



AGENDA
CITY OF LAKE WORTH BEACH
UTILITY CITY COMMISSION MEETING
CITY HALL COMMISSION CHAMBER
TUESDAY, APRIL 25, 2023 - 6:00 PM

ROLL CALL:

PLEDGE OF ALLEGIANCE: led by Commissioner Sarah Malega

AGENDA - Additions / Deletions / Reordering:

PRESENTATIONS: (there is no public comment on Presentation items)

A. Electric Utility Update by Ed Liberty, Electric Utility Director

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:

APPROVAL OF MINUTES:

A. [March 28, 2023](#)

CONSENT AGENDA: (public comment allowed during Public Participation of Non-Agendaed items)

A. [Sovereignty Submerged Lands Easement Renewal](#)

UNFINISHED BUSINESS:

A. [Purchased Power Cost Adjustment Update \(PCA\)](#)

NEW BUSINESS:

- A. [Resolution No. 10-2023 – Adopting a FY 2023 Budget Amendment for Subregional Wastewater Payment to ECR](#)
- B. [Resolution No. 11-2023 for the 2020 Non-Ad Valorem and 2020 Consolidated Utility Revenue Bonds Reauthorization](#)
- C. [Continuing Contracts for Professional Services for Energy Management and Engineering Services](#)
- D. [Agreement with Solar Energy Loan Fund \(SELF\)](#)
- E. [FMPA Municipal Solar Phase III Project Power Sales Contract](#)
- F. [Exercise of City’s extension rights under the OUC Supplemental Energy and Capacity Agreement](#)
- G. [Work Order No. 10 with L.E. Myers Co. to complete construction work for the French Ave Voltage Conversion Project](#)
- H. [Rate Stabilization Fund](#)

ADJOURNMENT:

The City Commission has adopted Rules of Decorum for Citizen Participation (See Resolution No. 81-2022). The Rules of Decorum are posted within the City Hall Chambers, City Hall Conference Room, posted online at: <https://lakeworthbeachfl.gov/government/virtual-meetings/>, and available through the City Clerk’s office. Compliance with the Rules of Decorum is expected and appreciated.

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

**MINUTES
CITY OF LAKE WORTH BEACH
UTILITY CITY COMMISSION MEETING
CITY HALL COMMISSION CHAMBER
TUESDAY, MARCH 28, 2023 - 6:00 PM**

The meeting was called to order by Mayor Resch on the above date at 6:01 PM in the City Commission Chamber located at City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

ROLL CALL: (0:35)

Present were Mayor Betty Resch, Vice Mayor Christopher McVoy, Commissioners Sarah Malega, Kimberly Stokes and Reinaldo Diaz. Also present were City Manager Carmen Davis, City Attorney Christy L. Goddeau and City Clerk Melissa Ann Coyne.

PLEDGE OF ALLEGIANCE: (0:52) led by Commissioner Sarah Malega.

Action: Consensus to lower the flag to half staff in remembrance of the victims of the Nashville school shooting.

AGENDA - Additions/Deletions/Reordering: (1:42)

There were no changes to the agenda.

PRESENTATIONS: (2:49) (there is no public comment on Presentation items)

A. Electric Utility Update by Ed Liberty, Electric Utility Director

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA: (21:17)

APPROVAL OF MINUTES: (20:49)

Action: Motion made by Commissioner Stokes and seconded by Commissioner Malega to approve the following minutes:

A. February 28, 2023

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz. NAYS: None.

CONSENT AGENDA: (public comment allowed during Public Participation of Non-Agendaed items) (44:46)

Action: Motion made by Commissioner Malega and seconded by Commissioner Stokes to approve the Consent Agenda.

A. Waiver of possible conflict of interest for Torcivia, Donlon, Goddeau & Rubin, P.A. to prepare the Subregional Wastewater Interlocal Agreement Amendment

- B. Work Order No. 13 with Miller Lining, LLC, to install gravity sewer pipe lining on 15th Avenue South

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz. NAYS: None.

UNFINISHED BUSINESS: (44:56)

- A. Purchased Power Cost Adjustment Update (PCA)

Action: Motion made by Commissioner Malega and seconded by Commissioner Stokes to approve the PCA as presented under Option 1, effective May 1, 2023.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz. NAYS: None.

The meeting recessed at 7:47 PM and reconvened at 8:02 PM.

NEW BUSINESS: (2:01:26)

- A. Purchase Order with Pat's Pump and Blower for an Aquatech Sanitary Storm Sewer Cleaner/Hydro-Excavator Vacuum Truck for the Water Utilities Department (2:01:38)

Action: Motion made by Commissioner Diaz and seconded by Commissioner Stokes to approve Purchase Order with Pat's Pump and Blower for an Aquatech Sanitary Storm Sewer Cleaner/Hydro-Excavator Vacuum Truck for the Water Utilities Department.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz. NAYS: None.

- B. Task Order No. 1 with Holtz Consulting Engineers, Inc. for design of Lift Stations 5, 6, 15 and 25 Improvements (2:02:19)

Action: Motion made by Commissioner Malega and seconded by Commissioner Diaz to approve Task Order No. 1 with Holtz Consulting Engineers, Inc. for design of Lift Stations 5, 6, 15 and 25 Improvements.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz. NAYS: None.

- C. Continuing Contracts for Professional Services for Energy Management and Engineering Services (2:05:19)

Action: Motion made by Commissioner Malega and seconded by Commissioner Stokes to approve the Agreements for Continuing Contracts for professional services for Energy Management and Engineering services with BHI Engineering, Inc., Kiewit Engineering Group, Inc., TEAMWORKnet, Inc., Chen Moore & Associates, Inc., RMC Technologies, Inc. and Professional Services Agreement for Utility Studies, System Modelling, Analytics and other energy services to nFront Consulting, LLC.

Vote: Voice vote showed: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz. NAYS: None.

D. Discussion regarding raising the rooftop solar limits brought forward by Vice Mayor McVoy (2:07:04)

Action: Consensus to bring back a resolution regarding raising the rooftop solar limits with backup to include potential costs for different solar limit scenarios and data for the claims on the May utility meeting.

E. Discussion regarding rooftop solar procedure brought forward by Vice Mayor McVoy (3:05:20)

Action: Consensus to bring back a resolution changing the procedure for approving rooftop solar with backup to include potential costs for different solar limit scenarios and data for the claims on the May utility meeting.

ADJOURNMENT: (3:20:52)

Action: Motion made by Commissioner Malega and seconded by Vice Mayor McVoy to adjourn the meeting at 9:22 PM.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz. NAYS: None.

Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

Minutes Approved: April 25, 2023

Item time stamps correspond to the meeting recording on YouTube.

STAFF REPORT UTILITY MEETING

AGENDA DATE: April 25, 2023

DEPARTMENT: Water Utilities

TITLE:

Sovereignty Submerged Lands Easement Renewal

SUMMARY:

Sovereignty Submerged Lands Easement Renewal provides nonexclusive easements to the City of Lake Worth for two stormwater outfall pipes into Lake Osborne, with a processing fee of \$739.88.

BACKGROUND AND JUSTIFICATION:

The City was granted a Sovereign Submerged Lands easement in 1993 for the two 36" stormwater outfalls into Lake Osborne, one along Lake Osborne Drive by Sunset Ave and one on Lake Osborne Drive between High Ridge Road and Cochran Road. These outfalls provide drainage of the surrounding areas along Lake Osborne. The easement was granted for 30 years and as such is set to expire this year. The State and the City wish to renew the easement. The internal processing fee for the renewal of this easement is \$739.88 due to the Florida Department of Environmental Protection.

MOTION:

Move to approve/disapprove Sovereignty Submerged Lands Easement Renewal with the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida in the amount of \$739.88.

ATTACHMENT(S):

Fiscal Impact Analysis
Easement Renewal
Invoice
1993 Easement

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Operating	\$739.88	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	\$739.88	0	0	0	0
No. of Addn'l Full-Time Employee Positions					
	0	0	0	0	0

New Appropriation Fiscal Impact:		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Budget Transfer Impact		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Contract Award - Existing Appropriation		
	Expenditure	
Department	Water Utilities	
Division	Administration	
GL Description	Professional Services	
GL Account Number	402-7010-533.31-90	
Project Number	N/A	
Requested Funds	\$739.88	

This Instrument Prepared By:

Sue Jones

Action No. 46892

Bureau of Public Land Administration

3900 Commonwealth Boulevard

Mail Station No. 125

Tallahassee, Florida 32399

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
OF THE STATE OF FLORIDA

SOVEREIGNTY SUBMERGED LANDS EASEMENT RENEWAL

EASEMENT NO. 28787 (4601-50)

BOT FILE NO. 502027966

THIS EASEMENT is hereby granted by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, hereinafter referred to as the Grantor.

WITNESSETH: That for the faithful and timely performance of and compliance with the terms and conditions stated herein, the Grantor does hereby grant to City of Lake Worth Beach, Florida, f/k/a City of Lake Worth, hereinafter referred to as the Grantee, a nonexclusive easement on, under and across the sovereignty lands, if any, contained in the following legal description:

A parcel of sovereignty submerged land in
Section 29, Township 44 South, Range 43 East, in Lake Osborne,
Palm Beach County, Florida, containing 1,998 square feet, more or less,
as is more particularly described and shown on Attachment A, dated December 10, 1992.

TO HAVE THE USE OF the hereinabove described premises from March 24, 2023, the effective date of this easement renewal, through March 24, 2048, the expiration date of this easement renewal. The terms and conditions on and for which this easement renewal is granted are as follows:

1. USE OF PROPERTY: The above described parcel of land shall be used solely for maintenance of two stormwater outfall pipes. All of the foregoing subject to the remaining conditions of this easement
2. EASEMENT CONSIDERATION: In the event the Grantor amends its rules related to fees and the amended rules provide the Grantee will be charged a fee or an increased fee for this activity, the Grantee agrees to pay all charges required by such amended rules within 90 days of the date the amended rules become effective or by a date provided by an invoice from the Department, whichever is later. All fees charged under this provision shall be prospective in nature; i.e. they shall begin to accrue on the date that the amended rules become effective.
3. WARRANTY OF TITLE/GUARANTEE OF SUITABILITY OF USE OF LAND: Grantor neither warrants title to the lands described herein nor guarantees the suitability of any of the lands for any particular use.
4. RIGHTS GRANTED: The rights hereby granted shall be subject to any and all prior rights of the United States and any and all prior grants by the Grantor in and to the submerged lands situated within the limits of this easement.

5. DAMAGE TO EASEMENT PROPERTY AND INTERFERENCE WITH PUBLIC AND PRIVATE RIGHTS: Grantee shall not damage the easement lands or unduly interfere with public or private rights therein.

6. GRANTOR'S RIGHT TO GRANT COMPATIBLE USES OF THE EASEMENT PROPERTY: This easement is nonexclusive, and the Grantor, or its duly authorized agent, shall retain the right to enter the property or to engage in management activities not inconsistent with the use herein provided for and shall retain the right to grant compatible uses of the property to third parties during the term of this easement.

7. RIGHT TO INSPECT: Grantor, or its duly authorized agent, shall have the right at any time to inspect the works and operations of the Grantee in any matter pertaining to this easement.

8. LIABILITY/INVESTIGATION OF ALL CLAIMS: The Grantee shall investigate all claims of every nature at its expense. Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by any party hereto, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims.

9. ASSIGNMENT OF EASEMENT: This easement shall not be assigned or otherwise transferred without prior written consent of the Grantor or its duly authorized agent and which consent shall not be unreasonably withheld. Any assignment or other transfer without prior written consent of the Grantor shall be null and void and without legal effect.

10. TERMINATION: The Grantee, by acceptance of this easement, binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Grantee, its successors and assigns. In the event the Grantee fails or refuses to comply with the provisions and conditions herein set forth or in the event the Grantee violates any of the provisions and conditions herein, this easement may be terminated by the Grantor upon 30 days written notice to the Grantee. If terminated, all of the above-described parcel of land shall revert to the Grantor. Any costs or expenses incurred by the Grantor in removing the Grantee or its property from the easement area shall be paid by the Grantee. All notices required to be given to the Grantee by this easement or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

City of Lake Worth Beach, Florida
7 North Dixie Highway
Lake Worth Beach, FL 33460

The Grantee agrees to notify the Grantor by certified mail of any changes to this address at least ten (10) days before the change is effective.

11. TAXES AND ASSESSMENTS: The Grantee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this easement which result from the grant of this easement or the activities of Grantee hereunder.

12. REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES: If the Grantee does not remove said structures and equipment occupying and erected upon the premises after expiration or cancellation of this easement, such structures and equipment will be deemed forfeited to the Grantor, and the Grantor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Grantee at the address specified in paragraph 10 or at such address on record as provided to the Grantor by the Grantee. However, such remedy shall be in addition to all other remedies available to Grantor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

13. ENFORCEMENT OF PROVISIONS: No failure, or successive failures, on the part of the Grantor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Grantor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

14. AMENDMENT/MODIFICATIONS: This easement is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this easement must be in writing and must be accepted, acknowledged and executed by the Grantee and Grantor.

15. USACE AUTHORIZATION: Prior to commencement of construction and/or activities authorized herein, the Grantee shall obtain the U.S. Army Corps of Engineers (USACE) permit if it is required by the USACE. Any modifications to the construction and/or activities authorized herein that may be required by the USACE shall require consideration by and the prior written approval of the Grantor prior to the commencement of construction and/or any activities on sovereign, submerged lands.

16. ADDITIONAL STRUCTURES OR ACTIVITIES/EMERGENCY STRUCTURAL REPAIRS: No additional structures shall be erected and/or activities undertaken, including but not limited to, dredging, relocation/realignment or major repairs or renovations made to authorized structures, on, in or over sovereignty, submerged lands without the prior written consent from the Grantor, with the exception of emergency repairs. Unless specifically authorized in writing by the Grantor, such activities or structures shall be considered unauthorized and a violation of Chapter 253, Florida Statutes, and shall subject the Grantee to administrative fines under Chapter 18-14, Florida Administrative Code. If emergency repairs are required to be undertaken in the interests of public health, safety or welfare, the Grantee shall notify the Grantor of such repairs as quickly as is practicable; provided, however, that such emergency activities shall not exceed the activities authorized by this easement.

17. UPLAND RIPARIAN PROPERTY INTEREST: During the term of this easement, Grantee must have satisfactory evidence of sufficient upland interest as defined in subsection 18-21.003(63), Florida Administrative Code, to the extent required by paragraph 18-21.004(3)(b), Florida Administrative Code, in order to conduct the activity described in this easement. If at any time during the term of this easement, Grantee fails to comply with this requirement, use of sovereignty, submerged lands described in this easement shall immediately cease and this easement shall terminate and title to this easement shall revert to and vest in the Grantor immediately and automatically.

[Remainder of page intentionally left blank; Signature page follows]

IN WITNESS WHEREOF, the Grantee and the Grantor have executed this instrument on the day and year first above written.

WITNESSES:

BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE STATE
OF FLORIDA

(SEAL)

Original Signature

Print/Type Name of Witness

BY: _____
Brad Richardson, Chief, Bureau of Public Land Administration,
Division of State Lands, State of Florida Department of
Environmental Protection, as agent for and on behalf of the Board
of Trustees of the Internal Improvement Trust Fund of the
State of Florida.

Original Signature

Print/Type Name of Witness

"GRANTOR"

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me by means of physical presence this _____ day of _____, 20____, by Brad Richardson, Chief, Bureau of Public Land Administration, Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. He is personally known to me.

APPROVED SUBJECT TO PROPER EXECUTION:



3/27/2023

DEP Attorney

Date

Notary Public, State of Florida

Printed, Typed or Stamped Name

My Commission Expires:

Commission/Serial No. _____

WITNESSES:

City of Lake Worth Beach, Florida
f/k/a City of Lake Worth (SEAL)

Original Signature

BY: _____
Original Signature of Executing Authority

Typed/Printed Name of Witness

Betty Resch
Typed/Printed Name of Executing Authority

Original Signature

Mayor
Title of Executing Authority

Typed/Printed Name of Witness

“GRANTEE”

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of __ physical presence or __ online notarization this _____ day of _____, 20____, by Betty Resch as Mayor, for and on behalf of City of Lake Worth Beach, Florida, f/k/a City of Lake Worth. She is personally known to me or who has produced _____, as identification.

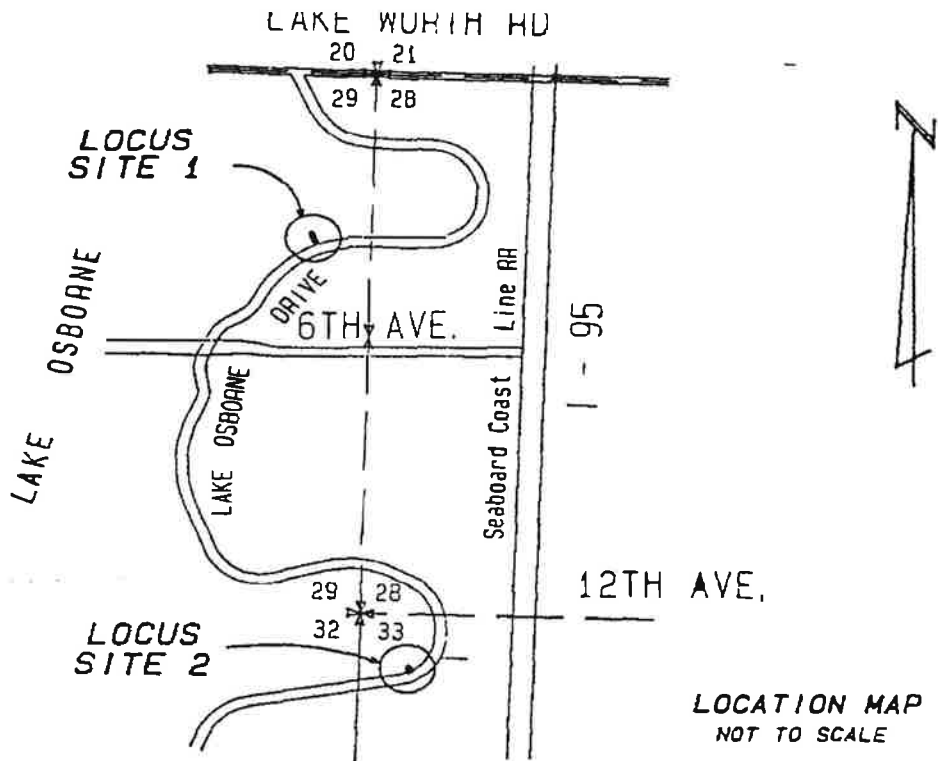
My Commission Expires:

Signature of Notary Public

Notary Public, State of _____

Commission/Serial No. _____

Printed, Typed or Stamped Name



NOTES: THERE ARE NO STRUCTURES WITHIN 100 FEET OF THE APPLICANT'S EASEMENT AREAS.

THE SAFE UPLAND LINE HAS BEEN ESTABLISHED AT ELEVATION 9.0 FEET NATIONAL GEODETIC VERTICAL DATUM (NGVD) APPROVED BY THE DEPARTMENT OF NATURAL RESOURCES. BENCH MARK FOR SITE 1 IS PK NAIL IN SOUTH SIDE OF POWER POLE LOCATED AT SOUTHEAST CORNER OF ENTRANCE TO 2020 LAKESIDE GARDENS, LAKE OSBORNE DRIVE, ELEV. 15.14 (NGVD). BENCH MARK FOR SITE 2 IS PK NAIL IN EAST SIDE OF POWER POLE LOCATED AT THE NORTHEAST CORNER OF COCHRAN DRIVE AND LAKE OSBORNE DRIVE, ELEV. 13.41 (NGVD).

THE LINEAR FOOTAGE OF THE SHORELINE BORDERING STATE SUBMERGED LANDS FROM THE PROPOSED EASEMENT SITE 1 IS 4,090 FEET, MORE OR LESS, NORTHERLY, TO LAKE WORTH ROAD AND 1,360 FEET, MORE OR LESS, SOUTHWESTERLY, TO 6TH AVENUE.

THE LINEAR FOOTAGE OF THE SHORELINE BORDERING STATE SUBMERGED LANDS FROM THE PROPOSED EASEMENT SITE 2 IS 600 FEET, MORE OR LESS, NORTHERLY TO 12TH AVENUE AND 6,000 FEET, MORE OR LESS, SOUTHERLY TO LANTANA WEST ROAD.

SURVEYOR'S CERTIFICATION

I HEREBY CERTIFY that the Specific Purpose Survey as shown hereon is a true and correct representation of a survey, made under my direction of the lands described hereon, and that, to the best of my knowledge and belief, that said survey complies with the Minimum Technical Standards as set forth by the Florida Board of Professional Land Surveyors pursuant to Section 472.027, Florida Statutes and Chapter 21 MH-6.006 of the Florida Administrative Code.

Date: 12-10-92 By: Mary Hanna Clodfelter
 Mary Hanna Clodfelter
 Professional Land Surveyor
 Florida Certificate No. 4763

SHEET 1 OF 5
 SPECIFIC PURPOSE SURVEY

REV: 12-10-92	MOCK, ROOS & ASSOCIATES, INC. ENGINEERS • SURVEYORS • PLANNERS 5720 CORPORATE WAY WEST PALM BEACH, FLORIDA 33407 Phone: 407 683-3113 Fax: 407 478-7248	Submerged Lands Easement Prepared for CITY OF LAKE WORTH SECT. 29, 33; T44S; R43E	SCALE: N/A
FIELD: N/A			DATE: MAY 1992
DRAWN: MI CLODFELTER			P. A. NO. 85098.06
APPROVED:			DR. NO. A-2478

**DESCRIPTION: SUBMERGED LANDS EASEMENT
SITE 1**

A parcel of submerged land situate in the Northeast One-Quarter (NE 1/4) of Section 29, Township 44 South, Range 43 East, Palm Beach County, Florida and being an easement 20.00 feet in width and being more particularly described as follows:

Commencing at the corner formed by the intersection of the South right-of way line of Lake Osborne Drive (100.00 feet wide) and the Northwesternmost corner of Lot 46 as shown on the plat of "Lake Shore Villas", recorded in Plat Book 23 at page 249 of the Public Records of said Palm Beach County, said point also being along the east line of said Section 29; thence departing from said South right-of-way of Lake Osborne Drive and along said east line of Section 29, North 01-52-44 East, a distance of 100.00 feet to intersect the North right-of-way line of Lake Osborne Drive; thence along said North right-of-way Line, North 88-07-16 West, a distance of 84.53 feet to the beginning of a curve having a radius of 1005.37 feet from which a radial line bears, South 01-52-44 West; thence Southwesterly along the arc of said curve subtending a central angle of 23 54-52, an arc distance of 419.63 feet; thence departing from said North right-of-way line, North 22-02-08 West, a distance of 69.60 feet to a point along the Safe Upland Line of Lake Osborne as now established at elevation 5.0 feet National Geodetic Vertical Datum (NGVD) and the Point of Beginning.

From the Point of Beginning; thence continuing North 22-02-08 West, a distance of 50.40 feet; thence North 67-57-52 East, a distance of 20.00 feet; thence South 22-02-08 East, a distance of 58.98 feet to intersect the aforementioned Safe Upland Line; thence along said line, North 88-48-18 West, a distance of 21.76 feet to the point of beginning.

Containing 0.025 acres (1093.8 Square Feet) of land, more or less.

Subject to rights-of-way, easements restrictions and/or reservations of record, if any.

Bearings shown are based on an assumed bearing of South 01-52-44 West along the east line of Section 29, Township 44 South, Range 43 East, Palm Beach County, Florida also being the west line of "Lake Shore Villas", as recorded in Plat Book 23 at Page 249 of the Public Records of said Palm Beach County, Florida.

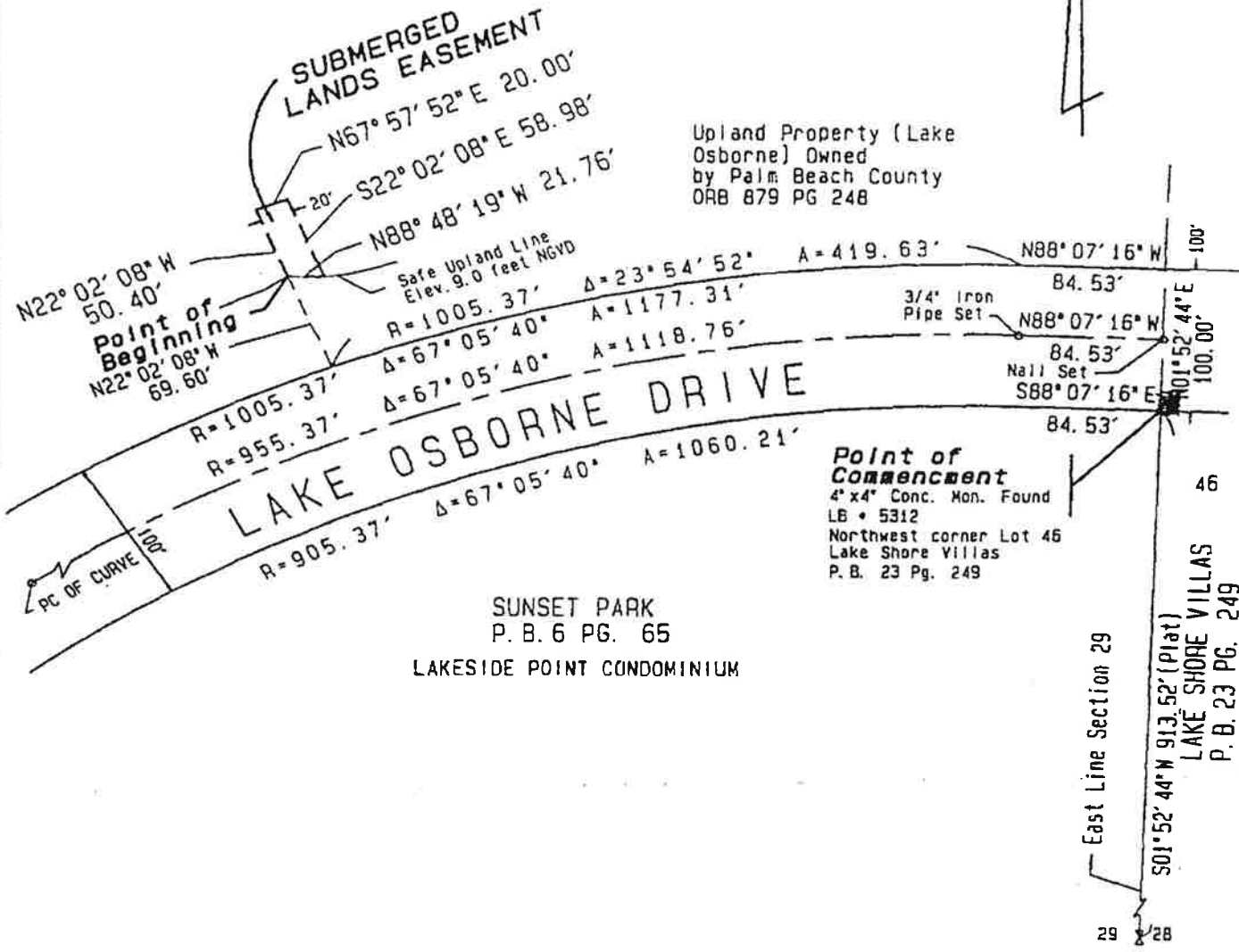
SHEET 2 OF 5
SPECIFIC PURPOSE SURVEY

REV: 12-10-92		MOCK, ROOS & ASSOCIATES, INC. ENGINEERS • SURVEYORS • PLANNERS 5720 CORPORATE WAY WEST PALM BEACH, FLORIDA 33407 Phone: 407 683-3113 Fax: 407 478-7248	Submerged Lands Easement	SCALE: N/A
FIELD: N/A			SITE 1	DATE: MAY 1992
DRAWN: WH CLODFELTER			Prepared for	P. A. NO. 85098.06
APPROVED:			CITY OF LAKE WORTH	DR. NO. A-2478
			SECT. 29, 33; T44S; R43E	

NOTES

- Bearings shown hereon are referenced to an assumed bearing of S 01°-52'-44" W along the East line of Section 29-44-43, being also the West line of Lake Shore Villas, P. B. 23 Pg. 249.
- Bench Mark is PK Nail in south side of power pole located at southeast corner of entrance to 2020 Lakeside Gardens, Lake Osborne Drive, Elev. 15.14 (NGVD).

LAKE OSBORNE



Point of Commencement
 4" x 4" Conc. Mon. Found
 LB # 5312
 Northwest corner Lot 46
 Lake Shore Villas
 P. B. 23 Pg. 249

SUNSET PARK
 P. B. 6 PG. 65
 LAKESIDE POINT CONDOMINIUM

East Line Section 29
 29
 28
 S01°52'44"W 913.52' (Plat)
 LAKE SHORE VILLAS
 P. B. 23 PG. 249

SHEET 3 OF 5
 SPECIFIC PURPOSE SURVEY

REV: 12-10-92	 MOCK, ROOS & ASSOCIATES, INC. ENGINEERS • SURVEYORS • PLANNERS 5720 CORPORATE WAY WEST PALM BEACH, FLORIDA 33407 Phone: 407 683-3113 Fax: 407 478-7248	Submerged Lands Easement	SCALE: 1" = 100'
FIELD: L. KESTY		SITE 1	DATE: MAY 1992
DRAWN: MI CLOOFELTER		Prepared for	P. A. NO. 85098.06
APPROVED:		CITY OF LAKE WORTH	DR. NO. A-2478
		SECT. 29, 33; T44S; R43E	

NOTES

1. Bearings shown hereon are referenced to an assumed bearing of S 01°52'37" W along the West line of Section 33-44-43, being also the centerline of High Ridge Road as shown on Lake Shore Manor, P. B. 25 PG. 233.
2. Bench Mark is PK Nail in East side of power pole located at Northeast corner Cochran Drive and Lake Osborne Drive. Elevation 13.42 (NGVD).

29 487' 28"
32 33

501°52'37"W 721.52' (PLAT)
501°52'37"W 739.80'
HIGH RIDGE ROAD (80')
501°52'37"W 272.62' to Crest Drive

LAKE OSBORNE

Upland Property (Lake Osborne)
Owner by Palm Beach County

SUBMERGED LANDS EASEMENT

N69°02'20"E 20.00'
S20°57'40"E 46.96'
S78°54'37"W 20.30'
N20°57'40"W 43.48'
Point of Beginning
N20°57'40"W 16.62'
N20°57'40"W 50.09'
A=108.12'
Δ=14°33'45"

LAKE OSBORNE DRIVE

18.28'
Brass Disk Fnd.
MC Witness corner
N80°19'18"E 361.11'
N80°19'18"E 371.33'
N80°19'18"E 320.32'
Point of Commencement
Intersection of centerline
Lake Osborne Drive and West
line of Section 33, shown on
Lake Osborne Manor
P. B. 25 Pg. 233

LAKE OSBORNE MANOR
P. B. 25 PG. 233

Centerline
Cochran Drive

SHEET 5 OF 5
SPECIFIC PURPOSE SURVEY

REV: 12-10-92
FIELD: L. KESTY
DRAWM: MH CLODFELTER
APPROVED:

MOCK, ROOS & ASSOCIATES, INC.
ENGINEERS • SURVEYORS • PLANNERS
5720 CORPORATE WAY
WEST PALM BEACH, FLORIDA 33407
Phone: 407 683-3113 Fax: 407 478-7248



Submerged Lands Easement
SITE 2
Prepared for
CITY OF LAKE WORTH
SECT. 29, 33; T44S; R43E

SCALE: 1"=100'
DATE: MAY 1992
P. A. NO. 8509B. 0E
DR. NO. A-2478

**DESCRIPTION: SUBMERGED LANDS EASEMENT
SITE 2**

A parcel of submerged land situate in the Northwest One-Quarter (NW 1/4) of Section 33, Township 44 South, Range 43 East, Palm Beach County, Florida and being an easement 20.00 feet in width and being more particularly described as follows:

Commencing at the corner formed by the intersection of the centerline of Lake Osborne Drive (100.00 feet wide) and the West line of said Section 33 as shown on the plat of "Lake Osborne Manor", recorded in Plat Book 25 at Page 233 of the Public Records of said Palm Beach County; thence along said centerline, North 80-19-18 East, a distance of 371.33 feet to the beginning of a curve having a radius of 425.40 feet from which a radial line bears North 09-40-42 West; thence Northeasterly along the arc of said curve subtending a central angle of 14-33-45, an arc distance of 108.12 feet; thence departing from said centerline, North 20-57-40 West, a distance of 50.09 feet to intersect the North Right-of-Way line of Lake Osborne Drive; thence continuing North 20-57-40 West, a distance of 16.62 feet to a point along the Safe Upland Line of Lake Osborne as now established at elevation 9.0 feet National Geodetic Vertical Datum (NGVD) and the Point of Beginning.


From the Point of Beginning; thence continuing North 20-57-40 West, a distance of 43.48 feet; thence North 69-02-20 East, a distance of 20.00 feet; thence South 20-57-40 East, a distance of 46.96 feet to intersect the aforementioned Safe Upland Line; thence along said Line, South 78-54-37 West, a distance of 20.30 feet to the point of beginning.

Containing 0.021 acre (904.4 Square Feet) of land, more or less.

Subject to rights-of-way, easement restrictions and/or reservations of record, if any.

Bearings shown are based on an assumed bearing of South 01-52-37 West along the West line of Section 33, Township 44 South, Range 43 East, Palm Beach County, Florida, also being the centerline of High Ridge Road as shown on "Lake Shore Manor" as recorded in Plat Book 25 Page 233 of the Public Records on said Palm Beach County.

SHEET 4 OF 5
SPECIFIC PURPOSE SURVEY

REV: 12-10-92		MOCK, ROOS & ASSOCIATES, INC. ENGINEERS • SURVEYORS • PLANNERS 5720 CORPORATE WAY WEST PALM BEACH, FLORIDA 33407 Phone: 407 683-3113 Fax: 407 478-7248	Submerged Lands Easement SITE 2 Prepared for CITY OF LAKE WORTH SECT. 29, 33; T44S; R43E	SCALE: N/A
FIELD: N/A				DATE: MAY 1992
DRAWN: MH CLOOFELTER				P. A. NO. 85098.06
APPROVED:				DR. NO. A - 2478

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Receipts Section
 Post Office Box 3070
 Tallahassee, FL, 32315-3070



INVOICE

Bill To:

City of Lake Worth Florida
 7 North Dixie Highway
 Lake Worth Beach, FL 33460

**** INVOICE / INSTRUMENT INFORMATION ****

Invoice #:	129747	Instrument #:	502027966
Invoice Date:	03/28/2023	Expiration Date:	03/24/2048
Due Date:	04/27/2023	Extended Term Fee:	N
Lessee Name:	City of Lake Worth Florida		
Rate:	Submerged Easement No Fee		
Location:	Storm water outfalls into Lake Osborne		

**** IMPORTANT REMINDER ****

If paying by mail, please return invoice with your payment to the above address.
 Online payment by check, credit card or debit card is available at
<http://www.fldepportal.com/go/pay-invoices/>.
 Late payments are subject to a 12% Interest fee pursuant to FAC 18-21.011(1)(b)13.

INFORMATION			LEASE FEE DATA				
Description	Memo	Object	Net Square Feet	Rate	Discount	Extended Term Fee	*Amount
2023/2024 Submerged Easement Processing Fee		1021	1998.0	739.88	0	N	\$739.88
Note: Agent: S. Jones Action# 46892 HS					Subtotal		\$739.88
					Credit Applied		(\$0.00)
					Payment Applied		\$0.00
					Total		\$739.88
					Invoice Balance Due		\$739.88
					Instrument Lease Balance Due		\$739.88

ANNUAL LEASE FEE FORMULA = BASE FEE - DISCOUNT + EXTENDED TERM FEE
 *BASE FEE =Base Rate x Net Square Feet OR
 *BASE FEE =Minimum Rate
 DISCOUNT =Base Fee x Discount Percentage
 EXTENDED TERM FEE =Base Fee x Extended Term Fee Percentage

**For any questions concerning this invoice,
 please call the Division of State Lands at (850) 245-2555.**

8. The Grantee shall investigate all claims of every nature at its expense, and shall indemnify, defend and save and hold harmless the Grantor and the State of Florida from all claims, actions, lawsuits and demands arising out of this easement.

9. Grantee waives venue as to any litigation arising from matters relating to this easement and any such litigation between Grantor and Grantee shall be initiated and maintained only in Leon County, Florida.

10. This easement shall not be assigned or otherwise transferred without prior written consent of the Grantor or its duly authorized agent. Any assignment or other transfer without prior written consent of the Grantor shall be null and void and without legal effect.

11. The Grantee, by acceptance of this easement, binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Grantee, its successors and assigns. In the event the Grantee fails or refuses to comply with the provisions and conditions herein set forth or in the event the Grantee violates any of the provisions and conditions herein, this easement may be terminated by the Grantor upon 30 days written notice to Grantee. If terminated, all of the above-described parcel of land shall revert to the Grantor. All costs, including attorneys' fees, incurred by the Grantor to enforce the provisions of this easement shall be paid by the Grantee. All notices required to be given to Grantee by this easement or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

City of Lake Worth
Seven North Dixie Highway
Lake Worth, Florida 33460

The Grantee agrees to notify the Grantor by certified mail of any changes to this address at least ten (10) days before the change is effective.

12. The Grantee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this easement which result from the grant of this easement or the activities of Grantee hereunder.

13. Renewal of this easement is at the sole option of the Grantor. Such renewal shall be subject to the terms, conditions and provisions of current management standards and applicable laws, rules and regulations in effect at that time. In the event that Grantee is in full compliance with the terms of this easement, the Grantee shall be allowed a 30-day grace period after expiration of this easement to apply in writing for a renewal. If the Grantee fails to apply for a renewal within the grace period, or in the event the Grantor does not grant a renewal, the Grantee shall vacate the premises and remove all structures and equipment occupying and erected thereon at its expense.

14. If the Grantee does not remove said structures and equipment occupying and erected upon the premises after expiration or cancellation of this easement, such structures and equipment will be deemed forfeited to the Grantor, and the Grantor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Grantee at the address specified in Item 11 or at such address on record as provided to the Grantor by the Grantee. However, such remedy shall be in addition to all other remedies available to Grantor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

15. No failure, or successive failures, on the part of the Grantor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Grantor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

16. The Grantee, at its own expense, shall record this easement and any subsequent approved renewal and/or modified easements in the official records of the county within which the easement site is located within ten (10) days after receipt of a fully executed copy of this easement, and shall provide the Grantor with a copy of the recorded easement indicating the book and page at which the easement is recorded.

17. This easement is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this easement must be in writing and must be accepted, acknowledged and executed by the Grantee and Grantor.

18. SPECIAL EASEMENT CONDITIONS:

a. The Grantee shall comply with the following Manatee Protection Construction Conditions:

1. The Grantee shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees.
2. The Grantee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and the Florida Manatee Sanctuary Act.
3. The Grantee shall ensure that siltation barriers are made of material in which manatees cannot become entangled, are properly secured, and are regularly monitored to avoid manatee entrapment. Barriers must not block manatee entry to or exit from essential habitat.
4. The Grantee shall ensure that all vessels associated with the construction project operate at "no wake/idle" speeds at all times while in water where the draft of the vessel provides less than a four foot clearance from the bottom and that vessels will follow routes of deep water whenever possible.
5. Construction activities in open water shall cease upon the sighting of a manatee(s) within 100 yards of the project area. Construction activities will not resume until the manatee(s) has departed the project area.
6. Any collision with and/or injury to a manatee shall be reported immediately to the "Florida Marine Patrol" (1-800-DIAL-FMP) and to the U.S. Fish and Wildlife Service, Jacksonville Office (904-791-2580) for North Florida and to the Vero Beach Field Office (407-562-3909) for South Florida.
7. Prior to commencement of construction each vessel involved in the construction shall display in a prominent location, visible to the operator an 8 1/2" X 11" temporary placard reading, "Manatee Habitat/Idle Speed in Construction Area". A second temporary 8 1/2" X 11" placard reading, "Warning Manatee Area" will be posted in a location prominently visible to water related construction crews.

b. The Grantee shall ensure that no additional structures and/or activities including repairs or renovations to structures authorized by this easement shall be erected or conducted over sovereignty submerged lands without prior written consent from the Grantor. Unless specifically authorized in writing by the Grantor, such activities or structures shall be considered unauthorized and a violation of Chapter 253, Florida Statutes, and shall subject the Grantee to administrative fines under Rule 18-14, Florida Administrative Code. Additionally, such activities shall be deemed to be a breach of this contract.

WITNESSES:

Cathy Watkins
Original Signature

Cathy Watkins
Typed/Printed Name of Witness

Judith A. Booth
Original Signature

Judith A. Booth
Typed/Printed Name of Witness

BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE STATE OF
FLORIDA

BY [Signature] (SEAL)
Deborah H. Parrish, Deputy Director,
Division of State Lands, Agent for the
Board of Trustees of the Internal
Improvement Trust Fund

"GRANTOR"

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 15th day of June, 1993, by Percy W. Mallison, Jr. Deborah H. Parrish, Deputy Division Director, who is personally known to me and who did not take an oath.

APPROVED AS TO FORM AND LEGALITY:

William C. Robinson
DNR Attorney

Cathy Lynn Watkins
Notary Public, State of Florida

Printed, Typed or Stamped Name
CATHY LYNN WATKINS
My Commission Expires March 22, 1996
Commission/Serial No. _____
BONDED THRU TROY FAIR INSURANCE, INC.

WITNESSES:

Herbert Fein
Original Signature

HERBERT FEIN
Typed/Printed Name of Witness

Eleonore H. Geiger
Original Signature

ELEONORE H. GEIGER
Typed/Printed Name of Witness

City of Lake Worth (SEAL)
Grantee

BY [Signature]
Original Signature of Executing Authority

RODNEY G. ROMANO
Typed/Printed Name of Executing Authority

Chairman / Mayor
Title of Executing Authority

"GRANTEE"

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 21st day of May, 1993, by _____, who is personally known to me and who did (did not) take an oath.

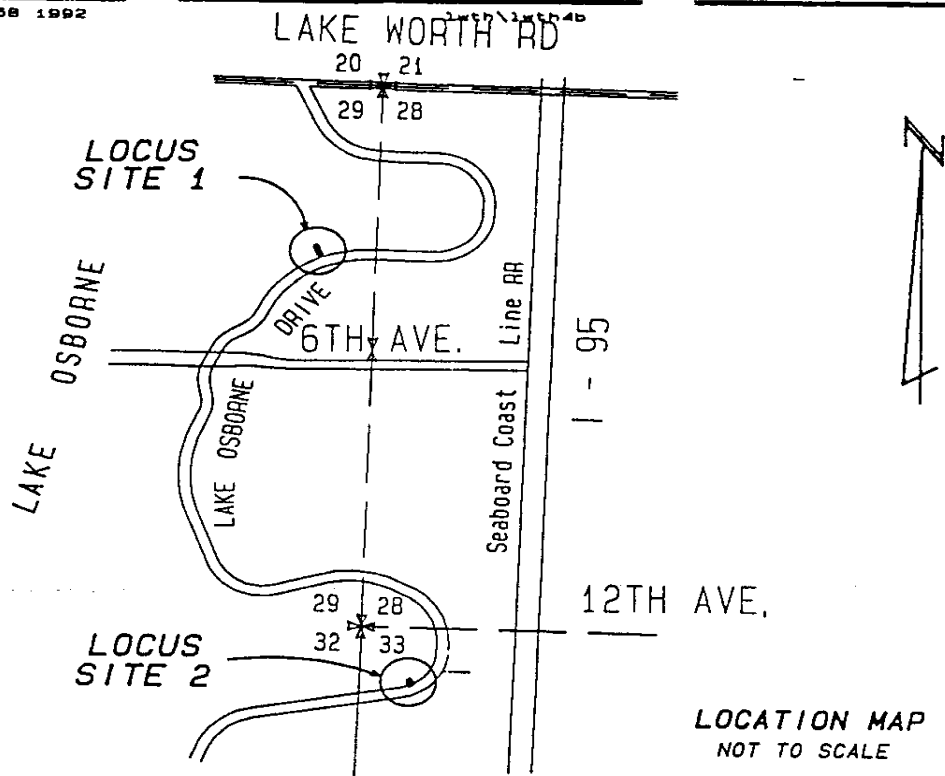
My Commission Expires:
NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP JUNE 18, 1994
BONDED THRU GENERAL INS. CO.

Commission/Serial No. 22526

Jennifer Callison
Notary Public, State of Florida

Jennifer Callison
Printed, Typed or Stamped Name

THU Dec 10 13:17:58 1992



LOCATION MAP
NOT TO SCALE

NOTES:

THERE ARE NO STRUCTURES WITHIN 100 FEET OF THE APPLICANT'S EASEMENT AREAS.

THE SAFE UPLAND LINE HAS BEEN ESTABLISHED AT ELEVATION 9.0 FEET NATIONAL GEODETIC VERTICAL DATUM (NGVD) APPROVED BY THE DEPARTMENT OF NATURAL RESOURCES. BENCH MARK FOR SITE 1 IS PK NAIL IN SOUTH SIDE OF POWER POLE LOCATED AT SOUTHEAST CORNER OF ENTRANCE TO 2020 LAKESIDE GARDENS, LAKE OSBORNE DRIVE, ELEV. 15.14 (NGVD). BENCH MARK FOR SITE 2 IS PK NAIL IN EAST SIDE OF POWER POLE LOCATED AT THE NORTHEAST CORNER OF COCHRAN DRIVE AND LAKE OSBORNE DRIVE, ELEV. 13.41 (NGVD).

THE LINEAR FOOTAGE OF THE SHORELINE BORDERING STATE SUBMERGED LANDS FROM THE PROPOSED EASEMENT SITE 1 IS 4,090 FEET, MORE OR LESS, NORTHERLY, TO LAKE WORTH ROAD AND 1,360 FEET, MORE OR LESS, SOUTHWESTERLY, TO 6TH AVENUE.

THE LINEAR FOOTAGE OF THE SHORELINE BORDERING STATE SUBMERGED LANDS FROM THE PROPOSED EASEMENT SITE 2 IS 600 FEET, MORE OR LESS, NORTHERLY TO 12TH AVENUE AND 6,000 FEET, MORE OR LESS, SOUTHERLY TO LANTANA WEST ROAD.

SURVEYOR'S CERTIFICATION

I HEREBY CERTIFY that the Specific Purpose Survey as shown hereon is a true and correct representation of a survey, made under my direction of the lands described hereon, and that, to the best of my knowledge and belief, that said survey complies with the Minimum Technical Standards as set forth by the Florida Board of Professional Land Surveyors pursuant to Section 472.027, Florida Statutes and Chapter 21 HH-6.006 of the Florida Administrative Code.

Date: 12-10-92

By: *Mary Hanna Clodfelter*
 Mary Hanna Clodfelter
 Professional Land Surveyor
 Florida Certificate No. 4763

SHEET 1 OF 5
 SPECIFIC PURPOSE SURVEY

REV: 12-10-92
FIELD: N/A
DRAWN: MH CLODFELTER
APPROVED:

MOCK, ROOS & ASSOCIATES, INC.
 ENGINEERS • SURVEYORS • PLANNERS
 5720 CORPORATE WAY
 WEST PALM BEACH, FLORIDA 33407
 Phone: 407 683-3113 Fax: 407 478-7248



Submerged Lands Easement
 Prepared for
 CITY OF LAKE WORTH
 SECT. 29, 33; T44S; R43E

SCALE: N/A
DATE: MAY 1992
P. A. NO. B509B.06
DR. NO. A-247B

**DESCRIPTION: SUBMERGED LANDS EASEMENT
SITE 1**

A parcel of submerged land situate in the Northeast One-Quarter (NE 1/4) of Section 29, Township 44 South, Range 43 East, Palm Beach County, Florida and being an easement 20.00 feet in width and being more particularly described as follows:

Commencing at the corner formed by the intersection of the South right-of-way line of Lake Osborne Drive (100.00 feet wide) and the Northwesternmost corner of Lot 46 as shown on the plat of "Lake Shore Villas", recorded in Plat Book 23 at page 249 of the Public Records of said Palm Beach County, said point also being along the east line of said Section 29; thence departing from said South right-of-way of Lake Osborne Drive and along said east line of Section 29, North 01-52-44 East, a distance of 100.00 feet to intersect the North right-of-way line of Lake Osborne Drive; thence along said North right-of-way line, North 88-07-16 West, a distance of 84.53 feet to the beginning of a curve having a radius of 1005.37 feet from which a radial line bears, South 01-52-44 West; thence Southwesterly along the arc of said curve subtending a central angle of 23-54-52, an arc distance of 419.63 feet; thence departing from said North right-of-way line, North 22-02-08 West, a distance of 69.60 feet to a point along the Safe Upland Line of Lake Osborne as now established at elevation 9.0 feet National Geodetic Vertical Datum (NGVD) and the Point of Beginning.


From the Point of Beginning; thence continuing North 22-02-08 West, a distance of 50.40 feet; thence North 67-57-52 East, a distance of 20.00 feet; thence South 22-02-08 East, a distance of 58.98 feet to intersect the aforementioned Safe Upland Line; thence along said line, North 88-48-18 West, a distance of 21.76 feet to the point of beginning.

Containing 0.025 acres (1093.8 Square Feet) of land, more or less.

Subject to rights-of-way, easements restrictions and/or reservations of record, if any.

Bearings shown are based on an assumed bearing of South 01-52-44 West along the east line of Section 29, Township 44 South, Range 43 East, Palm Beach County, Florida also being the west line of "Lake Shore Villas", as recorded in Plat Book 23 at Page 249 of the Public Records of said Palm Beach County, Florida.

SHEET 2 OF 5
SPECIFIC PURPOSE SURVEY

REV: 12-10-92	 <p>MOCK, ROOS & ASSOCIATES, INC. ENGINEERS • SURVEYORS • PLANNERS 5720 CORPORATE WAY WEST PALM BEACH, FLORIDA 33407 Phone: 407 683-3113 Fax: 407 478-7248</p>	Submerged Lands Easement SITE 1 Prepared for CITY OF LAKE WORTH SECT. 29, 33; T44S; R43E	SCALE: N/A
FIELD: N/A			DATE: MAY 1992
DRAWN: MH CLODFELTER			P. A. NO. 85098.06
APPROVED:			DR. NO. A-2478

Thu Dec 10 13:20:20 1992

1wth\1wth4b

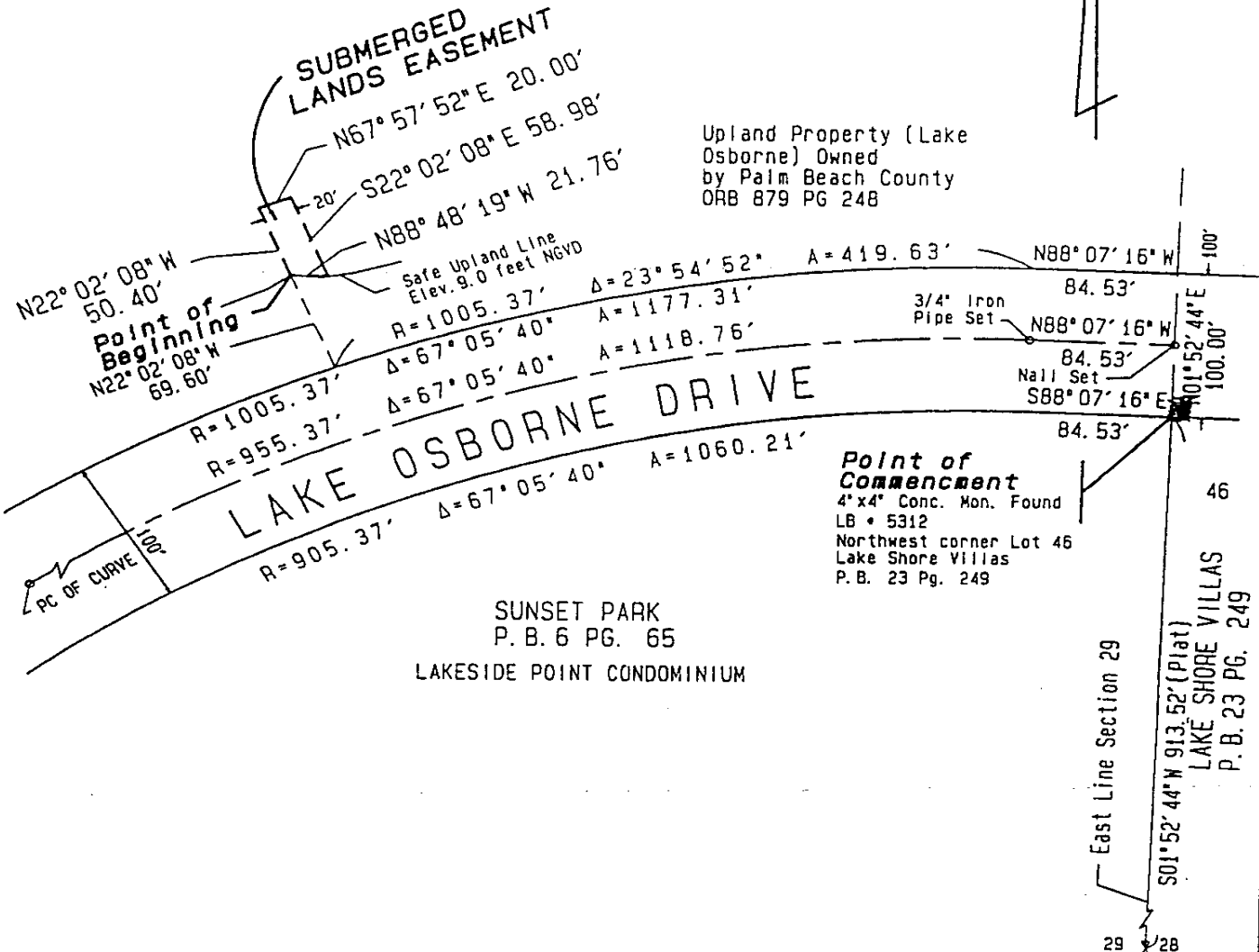
NOTES

1. Bearings shown hereon are referenced to an assumed bearing of S 01-52-44 W along the East line of Section 29-44-43, being also the West line of Lake Shore Villas, P. B. 23 Pg. 249.
2. Bench Mark is PK Nail in south side of power pole located at southeast corner of entrance to 2020 Lakeside Gardens, Lake Osborne Drive, Elev. 15.14 (NGVD).

LAKE OSBORNE



Upland Property (Lake Osborne) Owned by Palm Beach County ORB 879 PG 248



Point of Commencement
 4"x4" Conc. Mon. Found
 LB # 5312
 Northwest corner Lot 46
 Lake Shore Villas
 P. B. 23 Pg. 249

SUNSET PARK
 P. B. 6 PG. 65
 LAKESIDE POINT CONDOMINIUM

SHEET 3 OF 5
 SPECIFIC PURPOSE SURVEY

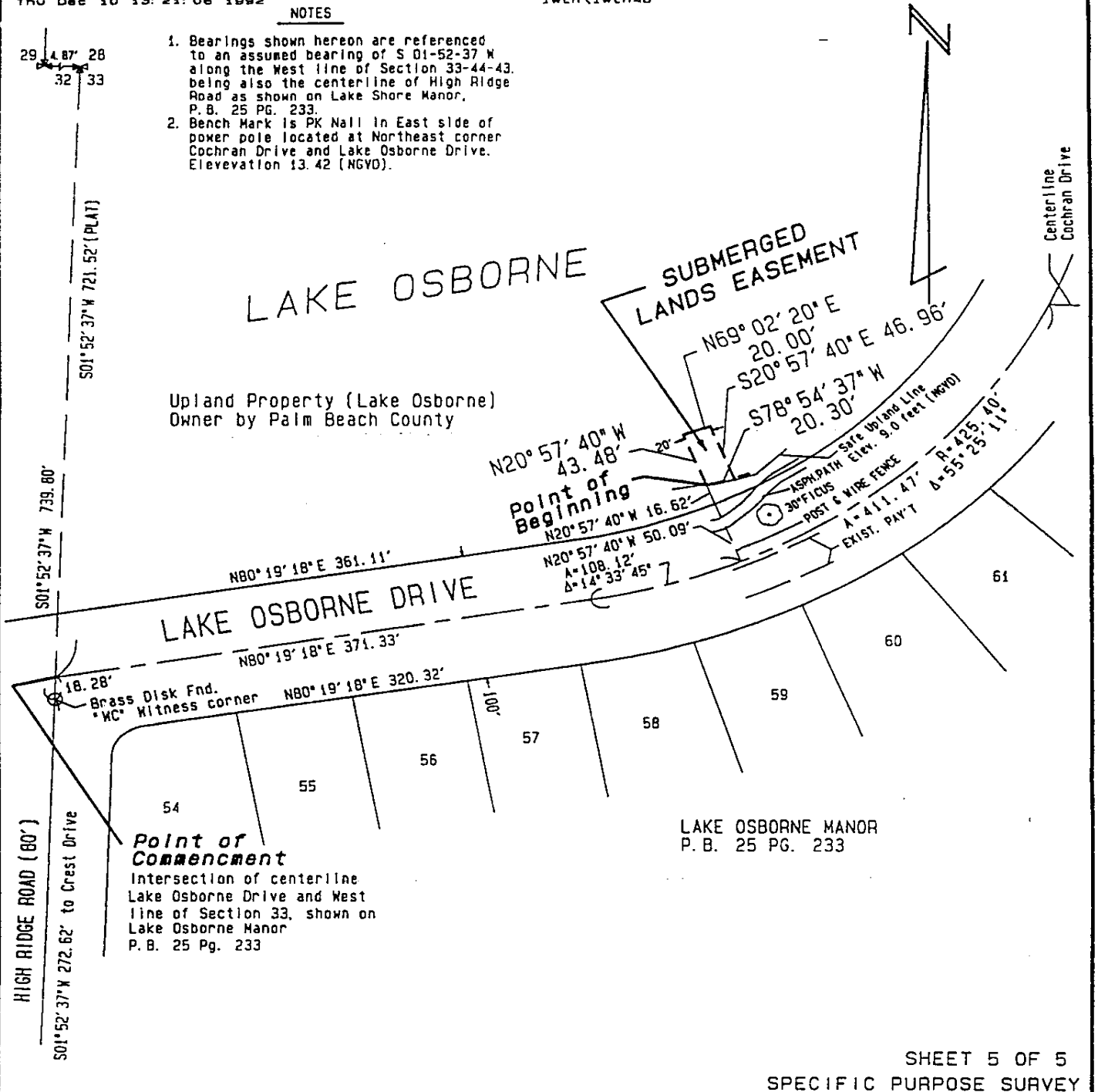
REV: 12-10-92	MOCK, ROOS & ASSOCIATES, INC. ENGINEERS • SURVEYORS • PLANNERS 5720 CORPORATE WAY WEST PALM BEACH, FLORIDA 33407 Phone: 407 683-3113 Fax: 407 478-7248	Submerged Lands Easement SITE 1 Prepared for CITY OF LAKE WORTH SECT. 29, 33; T44S; R43E	SCALE: 1" = 100'
FIELD: L. KESTY			DATE: MAY 1992
DRAWN: MH CLODFELTER			P. A. NO. 85098.06
APPROVED:			DR. NO. A-2478

Thu Dec 10 13:21:06 1992

1wth\1wth4b

NOTES

1. Bearings shown hereon are referenced to an assumed bearing of S 01-52-37 W along the West line of Section 33-44-43, being also the centerline of High Ridge Road as shown on Lake Shore Manor, P. B. 25 PG. 233.
2. Bench Mark is PK Nail in East side of power pole located at Northeast corner Cochran Drive and Lake Osborne Drive. Elevation 13.42 (NGVD).



SHEET 5 OF 5
SPECIFIC PURPOSE SURVEY

REV: 12-10-92	MOCK, ROOS & ASSOCIATES, INC. ENGINEERS • SURVEYORS • PLANNERS 5720 CORPORATE WAY WEST PALM BEACH, FLORIDA 33407 Phone: 407 683-3113 Fax: 407 478-7248	Submerged Lands Easement	SCALE: 1"=100'
FIELD: L. KESTY		SITE 2	DATE: MAY 1992
DRAWN: MI CLOOFELTER		Prepared for	P. A. NO. B5098.06
APPROVED:		CITY OF LAKE WORTH	DR. NO. A-2478
		SECT. 29, 33; T44S; R43E	

THU Dec 10 13:18:48 1992

1wch\1wch4b

**DESCRIPTION: SUBMERGED LANDS EASEMENT
SITE 2**

A parcel of submerged land situate in the Northwest One-Quarter (NW 1/4) of Section 33, Township 44 South, Range 43 East, Palm Beach County, Florida and being an easement 20.00 feet in width and being more particularly described as follows:

Commencing at the corner formed by the intersection of the centerline of Lake Osborne Drive (100.00 feet wide) and the West line of said Section 33 as shown on the plat of "Lake Osborne Manor", recorded in Plat Book 25 at Page 233 of the Public Records of said Palm Beach County; thence along said centerline, North 80-19-18 East, a distance of 371.33 feet to the beginning of a curve having a radius of 425.40 feet from which a radial line bears North 09-40-42 West; thence Northeasterly along the arc of said curve subtending a central angle of 14-33-45, an arc distance of 108.12 feet; thence departing from said centerline, North 20-57-40 West, a distance of 50.09 feet to intersect the North Right-of-Way line of Lake Osborne Drive; thence continuing North 20-57-40 West, a distance of 16.62 feet to a point along the Safe Upland Line of Lake Osborne as now established at elevation 5.0 feet National Geodetic Vertical Datum (NGVD) and the Point of Beginning.

From the Point of Beginning; thence continuing North 20-57-40 West, a distance of 43.48 feet; thence North 69-02-20 East, a distance of 20.00 feet; thence South 20-57-40 East, a distance of 46.96 feet to intersect the aforementioned Safe Upland Line; thence along said Line, South 78-54-37 West, a distance of 20.30 feet to the point of beginning.

Containing 0.021 acre (904.4 Square Feet) of land, more or less.

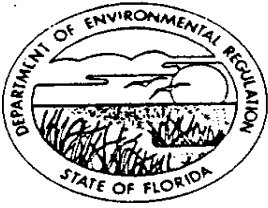
Subject to rights-of-way, easement restrictions and/or reservations of record, if any.

Bearings shown are based on an assumed bearing of South 01-52-37 West along the West line of Section 33, Township 44 South, Range 43 East, Palm Beach County, Florida, also being the centerline of High Ridge Road as shown on "Lake Shore Manor" as recorded in Plat Book 25 Page 233 of the Public Records on said Palm Beach County.

SHEET 4 OF 5
SPECIFIC PURPOSE SURVEY

REV: 12-10-92	 <p>MOCK, ROOS & ASSOCIATES, INC. ENGINEERS • SURVEYORS • PLANNERS 5720 CORPORATE WAY WEST PALM BEACH, FLORIDA 33407 Phone: 407 683-3113 Fax: 407 478-7248</p>	Submerged Lands Easement SITE 2 Prepared for CITY OF LAKE WORTH SECT. 29, 33; T44S; R43E	SCALE: N/A
FIELD: N/A			DATE: MAY 1992
DRAWN: MH CLOOFELTER			P. A. NO. 85098.06
APPROVED:			DR. NO. A-2478

(4301-50)



Florida Department of Environmental Regulation

Southeast District • 1900 S. Congress Ave., Suite A • West Palm Beach, Florida 33406

Lawton Chiles, Governor

Telephone: 407/433-2650
Fax: 407/433-2666

Carol M. Browner, Secretary

PERMITTEE:

City of Lake Worth
c/o Richard S. Serra
Mock, Roos & Assoc., Inc.
5720 Corporate Way
West Palm Beach, FL 33407

I.D. NUMBER: 5050M05109

PERMIT CERTIFICATION NUMBER: 502027966

DATE OF ISSUE: SEP 03 1992

EXPIRATION DATE: SEP 03 1997

COUNTY: Palm Beach

LATITUDE/LONGITUDE: 80°04'15"/26°36'15"

SECTION/TOWNSHIP/RANGE: 28/44S/43E

PROJECT: Stormwater Outfalls

This permit is issued under the provisions of Chapter 403, Florida Statutes, Public Law 92-500 and Title 17, Florida Administrative Code Rules. The above named permittee is hereby authorized to perform the work or operate the facility shown on the application and approved drawing(s), plans, and other documents attached hereto or on file with Department and made a part hereof and specifically described as follows:

TO: Install two (2) stormwater 36" diameter outfall pipes into Lake Osborne. Outfall #1 (Crest Drive) will extend 37.5' waterward of the existing bulkhead. Outfall #2 (Osborne Drive) will extend 42' waterward of the existing shoreline. Approximately 40 cubic yards of waterward dredging (per outfall) will be necessary to install the pipes.

IN ACCORDANCE WITH: The DER Application Form 17-312.900(1) received on October 18, 1991, additional information received on December 9, 1991 and April 21, 1992 and the nine (9) attached stamped drawings and engineering drawings numbered 44-43-15-85 and titled Lake Osborne Drive, Crest Drive, Storm Damage Improvements.

LOCATED IN: Lake Osborne, Class III Waters. Outfall #1 is located on Crest Drive west of Godfrey Avenue and outfall #2 is located on Osborne Drive west of Virginia Drive, Lake Worth, Palm Beach County.

SUBJECT TO: General Conditions 1-15 and Specific Conditions 1-8.

Page 1 of 5



1. The terms, conditions, requirements, limitations and restrictions set forth in this permit, are "permit conditions" and are binding and enforceable pursuant to Sections 403.141, 403.727, or 403.859 through 403.861, F.S. The permittee is placed on notice that the Department will review this permit periodically and may initiate enforcement action for any violation of these conditions.
2. This permit is valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits. Any unauthorized deviation from the approved drawings, exhibits, specifications, or conditions of this permit may constitute grounds for revocation and enforcement action by the Department.
3. As provided in subsections 403.087(6) and 403.722(5), F.S., the issuance of this permit does not convey any vested rights or any exclusive privileges. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations. This permit is not a waiver of or approval of any other Department permit that may be required for other aspects of the total project which are not addressed in this permit.
4. This permit conveys no title to land or water, does not constitute State recognition or acknowledgement of title, and does not constitute authority for the use of submerged lands unless herein provided and the necessary title or leasehold interests have been obtained from the State. Only the Trustees of the Internal Improvement Trust Fund may express State opinion as to title.
5. This permit does not relieve the permittee from liability for harm or injury to human health or welfare, animal, or plant life, or property caused by the construction or operation of this permitted source, or from penalties therefore; nor does it allow the permittee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order from the Department.
6. The permittee shall properly operate and maintain the facility and systems of treatment and control (and related appurtenances) that are installed and used by the permittee to achieve compliance with the conditions of this permit, are required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by Department rules.
7. The permittee, by accepting this permit, specifically agrees to allow authorized Department personnel, upon presentation of credentials or other documents as may be required by law and at reasonable times, access to the premises where the permitted activity is located or conducted to:
 - (a) Have access to and copy any records that must be kept under conditions of the permit;
 - (b) Inspect the facility, equipment, practices, or operations regulated or required under this permit; and
 - (c) Sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this permit or Department rules.
 Reasonable time may depend on the nature of the concern being investigated.
8. If, for any reason, the permittee does not comply with or will be unable to comply with any condition or limitation specified in this permit, the permittee shall immediately provide the Department with the following information:
 - (a) A description of and cause of noncompliance; and
 - (b) The period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance. The permittee shall be responsible for any and all damages which may result and may be subject to enforcement action by the Department for penalties or for revocation of this permit.

GENERAL CONDITIONS:

9. In accepting this permit, the permittee understands and agrees that all records, notes, monitoring data and other information relating to the construction or operation of this permitted source which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the permitted source arising under the Florida Statutes or Department rules, except where such use is prescribed by Section 403.111 and 403.73, F.S. Such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules.

10. The permittee agrees to comply with changes in Department rules and Florida Statutes after a reasonable time for compliance; provided, however, the permittee does not waive any other rights granted by Florida Statutes or Department rules.

11. This permit is transferable only upon Department approval in accordance with Rule 17-4.120 and 17-30.300, F.A.C., as applicable. The permittee shall be liable for any non-compliance of the permitted activity until the transfer is approved by the Department.

12. This permit or a copy thereof shall be kept at the work site of the permitted activity.

13. This permit also constitutes:

- () Determination of Best Available Control Technology (BACT)
- () Determination of Prevention of Significant Deterioration (PSD)
- Certification of compliance with state Water Quality Standards (Section 401, PL 92-500)
- () Compliance with New Source Performance Standards

14. The permittee shall comply with the following:

- (a) Upon request, the permittee shall furnish all records and plans required under Department rules. During enforcement actions, the retention period for all records will be extended automatically unless otherwise stipulated by the Department.
- (b) The permittee shall hold at the facility or other location designated by this permit records of all monitoring information (including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation) required by the permit, copies of all reports required by this permit, and records of all data used to complete the application for this permit. These materials shall be retained at least three years from the date of the sample, measurement, report, or application unless otherwise specified by Department rule.
- (c) Records of monitoring information shall include:
 1. the date, exact place, and time of sampling or measurements;
 2. the person responsible for performing the sampling or measurements;
 3. the dates analyses were performed;
 4. the person responsible for performing the analyses;
 5. the analytical techniques or methods used;
 6. the results of such analyses.

15. When requested by the Department, the permittee shall within a reasonable time furnish any information required by law which is needed to determine compliance with the permit. If the permittee becomes aware the relevant facts were not submitted or were incorrect in the permit application or in any report to the Department, such facts or information shall be corrected promptly.

Page 3 of 5

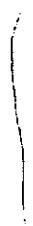
DER Form 17-1.201(5)
Effective November 30, 1982

PERMITTEE:
City of Lake Worth
c/o Richard S. Serra
Mock, Roos & Assoc., Inc.

I.D. NUMBER: 5050M05109-
PERMIT CERTIFICATION NUMBER: 502027966
DATE OF ISSUE: SEP 03 1987
EXPIRATION DATE: SEP 03 1987

SPECIFIC CONDITIONS:

1. The permittee is hereby advised that Florida law states:
"No person shall commence any excavation, construction, or other activity involving the use of sovereign or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund or the Department of Natural Resources under Chapter 253, until such person has received from the Board of Trustees of the Internal Improvement Trust Fund the required lease, license, easement, or other form of consent authorizing the proposed use." Pursuant to Florida Administrative Code Rule 16Q-14, if such work is done without consent, or if a person otherwise damages state land or products of state land, the Board of Trustees may levy administrative fines of up to \$10,000 per offense.
2. Written notification shall be provided to the Department of Environmental Regulation, Southeast Florida District Office in West Palm Beach and Palm Beach County Department of Environmental Resources Management, a minimum of forty-eight (48) hours prior to commencement of construction and a maximum of forty-eight (48) hours after completion of construction.
3. If historical or archeological artifacts, such as Indian canoes, are discovered at any time within the project site the permittee shall immediately notify the district office and the Bureau of Historic Preservation, Division of Archives, History and Records Management, R.A. Gray Building, Tallahassee, Florida 32301.
4. An effective means of turbidity control, such as, but not limited to, turbidity curtains shall be employed during all operations that may create turbidity so that it shall not exceed 29 Nephelometric Turbidity Units above natural background value. Turbidity control devices shall remain in place until all turbidity has subsided.
5. The devices should be inspected daily to insure that they remain stabilized to the lake bottom.
6. Any spoil material shall be placed on a self contained upland site. If water from the spoil is to be returned to the waterway then this water shall be treated in such a manner (settling basins, retention chambers, etc.) so State water quality standards for turbidity are not violated.
7. All other necessary State, Federal, or Local permits must be applied for and received prior to the start of work.



PERMITTEE:
City of Lake Worth
c/o Richard S. Serra
Mock, Roos & Assoc., Inc.


I.D. NUMBER: 5050M05109 -
PERMIT CERTIFICATION NUMBER: 502027966
DATE OF ISSUE: SEP 03 1992
EXPIRATION DATE: SEP 03 1997

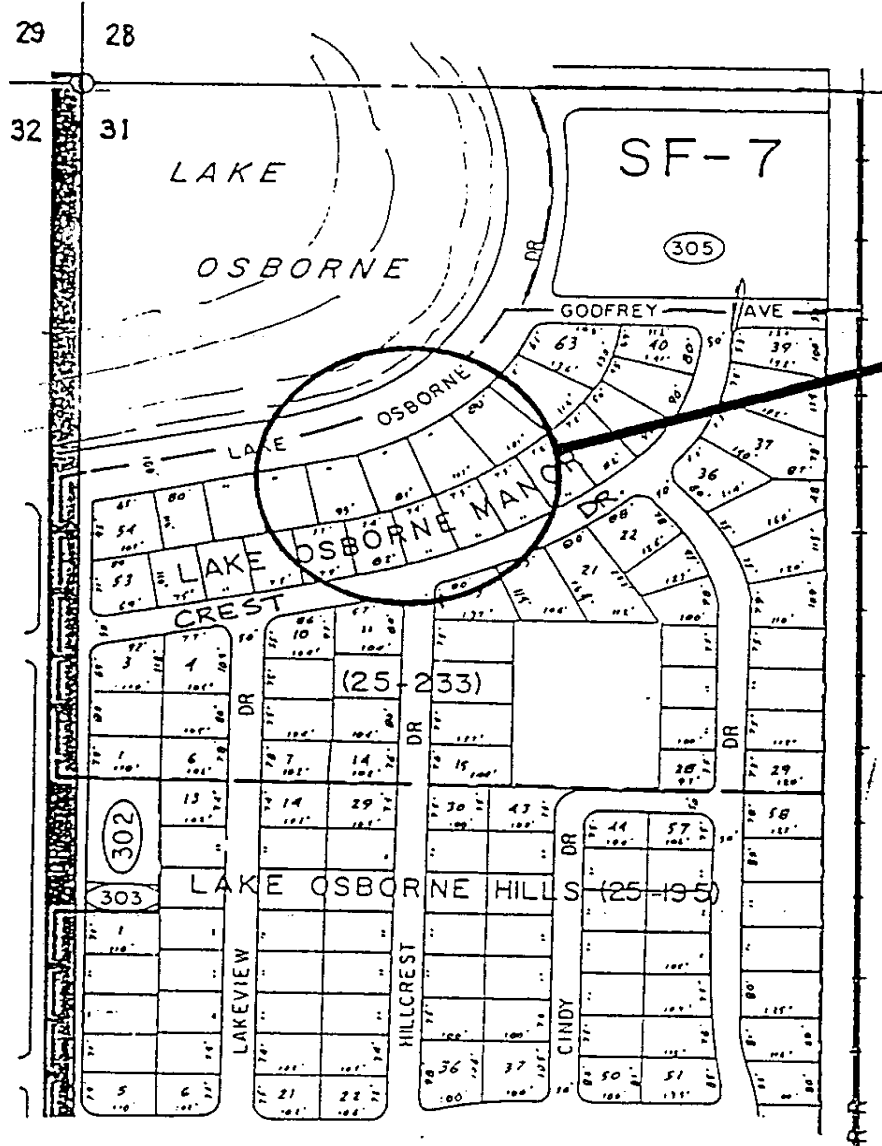
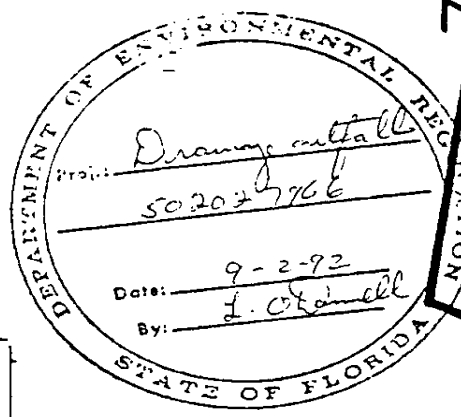
SPECIFIC CONDITIONS:

8. The permittee shall be aware of and operate under the attached "General Permit" Conditions #1 and #15". General Permit Conditions are binding upon the permittee and enforceable pursuant to Chapter 403 of the Florida Statutes.

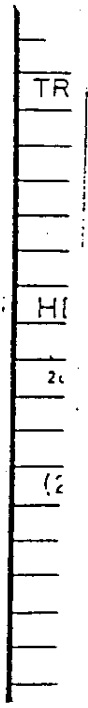
Issued this 1st day of September, 1992

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION


Bobby A. Cooley
Acting Director of District Management



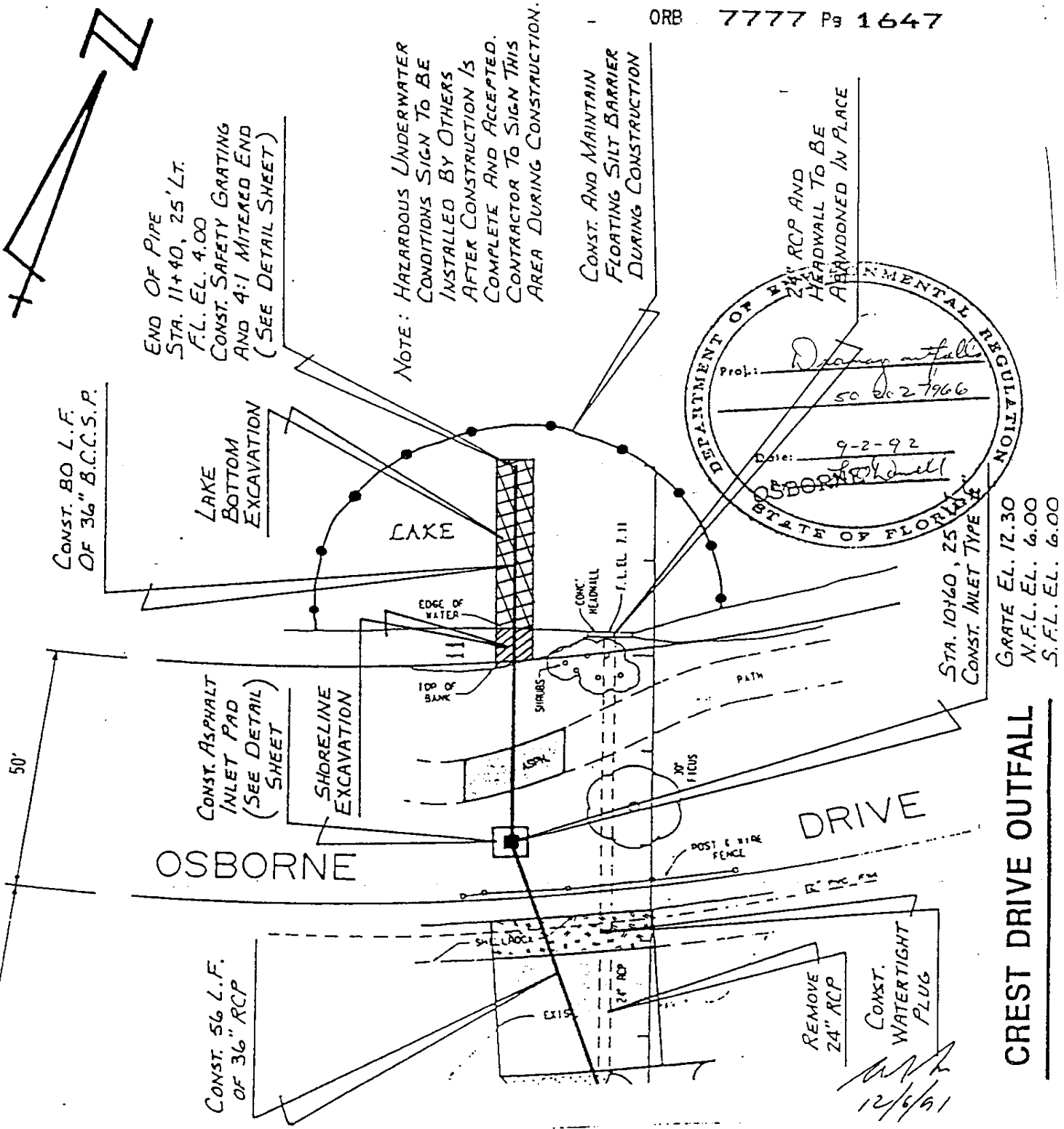
AREA OF
CONSTRUCTION
CREST DRIVE
OUTFALL



MMA
12/6/91

CREST DRIVE OUTFALL

PREPARED BY: MOCK, ROOS AND ASSOCIATES, INC.	CITY OF LAKE WORTH 1985 STORM SEWER BOND ISSUE PHASE 4B	DATE: SEP. 1991
		P.A. NO 85-098.06
		SHEET 1 OF 7



END OF PIPE
 STA. 11+40, 25' LT.
 F.L. EL. 4.00
 CONST. SAFETY GRATING
 AND 4:1 MITERED END
 (SEE DETAIL SHEET)

NOTE: HAZARDOUS UNDERWATER
 CONDITIONS SIGN TO BE
 INSTALLED BY OTHERS
 AFTER CONSTRUCTION IS
 COMPLETE AND ACCEPTED.
 CONTRACTOR TO SIGN THIS
 AREA DURING CONSTRUCTION.

CONST. AND MAINTAIN
 FLOATING SILT BARRIER
 DURING CONSTRUCTION

DEPARTMENT OF ENVIRONMENTAL REGULATION
 STATE OF FLORIDA

Proj.: Dewatering outfall
 50 202 7966

Date: 9-2-92

OSBORNE

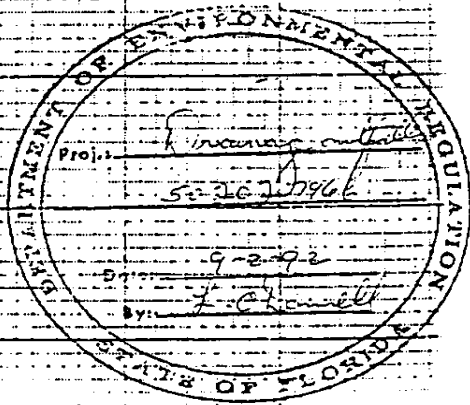
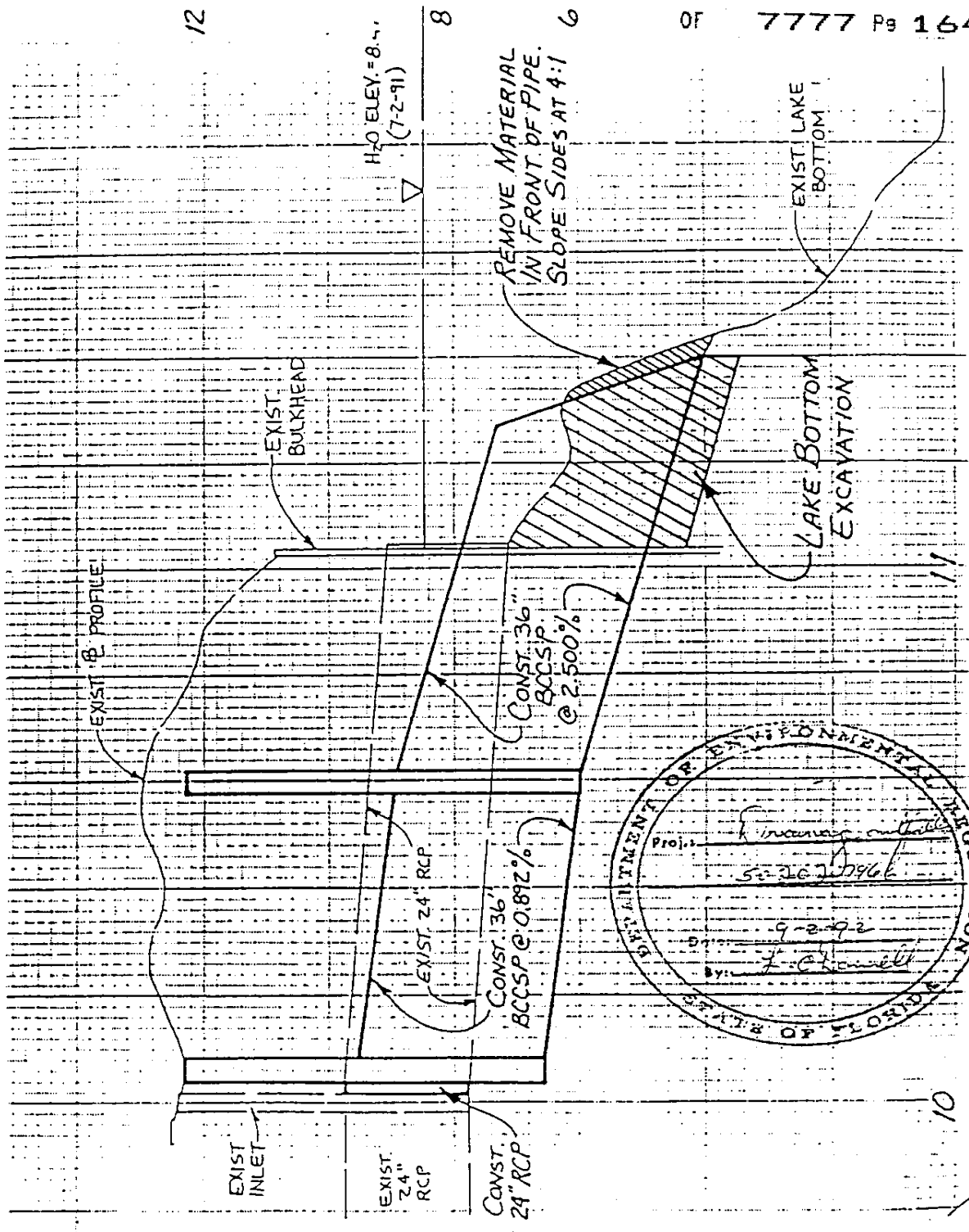
24" RCP AND
 HEADWALL TO BE
 ABANDONED IN PLACE

STA. 10+60, 25'
 CONST. INLET TYPE
 GRATE EL. 12.30
 N.F.L. EL. 6.00
 S.F.L. EL. 6.00

CREST DRIVE OUTFALL

REMOVE
 24" RCP
 CONST.
 WATERTIGHT
 PLUG
 12/6/91

PREPARED BY: MOCK, ROOS AND ASSOCIATES, INC.	CITY OF LAKE WORTH 1985 STORM SEWER BOND ISSUE PHASE 4B	DATE: SEP. 1991
		P.A. NO 85-098.06
		SHEET 2 OF 7



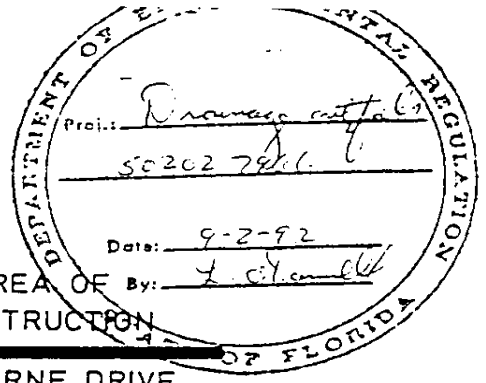
SCALE: 1" = 2.5' VERT.
1" = 25' HORIZ.

CREST DRIVE OUTFALL

10

M.M.
12/6/91

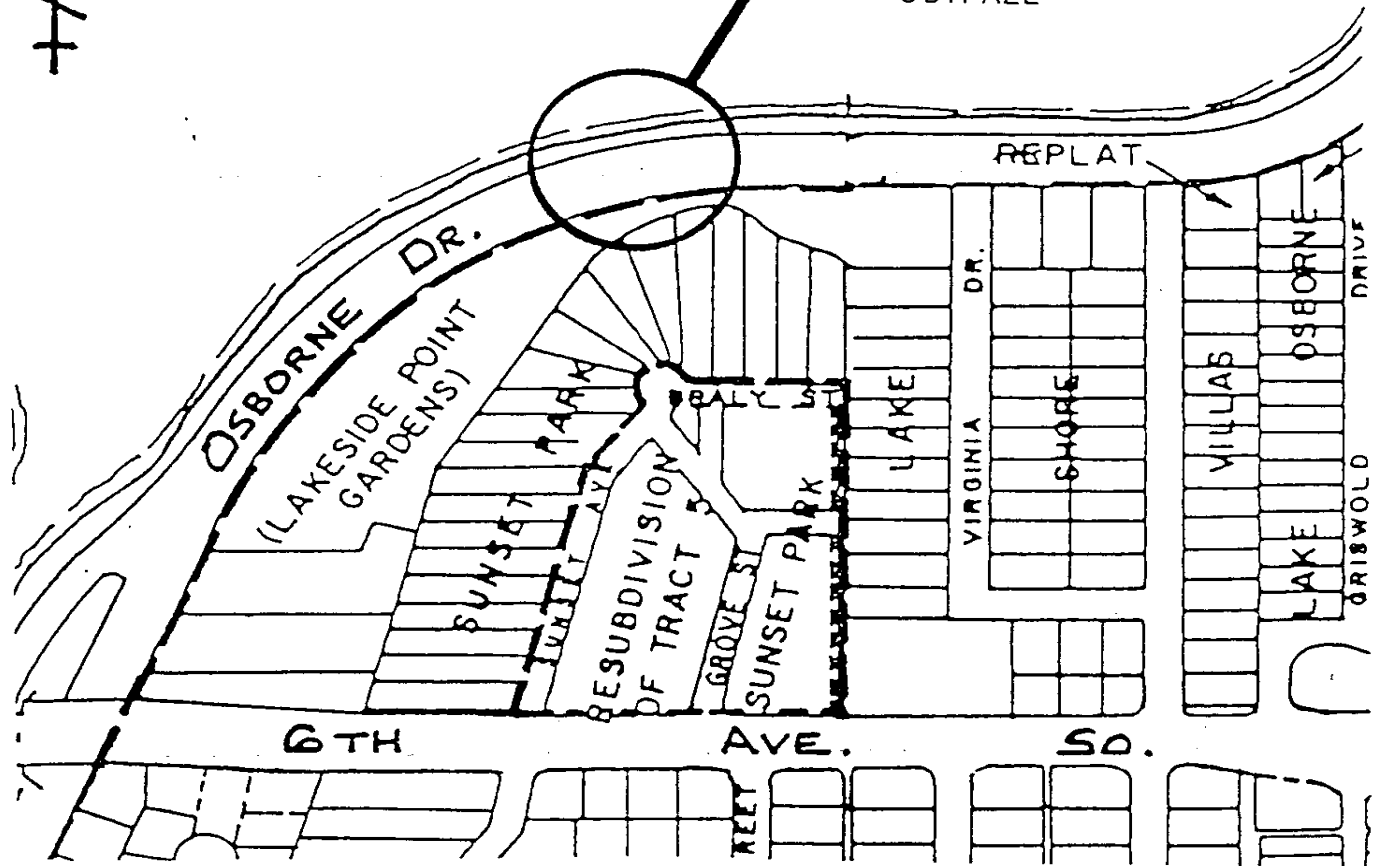
PREPARED BY: MOCK, ROOS AND ASSOCIATES, INC.	CITY OF LAKE WORTH 1985 STORM SEWER BOND ISSUE PHASE 4B	DATE: SEP. 1991
		P.A. NO 85-098.06
		SHEET 3 OF 7



Lake Osborne

AREA OF CONSTRUCTION

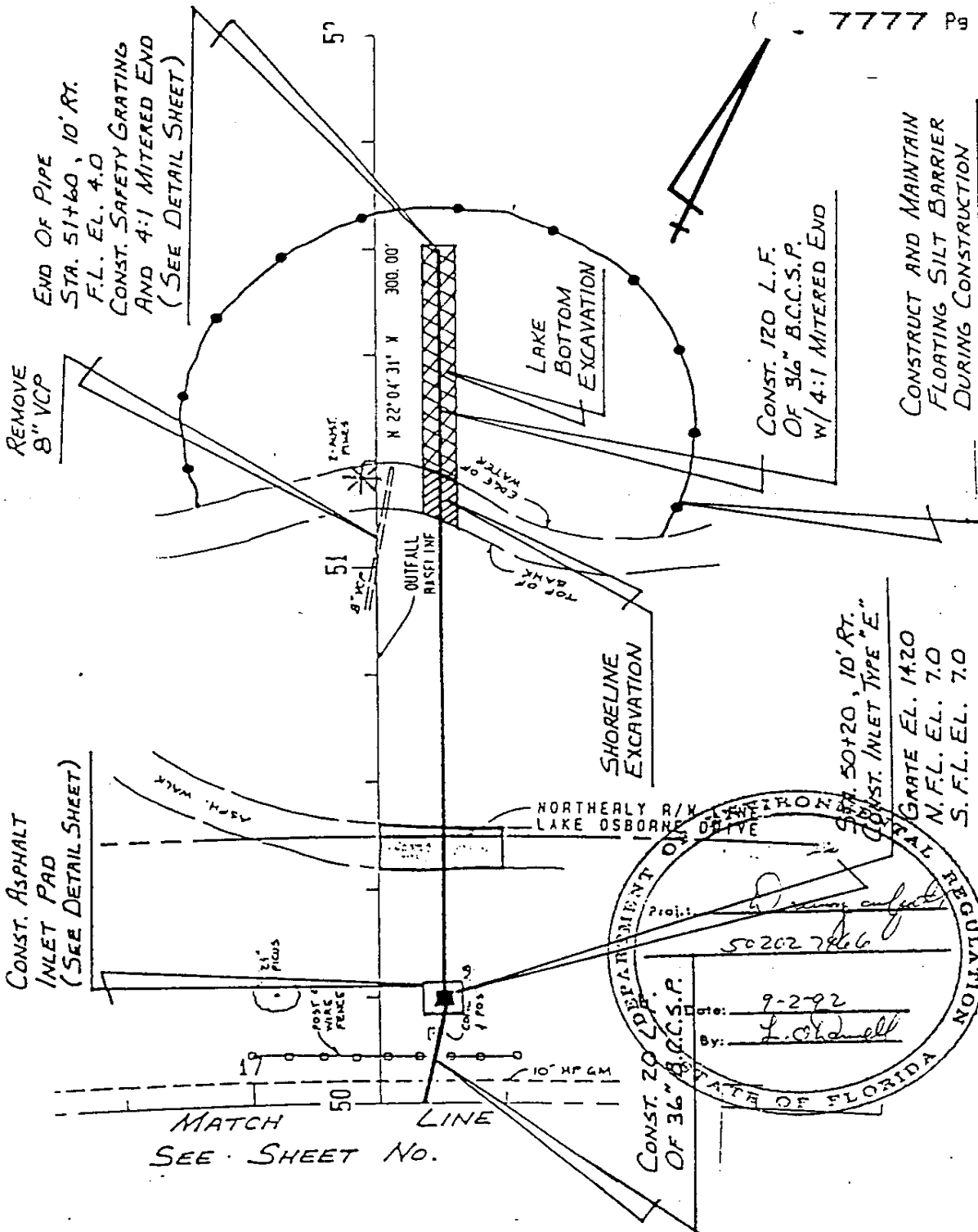
OSBORNE DRIVE OUTFALL



OSBORNE DRIVE OUTFALL

WLR
12/6/91

PREPARED BY: MOCK, ROOS AND ASSOCIATES, INC.	CITY OF LAKE WORTH 1985 STORM SEWER BOND ISSUE PHASE 4B	DATE: SEP. 1991 P.A. NO 85-098.06 SHEET 4 OF 7
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OSBORNE DRIVE OUTFALL

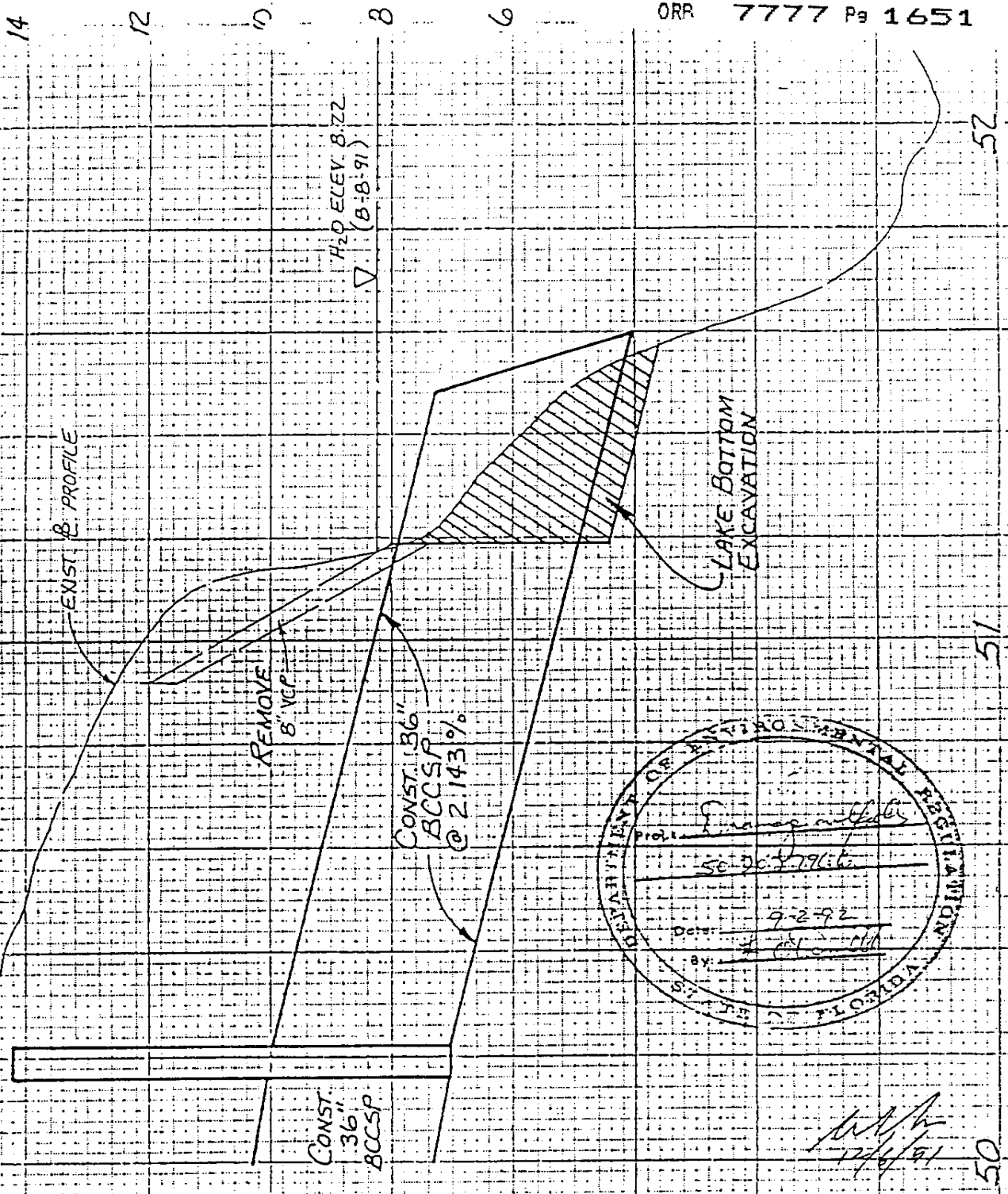
NOTE: HAZARDOUS UNDERWATER CONDITIONS SIGN TO BE INSTALLED BY OTHERS AFTER CONSTRUCTION IS COMPLETE AND ACCEPTED. CONTRACTOR TO SIGN THIS ARE DURING CONSTRUCTION.

[Signature]
12/6/91

PREPARED BY:
MOCK, ROOS AND ASSOCIATES, INC.

CITY OF LAKE WORTH
1985 STORM SEWER BOND ISSUE
PHASE 4B

DATE: SEP. 1991
P.A. NO 85-098.06
SHEET 5 OF 7



SCALE: 1" = 2.5' VERT.
1" = 20' HORIZ.

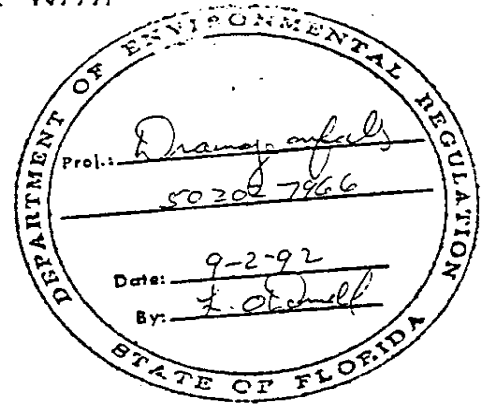
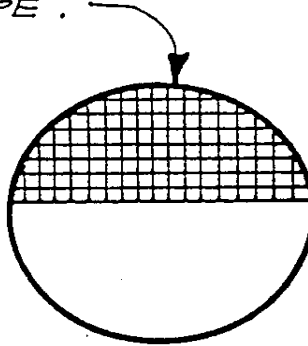
OSBORNE DRIVE OUTFALL

PREPARED BY:
MOCK, ROOS AND
ASSOCIATES, INC.

CITY OF LAKE WORTH
1985 STORM SEWER BOND ISSUE
PHASE 4B

DATE: SEP. 1991
P.A. NO 85-098.06
SHEET 6 OF 7

CONSTRUCT STEEL BAR GRATING ON UPPER HALF OF PIPE END. GRATING SHALL BE WELDED TO PIPE SIDES AND COATED WITH BITUMINOUS MATERIAL. BARS SHALL BE 2 1/2" x 1/4" @ 1 3/16" O.C. WITH CROSS BARS @ 4" O.C. AND THE OPEN END BANDED. BEARING BARS SHALL RUN PARALLEL WITH THE PIPE.



36" BCCSP
SAFETY GRATING

CREST DRIVE OUTFALL
OSBORNE DRIVE OUTFALL

W.A.H.
12/6/91

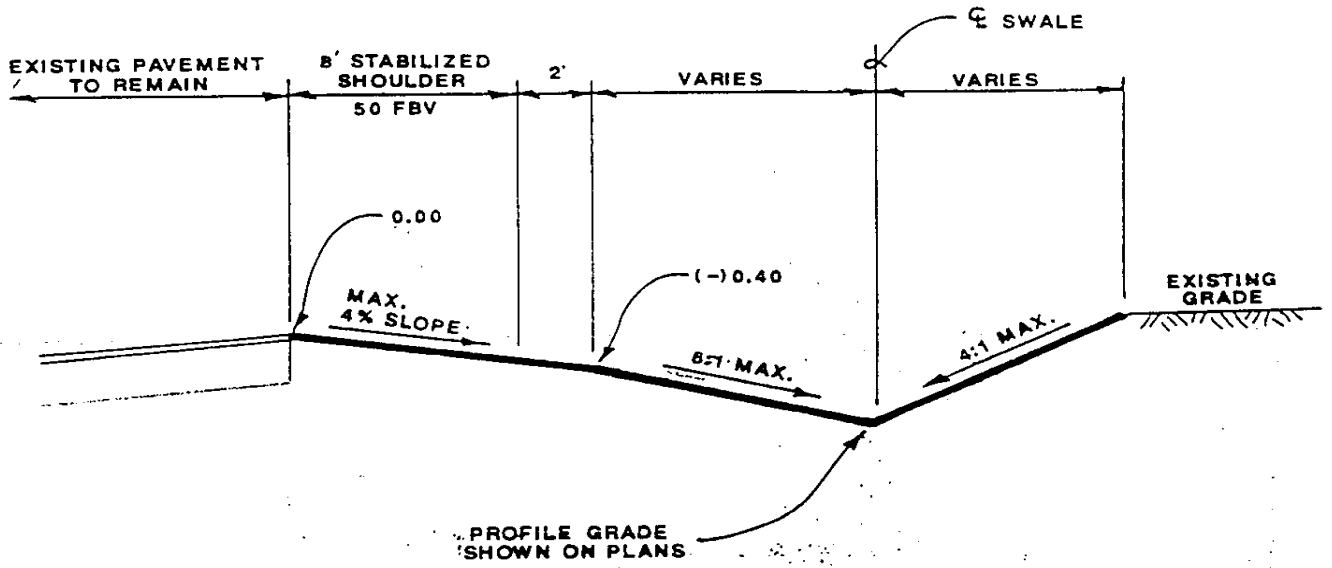
PREPARED BY: MOCK, ROOS AND ASSOCIATES, INC.	CITY OF LAKE WORTH 1985 STORM SEWER BOND ISSUE PHASE 4B	DATE: SEP. 1991
		P.A. NO 85-098.06
		SHEET 7 OF 7

RECORDED

APR 01 1992

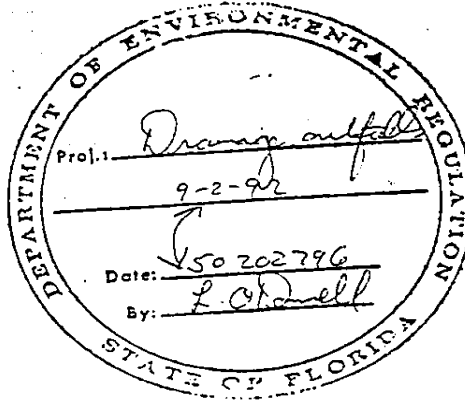
Dept. of Environmental Reg.
West Palm Beach

ORB 7777 Pg 1653
RECORD VERIFIED DOROTHY H WILKEN
CLERK OF THE COURT - PB COUNTY, FL



OSBORNE DRIVE SWALE SECTION

STA. 10+00 TO 10+50



[Handwritten signature]
4-2-92

(4301-50)

STAFF REPORT UTILITY MEETING

AGENDA DATE: April 25, 2023

DEPARTMENT: Electric Utility

TITLE:

Purchased Power Cost Adjustment Update (PCA)

SUMMARY:

Monthly update for the Purchased Power Cost Adjustment in Electric Utility Rates

BACKGROUND AND JUSTIFICATION:

The City's electric utility provides electricity to its customers using a variety of electric production resources. Among them are the City's entitlements in various Florida Municipal Power Agency (FMPA) St. Lucie and Stanton 1 Projects, the City's own solar farm atop City's closed landfill, the City's power plant, and a contract with Orlando Utilities Commission for supplemental energy and capacity (the "OUC Agreement").

As determined during the electric utility rate making process certain electric utility expenses largely related to the purchase of electric capacity, debt service, operations and maintenance, general fund transfer, and City shared internal service costs are recovered via the Base Energy Charge on customers' bills and are not included in the Purchased Power Cost Adjustment (PCA).

Expenses largely related to the purchase of electric energy from the aforementioned electric production resources, as well as the electric energy and capacity purchases under the OUC Agreement, and electric transmission costs, are recovered or returned via the Purchased Power Cost Adjustment (PCA) on customers' bills. As per City Resolution 92-2021 the PCA "shall be established for a projected 3-month period for energy sales during that period..."

In order to establish the PCA, City's Electric Utility Staff provides a recommendation to the City Commission of the PCA for the upcoming 3-month period.

In determining the PCA recommendation for June 1, Staff has calculated actual incurred purchased power costs beginning with December '21 (when the PCA resolution was adopted by the Commission) through February '23 together with a forecast of purchased power costs for the upcoming 3-month period (April '23 – June '23).

In performing its analysis Staff then calculates a True-Up amount representing the over or under recovery of purchased power costs from the prior period (Dec '21 – Fed '23), which are then credited or debited to the following period accordingly.

Monthly PCA Review:

During the February 28 Utility Meeting, the Commission requested a monthly update on the PCA projection in lieu of making adjustments to the April 1 PCA.

Due to the impact of declining natural gas costs on wholesale power costs. Staff has developed three cases or options for evaluation by the City Commission. Option 1 would allow for a reduction on the PCA as we anticipate an over-recovery due to declining natural gas prices since the Commission previously approved a \$7.29 reduction in the PCA (to take effect May 1, 2023). Option 2 would allow for a transfer of \$500,000 to the Rate Stabilization Fund and a smaller reduction in the PCA. Option 3 would allow for a transfer of \$1,000,000 to the Rate Stabilization Fund with an even lower reduction in the PCA. Funding the Rate Stabilization Fund would serve to minimize the impact to customers during periods when increase due to rising natural gas fuel costs by withdrawing from the Rate Stabilization Fund to offset PCA costs.

Staff develops its estimates of future purchased power costs using widely published and publicly available values for natural gas futures contracts for the applicable months. City does not actually purchase natural gas futures contracts, it merely used published prices as a forecasting tool. Staff develops its estimates of future purchased power costs using widely published and publicly available values for natural gas futures contracts for the applicable months. City does not actually purchase natural gas futures contracts, it merely used published prices as a forecasting tool. Section 3 of City's Resolution 92-2021 defines the Purchased Power Cost Adjustment (PCA) and formula for calculation as follows:

$$PCA = (A + B + C) / D$$

Where:

A = The projected purchased power costs for the projected 3-month period comprised of costs such as the FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity; energy and directly related costs, Lake Worth Beach electric utility power plant generating fuel; and transmission costs:

B = A true-up amount representing the over or under recovery of purchased power costs from the prior period

C = The amount transferred to or from the Rate Stabilization Fund for the projected period

D = The projected total retail sales in MWh for the projected 3-month period

Option 1:

Accordingly, the recommended PCA elements effective June 1, 2023 under Option 1 are as follows:

A = \$3,562,184

B = -\$281,075

C = \$0

D = 113,107 MWh

PCA = \$29.01 per MWh

Option 1 PCA; Residential First 1,000 kWh per month = \$0.02691 per kWh

Option 1 PCA; Residential Additional kWh above 1,000 kWh per month = \$0.03691 per kWh

Option 1 PCA; Average; Commercial and Demand = \$0.02901 per kWh

Option 1 Monthly Change in Bill for 1,000 kWh Residential Customer = -\$34.01 (includes \$7.29 reduction scheduled to take effect May 1, 2023)

Option 2:

Alternatively, the recommended PCA elements effective June 1, 2023 under Option 2 are as follows:

A = \$3,562,184

B = -\$281,075

C = \$500,000

D = 113,107 MWh

PCA = \$33.43 per MWh

Option 2 PCA; Residential First 1,000 kWh per month = \$0.03133 per kWh

Option 2 PCA; Residential Additional kWh above 1,000 kWh per month = \$0.04133 per kWh

Option 2 PCA; Average; Commercial and Demand = \$0.03343 per kWh

Option 2 Monthly Change in Bill for 1,000 Residential Customer = -\$29.59 (includes \$7.29 reduction scheduled to take effect May 1, 2023)

Option 3:

Lastly, the recommended PCA elements effective June 1, 2023 under Option 3 are as follows:

A = \$3,562,184

B = -\$281,075

C = \$1,000,000

D = 113,107 MWh

PCA = \$37.85 per MWh

Option 3 PCA; Residential First 1,000 kWh per month = \$0.03575 per kWh

Option 3 PCA; Residential Additional kWh above 1,000 kWh per month = \$0.04575 per kWh

Option 3 PCA; Average; Commercial and Demand = \$0.03785 per kWh

Option 3 Monthly Change in Bill for 1,000 kWh Residential Customer = -\$25.17 (includes \$7.29 reduction scheduled to take effect May 1, 2023)

If approved, the PCA for all customer rate classes will change effective June 1, 2023.

MOTION:

Move to approve/disapprove the PCA as presented under Option 1; Option 2; or Option 3 effective June 1, 2023.

ATTACHMENT(S):

Resolution 92-2021

PCA Calculation Templates for Rates Effective June 1, 2023

CITY OF LAKE WORTH BEACH, FLORIDA
POWER COST ADJUSTMENT CALCULATION

Option 1

- 1 Projected Period April 2023 - June 2023
- 2 Prior Period True-Up Dec 2021 - Feb 2023

PCA = (A + B + C) / D

3	A = Projected Power Costs for the 3 months April 2023 - June 2023 (FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity, energy and directly related costs, Lake Worth Beach electric utility power generating fuel, and transmission costs)	\$3,562,184	Based on anticipated Purchased Power, Gas futures; planned outages and transmission projections.
	B = True up amount for prior period Dec 2021 - Feb 2023		
4	Actual Power Costs	\$27,083,969	OUC bill, Stanton Energy only, Transmission & Power Plant Gas
5	Actual PCA Revenues	<u>\$27,365,044</u>	PCA Revenues ACTUAL
6	Difference	-\$281,075	
7	B = True Up amount = Line 6	-\$281,075	
8	Remaining Costs to be Recovered	\$0	
9	A + B =	\$3,281,109	
10	C = Amount transferred to or from the Rate Stabilization Fund	\$0	
11	D = Projected retail sales in MWh for the 3 months April 2023 - June 2023	113,107	Derived from April - June '22 actual sales plus 3% added for growth
12	PCA = (A + B + C) / D =	<u>\$29.01</u>	per MWh
13		<u>\$0.02901</u>	per kWh
14		\$29.01	per 1,000 kWh
15	Current PCA (Average - Commercial, Demand)	\$0.06302	per kWh
16	Current PCA (First 1,000 kWh Residential)	\$0.06092	per kWh
17	Current PCA (Additional kWh Residential)	\$0.07092	per kWh
18	Current PCA (Average - Commercial, Demand)	\$63.02	per 1,000 kWh

19	Change in PCA	-0.03401	per kWh
20	Monthly Change in Bill for 1,000 kWh Residential Customer and other customers per 1,000 kWh	<u>-34.01</u>	per 1,000 kWh (\$7.29 + \$26.72)*
21	Proposed PCA (Average - Commercial, Demand)	0.02901	per kWh
22	Proposed PCA (First 1,000 kWh Residential)	0.02691	per kWh
23	Proposed PCA (Additional kWh Residential)	0.03691	per kWh

*\$7.29 already approved by commission to take effect May 1 2023

CITY OF LAKE WORTH BEACH, FLORIDA
POWER COST ADJUSTMENT CALCULATION

Option 2

- 1 Projected Period April 2023 - June 2023
- 2 Prior Period True-Up Dec 2021 - Feb 2023

PCA = (A + B + C) / D

3	A = Projected Power Costs for the 3 months April 2023 - June 2023 (FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity, energy and directly related costs, Lake Worth Beach electric utility power generating fuel, and transmission costs)	\$3,562,184	Based on anticipated Purchased Power, Gas futures; planned outages and transmission projections.
	B = True up amount for prior period Dec 2021 - Feb 2023		
4	Actual Power Costs	\$27,083,969	OUC bill, Stanton Energy only, Transmission & Power Plant Gas
5	Actual PCA Revenues	<u>\$27,365,044</u>	PCA Revenues ACTUAL
6	Difference	-\$281,075	
7	B = True Up amount = Line 6	-\$281,075	
8	Remaining Costs to be Recovered	\$0	
9	A + B =	\$3,281,109	
10	C = Amount transferred to or from the Rate Stabilization Fund	\$500,000	
11	D = Projected retail sales in MWh for the 3 months April 2023 - June 2023	113,107	Derived from April - June '22 actual sales plus 3% added for growth
12	PCA = (A + B + C) / D =	<u>\$33.43</u>	per MWh
13		<u>\$0.03343</u>	per kWh
14		\$33.43	per 1,000 kWh
15	Current PCA (Average - Commercial, Demand)	\$0.06302	per kWh
16	Current PCA (First 1,000 kWh Residential)	\$0.06092	per kWh
17	Current PCA (Additional kWh Residential)	\$0.07092	per kWh
18	Current PCA (Average - Commercial, Demand)	\$63.02	per 1,000 kWh

19	Change in PCA	-0.02959	per kWh
20	Monthly Change in Bill for 1,000 kWh Residential Customer and other customers per 1,000 kWh	<u>-29.59</u>	per 1,000 kWh (\$7.29 = \$22.30)*
21	Proposed PCA (Average - Commercial, Demand)	0.03343	per kWh
22	Proposed PCA (First 1,000 kWh Residential)	0.03133	per kWh
23	Proposed PCA (Additional kWh Residential)	0.04133	per kWh

*\$7.29 already approved by commission to take effect May 1 2023

CITY OF LAKE WORTH BEACH, FLORIDA
POWER COST ADJUSTMENT CALCULATION

Option 3

- 1 Projected Period April 2023 - June 2023
- 2 Prior Period True-Up Dec 2021 - Feb 2023

PCA = (A + B + C) / D

3	A = Projected Power Costs for the 3 months April 2023 - June 2023 (FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity, energy and directly related costs, Lake Worth Beach electric utility power generating fuel, and transmission costs)	\$3,562,184	Based on anticipated Purchased Power, Gas futures; planned outages and transmission projections.
	B = True up amount for prior period Dec 2021 - Feb 2023		
4	Actual Power Costs	\$27,083,969	OUC bill, Stanton Energy only, Transmission & Power Plant Gas
5	Actual PCA Revenues	<u>\$27,365,044</u>	PCA Revenues ACTUAL
6	Difference	-\$281,075	
7	B = True Up amount = Line 6	-\$281,075	
8	Remaining Costs to be Recovered	\$0	
9	A + B =	\$3,281,109	
10	C = Amount transferred to or from the Rate Stabilization Fund	\$1,000,000	
11	D = Projected retail sales in MWh for the 3 months April 2023 - June 2023	113,107	Derived from April - June '22 actual sales plus 3% added for growth
12	PCA = (A + B + C) / D =	<u>\$37.85</u>	per MWh
13		<u>\$0.03785</u>	per kWh
14		\$37.85	per 1,000 kWh
15	Current PCA (Average - Commercial, Demand)	\$0.06302	per kWh
16	Current PCA (First 1,000 kWh Residential)	\$0.06092	per kWh
17	Current PCA (Additional kWh Residential)	\$0.07092	per kWh
18	Current PCA (Average - Commercial, Demand)	\$63.02	per 1,000 kWh

19	Change in PCA	-0.02517	per kWh
20	Monthly Change in Bill for 1,000 kWh Residential Customer and other customers per 1,000 kWh	<u>-25.17</u>	per 1,000 kWh (\$7.29 + \$17.88)*
21	Proposed PCA (Average - Commercial, Demand)	0.03785	per kWh
22	Proposed PCA (First 1,000 kWh Residential)	0.03575	per kWh
23	Proposed PCA (Additional kWh Residential)	0.04575	per kWh

*\$7.29 already approved by commission to take effect May 1 2023

		From Bills						
Month	PCA Revenues	OUC	Stanton Energy	FPL Transmission	Power Plant Gas	Total PCA Expenditures	Difference	
Dec-21	\$1,103,969	\$624,137	\$150,600	\$161,877	\$5,987	\$942,601	\$161,368	
Jan-22	\$1,194,586	\$597,332	\$185,672	\$157,785	\$82,342	\$1,023,131	\$171,455	
Feb-22	\$1,025,360	\$629,349	\$114,305	\$193,045	-\$9,875	\$926,824	\$98,536	
Mar-22	\$1,119,931	\$757,376	\$319,272	\$207,018	-\$10,232	\$1,273,434	-\$153,503	
Apr-22	\$1,347,197	\$1,100,745	\$275,769	\$234,601	-\$19,617	\$1,591,498	-\$244,301	
May-22	\$1,266,715	\$1,821,194	\$244,121	\$245,204	\$68	\$2,310,587	-\$1,043,872	
Jun-22	\$1,758,533	\$2,052,485	\$231,784	\$220,612	\$78,717	\$2,583,598	-\$825,065	
Jul-22	\$1,959,972	\$3,186,177	\$225,766	\$268,782	\$62,312	\$3,743,037	-\$1,783,065	
Aug-22	\$2,229,001	\$3,246,599	\$210,589	\$309,347	\$16,073	\$3,782,608	-\$1,553,607	
Sep-22	\$3,044,528	\$2,793,956	\$223,199	\$281,616	\$16,958	\$3,315,729	-\$271,201	
Oct-22	\$2,754,939	\$1,143,371	\$261,212	\$252,044	\$0	\$1,656,627	\$1,098,312	
Nov-22	\$2,305,698	\$767,327	\$288,673	\$242,922	\$14,228	\$1,313,150	\$992,548	
Dec-22	\$2,267,120	\$594,138	\$254,194	\$155,730	-\$55,436	\$948,626	\$1,318,494	
Jan-23	\$2,123,484	\$535,886	\$106,848	\$143,583	\$0	\$786,317	\$1,337,167	
Feb-23	\$1,864,011	\$617,271	\$58,539	\$210,392	\$0	\$886,202	\$977,809	
Mar-23	\$2,074,694	\$800,769	\$15,895	\$219,482	\$11,350	\$1,047,496	\$1,027,198	
TOTALS	\$29,439,738	\$21,268,112	\$3,166,438	\$3,504,040	\$192,875	\$28,131,465	\$1,308,273	

RESOLUTION NO. 92-2021 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, PROVIDING FOR RATES, FEES AND CHARGES, AND REGULATIONS FOR ALL ELECTRICITY SOLD BY THE CITY OF LAKE WORTH BEACH, FLORIDA FOR USE OF ELECTRIC LIGHT AND POWER SYSTEM; REPEALING ALL RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Lake Worth Beach, Florida, is authorized and required to fix uniform and adequate rates for its service; and

WHEREAS, the rates set forth herein are just and equitable and serve a valid public purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA as follows:

Section 1. Definitions: For the purpose of this resolution, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

- A. "Shall" is always mandatory and not merely directory.
- B. "Net Metering Accounts" are those customer accounts with the City's Electric Utility where the customer has applied to the City's Electric Utility; installed a Customer-Owned Renewable Generation System (as defined in the Net Metering Program Rules and Regulations); executed a City Interconnection Agreement; has been approved by the Electric Utility for interconnection with the City's electric system; and, remains in compliance with the City's Net Metering Program. All rates applicable to Net Metering Accounts are governed by Resolution No. 45-2019 (as may be amended from time to time).
- C. "Purchased Power Cost Adjustment (PCA)" The cost of electricity is affected by the price of fuel and the purchase price of power supply. The PCA is an adjustment charge caused by an increased or decreased in the cost to purchase or supply power to customers. It is shown on the customer's bill as a credit or a surcharge to the price per kilowatt-hour. The customer's utility bill may have a credit, as the cost of power supply decreases, or it may have a surcharge when the costs increase.

Section 2. The following schedules shall be the rates charged and the regulations imposed by the City of Lake Worth Beach, Florida, on all electric power sold by the City of Lake Worth Beach, Florida for lighting, heating and power purposes, to wit:

A. Regular Residential Electric (Schedule R-S)

1. Designation: Regular Residential Electric
2. Applicable: For domestic electric purposes in private residences and individually metered apartments. Residential rates shall apply for electric energy used in commonly-owned facilities in condominiums and cooperative apartment buildings, subject to the following criteria:
 - a. 100% of the energy is used exclusively for the co-owner's benefit.
 - b. None of the energy is used in any endeavor which sells or rents a commodity or provides service for a fee.
 - c. Each point of delivery will be separately metered and billed.
 - d. A responsible legal entity is established as the customer to whom the City of Lake Worth Beach can render its bills for said service.
 - e. A cooperative or condominium requesting residential rates shall apply for the rate and establish the above criteria.
3. Limitations: Auxiliary and stand-by generation or resale of the electric energy not permitted hereunder. Recognized rooming houses, tourist homes and dwellings accommodating more than four paying guests supplied through a single meter will not be served under this schedule.
4. Service: Single phase, 60 cycles at available standard voltage. Three phase service may be furnished but only under special arrangements and at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill, which will be applied to each electric account receiving a bill. \$10.55 per month.
 - b. Energy Charge per kWh

	First 1,000 KWH's	Excess
Base Energy	\$0.06900	\$0.08900
Power Cost Adjustment	\$0.03490	\$0.04490
Capacity	N/A	N/A
Total	\$0.1039	\$0.1339

6. The rates listed above include all administrative charges from the City of Lake Worth Beach.
7. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
9. Minimum Bill: The minimum bill for electric use shall be charged at \$35.00 per month.

B. Regular Commercial Service (Schedule C-S)

1. Designation: Regular Commercial Electric.
2. Applicable: For commercial, industrial, and governmental use within the territory served by the Electric Distribution System of the City of Lake Worth Beach, as available and at the option of the City.
3. Limitations: For consumers who own renewable energy facilities (such as wind, solar power or home fuel cells), resale of the electric energy is not permitted hereunder.
4. Service: Single or three phase, 60 cycles and at any available standard voltage, at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill which will be applied to each electric account receiving a bill. \$17.00 per month.
 - b. Energy Charge per kWh.

	All kWhs
Base Energy	\$0.08700
Power Cost Adjustment	\$0.03700
Capacity	N/A
Total	\$0.12400

6. The rates listed above includes all administrative charges from the City of Lake Worth Beach.
7. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
9. Minimum Bill: The minimum bill for electric use shall be \$50.00 per month for single phase service and \$100.00 per month for poly phase service.

C. Demand Commercial Service (Schedule CD-S)

1. Designation: Demand Commercial Electric
2. Applicable: For customers who qualifies for service under Schedule C-S above and has a peak demand of 25 kW or greater for three (3) consecutive months:
3. Limitations: Auxiliary or stand-by service or resale not permitted hereunder.
4. Service: Single or three phase, 60 cycles and at any available standard voltage, at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill, which will be applied to each electric account receiving a bill. \$130.00 per month.
 - b. Energy Charge per KWH

	All kWhs	Demand - KW
Base Energy	\$0.05200	\$12.00
Power Cost Adjustment	\$0.03700	
Capacity Charge	N/A	
Total	\$0.08900	\$12.00

6. The rates listed above include all administrative charges from the City of Lake Worth Beach.
7. Billing Demand: The maximum 15 minute measured demand in the month, subject to power factor adjustment.
8. Power Factor Adjustment: When demand is measured with a kW meter and customer's power factor in any month is below 95% the measured demand may be adjusted to 95% power factor.
9. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
10. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
11. Minimum Bill: The minimum bill for electric use shall be \$250.00 per month.

D. Regular Time of Use Commercial Service (Schedule CT-S)

1. Designation: Time of Use Commercial Service
2. Applicable: For commercial, industrial, and governmental use within the territory served by the Electric Distribution System of the City of Lake Worth Beach, as available and at the option of the City.
3. Limitations: For consumers who own renewable energy facilities (such as wind, solar power or home fuel cells), resale of the electric energy is not permitted hereunder.
4. Service: Single or three phase, 60 cycles and at any available standard voltage, at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill which will be applied to each electric account receiving a bill. \$30.00 per month.
 - b. Energy Charge:
 - i. Off Peak \$0.0840 per kWh
 - ii. On Peak \$0.2600 per kWh
 - iii. Determination of Off-Peak Period: October – May: The off-peak period is defined as the hours between 1:00 p.m. and 6:00 a.m., Monday through Friday and all day Saturday and Sunday. In addition, the following holidays will also be considered off-peak: New Year's Day, Memorial Day, Thanksgiving Day, and Christmas Day. June – September: The off-peak period is defined as the hours between 7:00 p.m. and 2:00 p.m., Monday through Friday and all day Saturday and Sunday. In addition, the following holidays will also be considered off-peak: Independence Day and Labor Day. All other hours are considered on peak hours.

6. Term of Contract: One year and thereafter until terminated at the option of either party by the giving of not less than thirty (30) days advance written notice of the effective date of termination.
 7. Purchased Power Cost Adjustment Charge: A Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
 8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
 9. Minimum Bill: The minimum bill for electric use shall be \$50.00 per month for single phase service and \$100.00 per month for poly phase service.
- E. Time of Use Demand Commercial Service (Schedule CDT-S)
1. Designation: Time of Use Demand Commercial Service
 2. Applicable: For commercial, industrial, and governmental use within the territory served by the Electric Distribution System of the City of Lake Worth Beach, as available and at the option of the City.
 3. Limitations: For consumers who own renewable energy facilities (such as wind, solar power or home fuel cells), resale of the electric energy is not permitted hereunder.
 4. Service: Single or three phase, 60 cycles and at any available standard 416 voltage, at the option of the City of Lake Worth Beach.
 5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill which will be applied to each Electric account receiving a bill. \$140.00 per month.
 - b. Energy Charge:
 - i. Off Peak \$0.0620 per kWh
 - ii. On Peak \$0.2400 per kWh
 - iii. Demand Charge: \$7.00 per kW.
 - iv. Billing Demand: The maximum 15 minute measured demand in the month, subject to power factor adjustment.
 - v. Power Factor Adjustment: When demand is measured with a kW 438 meter and customer's power factor in any month is below 95% the measured demand may be adjusted to 95% power factor.
 - vi. Determination of Off-Peak Period: October – May: The off-peak period is defined as the hours between 1:00 p.m. and 6:00 a.m., Monday through Friday and all day Saturday and Sunday. In addition, the following holidays will also be considered off-peak: New Year's Day, Memorial Day, Thanksgiving Day, and Christmas Day.
 - vii. June – September: The off-peak period is defined as the hours between 7:00 p.m. and 2:00 p.m., Monday through Friday and all day Saturday and Sunday. In addition, the following holidays will also be considered off-peak: Independence Day and Labor Day. All other hours are considered on peak hours.
 6. Term of Contract: One year and thereafter until terminated at the option of either party by the giving of not less than thirty (30) days advance written notice of the effective date of termination.
 7. Purchased Power Cost Adjustment Charge: A Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.

8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
9. Minimum Bill: The minimum bill for electric use shall be \$140.00 per month.

F. Electric Vehicle Charging Level II (Schedule EV2-S)

1. Designation: Electric Vehicle Charging Level II
2. Applicable: For City owned public electric vehicle Level II charging stations.
 - a. None of the energy is used in any endeavor which sells or rents a commodity or provides service for a fee.
 - b. Each point of delivery will be separately metered and billed.
 - c. Limitations: Auxiliary and stand-by generation or resale of the electric energy not permitted hereunder.

3. Energy Charge per kWh

	All KWH's
Base Energy	\$0.05148
Power Cost Adjustment	\$0.03578
Capacity	\$0.01020
Total	\$0.09746

4. The rates listed above include all administrative charges from the City of Lake Worth Beach.
5. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
6. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.

G. Private Area Lighting (Schedule L-P)

1. Designation: Private Area Lighting
2. Applicable: For year-round outdoor security lighting of yards, driveways, walkways, parking lots, parks, and other areas, under the following conditions:
 - a. Lights to be served hereunder shall be at locations that are easily and economically accessible to the City of Lake Worth Beach equipment and personnel for construction and maintenance.
 - b. Original location of lighting fixtures shall be by mutual agreement and shall not be located so as to create a public nuisance.
 - c. Any relocation requested by customer after installation shall be made at customer's expense. All new lighting units provided under this Schedule shall be the high pressure sodium vapor (conservation lighting) type.
3. Limitations:
 - a. Auxiliary and stand-by generation or resale of the electric energy not permitted hereunder.
 - b. The City of Lake Worth Beach, while exercising reasonable diligence at all times to furnish service hereunder, does not guarantee continuous lighting and will not be liable for damages for any interruption, deficiency or failure of service and reserves the right to interrupt service at any time for necessary repairs to lines or equipment.

4. **Service:** Service includes lamp renewals, energy from approximately dusk each day until approximately dawn the following day and maintenance of facilities. The City of Lake Worth Beach will replace all burned out lamps and will maintain its facilities during regular daytime working hours as soon as practicable following notification by the customer that such work is necessary. The City of Lake Worth Beach shall be permitted to enter the customer's premises at all reasonable times for the purpose of inspecting, maintaining, installing and removing any or all of its equipment and facilities. Single phase, 60 cycles at available standard voltage. Three phase service may be furnished but only under special arrangements and at the option of the City of Lake Worth Beach.
5. **Term of Service:** Not less than one (1) year.
6. **Monthly Rates:** A fixed monthly charge based on the number of units installed shall be charged based on the following schedule.
 - a. **Standard Lighting:**

Description Unit Cost per Month

175 Watt (7,000 Lumen) Mercury –Vapor Street Light Unit on Existing Pole	\$12.21
400 Watt (20,500 Lumen) Mercury-Vapor Street Light Unit on Existing Pole	\$19.15
1,000 Watt (55,000 Lumen) Mercury-Vapor Street Light Unit on Existing Pole	\$37.68
100 Watt (9,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$9.93
250 Watt (27,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$14.26
360 Watt High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$17.05
400 Watt (50,000 Lumen) High Pressure Sodium Vapor Street Light Unit on existing pole	\$17.15
48 Watt LED Street Light Unit on Existing Pole	\$9.00
70 Watt LED Street Light Unit on Existing Pole	\$9.70
80 Watt LED Street Light Unit on Existing Pole	\$9.70
101 Watt LED Street Light Unit on Existing Pole	\$16.30
110 Watt LED Street Light Unit on Existing Pole	\$16.30
133 Watt LED Street Light Unit on Existing Pole	\$16.30
150 Watt LED Street Light Unit on Existing Pole	\$16.30
Wood Pole and span of Overhead Conductors or Pole used only for Light	\$10.00
Concrete Pole and Span of Overhead Conductors or Pole used only for Light	\$15.00
Underground Conductors up to 150 feet	\$1.33
Underground Conductors from 150 feet to 300 feet	\$2.68

7. **Purchased Power Cost Adjustment Charge:** A Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. **Outside City Limits Surcharge:** A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.

H. Street Lighting (Schedule L-S)

1. Designation: Street Lighting
2. Applicable: For lighting of public right-of ways.
3. Limitations:
 - a. Auxiliary and stand-by generation or resale of the electric energy not permitted hereunder.
 - b. The City of Lake Worth Beach, while exercising reasonable diligence at all times to furnish service hereunder, does not guarantee continuous lighting and will not be liable for damages for any interruption, deficiency or failure of service and reserves the right to interrupt service at any time for necessary repairs to lines or equipment.
 - c. Should the City of Lake Worth Beach be required by the customer to replace the street light(s) with a light (or lights) of another type or rating, then the customer may be required to pay the estimated labor, vehicle use and other direct costs involved in replacing the fixtures.
4. Service: Service includes lamp renewals, energy from approximately dusk each day until dawn the following day and maintenance of City of Lake Worth Beach owned street lighting systems.
5. Term of Service: For not less than ten (10) years for City of Lake Worth Beach facilities or customer will be required to pay depreciated cost of installed facilities plus cost of removal.
6. Monthly Rates:
 - a. A fixed monthly charge based on the number of units installed shall be charged based on the following schedule.
 - b. Conservation Lighting:

Description Unit Cost per Month

100 Watt (9,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$7.85
150 Watt (27,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$9.33
250 Watt (27,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$12.26
360 Watt High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$15.19
400 Watt (50,000 Lumen) High Pressure Sodium Vapor Street Light Unit on existing pole	\$17.09
48 Watt LED Street Light Unit on Existing Pole	\$9.00
70 Watt LED Street Light Unit on Existing Pole	\$9.70
80 Watt LED Street Light Unit on Existing Pole	\$9.70
101 Watt LED Street Light Unit on Existing Pole	\$16.30
110 Watt LED Street Light Unit on Existing Pole	\$16.30
133 Watt LED Street Light Unit on Existing Pole	\$16.30
150 Watt LED Street Light Unit on Existing Pole	\$16.30

c. Appurtenances:

Description Unit Cost per Month

Wood Pole and span of Overhead Conductors \$10.00 or Pole used only for Light
 Concrete Pole and Span of Overhead Conductors \$15.00 or Pole used only for Light
 Underground Conductors up to 150 feet \$1.33
 Underground Conductors from 150 feet to 300 feet \$2.68

7. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. Outside City Limits Surcharge:
 - A. Surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.

Section 3. Purchased Power Cost Adjustment (PCA): A Purchased Power Cost Adjustment Charge (PCA) shall be established for a projected 3 month period for energy sales during that period as follows:

$$PCA = (A + B + C) / D$$

where:

A = The projected purchased power costs for the projected 3 month period comprised of costs such as the FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity, energy and directly related costs, Lake Worth Beach electric utility power generating fuel, and transmission costs

B = A true-up amount representing the over or under recovery of purchased power costs from the prior period

C = The amount transferred to or from the Rate Stabilization Fund for the projected period

D = The projected total retail sales in MWh for the projected 3 month period

The purchased power cost adjustment charge will be reconciled quarterly and trued up between estimated costs and billing units and actual costs and billing units.

Section 4. Surcharge For Service Outside The Municipal Limits: With respect to any residents, premises and/or users outside the corporate limits of the City of Lake Worth Beach, Florida, where such residents, premises and/or users now or hereafter have or use electrical utility service with the electrical system of the City of Lake Worth Beach, they shall be charged a rate for the electricity they use equal to the charge established for service to the residents, premises and/or users within the City of Lake Worth Beach, Florida, plus any applicable taxes or fees that are required in the Code of Ordinances or Resolutions of the specific jurisdiction in which those accounts reside. Such taxes and fees are collected by the City of Lake Worth Beach and remitted directly to the appropriate County or Municipal entity.

Section 5. Nothing in this resolution shall prohibit the City of Lake Worth Beach from entering into an agreement to provide electricity and electric utility services to or within any unit of government or governmental subdivision with terms and conditions other than contained herein.

Section 6. All resolutions or parts of resolutions in conflict herewith are expressly repealed.

Section 7. If any provision of this resolution or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the resolution, which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared severable.

Section 8. This resolution shall be in effect for billings issued on or after January 1, 2022.

The passage of this resolution was moved by Commissioner McVoy, seconded by Commissioner Malega and upon being put to a vote, the vote was as follows:

Mayor Betty Resch	AYE
Vice Mayor Herman Robinson	AYE
Commissioner Sarah Malega	AYE
Commissioner Christopher McVoy	AYE
Commissioner Kimberly Stokes	AYE

The Mayor thereupon declared this resolution duly passed and enacted on the 14th day of December 2021.

LAKE WORTH BEACH CITY COMMISSION

By: _____

Betty Resch, Mayor

ATTEST:



Melissa Ann Coyne, City Clerk



STAFF REPORT UTILITY MEETING

AGENDA DATE: April 25,2023

DEPARTMENT: Regional Sewer

TITLE:

Resolution No. 10-2023 – Adopting a FY 2023 Budget Amendment for Subregional Wastewater Payment to ECR

SUMMARY:

Resolution 10-2023 adopts a budget amendment in the amount of \$240,863 Regional Sewer Fund balance to pay the City of West Palm Beach East Central Regional Water Reclamation Facility (ECR) to meet the 1% cash requirement of the Renewal & Replacement Fund per the Interlocal Agreement.

BACKGROUND AND JUSTIFICATION:

The City of Lake Worth Beach sends wastewater from its system, along with seven Subregional partners, to the ECR. The City is party to a 1992 Interlocal Agreement with five entities who share ownership of the ECR, with the City of West Palm Beach providing operations and maintenance of the facility. The City of West Palm Beach recently notified the entities of their balance in the renewal and replacement (R&R) fund, and their review if the partners met the 1% of plant value cash reserves requirement in each entities fund, as required per the Interlocal Agreement. The City of Lake Worth Beach has fallen below the required 1% balance and as such must make a payment to maintain the balance. Many necessary capital projects have been underway at ECR, drawing down the balance of this fund. The provision which established the 1% minimum deposit value is found in “Section 6. Renewal and Replacement Fund”, starting on page six of the Interlocal Agreement.

Resolution No. 10-2023 for the budget amendment provides funding for the aforementioned difference required to maintain the 1% of plant value minimum deposit in the City’s R&R fund at ECR.

The source of funds will be from the Regional Sewer Fund Balance.

MOTION:

Move to approve/disapprove Resolution No. 10-2023 adopting a FY 2023 Budget Amendment for Subregional Wastewater Payment to ECR

ATTACHMENT(S):

Fiscal Impact Analysis
Resolution 10-2023
Invoice
ECR Interlocal 1992 Agreement

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Current Appropriation	0	0	0	0	0
Operating	\$240,863	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	\$240,863	0	0	0	0
No. of Addn'l Full-Time Employee Positions					
	0	0	0	0	0

New Appropriation Fiscal Impact:		
	Revenue Source	Expenditure
Department	Regional Sewer	Regional Sewer
Division	N/A	N/A
GL Description	Use of Fund Balance	Contractual Services / Regional Exp - ECR R & R
GL Account Number	405-0000-395.00-00	405-7421-535.34-87
Project Number	N/A	N/A
Requested Funds	\$240,863	\$240,863

RESOLUTION NO. 10-2023, BUDGET AMENDMENT OF THE CITY OF LAKE WORTH BEACH, A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA, MAKING A BUDGET TRANSFER OF \$240,863 FROM THE FISCAL YEAR 2023 SUBREGIONAL SEWER EQUITY FUND BALANCE TO PAY THE CITY OF WEST PALM BEACH EAST CENTRAL REGIONAL WATER RECLAMATION FACILITY RENEWAL AND REPLACEMENT FUND FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2022 AND ENDING SEPTEMBER 30, 2023; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Lake Worth Beach, Florida (the "City") previously adopted the Fiscal Year (FY) 2023 Annual Operating Budget pursuant to Resolution No. 69-2022 on September 22, 2022 (as amended thereafter);

WHEREAS, the City finds it is necessary and essential to amend the FY 2023 Annual Operating Budget to transfer funds from the FY 2023 Subregional Sewer Equity Fund Balance Budget to the Subregional Sewer Operating Fund in order to make the required payment to the City of West Palm Beach East Central Regional Water Reclamation Facility (ECR) to maintain the required 1% of plant value cash balance in the City's renewal and replacement fund; and

WHEREAS, the budget transfer of \$240,863 from the FY 2023 Subregional Sewer Equity Fund Balance to the Subregional Sewer Operating Fund is shown in **Exhibit "A"**;

WHEREAS, adoption of this Resolution to amend the FY 2023 Annual Operating Budget serves a valid public purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, that:

Section 1. The above recitals are hereby ratified and confirmed as being true and correct and are hereby incorporated into this Resolution.

Section 2. As hereinafter stated in this Resolution, the term "fiscal year" shall mean the period of time beginning October 1, 2022, and ending and including September 30, 2023.

Section 3 The funds and available resources that are set out and attached as **Exhibit "A"** and incorporated herein by reference, be, and the same hereby are, transferred and appropriated to provide the monies to be used to pay the necessary ECR operating expenses of the fund for the fiscal year.

Section 4. The sums, which are set out in **Exhibit "A"** and herein incorporated by reference, listed as expenses of the Regional Sewer Fund of the City, be, and the same hereby are, appropriated and shall be paid out of the equity fund balance revenues herein appropriated for the fiscal year.

Section 5. The revenues and the expenses for which appropriations are hereby made, all set forth above, shall be as set out in the Amended Budget for the fiscal year.

Section 6. The sums set out in **Exhibit "A"** are herein before incorporated by reference and based upon an invoice received from the City of West Palm Beach shall be, and the same hereby are, fixed and adopted as the amended budget for the operation of the City and its other enterprises for the fiscal year.

Section 7. Except as amended hereto, the remainder of the FY 2023 Annual Operating Budget for the fiscal year remains in full force and effect.

Section 8. This Resolution shall become effective immediately upon its passage.

The passage of this Resolution was moved by Commissioner _____, seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch
Vice Mayor Christopher McVoy
Commissioner Sarah Malega
Commissioner Kimberly Stokes
Commissioner Reinaldo Diaz

The Mayor thereupon declared this resolution duly passed and adopted on the 25th day of April 2023.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

Exhibit A

GL ACCOUNT #	DESCRIPTION	FY 2022 - 2023 BUDGET	BUDGET AMENDMENT	FY 2022- 2023 FINAL BUDGET
405-0000-395.00-00	Other Sources/Use of Fund Balance		\$240,863.00	\$240,863.00
405-7421-535.34-87	Regional Exp – ECR R&R	\$2,263,189	+\$240,863.00	\$2,504,052.00



Remit to : City of West Palm Beach
 P.O. Box 3366
 West Palm Beach, FL 33402-3366

Return this part with remittance
 Please make checks payable to the City of West Palm Beach

Invoice	
Number	227185
Date	21-MAR-23
Type	CLRR
Customer	1220
Site ID	1220
Amount	240,863.00
Due Date	20-APR-23



Credit card payments accepted at
 City Center, 401 Clematis St., WPB

Bill To:

LAKE WORTH UTILITIES
 301 COLLEGE STREET
 LAKE WORTH, FL - 33460

DO NOT WRITE BELOW THIS LINE

502 000001220 0000227185 0024086300

All calls regarding: **ECR Charges**
 Should be made to: **(561) 494-1045 Ext 1065**

Terms: 30 NET

Invoice Number: 227185

Item	Invoice Description	Quantity	Unit Price	Extended Amount
1	ECR R&R AGENCY FUND 471 BALANCE DUE FOR ONE PERCENT CASH REQUIREMENT	1	240,863.00	240,863.00
			Total	240,863.00

Finance Department
City of West Palm Beach
P.O. Box 3366
401 Clematis Street
West Palm Beach, FL 33402-3366

Temp-Return Service Requested

LAKE WORTH UTILITIES
 301 COLLEGE STREET
 LAKE WORTH, FL - 33460

East Central Regional Water Reclamation Facility
Renewal/Replacement & Capital Improvement Fund 471
FY 2023 Fund Summary as of January 31, 2023

	West Palm Beach	Town of Palm Beach	Lake Worth Beach	Palm Beach County	Riviera Beach	Total
Percent Capacity @ 70 MGD	29.28570%	8.57140%	16.42860%	34.28570%	11.42860%	100%
Cash- October 01, 2022	\$21,267,004	\$3,581,660	\$5,264,777	\$10,071,235	\$5,868,478	\$46,053,153
Revenue						
Payments Received - Annual Payments (3.6%)	1,569,152	1,337,309	2,263,189	5,349,251 *		10,518,901
Interest-YTD Allocated	0	0	0	0	0	0
Interest - Unallocated	0	0	0	0	0	0
Total Revenue	\$1,569,152	\$1,337,309	\$2,263,189	\$5,349,251	\$0	\$10,518,901
Disbursements						
Project Expenditures	(190,157)	(55,656)	(106,674)	(222,623)	(74,208)	(649,316)
Other Disbursements (Vouchers Payable)	(162,705)	(47,621)	(91,274)	(190,484)	(63,495)	(555,579)
Total Disbursements	(\$352,862)	(\$103,276)	(\$197,947)	(\$413,107)	(\$137,703)	(\$1,204,895)
Cash Balance	\$22,483,294	\$4,815,693	\$7,330,019	\$15,007,379	\$5,730,775	\$55,367,159
Commitments:						
Project Encumbrances	(1,742,758)	(510,074)	(977,647)	(2,040,302)	(680,103)	(5,950,884)
Remaining Project Budget	(10,915,570)	(3,194,792)	(6,123,382)	(12,779,205)	(4,259,747)	(37,272,695)
Deduction from Remaining Project Budget CWPB	878,571	257,142	492,858	1,028,571	342,858	3,000,000
Use of Unrestricted Reserves for CWPB Annual Contribution	(3,000,000)					(3,000,000)
Deduction from Remaining Project Budget LWB	87,857	25,714	49,286	102,857	34,286	300,000
Use of Unrestricted Reserves for LWB Annual Contribution			(300,000)			(300,000)
Cash Available for 1% Test *	\$7,791,394	\$1,393,683	\$471,134	\$1,319,300	\$1,168,069	\$12,143,580
1% Cash Requirement	(1,269,209)	(371,475)	(711,997)	(1,485,903)	(495,303)	(4,333,886)
Reserve for Future Projects Balance	\$6,522,185	\$1,022,209	(\$240,863)	(\$166,603)	\$672,766	\$7,809,694

	Est Replacement Plant Value					
Calculations of Minimum Requirements						
Original Est Plant Value per 1992 Interlocal Agreement	\$100,600,000					
SRF & Other Improvements (Rounded)	31,400,000					
ECR Expansion (Rounded)	16,000,000					
Adjustment for AWT Value from FY 2018	18,674,978					
Biosolids Expansion Adjustment	100,000,000					
Adj of Replacement Value FY2008 to FY2022	154,090,661					
Adjustment for Est Replacement Cost for FY 2023	12,622,969					
Total Estimated Plant Value @ 9/30/23	\$433,388,608					
	West Palm Beach	Town of Palm Beach	Lake Worth Beach	Palm Beach County	Riviera Beach	Total
1% Test - Minimum Cash Requirement	\$433,388,608	\$1,269,209	\$371,475	\$711,997	\$1,485,903	\$4,333,886
Cash Available*	7,791,394	1,393,683	471,134	1,319,300	1,168,069	12,143,580
Over/(Under) 1% Requirement	\$6,522,185	\$1,022,209	(\$240,863)	(\$166,603)	\$672,766	\$7,809,694
5% Cash Requirement	6,346,044	1,857,374	3,559,984	7,429,516	2,476,513	21,669,430
Cash Available*	7,791,394	1,393,683	471,134	1,319,300	1,168,069	12,143,580
Over/(Under) 5% Requirement	\$1,445,350	(\$463,690)	(\$3,088,850)	(\$6,110,216)	(\$1,308,444)	(\$9,525,850)
10% Cash Requirement	12,692,089	3,714,747	7,119,968	14,859,032	4,953,025	43,338,861
Cash Available*	7,791,394	1,393,683	471,134	1,319,300	1,168,069	12,143,580
Over/(Under) 10% Requirement	(\$4,900,695)	(\$2,321,064)	(\$6,648,834)	(\$13,539,732)	(\$3,784,956)	(\$31,195,281)

* Annual contribution of \$1,783,089 not paid by City of Riviera Beach

**INTERLOCAL AGREEMENT
ESTABLISHING DUTIES AND RESPONSIBILITIES
AMONG THE ENTITIES FOR THE OPERATION OF THE
EAST CENTRAL REGIONAL WASTEWATER TREATMENT FACILITIES**

THIS AGREEMENT entered into this 9 day of September 1992, by and among the CITY OF WEST PALM BEACH, a municipality organized under the laws of the State of Florida, hereinafter referred to as "WPB;" PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY;" the CITY OF LAKE WORTH, a municipality organized under the laws of the State of Florida, hereinafter referred to as "LW;" the CITY OF RIVIERA BEACH, a municipality organized under the laws of the State of Florida, hereinafter referred to as "RB;" and the TOWN OF PALM BEACH, a municipality organized under the laws of the State of Florida, hereinafter referred to as "PB," collectively referred to as the "ENTITIES."

WITNESSETH:

WHEREAS, the COUNTY, LW, RB and PB currently have separate individual Interlocal Agreements with WPB, which involve the ownership, operation, maintenance, renewal, replacement and expansion of the existing East Central Regional Wastewater Facilities (the "FACILITIES"), as listed on Exhibit "A" - Interlocal Agreements.

WHEREAS, the ENTITIES believe that it is the most efficient use of their respective powers to cooperate with each other on a basis of mutual advantage to consolidate the separate Agreements into a single unified Interlocal Agreement, to own, operate and manage the FACILITIES, presently operated by WPB for the benefit of the ENTITIES, in a manner that will accord best with the citizens and utility consumers of the ENTITIES and with other geographic, economic and population factors influencing the needs and development of the ENTITIES; and

WHEREAS, the ENTITIES believe for the following reasons, without limitation, that it is essential, necessary and in the ENTITIES' best interest to establish rules and procedures under which WPB operates and manages the FACILITIES for the benefit of the ENTITIES.

(A) The ENTITIES must meet the comprehensive planning requirements of State law which mandate that each coordinate their community plans for future growth with available sources of funding and the availability of infrastructure. The provision of utilities is a major factor in such infrastructure coordination. The entering into of an Interlocal Agreement pursuant to Part I of Chapter 163, Florida Statutes (F.S.) will facilitate the ENTITIES' ability to meet their statutory mandate with respect to the utilities elements of the comprehensive plans.

(B) To provide for a unified system of wastewater service for Central Palm Beach County, to assure the continued provision of a safe and healthy environment for the users of the

FACILITIES.

(C) To ensure that the customers of the FACILITIES are provided efficient and cost-effective service and rates and assure that proper expansion of the FACILITIES will occur to meet the demands of development as approved in each jurisdiction.

(D) To ensure the public health, safety and welfare of the residents by establishing a cooperative arrangement among the ENTITIES to provide essential government services in the Central County area; and

WHEREAS, Chapter 163, F.S., Part I, provides a mechanism to accomplish the above-described purpose of the ENTITIES by permitting the joint exercise of any power, privilege or authority which each entity shares in common and which each might exercise separately.

NOW, THEREFORE, pursuant to Chapter 163, F.S., Part I, the ENTITIES do hereby enter into an Interlocal Agreement for the purposes as set forth herein, as follows:

1. **Purpose.** The purpose of this Interlocal Agreement is to establish uniform rules and procedures for the operation and management of the FACILITIES by WPB for the benefit of the ENTITIES, to provide wastewater treatment and disposal and sludge treatment and disposal services as herein defined in an economical and efficient manner and to provide wastewater treatment and disposal and sludge treatment and disposal services to all others who can be legally serviced.
2. **Legal Authority/Consent to Serve.** The ENTITIES designate and acknowledge that WPB shall be the ENTITY which formally retains legal title of the FACILITIES, which are held for the benefit of the ENTITIES, and WPB accepts full responsibility for the operation and management of the FACILITIES for the benefit of the ENTITIES, pursuant to the terms of this Agreement.
3. **Definitions.**

(A) "FACILITIES" shall mean and shall include all existing plant structures, equipment, piping, valves, roads, buildings, pumps, injection wells, electrical switchgear, and any improvement or expansion thereto required to receive, convey between process units, treat, stabilize, thicken, dewater, pump, and dispose of wastewater from the ENTITIES, and the real property and easements on which the FACILITIES are located, the real property encompassing the area described on Exhibit "B" - Legal Description, attached hereto, also commonly referred to as East Central Regional Wastewater Treatment Plant (ECRWWTP).

(B) "Commission" shall mean the governing body of WPB, which holds the operating permits for the FACILITIES and operates and manages the FACILITIES in accordance with this Interlocal

Agreement for the benefit of the ENTITIES.

(C) "Cost" as applied to the acquisition and construction of expansions, additions or improvements to the FACILITIES shall include the cost of construction or reconstruction, the cost of all labor, materials, machinery and equipment, easements and franchises of any nature whatsoever, finance charges, interest, the creation of initial reserve or debt service funds, bond discount, cost of plans and specifications, surveys and estimates of costs and revenues, cost of engineering, financial, audit and legal services and all other expenses necessary or incidental in determining the feasibility or practicability of such construction, reconstruction, administrative expenses or such other expenses as may be necessary or incidental to financing authorized by law, and including reimbursement of the ENTITIES for any monies advanced in connection with any of the foregoing items of cost.

(D) "Reserve Capacity" shall mean the capacity allocations as defined in Section 19 below, as shown on Exhibit "E" - Reserve Capacity Percentages.

(E) "Excess Flow" shall mean any three month moving average that exceeds Reserve Capacity.

4. Establishment of BOARD Functions; Membership. The ENTITIES hereby create an Operation BOARD (hereinafter referred to as the "BOARD"), under Section 163.01(7), to administer this Agreement. The BOARD shall have the powers enumerated in this Agreement and the additional powers enumerated in Section 163.01(7). The BOARD shall decide all matters related to the FACILITIES, including, but not limited to, approval of all construction contracts, FACILITIES budget and expansion of the FACILITIES and direct WPB as to the operation and management of the FACILITIES. The BOARD so created shall be comprised of five (5) members, one from each ENTITY, who shall be the designated Staff Officials from the respective ENTITIES. Each ENTITY shall appoint an alternate, whom shall represent the ENTITY in the absence of the designated Staff Official, but shall not vote.

(A) Voting of the members of the BOARD shall be by one (1) vote per ENTITY for Administrative and Parliamentary matters including, but not limited to, operating budget approval, establishment of flow charges and dispute resolution amongst the ENTITIES (the "Equal Voting Percentages").

(B) Voting on matters involving the expenditure of capital for existing FACILITY improvements and renewal and replacement items, including, but not limited to, consultant selection and removal, change orders, award of construction contracts, value engineering, approval of engineering documents and settlement of contractor and other third-party disputes, shall be weighted as follows (the "Weighted Voting Percentages"):

The voting percentages shall be calculated

according to each of the ENTITIES' respective reserve capacity. Each ENTITY shall have a minimum of one percent (1%) voting percentage in all BOARD decisions. A super majority vote of greater than fifty percent (>50%) of reserve capacity is required on any decision except as delineated in Paragraph A above. In addition to greater than fifty percent of capacity for a vote to pass, a minimum of three ENTITIES must vote in the majority.

(C) The BOARD members so appointed shall serve at the pleasure of the ENTITY by whom the BOARD member was appointed, and may be removed at any time by such ENTITY, without cause or requirement of hearing. Members shall be deemed to hold office until a successor has been appointed.

(D) WPB shall be charged with providing operational reports as reasonably determined by the BOARD and financial reports to be provided quarterly within 60 days from the end of the quarter in accordance with generally accepted accounting principles at the meetings along with recording the meetings, and providing minutes of the meetings to all members. The BOARD members shall elect a Chair of the BOARD to serve on an annual basis. The elected Chair in conjunction with WPB shall set the agenda for the meetings in accordance with the requests of the BOARD members. The BOARD members shall elect a Vice-Chair to serve as Chair in the Chair's absence.

(E) The BOARD shall meet regularly at least once in every quarter at such time and places as the BOARD may prescribe by rule and all meetings shall be publicly noticed. Special meetings may be held on the call of the Chair or any other two BOARD members, and, whenever practicable, upon no less than twenty-four (24) hours' notice to each member and the public. The BOARD shall determine its own rules and orders of business. A majority (three out of five ENTITIES) of the members of the BOARD shall constitute a quorum; but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the BOARD. No action of the BOARD, except as otherwise provided in the preceding sentence, shall be valid or binding unless adopted as set forth above.

(F) The BOARD may, from time to time, create subcommittees to address specific issues related to the operation, improvement, permitting and expansion of the FACILITIES. The subcommittees shall serve in an advisory role and shall only provide recommendations to the BOARD for action.

(G) Decisions of the BOARD shall be administered and carried out by WPB. As a mechanism to carry out the actions of the BOARD, the BOARD shall utilize the personnel, purchasing, industrial pretreatment, and Minority Business Enterprise policies and procedures of WPB currently in existence as of

June 17, 1992, Exhibit "F" - WPB Policies and Procedures, and shall consider any future changes to such policies and procedures proposed by WPB, taking into consideration changes to such policies and procedures approved by the Board.

5. Wastewater Flow Charge Budget.

* A. The BOARD shall establish, and WPB shall implement, a Regional Wastewater Enterprise Fund. Wastewater flow charges will be implemented to provide sufficient funding to properly and efficiently operate and maintain the FACILITIES, to fulfill all bonding requirements, including coverage tests, and to maintain compliance with all regulatory requirements. The BOARD shall establish an annual budget from which the wastewater flow charges will be determined using the formula for sewer flow charges in Exhibit "C" - Flow Charge Formula. Wastewater charges shall be adjusted for increases or decreases accordingly for ancillary charges such as sludge processing as applicable. The formula for establishing flow charges may be modified as determined by the BOARD. Penalties will be assessed by the BOARD for ENTITY flows exceeding reserve capacity on a three-months moving average basis at the rate of 150% of normal charges.

(B) WPB shall submit to the BOARD a proposed annual budget not later than one hundred fifty (150) days prior to the completion of the fiscal year. The proposed budget shall detail the operational expenditures for the FACILITIES for the previous two (2) years, the current year-to-date expenditure, projected year-end total and a budgetary amount for the upcoming fiscal year. The budget shall include the line items as listed in Exhibit "D" - Budget Line Items. The BOARD shall approve a final budget by July 1st or as amended by the BOARD. WPB shall implement the approved budget.

(C) The annual budget shall include the projected costs of services of outside consultants necessary to assist in the operation, maintenance, operational improvement and regulatory compliance of the FACILITIES. The cost of these services shall be included in the wastewater flow charge formula.

(D) WPB shall report monthly to the BOARD members on the year-to-date expenditures and projected year-end costs by line item. WPB may request the BOARD amend the budget to adjust line item expenditures. In the event that the annual budget will not be sufficient to properly operate and maintain the FACILITIES during any fiscal year, WPB shall so notify the ENTITIES through the BOARD and a revised budget and flow charge shall be established by the BOARD. If the budget insufficiency is directly related to gross negligence on the part of WPB in implementing the annual budget, WPB shall be responsible for shortfall.

(E) Decisions of the BOARD shall bind all ENTITIES, and for such decisions, WPB, COUNTY, LW, RB, PB, shall in no way be liable to any of the other ENTITIES of the BOARD.

6. **Renewal and Replacement Fund.** The BOARD shall ensure that adequate funds are available for renewal and replacement (R&R) of the FACILITIES. R&R funds shall be deposited into a separate Agency Fund for the sole purpose of funding each ENTITY's pro-rata share of extraordinary expenses, renewal and improvements, or replacement of capital assets or any part thereof at the FACILITIES. An annual payment shall be made by each ENTITY into the R & R Agency Fund according to the following formula:

(Replacement plant value) X (ENTITY reserve capacity percentage) X (one percent (1%)). Each ENTITY shall make R&R Agency Fund payments until the amount in the R&R Agency Fund allocated to such ENTITY has reached 10% of such ENTITY's proportionate share of the replacement plant value. No further payments to the R&R Agency Fund will be required by an ENTITY until that ENTITY's share of the Agency Fund falls below 5% of its proportionate share of the replacement plant value. At that time, annual payments shall again be made by the ENTITY until the 10% level has again been reached. The BOARD shall determine the replacement plant value of the FACILITIES at the first meeting of the BOARD every fiscal year, absent which the previous year's value shall carry over until changed by the BOARD. The replacement value as of the effective date of this Agreement shall be as shown on Exhibit "G" - Replacement Plant Value.

Under no circumstances shall any ENTITY's proportionate share of the R&R Agency Fund drop below 1% of its proportionate share of the replacement plant value, except when directed by the Board. From time to time the BOARD may require special non-annual payments be made by each ENTITY to the R&R Agency Fund in anticipation of projects which will require additional funding. Such special non-annual payments shall be calculated in accordance with each ENTITY's Reserve Capacity Percentage of anticipated project costs. All interest earned by the R&R Agency Fund shall accrue to the R&R Agency Fund and be credited proportionately to each ENTITY's account.

All funds currently held by WPB or in escrow on behalf of each ENTITY shall be transferred to the R&R Agency Fund upon execution of this Agreement and shall accrue to such ENTITY'S account, limited to 10% of such ENTITY'S replacement plant value at the request of the ENTITY. This accrual may require an ENTITY to commence making annual payments hereunder while other ENTITIES may already have attained their 10% maximum in the R&R Agency Fund. WPB shall submit to the BOARD a proposed annual budget for R&R not later than one hundred fifty (150) days prior to the completion of the fiscal year. The proposed R&R budget shall detail the improvements expenditures for the FACILITIES for the current year-to-date expenditure, projected year-end total and a budgeting amount for the upcoming fiscal year. WPB shall administer the R&R Agency Fund according to this Section and shall submit a monthly status report of the R&R Agency Fund to the BOARD members. At the end of each fiscal year, WPB shall submit, to the BOARD, a year-end financial analysis of the R&R Agency Fund which shall include all

debits, credits, investment, interest and year-end Fund balances prepared in accordance with generally accepted accounting principles. The analysis shall break this information out by ENTITY. The BOARD shall have the power to modify the R&R Agency Fund formula or percentages as needed.

7. **Expansion Policy.** Each ENTITY shall have the right to expand the FACILITIES to meet capacity or special treatment or disposal requirements of the ENTITY provided the following conditions are adhered to:

(A) The BOARD is given written notice, with a reasonable schedule, to provide the additional capacity or special treatment or disposal requirements, and such requirements can feasibly be accomplished given the state of the FACILITIES at the time of request.

(B) The ENTITY(s) involved in the expansion shall execute a separate Participatory Agreement with each other and the BOARD, which shall set forth the responsibility of the affected ENTITY(s) for all costs, direct and indirect, associated with the request. **Prior to entering into construction contracts for such separate expansions the ENTITY or ENTITIES shall show financial capability and technical feasibility for such a project in a manner acceptable to the BOARD.**

(C) The BOARD shall be responsible for directing WPB in the procurement of all services required to comply with the request, including but not limited to, consultant's selection and removal, award of construction contracts, change orders, approval of engineering documents and settlement of construction disputes.

8. **System Operation.** Operation and maintenance of the FACILITIES shall be the responsibility and obligation of WPB provided that an adequate budget is adopted by the BOARD. WPB shall provide sufficient personnel, with appropriate experience to undertake all FACILITIES operations and maintenance, comply with all regulatory requirements, including, but not limited to, those imposed by the Florida Department of Environmental Regulation, the Palm Beach County Health Department and U.S. Environmental Protection Agency. Each ENTITY shall comply with the rules and regulations governing a sewage flow into the FACILITIES as set forth in the Pretreatment Ordinance as adopted by the BOARD, and as such rules and regulations may be changed from time to time by the BOARD. If new regulatory requirements necessitate capital improvements or budget amendments, the BOARD shall take all necessary actions to accomplish the same, and WPB shall implement the decisions of the BOARD. The failure or inaction of the BOARD to carry out or authorize the recommendations as presented by WPB for compliance of any consent order, regulatory agency or operating permit by WPB shall preclude such liability as may be placed on WPB and shall entitle WPB to indemnification for all costs and penalties by the other ENTITIES. WPB shall be liable for all regulatory violations, including compliance costs or penalties assessed for same, which

arise out of or are solely related to: (1) material errors or omissions by its personnel and agents in the day-to-day operations of the FACILITIES; or (2) the failure of WPB to timely proceed administratively to undertake or complete a requirement imposed by any regulatory agency in any consent order or operating permit. Other regulatory violations, caused by action of the BOARD including the costs of bringing the FACILITIES into compliance and penalties assessed, shall be included as an expense of the FACILITIES and shared by the ENTITIES. WPB shall maintain adequate catastrophic insurance on the FACILITIES on such terms and amounts as set by the BOARD.

9. **Metering.** The metering for flow charges shall be accomplished by WPB as directed by the BOARD. This shall include a metering system owned by an ENTITY as approved by the BOARD. Such metering shall be acceptable to regulatory agencies in addition to the BOARD. The meters shall be calibrated quarterly by an independent contractor as selected by the BOARD. In the event of meter malfunction, flow shall be calculated using the previous year's 3-month average consisting of the month in question plus the preceding and subsequent months.

10. **Reports of the System.** WPB shall cause to be made, at least once each year, financial statements prepared in accordance with generally accepted accounting principles and shall have performed an independent audit in accordance with generally accepted auditing standards. Copies of such reports shall be filed promptly with the ENTITIES within 210 days and shall be open to public inspection. WPB shall also provide monthly operating and financial reports (including regulatory submissions) and quarterly financial statements in accordance with generally accepted accounting principles to the BOARD members. WPB shall comply with the requirements of Chapter 189, F.S., as it applies to the BOARD.

11. **Payments to BOARD.** On behalf of the BOARD, WPB shall invoice each ENTITY monthly thirty (30) days prior to the beginning of the month for its wastewater flow charges. The ENTITIES shall make required payments to WPB within thirty (30) days of the date of invoice. Payments not received within thirty (30) days shall accrue interest at the legal rate of twelve percent (12%) per annum, as amended by law from time to time. WPB shall hold all unspent funds in an interest-bearing account until expended.

12. **Compensation.** The members of the BOARD shall serve without compensation under this Agreement.

13. **Expenses.** The BOARD is established on the basis that the schedule of wastewater flow charges and other charges cause the FACILITIES to be self-sustaining. The BOARD shall not be authorized to create or distribute a profit or surplus to any ENTITY, including WPB. This shall not, however, prevent the BOARD from establishing reserves or adding to existing R & R Reserves, for capital projects and/or unanticipated expenses in keeping with sound, prudent, and reasonable operation of the system in accordance with industry standards or from fulfilling any other requirements imposed by bond financing, law, or previous agreements

not superseded.

14. **Term and Termination.** The term of this Agreement is for an initial period of thirty years with a renewable term of thirty years upon the mutual consent of the parties. This Interlocal Agreement shall terminate only upon the consent of one hundred percent (100%) of the ENTITIES. Any ENTITY can withdraw from participation in this Agreement but will lose its interest and allocation in the FACILITIES and shall continue to meet its obligations. Any ENTITY may assign its interest to one or more of the other ENTITIES or any other BOARD approved designee.

15. **Disposition of the System.** Should the FACILITIES be sold or disposed of by the BOARD (by one hundred percent (100%) vote), proceeds of the sale or disposition shall be prorated among the ENTITIES in proportion to the allocated reserve capacity of each jurisdiction as of the date of disposition.

16. **Miscellaneous.** This Agreement may not be amended, except upon the written agreement of the ENTITIES holding a cumulative capacity allocation of one hundred percent (100%). In the event of any dispute arising out of or in relation to this Agreement, the prevailing party shall be entitled to attorney's fees and costs, including attorney's fees through all appellate procedures.

17. **Dispute Resolution.** In the event of a dispute involving payment of an amount due from any ENTITY hereunder, the full amount shall be paid to WPB, with the amount in dispute to be held by WPB in escrow pending resolution of the dispute. Such escrow funds shall be invested with interest, with the interest accruing to the prevailing party (BOARD or disputing ENTITY).

In the event a dispute arises between or among any of the ENTITIES as to any matter arising out of this Agreement, exclusive of matters that relate to WPB's responsibility to comply with Federal, State, and local regulatory requirements, such dispute shall be resolved as follows:

(A) The disputed issue will be presented to the BOARD. If the parties in dispute do not agree with the majority (three out of five ENTITIES) decision of the BOARD, then the disputing parties may, if in full agreement, refer the item to non-binding arbitration before one (1) arbitrator, pursuant to the rules of the American Arbitration Association. The arbitrator shall be selected by joint agreement of all parties to the proceeding from a list of arbitrators prepared by the American Arbitration Association experienced in engineering and operation of municipal wastewater treatment facilities. If the parties do not agree within twenty (20) days of the date of request for arbitration, the selection shall be made pursuant to the rules of such Association.

The award rendered by the arbitrator shall be non-binding upon the parties to the proceeding. Each party shall pay its own expenses of arbitration and the expenses of the arbitrator shall be equally shared. Nothing herein shall prevent the parties from settling any dispute between or among them by mutual agreement at any time.

(B) Before filing any legal action in court pertaining to any dispute or other matter in question arising out of or relating to the Agreement or the breach thereof, the claimant/objector shall first define the dispute to the other party to this Agreement in writing and make a specific demand or offer a specific counterproposal thereto within thirty (30) days of the receipt of such claim demand and settlement proposal, or if the claimant/objector fails to accept any counterproposal from the other party within thirty (30) days of receipt thereof, the other party shall be free to pursue all legal remedies available in a court of competent jurisdiction in accordance with Paragraph C hereof.

(C) Any dispute arising out of the terms of this Agreement shall be litigated in the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida.

18. **Filing.** Upon execution of this Agreement and subsequent amendments thereto, this Agreement, and such subsequent amendments shall be filed with the Clerk of the Circuit Court of Palm Beach County. This Agreement shall be effective upon filing with the Clerk.

19. **Reserve Capacity Percentages.** The ENTITIES agree and acknowledge that the existing capacity allocated to each of the ENTITIES is as set forth in Exhibit "E" - Reserve Capacity Percentages attached hereto and made a part hereof. This capacity shall be adjusted from time to time by the BOARD to reflect changes due to expansion under Paragraph 7 above or agreement of the ENTITIES to reallocate capacity.

20. **Prior Agreement.** The ENTITIES agree that this Interlocal Agreement constitutes the entire agreement of the parties hereto on the matters set forth herein and supersedes only those prior Interlocal Agreements as shown in Exhibit "A" attached hereto, between the parties relating to the FACILITIES.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

WITNESSES:

Peter B. Ebell
Cindy Cousins
(OFFICIAL SEAL)

TOWN OF PALM BEACH, FLORIDA

[Signature]
Mayor

ATTEST:

By: [Signature]
Acting Clerk

WITNESSES:

[Signature]
[Signature]
(OFFICIAL SEAL)

PALM BEACH COUNTY, FLORIDA

[Signature]
Chairman

ATTEST:

MILTON T. BAUER, CLERK
By: [Signature]
Deputy Clerk

WITNESSES:

[Signature]
(OFFICIAL SEAL)

CITY OF RIVIERA BEACH, FLORIDA

ATTEST:
By: [Signature]
Mayor

WITNESSES:

[Signature]
(OFFICIAL SEAL)

CITY OF LAKE WORTH, FLORIDA

ATTEST:
By: [Signature]
Mayor

WITNESSES:

[Signature]
(OFFICIAL SEAL)

CITY OF WEST PALM BEACH, FLORIDA

ATTEST:
By: [Signature]
Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

[Signature]
COUNTY ATTORNEY

LIST OF EXHIBITS
ATTACHED TO INTERLOCAL AGREEMENT

- EXHIBIT A - INTERLOCAL AGREEMENTS
- EXHIBIT B - LEGAL DESCRIPTION
- EXHIBIT C - FLOW CHARGE FORMULA
- EXHIBIT D - BUDGET LINE ITEMS
- EXHIBIT E - RESERVE CAPACITY PERCENTAGES
- EXHIBIT F - POLICIES AND PROCEDURES
- EXHIBIT G - REPLACEMENT PLANT VALUE

EXHIBIT A

INTERLOCAL AGREEMENTS

<u>TITLE OF AGREEMENT</u>	<u>DATE</u>
Resolution 141-72 Resolution Approving Agreement Between The Town of Palm Beach and the City of West Palm Beach.	12/6/72
Resolution R76-712 Resolution Approving Agreement Between Palm Beach County, Florida, and The City of West Palm Beach for the Construction of an 8 MGD Module at the Regional Sewage Treatment Plant.	8/10/76
Resolution 122-76 Resolution Approving Agreement Between The City of Riviera Beach and the City of West Palm Beach.	8/18/76
Resolution R94-76 and U31-76 Resolution Approving Agreement Between Lake Worth Utilities Authority and the City of West Palm Beach.	9/8/76

EXHIBIT B

LEGAL DESCRIPTION OF
LAND RESERVED FOR
REGIONAL SEWAGE TREATMENT PLANT
CITY OF WEST PALM BEACH

July 19, 1974

A parcel of land containing 300 acres, more or less, in Section 11, Township 43 South, Range 42 East, Palm Beach County, Florida, more particularly described as follows:

From a point of beginning being the Southwest corner of Section 11, Township 43 South, Range 42 East, Palm Beach County, Florida, run North along the West line of said Section 11, a distance of 3,012.57 feet more or less, to the Southerly line of the Florida Gas Company easement; thence Northeasterly along said easement, making an angle of 49°-58'-10" with the preceding course as measured from North to Southeast, a distance of 1,115.7 feet more or less to a point; thence Easterly, making an angle of 39°-45'-22" with the preceding course as measured from North to East, a distance of 2,756 feet more or less to a point; thence Southerly, making an angle of 90°-02'-14" with the preceding course as measured from East to South a distance of 3,725 feet more or less to a point on the South Section line of Section 11; thence West along said section line a distance of 3,615 feet more or less to the point of beginning.

EXHIBIT C

EAST CENTRAL REGIONAL
WASTEWATER TREATMENT PLANT

FLOW CHARGE FORMULA

Wastewater Flow Charge = Direct Expenses + Indirect Expenses

Direct Expenses = ECRWWTP Expenses + 20% Utility Engineering Expenses
(Acct #340) (Acct #160)
(Acct #350)
(Acct #410)

Indirect Expenses* = $\left(\frac{\text{Direct WWTP Expenses}}{\text{Direct Sewer Expenses}} \right) \left(\frac{\text{Total Wastewater Expenses}}{\text{Direct Water \& Sewer Expenses}} \right) \left(\text{Utility Administrative Expenses} \right)$

* Methodology For Indirect Expenses Calculation

Step 1 Acct #340
+ 20% Acct #160 _____ = A (%)
Acct #310 + Acct #320
+ Acct #330 + Acct #340

Step 2 A % x Admin. Cost Acct #100 = B

Step 3 B + Acct #340
+ 20% Acct #160 + Acct #310
+ Acct #320 + Acct #330 = C (%)
Acct #210 + Acct #230
+ Acct #240 + Acct #310
+ Acct #320 + Acct #330 + Acct #340

Step 4 A (%) x C (%) x Admin. Cost
Acct #100 = Indirect Expenses

Typical Flow Charge Breakdown

1. Direct Expenses

- o Direct WWTP = 31.34 cents/1,000 gal (79%) (Acct #340)
- o Engineering Allocation = 0.48 cents/1,000 gal (1.2%) (20% of Acct #160)

Total Direct = 31.82 cents/1,000 gal (80%)

2. Indirect Expenses

- o Administrative Allocation = 7.85 cents/1,000 gal (20%)

Total Charge = 39.67 cents/1,000 gal

FUND:450: WATER & SEWAGE SYSTEMS REVENUE FUND
DEPT:097: UTILITIES
DIV: 340: WASTEWATER TREATMENT PLANT

PERSONAL SERVICES

536120 REGULAR SALARIES & WAGES
536140 OVERTIME
536150 SPECIAL PAY
536212 FICA TAXES
536229 RETIREMENT CONTRIBUTIONS
536231 HEALTH INSURANCE
536232 LIFE INSURANCE
536240 WORKER'S COMPENSATION

MATERIALS & SERVICES

536310 PROFESSIONAL SERVICES
536313 ENGINEERING SERVICES
536340 OTHER CONTRACTUAL SERVICES
536345 MIS MAINTENANCE SERVICES
536400 TRAVEL AND PER DIEM
536403 TRAINING
536411 COMMUNICATIONS SYSTEMS SERVICES
536420 TRANSPORTATION
536431 ELECTRIC SERVICE
536433 WATER SERVICE
536434 SEWER SERVICE
536435 WASTE DISPOSAL SERVICE
536440 RENTALS AND LEASES
536450 INSURANCE
536451 INSURANCE- GENERAL LIABILITY
536455 INSURANCE- AUTO LIABILITY
536460 REPAIR & MAINTENANCE SERVICES
536468 EQUIPMENT MAINTENANCE
536470 PRINTING AND BINDING
536482 LEGAL ADS
536490 OPERATIONAL EXPENSES
536510 OFFICE SUPPLIES
536520 OPERATING SUPPLIES
536521 GASOLINE
536522 DIESEL FUEL
536523 LUBRICANTS
536524 CHEMICALS
536525 UNIFORMS
536530 ROAD MATERIALS & SUPPLIES
536540 BOOKS, SUBSCRIPTIONS & MEMBERSHIPS
536560 MINOR EQUIPMENT

CAPITAL OUTLAY

536640 MACHINERY & EQUIPMENT
536641 AUTOMOTIVE EQUIPMENT

REVENUE

SEWER SERVICE CHARGE-WPB
343514 SEWER SERVICE CHARGE-LW
343515 SEWER SERVICE CHARGE-RB
343516 SEWER SERVICE CHARGE-PBC
343517 SEWER SERVICE CHARGE-TPB

FUND:450: WATER & SEWAGE SYSTEMS REVENUE FUND
DEPT:097: UTILITIES
DIV: 350: INDUSTRIAL PRE-TREATMENT

PERSONAL SERVICES

536120 REGULAR SALARIES & WAGES
536140 OVERTIME
536150 SPECIAL PAY
536212 FICA TAXES
536229 RETIREMENT CONTRIBUTIONS
536231 HEALTH INSURANCE
536232 LIFE INSURANCE
536240 WORKER'S COMPENSATION

MATERIALS & SERVICES

536310 PROFESSIONAL SERVICES
536313 ENGINEERING SERVICES
536340 OTHER CONTRACTUAL SERVICES
536400 TRAVEL AND PER DIEM
536411 COMMUNICATIONS SYSTEMS SERVICES
536420 TRANSPORTATION
536451 INSURANCE- GENERAL LIABILITY
536460 REPAIR & MAINTENANCE SERVICES
536468 EQUIPMENT MAINTENANCE
536470 PRINTING AND BINDING
536482 LEGAL ADS
536490 OPERATIONAL EXPENSES
536510 OFFICE SUPPLIES
536520 OPERATING SUPPLIES
536525 UNIFORMS
536540 BOOKS, SUBSCRIPTIONS & MEMBERHSIPS
536560 MINOR EQUIPMENT

CAPITAL OUTLAY

536640 MACHINERY & EQUIPMENT
536641 AUTOMOTIVE EQUIPMENT

REVENUE

329210 SEWER DISCHARGE PERMIT

FUND:450: WATER & SEWAGE SYSTEMS REVENUE FUND
DEPT:097: UTILITIES
DIV: 340: E.C.R. MAINTENANCE

PERSONAL SERVICES

536120 REGULAR SALARIES & WAGES
536140 OVERTIME
536150 SPECIAL PAY
536212 FICA TAXES
536229 RETIREMENT CONTRIBUTIONS
536231 HEALTH INSURANCE
536232 LIFE INSURANCE
536240 WORKER'S COMPENSATION

MATERIALS & SERVICES

536340 OTHER CONTRACTUAL SERVICES
536435 WASTE DISPOSAL SERVICE
536440 RENTALS AND LEASES
536460 REPAIR & MAINTENANCE SERVICES
536520 OPERATING SUPPLIES
536522 DIESEL FUEL
536523 LUBRICANTS
536525 UNIFORMS
536560 MINOR EQUIPMENT

CAPITAL OUTLAY

536640 MACHINERY & EQUIPMENT
536641 AUTOMOTIVE EQUIPMENT

EFFECTIVE DATE: DECEMBER, 1986

Chapter 2, Budget Policy 2-2

The thirteenth, fourteenth and fifteenth digits of the suggested expenditure account designate the sub-object classification. The six sub-objects and their control are :

100 - 260	Personal Services
300 - 560	Operating Expenses
600 - 660	Capital Outlay
700 - 730	Debt Service
800 - 888	Grants and Aids
900 - 999	Non-Operating

All departments are required to use these six sub-object classifications, however, they may be expanded at the discretion of the Finance Department.

100 PERSONAL SERVICES

Expenses for salaries, wages, and related benefits provided for all persons employed by the local unit of government whether full-time, part-time, temporary, or seasonal. Employee benefits include employer contributions to a retirement system, social security, insurance, sick leave, terminal pay and similar direct benefits as well as other costs such as Worker's Compensation and Unemployment Compensation Insurance.

110 Executive Salaries

Includes elected officials and top level management positions. (For constitutional offices include the officers salary only.) Also includes special qualification salary for elected officials (Chapter 145, Florida Statutes), if earned.

120 Regular Salaries and Wages

Includes employees who are or will be members of a retirement system as a condition of their employment. Includes all full-time and part-time employees who make up the regular work force. Employees who are serving a probationary employment period shall be included in this category if they satisfy the other requirements.

This includes all salaries and salary supplements for official court reporters and electronic recorder operator transcribers.

130 Other Salaries and Wages

Employees who are not and will not be members of a retirement system as a condition of their employment. Includes all full-time and part-time employees who are not part of the regular work force and who are filling positions having a temporary duration, usually less than 4 consecutive months in a 12-month period.

Reference: Sections 22B-1.04(5)(b) and 22B-1.04(6), FAC.

140 Overtime

Payments in addition to regular salaries and wages for services performed in excess of the regular work hour requirement. This includes all overtime for official court reporters and electronic recorder operator transcribers. Also include the straight time paid to employees required to work on a legal holiday.

150 Special Pay

Includes compensation paid to employees for which no contributions shall be required and no benefits shall be paid under the provisions of the Florida Retirement System or any local government retirement system. This includes incentive pay for law enforcement officers and firefighters.

Reference: Section 943.22(2)(e), FS. - Law Enforcement and Correctional Officers and Section 663.382(5)(c), FS.-Firefighters.

155 Off Duty Pay

Compensation paid to police personnel for providing security service to outside agencies.

212 FICA Taxes

Social Security matching contribution.

220 Retirement Contributions-General

Amounts contributed to a retirement fund for General employees.

225 Retirement Contributions-Police

Amounts contributed to a retirement fund for sworn Police personnel.

227 Retirement Contributions-Fire

Amounts contributed to a retirement fund for uniformed Firefighters.

- 313 Legal Services-Pensions**
Fees for attorney services regarding pensions.
- 314 Medical Services**
Fees for services from doctors, clinics, dental services, veterinary services, hospitals, etc.
- 316 Engineering Services**
Fees paid for engineering services.
- 320 Accounting and Auditing**
Generally includes all services received from independent certified public accountants.
- 340 Other Contractual Services**
Custodial, janitorial and other services procured independently by contract or agreement with persons, firms, corporations or other governmental units. Do not include contracts or services which are defined under sub-objects 310, 311, 312, 313, 314, 316, 320, 460 and 470.
- 345 MIS Maintenance Services**
Services provided by the internal service fund for data processing, maintaining existing programs and the mainframe, and debugging existing programs.
- 346 MIS New Programs**
Costs of services provided by the internal service fund for implementing new software, new programs, new reports, etc.
- 347 Outside Data Processing Services**
This includes services related to data processing that are not provided by the MIS department.
- 400 Travel**
This includes the costs of public transportation, motor pool charges, reimbursements for use of private vehicles, per diem, meals and incidental travel expenses.
- 401 Motor Pool Services**
Charges for use and replacement of motor pool equipment. Charges are from the Fleet Management internal service fund.

403 Training

This includes course registration fees, tuition and other training costs.

404 Employee Development

Funds used by the Employee Relations Department for college courses, training courses, etc., for employees throughout the City.

411 Communications Systems Service

Charges for dispatching services and communications equipment maintenance (i.e. radios & telephones) from the Telecommunications Internal Service Fund.

412 Telephone Service

Amounts paid for telephone bills. This includes cellular telephone service.

420 Transportation

Freight and express charges, drayage, postage and messenger services.

431 Electric Service

Amounts paid for electric service.

432 Gas Service

Amounts paid for propane and natural gas utility service.

433 Water Service

Amounts paid for water bills.

434 Sewer Service

Amounts paid for sewer bills.

435 Waste Disposal Services

Amounts paid for solid waste collection bills.

440 Rentals and Leases

Amounts paid for leasing or renting land, buildings or equipment. This would also include leasing vehicles.

450 Insurance

Includes all insurance carried for protecting the local government such as fire, theft, casualty, general and professional liability, auto coverage, surety bonds, etc.

451 Insurance - General Liability

Amounts provided to Risk Management through the Budget Office for charges including damages to property, buildings and contents, city equipment, etc.

452 Auto Liability Claims

Auto liability claims paid by the Risk Management internal service fund.

453 General Liability Claims

General liability claims paid by the Risk Management internal service fund.

454 Workers' Compensation Claims

Claims paid for workers' compensation.

455 Insurance - Auto Liability

Amounts provided to Risk Management through the Budget Office for charges including damages to automobiles, trucks, etc.

460 Repair and Maintenance Services

The costs incurred for the repair and maintenance of building and equipment, including all maintenance and service contracts. Do not include custodial or janitorial services which are recorded under sub-object 340.

461 Fire Equipment Maintenance

Repair parts and maintenance costs from outside vendors for Fire Department vehicles and equipment.

462 Automotive Repair and Maintenance

Used only by the Fleet Management internal service fund. Includes cost of parts, outside repairs and maintenance equipment.

463 Sweeper Maintenance

Costs related to the repair and preventative maintenance of City sweeper vehicles, e.g., brooms, rubber squeegees, lubricants, etc.

- 464 Auto Physical Damage
Repair or replacement of autos due to accidents.
- 465 Property Damage and Theft
Repair or replacement of property damaged, excluding autos.
- 468 Equipment Maintenance
Charges for services from the internal service fund for equipment maintenance, i.e., services on vehicles, trucks, lawn mowers, gasoline or diesel powered equipment.
- 470 Printing and Binding
Costs of printing, binding and other reproduction services which are contracted for or purchased from outside vendors. Also include charges for printing, etc., performed by an in-house print shop. Charges related to the use of the Fax machine.
- 475 Outside Printing Services
Costs for printing services not provided by the City's Printing Internal Service Fund.
- 480 Promotional Activities
Includes any type of promotional advertising on behalf of the City, but does not include legal ads.
- 481 Advertising
Includes any type of promotional advertising on behalf of the local unit, but does not include legal ads.
- 482 Legal Ads
Amounts paid for legal ads.
- 490 Operational Expenses
Includes other services not otherwise classified, ordinary witness fees, expert witness fees, information and evidence, etc.
- 491 Bad Debt Expense
Expenses incurred by the inability to collect receivables.
- 493 Licenses and Permits
Fees paid for licenses and permits needed during special events coordinated by the City.

- 495 Defense Fees and Costs**
Used only by the Risk Management Fund for witness fees, subpoena fees, court reporter fees, etc.
- 510 Office Supplies**
This object includes materials and supplies such as stationary, preprinted forms, paper, computer software, charts and maps.
- 520 Operating Supplies**
All types of supplies consumed in conducting operations. This category may include food, laboratory supplies, household items, institutional supplies, film, batteries, copy machine supplies, fertilizer and ammunition. Do not include items classified in 521, 522, 523, 524 or 525. Also includes recording tapes and transcript production supplies. Do not include materials and supplies unique to construction or repair of roads or bridges.
- 521 Gasoline**
Includes charges from fuel operations for fuel provided.
- 522 Diesel Fuel**
- 523 Lubricants**
Includes charges from Fleet Management for oil and other lubricants.
- 524 Chemicals**
Chemicals such as chlorine, ammonia, etc., and chemicals used to recharge fire extinguishers (excluding the annual maintenance).
- 525 Uniforms**
Uniform purchase, boots, fire helmets and bunker coats, police holsters, badges and other clothing including rain gear and safety clothing.
- 530 Road Materials and Supplies**
Those materials and supplies used exclusively in the repair and installation of street signs and street striping.
- 531 Concrete Materials**
Materials such as concrete, rebar, wire mesh, wood, etc., used for the repair of sidewalk curbs and foundations.

532 Asphalt Materials

Materials such as asphalt, tack, etc., used for the repair of potholes and the paving of roads.

533 Sewer Materials

Materials used for the repair and maintenance of stormwater inlets, piping, and culverts.

535 Street Lighting Materials and Supplies

Materials used exclusively for the repair and replacement of street lighting fixtures, poles, fuses, wire, etc.

540 Books, Publications, Subscriptions, and Memberships

Includes books, or sets of books if purchased by set, of unit value less than \$500 and not purchases for use by libraries, educational institutions, and other institutions where books and publications constitute capital outlay. This object also includes subscriptions, memberships and professional licenses, paramedic certification fees, and related educational and/or professional data costs.

560 Minor Equipment

Includes light equipment of unit value less than \$500 such as office equipment and other light machinery and equipment, e.g., calculators, chairs, typewriters, etc.

600 CAPITAL OUTLAY

Outlay for the acquisition of or addition to fixed assets.

610 Land

Land acquisition costs, easements, right of way.

620 Buildings

Office buildings, firehouses, garages, jails, zoos, parks and recreational buildings.

621 Building Improvements

Remodeling and improvements made to existing buildings.

622 Conference/Civic Center

Costs to construct a conference/civic center including related consultants studies.

- 630 Improvements Other Than Buildings**
Includes structures and facilities other than buildings such as roads, bridges, curbs, gutters, docks, wharves, fences, landscaping, lighting systems, parking areas, storm drains, athletic fields, etc. Does not include items classified under 631, 632, 633, 634, 635 and 636.
- 631 Sewers, Pipes, Manholes & Service Connections**
Utilities department new sewer connections and manholes.
- 632 Meters**
Meters purchased for utility customer accounts.
- 633 Fire Hydrants**
Utilities department new fire hydrants.
- 634 Water Main, Valves & Copper Service Lines**
Utilities department new mains, etc.
- 635 Private Fire Protection**
Utilities department new private fire lines.
- 636 Landscaping, Fencing and Parking Areas**
Costs for new landscaping, fencing and parking areas.
- 637 Road Improvements**
- 640 Machinery and Equipment**
Includes motor vehicles, heavy equipment - transportation, other heavy equipment, office furniture and equipment, and other machinery and equipment. Also includes court recording, duplicating, and transcribing equipment.
- 641 Automotive Equipment**
Includes motor vehicles and items affixed to the vehicles such as lights, sirens, cages, etc.
- 650 Construction in Progress**
This object is used to account for undistributed work in progress on construction projects. Sufficient documentation of work orders and other related records should be kept in order to establish the validity of this account when posted to the general fixed assets group accounts.

660 Books, Publications, and Library Materials

This object includes all books and publications regardless of value when purchased for use by libraries, educational institutions, and other institutions or facilities where such items constitute a major capital outlay category. This object is also used for these items when they exceed a \$500 unit value regardless of the institution or facility purchasing them.

700 DEBT SERVICE

Outlays for debt service purposes.

710 Principal

Regularly scheduled principal payments of debt service.

720 Interest

Interest payments of debt service.

721 Bonds, Retired Early

Payments to retire bonds before their normal due date.

722 Premium on Bonds Retired Early

Premiums paid to retire bonds before their normal due date.

730 Other Debt Service Costs

Payments for trustee fees, agent fees, etc.

800 GRANTS AND AIDS

Includes all grants, subsidies and contributions to other government agencies and private organizations.

810 Aid to Government Agencies

Includes all grants, subsidies and contributions to other governmental units. Excludes transfers to agencies within the same governmental entity.

820 Aid to Private Organizations

Include all grants, subsidies and contributions to private organizations.

835 Undesignated Donations

Funds that have been set aside for donations but have not yet been assigned to a specific organization.

900 NON-OPERATING

910 Transfers

Includes all transfers between funds which do not represent operating expenditures.

920 Advances

Includes advances to establish working capital and petty cash funds which are expected to be returned when the fund is liquidated.

930 Budget Transfers

Transfers between the Board of County Commissioners, the Constitutional Officers and other taxing authorities.

950 Contingency

Expenditures cannot be made directly from this account. Amounts can be transferred from this account to any other expenditure account in the same fund via an "F" Resolution.

990 Less Amounts Capitalized

Fixed assets purchased through budgetary expenditure accounts get offset by this account in the ISFs and Enterprise Funds.

991 Transfer to Equipment Replacement Reserve

992 Amortization Expense

998 Depreciation Expense

999 Transfer to Fund Balance/Retained Earnings

229 Retirement Contributions-Utilities

Amounts contributed to a retirement fund for employees of the Utilities Department.

231 Health Insurance

Health insurance premiums and benefits paid for employees.

232 Life Insurance

Life insurance premiums and benefits paid for employees.

240 Workers' Compensation

Premiums and benefits paid for workers' compensation insurance.

250 Unemployment Compensation

Amounts contributed to the unemployment compensation fund.

300 OPERATING EXPENSES

Includes expenditures for goods and services which primarily benefit the current period and are not defined as personal services or capital outlay.

301 Administrative Expense

Indirect costs, parking administrative fees, P.I.L.O.T., cost allocation, city services charged to utilities, etc.

310 Professional Services

Legal, medical, dental, engineering, architectural, appraisal and other services procured by the local unit as independent professional assistance. Includes such financial services as bond rating, where the service received is not directly involved with accounting and/or auditing. Also, include fees paid for competency and/or psychiatric evaluations and court appointed attorneys.

311 Legal Services

Fees for attorney services.

312 Legal Services-Investment Claims

Fees for attorney services regarding investment claims.

EXHIBIT E

RESERVE CAPACITY PERCENTAGES

East Central Regional
Wastewater Treatment Plant

55 MGD (Current Rated Capacity)

ENTITY	FLOW ALLOCATION (MGD)	PERCENTAGE
Lake Worth	12.5	22.727%
Riviera Beach	8.0	14.546%
West Palm Beach	17.0	30.909%
Town of Palm Beach	5.0	9.091%
Palm Beach County	12.5	22.727%
Total:	55.0	100%

EXHIBIT "F"

CITY OF WEST PALM BEACH POLICIES AND PROCEDURES
INCORPORATED HEREIN BY REFERENCE

PERSONNEL

Chapter 2 of the City Code relating to personnel

CIVIL SERVICES RULES AND REGULATIONS

JOB CLASSIFICATION AND PAY PLAN

DISCIPLINE ADMINISTRATION MANUAL

PROCUREMENT

CITY OF WEST PALM BEACH PROCUREMENT CODE

MINORITY/WOMEN BUSINESS ENTERPRISE PROGRAM
ORDINANCE AND POLICIES

INDUSTRIAL PRETREATMENT

Article VII of Chapter 31, City Code of Ordinances

EXHIBIT G

EAST CENTRAL REGIONAL WASTEWATER TREATMENT PLANT
ESTIMATED REPLACEMENT VALUE

UNIT PROCESS	Estimated Replacement Value (\$1,000)		
	Existing Facilities	Facility Improvements	Improved Facilities
Influent Metering	300	-0-	300
Influent Screening & Headworks	2,600	400	3,000
Grit Removal	-0-	2,200	2,200
Conventional Activated Sludge, Diffused Aeration	17,600	4,400	22,000
Secondary Clarification	18,200	-0-	18,200
Return Sludge Pumping	3,600	-0-	3,600
Waste Sludge Pumping	200	100	300
Chlorine Disinfection	1,700	-0-	1,700
Effluent Pumping	5,000	2,900	7,900
Deep Well Disposal	24,000	4,000	28,000
Flow Equalization	4,000	200	4,200
Aerobic Digestion	7,800	-0-	7,800
Decant Tanks	1,500	-0-	1,500
Sludge Thickening	-0-	2,700	2,700
Sludge Dewatering	3,500	2,200	5,700
Supernatant Pumping	300	-0-	300
Reclaimed Water Production	-0-	7,800	7,800
AWT/Wetlands	-0-	900	900
Septage Receiving	-0-	1,700	1,700
Administration Building	300	-0-	300
Miscellaneous (Electric, Piping, Roads, Structures, etc.)	10,000	4,100	14,100
TOTAL	100,600	33,600	134,200

STAFF REPORT UTILITY MEETING

AGENDA DATE: April 25, 2023

DEPARTMENT: Water Utilities

TITLE:

Resolution No. 11-2023 for the 2020 Non-Ad Valorem and 2020 Consolidated Utility Revenue Bonds Reauthorization

SUMMARY:

The 2020 Non-Ad Valorem Revenue Bond Reauthorization serves to re-authorize monies within the stormwater projects identified as part of the Bond obtained in 2020. The 2020 Utility Bond Reauthorization serves to re-authorize monies within the local sewer and water projects identified as part of the Bond obtained in 2020.

BACKGROUND AND JUSTIFICATION:

The City obtained Non-Ad Valorem Revenue Bonds Series 2020A and Taxable Series 2020B in June 2020. The Bond amounts for stormwater utilities were based on capital improvement projects for Fiscal Year 2020 and 2021. The City also obtained a Consolidated Utility Revenue Bond in November 2020 for electric, water and local sewer projects. The timing of projects, grants obtained, bid pricing and new priorities have necessitated a reallocation of funding needed per project within stormwater, water and local sewer projects in the bonds, respectively.

Per the advice of the bond counsel, City staff has prepared a resolution to reallocate and reauthorize bond funds, from like projects to like projects within the stormwater, water and sewer funds. The resolution also provides the ability to reallocate funds between projects for up to 20% of the budget based on contingencies and changes as the projects progress through design and construction.

MOTION:

Move to approve/disapprove Resolution No. 11-2023 for the 2020 Non-Ad Valorem Revenue Bond and 2020 Consolidated Utility Revenue Bond Reauthorization.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
Resolution No. 11-2023

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Current Appropriation	0	0	0	0	0
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

RESOLUTION NO. 11-2023, A GENERAL RESOLUTION OF THE CITY OF LAKE WORTH BEACH, A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA, TO REALLOCATE AND REAUTHORIZE 2020 NON-AD VALOREM REVENUE BOND AND 2020 CONSOLIDATED UTILITY REVENUE BOND AMONG BOND FUNDED PROJECTS AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Lake Worth Beach, Florida (the "City") previously issued 2020 Non-Ad Valorem Revenue Bonds, and 2020 Consolidated Utility Revenue Bonds for the financing, refinancing the acquisition, construction and equipping of capital improvements to the City;

WHEREAS, the City finds it is necessary and essential to reauthorize the budgeted project costs amongst the project list as shown in Exhibit A; and

WHEREAS, any future reallocation of funds necessary between projects within the same fund may be completed for an amount up to 20% of either projects budget; and

WHEREAS, adoption of this Resolution set forth herein serves a valid public purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF LAKE WORTH BEACH, FLORIDA, that:

SECTION 1: The above recitals are hereby ratified and confirmed as being true and correct and are hereby incorporated into this resolution.

SECTION 2: As hereinafter stated in this resolution, the term "fiscal year" shall mean the period of time beginning October 1, 2022 and ending and including September 30, 2023.

SECTION 3: The funds and available resources and revenues that are set out and attached as Exhibit "A" and incorporated herein by reference, be, and the same hereby are, reallocated and appropriated to provide monies to be used to pay the necessary capital project expenses of the respective funds and departments of the City for the fiscal year.

SECTION 4: The sums, which are set out in Exhibit "A" and herein incorporated by reference, listed as capital expenses of the respective funds and departments of the City, be, and the same hereby are, reallocated and appropriated and shall be paid out of the 2020 Non-Ad Valorem Revenue Bonds and 2020 Consolidated Utility Revenue Bonds.

SECTION 5: The revenues and expenses for which appropriations are hereby made, all set forth above, shall be as set out in the Amended City of Lake Worth Beach capital budget for the fiscal year as attached in Exhibit "A".

SECTION 6: The sums set out in Exhibit "A" are hereinbefore incorporated by reference and based upon departmental estimates prepared by the City Manager and the Finance Director, shall be, and the same hereby are, fixed and adopted as the amended capital budget for the respective enterprise funds for the fiscal year.

SECTION 7: Except as amended in Exhibit "A" hereto, the remainder of the FY 2023 Annual Capital Budget for the fiscal year remains in full force and effect.

SECTION 8: This resolution shall become effective upon adoption.

The passage of this resolution was moved by Commissioner _____, seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch
Vice Mayor Christopher McVoy
Commissioner Sarah Malega
Commissioner Reinaldo Diaz
Commissioner Kim Stokes

The Mayor thereupon declared this resolution duly passed and adopted on the _____ day of _____, 2023.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

EXHIBIT A

Projects	Project Number	Project Budget	Current Balance	Project Reallocation	Balance
Local Sewer -Collection	SG1804	\$2,224,143	\$ 1,449,345.21	(\$31,108.42)	\$1,418,236.79
Local Sewer - Pumping	LS2103	\$786,625	\$ 713,353.95	\$31,108.42	\$ 744,462.37
Water Treatment - Wells	WT2100, WT2101	\$2,138,400	\$ 2,138,270.34	\$750,283.78	\$2,888,554.12
Water Treatment	WT2104, WT1603	\$1,637,608	\$ 930,229.73	(\$11,817.39)	\$ 918,412.34
Water Distribution	NR2001, NR2002, WT2114	\$2,950,211	\$ 2,200,970.59	(\$738,466.39)	\$1,462,504.20
			\$ 7,432,169.82	\$ -	\$7,432,169.82

** No Financial Impact*

STAFF REPORT REGULAR MEETING

AGENDA DATE: April 25, 2023

DEPARTMENT: Electric Utility

TITLE:

Continuing Contracts for Professional Services for Energy Management and Engineering Services

SUMMARY:

Continuing Contracts for Professional Services for Energy Management and Engineering services with Power Engineers, Inc. and Kiewit Engineering Group, consistent with Florida's Consultants' Competitive Negotiations Act (CCNA)

BACKGROUND AND JUSTIFICATION:

The City of Lake Worth Beach has a requirement for professional consulting firms to provide civil engineering, geotechnical engineering, surveying, architecture, hydrogeological services, energy management and engineering services. The services consist of engineering studies, reports, design and construction phase services for capital improvements projects and other needs within the municipal limits of the City of Lake Worth Beach and the water and electric utility service areas. The City desires to establish "continuing contracts" with a manageable number of firms for each engineering category, with the intent of affording the City a diverse consultant base, and to facilitate the issuance of engagements for studies, design, engineering, construction inspection and other services across a range of CCNA disciplines.

The City issued Request for Qualifications RFQ#23-300 to acquire select professional services for the City consistent with the Florida's Consultants' Competitive Negotiations Act (CCNA) (section 287.055, Florida Statutes). The RFQ included seven different engineering service categories: Architecture, Civil Engineering for Water and Transportation; Geotechnical, Hydrogeological Sciences, Surveying and Energy Management and Engineering Services. It is the intent of the City to award multiple non-exclusive agreements for the initial period of three years with the possibility to extend the agreements for three additional one-year terms.

The City received 60 qualifications from interested firms across all categories.

The City assembled Evaluation Committees comprised of City staff for each of the seven categories that met publicly to evaluate received qualifications. The first step of the evaluations included shortlisting of the firms based on the personnel availability, capability, experience and skill, firm's past performance, client management, past terminations and litigations and evidence of veteran business enterprise, small business and local business preference. Shortlisted firms were invited to prepare presentations at the final evaluation meeting. Evaluation Committees evaluated shortlisted firms after their presentations based on firm's ability of professional personnel, evidence of successful past performance for similar projects, recent and current workload and location/convenience to City staff and recommended the awards for each of the categories.

For the Energy Management and Engineering services category, the City received 11 qualification submittals. The Evaluation Committee shortlisted eight firms for presentations and in the final evaluation meeting recommended award to all eight firms: BHI Engineering, Inc., Power Engineers, Inc., Kiewit Engineering Group, Inc., TEAMWORKnet, Inc., Enercon Services, Inc., Chen Moore & Associates, Inc., RMC Technologies, Inc. and nFront Consulting, LLC. City staff negotiated rates and terms with each of the recommended firms. Agreements with BHI Engineering, Inc., TEAMWORKnet, Inc., Enercon

Services, Inc., Chen Moore & Associates, Inc., RMC Technologies, Inc. and nFront Consulting, LLC were approved by the City Commission on March 28, 2023 meeting.

MOTION:

Move to approve/disapprove the Agreements for Continuing Contracts for professional services for Energy Management and Engineering services with Power Engineers, Inc. and Kiewit Engineering Group.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A

Shortlist Results Energy Management and Engineering services

Final Results Energy Management and Engineering services

Power Engineers, Inc. Agreement

Kiewit Engineering Group Agreement



RFQ#23-300 Continuing Contracts for Professional Services

Evaluation Committee Meeting – Shortlisting Results Energy Management & Engineering Services

The following firms have been shortlisted by the Evaluation Committee to proceed to presentation meeting:

COMPANY	TOTAL	RANK
Enercon Services, Inc	375	1
POWER Engineers, Inc.	375	1
RMC Technologies, Inc.	369	3
TEAMWORKnet, Inc.	367	4
Chen Moore & Associates, Inc.	360	5
Kiewit Engineering Group, Inc.	355	6
BHI Engineering, Inc.	342	7

Additional firm invited to provide presentation on part of their qualifications relating to utility studies and system modelling, analytics and other energy services only.

1. NFRONT

Attachments:

Evaluation Sheet for RFQ # 23-300 Continuing Contracts for Professional Services (CCNA) Energy Management & Engineering Services

City of Lake Worth Beach
Evaluation Matrix - Shortlisting

RFQ # 23-300 Continuing Contracts for Professional Services (CCNA) Energy Management & Engineering Services

RANKED:		7	5	8	1	10	6	9	1	3	11	4	
Shortlist Evaluation Criteria Score Sheet:		BHI	CMA	CMY	ENERCON	FERREIRA	KIEWIT	NFRONT	POWER ENGINEERS	RCM	SEC	TEAMWORKNET	
Weight													
1	Evidence of personnel availability, capability, experience and skill	35	122	112	105	135	90	125	80	140	140	80	120
2	Successful past performance for similar projects & accountability	35	130	130	113	140	103	135	100	135	129	85	127
3	Client Management and Project Staffing Plan	20	70	78	78	80	57	75	75	80	80	57	80
4	Terminations and/or litigation(if statement not provided – 0 points)	5	20	20	20	20	20	20	20	20	20	20	20
5	Evidence of veteran business enterprise, small business or local business preference (documents must be provided to claim preference) Completed & verified by Purchasing Division	5	0	20	0	0	0	0	0	0	0	20	20
Total Points Received:		342	360	316	375	270	355	275	375	369	262	367	
Exhibit "B" - Respondent Information Form		submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "C" - Drug Free Workplace Form		submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "D" - References		submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "E" - Campaign Contribution Statement		submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "F" - Scrutinized Companies Certification		submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "G" - Veteran Bus. Enterprise, Small Bus. Local Bus. Preference default, termination, litigation statement		no, didn't meet LWB requirement*	yes/small business	n/a	n/a	n/a	no, didn't meet LWB requirement*	n/a	n/a	n/a	n/a	yes/small business	yes/small business
		submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted
		*West Palm Beach address					*Juno Beach Address						

City of Lake Worth Beach
Final Evaluation Matrix - Oral Presentations

RFQ # 23-300 Continuing Contracts for Professional Services (CCNA) - Energy Management & Professional Services

RANKED:

5	1	7	4	6	3	1
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Oral Presentation Evaluation Criteria Score Sheet:	Weight	Enercon Services	Power Engineers	RMC Technologies	Teamworknet	Chen Moore & Associates	Kiewit Engineering Group	BHI Engineering
1 Ability of professional personnel	35	130	138	135	132	138	135	131
2 Evidence of successful past performance for similar projects	35	133	138	138	134	138	134	140
3 Recent, current workload	15	60	60	51	60	50	60	60
4 Location/Convenience to City staff	15	60	55	26	60	45	60	60
Total Points Received:		383	391	350	386	371	389	391

CONTINUING PROFESSIONAL SERVICES AGREEMENT

RFO#23-300

(Energy Management & Engineering Services)

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Power Engineers, Inc.**, an Idaho Corporation registered to do business in the State of Florida (“CONSULTANT”).

RECITALS

WHEREAS, the City issued Request for Qualifications (No. 23-300) for civil engineering, geotechnical engineering, surveying, architecture, hydrogeological services, transportation and mobility planning, energy management and engineering services, construction management and project management and related professional services in accordance with the Consultants’ Competitive Negotiations Act, section 287.055, Florida Statutes (“RFQ”); and

WHEREAS, the CONSULTANT submitted its qualifications in response to the RFQ; and

WHEREAS, the City desires to award the RFQ to the CONSULTANT based on CONSULTANT’s qualifications and experience to provide Energy Management & Engineering Services; and

WHEREAS, the CONSULTANT has significant experience in assisting municipal organizations in providing engineering services; and

WHEREAS, this Agreement may be funded, in whole or in part, by the Federal agencies, in which case, the CONSULTANT agrees that any services performed pursuant to the RFQ and this Agreement will comply with all applicable Federal law, Federal regulations, executive orders, FEMA policies, procedures, and directives and special clauses as provided for in **Exhibit “C”**; and

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for the provision of services by the CONSULTANT to the City; and,

WHEREAS, the City finds entering this Agreement with the CONSULTANT serves a valid public purpose.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and the CONSULTANT agree as follows:

SECTION 1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Agreement by reference and acknowledged as true and correct statements.

SECTION 2: CONSULTANT’S SERVICES. The City has awarded the CONSULTANT the non-exclusive right to provide the City with Energy Management & Engineering Services (“services”).

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP. No relationship of employer or employee is created by this Agreement, it being understood that CONSULTANT will act hereunder as an independent contractor and none of the CONSULTANT’s, officers, directors, employees, independent contractors, representatives or agents performing services for CONSULTANT pursuant to this Agreement shall have any claim under this Agreement or otherwise against the City for compensation of any kind under this Agreement. The relationship between the City and CONSULTANT is that of independent contractors, and

neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

SECTION 4: TERM, TIME AND TERMINATION.

(a) Term. This non-exclusive Agreement shall become effective upon approval by the City Commission and execution by the City, and shall have an initial term of three (3) years with three (3) optional, one (1) year renewals. The City Manager is authorized to exercise the optional one (1) year renewals. Each fiscal year of this Agreement and any renewals will be subject to the availability of funds lawfully appropriated for its purpose by the City Commission. Notwithstanding the foregoing, this Agreement may be terminated as stated herein. The term may be extended by written agreement of the parties for further services related to those services identified herein.

(b) Time for Completion. The CONSULTANT shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the mutually agreed upon project schedule set forth in the negotiated Task Order.

(c) Force Majeure. Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, regulations, epidemic or pandemic. The CONSULTANT or City may suspend its performance under this Agreement as a result of a force majeure without being in default of this Agreement, but upon the removal of such force majeure, the CONSULTANT or City shall resume its performance as soon as is reasonably possible. Upon the CONSULTANT's request, the City shall consider the facts and extent of any failure to perform the services and, if the CONSULTANT's failure to perform was without its or its sub-consultants' fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the services at any time. No extension shall be made for delay occurring more than seven (7) days before a notice of delay or claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) notice of delay or claim is necessary.

(d) Termination without cause. Either party may terminate this Agreement at any time with or without cause by giving not less than thirty (30) days written notice of termination.

(e) Termination for cause. Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have five (5) days from the date of the notice in which to remedy the breach. If such corrective action is not taken within five (5) days, then this Agreement shall terminate at the end of the five (5) day period without further notice or demand.

(f) Early Termination. If this Agreement is terminated before the completion of all services by either party, the CONSULTANT shall:

1. Stop services on the date and to the extent specified including without limitation services of any sub-consultants.
2. Transfer all work in progress, completed work, and other materials related to the terminated services to the City in the format acceptable to City.
3. Continue and complete all parts of the services that have not been terminated.

(g) Effect of Termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination. Notwithstanding the foregoing, the parties acknowledge and agree that the City is a municipal corporation and political subdivision of the state of Florida, and as such, this Agreement is subject to budgeting and appropriation by the City of funds sufficient to pay the costs associated herewith in any fiscal year of the City. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the City's governing board in any fiscal year to pay the costs associated with the City's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the City to be, insufficient to pay the costs associated with the City's obligations hereunder in any fiscal period, then the City will notify CONSULTANT of such occurrence and either the City or CONSULTANT may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the City of any kind whatsoever; however, City shall pay CONSULTANT for all services performed under this Agreement through the date of termination.

SECTION 5: COMPENSATION.

(a) Fee Schedule. The fee schedule attached as **Exhibit "B"** shall remain firm for the first three (3) years of this Agreement. After the first three (3) years, the CONSULTANT may request a change to the fee schedule. No changes to the fee schedule shall occur unless approved in writing by the City, which may be by an approved amendment signed by the City Manager. The fee schedule shall be the basis for all fees proposed by the CONSULTANT and in any approved task order.

(b) Task Order(s). This non-exclusive Agreement does not guarantee that the City will utilize CONSULTANT in any capacity or for any services identified herein. When the City identifies a need for the CONSULTANT's services, the City will request a proposal from the CONSULTANT to provide the services requested. The CONSULTANT's proposal shall be submitted in the format of the sample task order, attached hereto and incorporated herein as **Exhibit "A"** and shall be based on the CONSULTANT's currently hourly fee set forth in the CONSULTANT's proposal and attached hereto as **Exhibit "B"**. If a sub-consultant(s) is to be utilized for services under a task order, the CONSULTANT shall obtain a written proposal from the sub-consultant(s) and attach the same with to the CONSULTANT's proposal submitted to the City. Upon receipt of the CONSULTANT's proposal, the City shall decide in its sole discretion whether to award the task order to the CONSULTANT. Depending on the lump sum, not to exceed amount of each proposed task order, the task order may be awarded by the City Manager (if within her purchasing authority of \$50,000 or less) or the City Commission. If the task order is awarded to the CONSULTANT, the CONSULTANT shall commence the identified services upon receipt of a Notice to Proceed from the City or upon the CONSULTANT's receipt of a fully executed task order for the services. The City reserves the right to reject any and all proposals submitted by the CONSULTANT.

(c) Invoices. Unless otherwise agreed in an issued Task Order, the CONSULTANT shall render monthly invoices to the City for services that have been rendered in conformity with this Agreement in the previous month. The invoices shall specify the services performed and the time spent on such work. All reimbursable expenses shall also be clearly identified on the invoice with supporting documentation. Invoices will be paid within thirty (30) days following the City's receipt of the CONSULTANT's invoice.

(d) Reimbursable Expenses. The CONSULTANT's reimbursable, out-of-pocket expenses including, but not limited to, travel, per diem and other living expenses, shall be identified in an approved task order. The City shall not be responsible for payment of any such reimbursable, out-of-pocket expenses except as provided for in an approved task order or amendment thereto. Reimbursement for mileage shall only be for travel required outside of Palm Beach County. CONSULTANT shall not be reimbursed for

travel within Palm Beach County and all travel shall be proposed and reimbursed pursuant to section 112.061, Florida Statutes.

(e) Direct Project Expenses. Unless otherwise specifically stated in an approved task order, charges for printing, reproduction, use of computer-aided design equipment, field equipment, and any laboratory analysis performed by the CONSULTANT or its subconsultants or its subcontractors, and the use of the CONSULTANT's and employee's automobiles shall be identified in an approved task order. The City shall not be responsible for payment of any other direct project expenses. All direct project expenses shall be billed at cost to the City and the CONSULTANT shall not mark-up or charge an administrative fee in addition to the direct cost for such expenses.

(f) Additional Services. If the City seeks to utilize the CONSULTANT for any additional services related to the services identified herein, the City and CONSULTANT will meet and negotiate a reasonable fee for such services. The negotiated fee shall be approved by the City in the form of an Amendment prior to said services being provided.

(g) Status Report. The CONSULTANT shall complete and submit a technical summary and budgetary status report with each invoice at no additional cost to the City (format may be provided by City or CONSULTANT for each approved task order).

(h) Fiscal Non-funding. In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the CONSULTANT prior to such occurrence and this Agreement shall terminate on the last day of the current fiscal period without penalty or expense to the City. The CONSULTANT will be paid for all services rendered through the date of termination.

SECTION 6: TERMS OF PERFORMANCE

(a) Starting Work. The CONSULTANT will not begin any of the services until authorized in writing by a Notice to Proceed from the City or upon the CONSULTANT's receipt of an approved Task Order for the services.

(b) Ownership of Documents. The drawings, specifications, calculations, supporting documents, or other work products which are prepared for the City by the CONSULTANT under this Agreement, a City issued Task Order, or amendments thereto ("Work Product"), shall be and shall become the property of the City upon delivery or completion by the CONSULTANT or receipt of payment from the City for the same. The City shall not gain ownership of any intellectual property of CONSULTANT that was used to create deliverables in a Task Order or as otherwise specified under this Agreement. The CONSULTANT may keep copies or samples thereof and shall have the right to use such Work Product. The City accepts sole responsibility for its reuse of any Work Product in a manner other than as initially intended under this Agreement or any approved Task Order, or for any use of incomplete Work Product unless prior written approval is obtained from the CONSULTANT.

(c) Accounting Records. The CONSULTANT's accounting records, insofar as they pertain to invoicing the City or for disbursements made from the CONSULTANT's account for services under this Agreement, shall be open to City's inspection and audit at the CONSULTANT's office upon reasonable prior notice and during normal business hours. Backup documentation for out-of-pocket expenses exceeding Twenty-Five Dollars (\$25.00) each shall be available at the CONSULTANT's office. These records will be retained by the CONSULTANT for five (5) years after the calendar year in which the services to which they pertain were rendered or the disbursements were made.

(d) Approval of Changes. The City, through the City Manager and CONSULTANT must approve in writing any changes in the scope of services which result in additional costs or expenses to the City, extension of the schedule or which would change the underlying purpose of the services. Changes include, but are not limited to, issuing additional instructions, requesting additional work, direct omission of work

previously ordered, or changes in time of performance. If there is a change in any state or federal law, regulation or rule or interpretation thereof, which affects the Agreement or the Agreement Documents, and CONSULTANT reasonably believes in good faith that the change will have a substantial adverse effect on CONSULTANT's rights or obligations under the Agreement or the Agreement Documents, then CONSULTANT may, upon written notice with documentation supporting the change and anticipated substantial adverse effect, request an adjustment in the CONSULTANT's obligations, compensation, schedule, or other term of the Agreement, subject to mutual negotiation between CONSULTANT and the City. If the parties are unable to reach an agreement concerning such an adjustment within thirty (30) days after the date of the notice seeking renegotiation, then the parties shall seek to resolve the issue in accordance with Section 16 of the Agreement.

(e) Authorized Representative. Before starting work, the CONSULTANT shall designate an authorized representative acceptable to the City to represent and act for the CONSULTANT and shall inform the City in writing of the name and address of such representative together with a clear definition of the scope of their authority. The CONSULTANT shall keep the City informed of any subsequent changes in the foregoing. The authorized representative of the City shall be the City Manager or designee.

(f) Design/Construction Phase Services. Visits to construction sites and observations made by the CONSULTANT as part of construction phase services, if any, shall not relieve the construction contractor(s) of obligation to conduct comprehensive inspections of the work sufficient to insure conformance with the intent of the construction contract documents, and shall not relieve the construction contractor(s) of full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s) and for all safety precautions incidental thereto. Safety precautions administered by the CONSULTANT, if any, to protect the CONSULTANT's personnel shall meet those policies enacted by the City, which shall be provided to CONSULTANT prior to the commencement of CONSULTANT's services under this Agreement or an approved task order. Further, CONSULTANT shall endeavor to make reasonable efforts to guard the City against defects and deficiencies in the services of the construction contractor(s) and to help determine if the provisions of the construction contract documents are being fulfilled. This paragraph does not, however, release the CONSULTANT from any liability which might be attributable to its negligent acts, errors, or omissions, including but not limited to design, construction phase services, or other services as defined in this Agreement, of the CONSULTANT.

(g) Personnel. The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The CONSULTANT shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. All of the CONSULTANT's personnel (and all subconsultants) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of CONSULTANT's personnel furnished by the CONSULTANT upon written notice by City to CONSULTANT of the cause for such replacement.

(h) Conflict of Interest. The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes. The CONSULTANT further represents that no person having any such conflicting interest shall be employed for said performance. The CONSULTANT shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a

conflict of interest if entered into by the CONSULTANT. The City agrees to notify the CONSULTANT of its opinion within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the City shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the CONSULTANT under the terms of this Agreement.

(i) News Releases / Publicity. The CONSULTANT shall not make any news releases, publicity releases, or advertisements relating to this Agreement or the services hereunder without prior written City approval.

SECTION 8: CITY'S RESPONSIBILITIES

(a) Service of Others. The City shall furnish to the CONSULTANT, if required for performance of the Consultant's services, all available data prepared by or the result of the services of others, including without limitation (as may be appropriate): building plans and related drawings, core borings, probings, and subsurface explorations, hydraulic surveys, laboratory tests, and inspections of samples, materials, and equipment, appropriate professional interpretations of all of the foregoing; environmental assessments and impact statements, appropriate professional interpretations of all of the foregoing; property boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; zoning, deed, and other land use restrictions; and any other special data or consultations relating to the Project.

(b) Examine Work of the Consultant. Within a reasonable time so as not to delay the services of the CONSULTANT, the City shall examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the CONSULTANT, obtain advice of an attorney, insurance counselor, or other consultants, as the City deems appropriate, for such examinations and the rendering, if required, of written opinions pertaining thereto.

SECTION 9: SUSPENSION BY CITY FOR CONVENIENCE. The City may, at any time without cause, order CONSULTANT in writing to suspend, delay or interrupt its services in whole or in part for such period of time as City may determine for City's convenience. Such order shall be by written notice to the CONSULTANT providing at least ten (10) days advance notice unless such order is immediately necessary for the protection of the public health, safety or welfare or for the protection of property. Notwithstanding the foregoing, if such period of time exceeds ninety (90) days, then CONSULTANT shall have the right to terminate this Agreement without cause.

SECTION 10: INDEMNIFICATION. The CONSULTANT shall indemnify and hold harmless the City, including its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence of the CONSULTANT, its officers, directors, employees, and representatives, employed or utilized by the CONSULTANT in the performance of the services under this Agreement. The City agrees to be responsible for its own negligence. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the CONSULTANT, nor shall this Agreement be construed as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes.

A. WAIVER OF CONSEQUENTIAL DAMAGES: Neither the CONSULTANT nor the City nor either party's suppliers, agents, officers, and directors shall have any liability regardless of the theory of recovery, including breach of contract or negligence, to the other party or any other person or entity for any indirect, incidental, special, or consequential damages, cost or expense whatsoever, including but not limited to loss of revenue or profit, whether actual or anticipated, loss of use, failure to realize anticipated savings, loss of or damage to data or other commercial or economic loss. This waiver of consequential damages is made regardless that (i) either party has been advised of the possibility of such damages and (ii) that such damages

may be foreseeable.

B. LIMITATION OF LIABILITY: For each proposed Task Order under this Agreement, the CONSULTANT may propose a limitation of liability provision based on the proposed services to be performed under the Task Order. The City will review the proposed limitation of liability provision and agree to accept, modify or reject the same in its sole discretion. If the City rejects the proposed limitation of liability provision of the City and CONSULTANT cannot agree on a modified provision, the City will have no obligation to approve the proposed Task Order and may request the same services from another firm,

SECTION 11: COMPLIANCE AND DISQUALIFICATION. Each of the parties agrees to perform its responsibilities under this Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Agreement.

SECTION 12: SUB-CONSULTANTS. The City reserves the right to accept the use of a subconsultant or to reject the selection of a particular subconsultant and approve all qualifications of any subconsultant in order to make a determination as to the capability of the subconsultant to perform properly under this Agreement. All subconsultants providing professional services to the CONSULTANT under this Agreement will also be required to provide their own insurance coverage identical to those contained in this Agreement for the CONSULTANT. In the event that a subconsultant does not have insurance or does not meet the insurance limits as stated in this Agreement, the CONSULTANT shall indemnify and hold harmless the City for any claim in excess of the subconsultant's insurance coverage, arising out of the negligent acts, errors or omissions of the subconsultant. Nothing contained herein shall create any contractual relationship between any subconsultant and the City.

SECTION 13: FEDERAL AND STATE TAX. The City is exempt from payment of Florida State Sales and Use Tax. The CONSULTANT is not authorized to use the City's Tax Exemption Number.

SECTION 14: INSURANCE. Prior to commencing any services, the CONSULTANT shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the City and the CONSULTANT. All such insurance policies may not be modified or terminated without the express written authorization of the City.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Professional liability/ Errors and Omissions	\$1,000,000 per occurrence
Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent CONSULTANT, personal injury)	\$1, 000,000 per occurrence \$2,000,000 annual aggregate
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker's Compensation	\$ statutory limits

The commercial general liability and automobile policies will name the City as an additional insured on primary, non-contributory basis and proof of all insurance coverage shall be furnished to the City by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification as required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve CONSULTANT of its liability and obligations under this Agreement.

Additional Insured status shall be provided pursuant and subject to ISO Form CG 20 10 12 19 (ongoing operations) and, if applicable, CG 20 37 12 19 (completed operations), or equivalent forms for coverages other than Commercial General Liability, to the extent that the loss or claim in question is caused by the CONSULTANT's negligence in its operations in and during the performance of the services, and to no greater extent than is necessary to provide insurance coverage for the covered indemnity obligations expressly assumed by CONSULTANT under this Agreement, it being the express intent and understanding of the Parties that, up to specified limits, additional insured status is provided hereunder as a support to performance of CONSULTANT's expressly assumed, covered indemnity obligations hereunder.

SECTION 15: SUCCESSORS AND ASSIGNS. The City and the CONSULTANT each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as agreed in writing by all parties, this Agreement is not assignable.

SECTION 16: DISPUTE RESOLUTION, LAW, VENUE AND REMEDIES. All claims arising out of this Agreement or its breach shall be submitted first to mediation. The parties shall share the mediator's fee equally. The mediation shall be held in Palm Beach County, Florida. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. This Agreement shall be governed by the laws of the State of Florida. Venue for any and all legal action necessary to enforce the Agreement or disputes arising out of the Agreement will be held exclusively in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

SECTION 17: WAIVER OF JURY TRIAL. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

SECTION 18: NONDISCRIMINATION. The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

SECTION 19: AUTHORITY TO PRACTICE. The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the services required under this Agreement, and that it will at all times conduct its business and provide the services under this Agreement in a reputable manner. Proof of such licenses and approvals shall be submitted to the City upon request.

SECTION 20: SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 21: PUBLIC ENTITY CRIMES. CONSULTANT acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or subcontractor under a contract with any public entity; and may not transact business with any public entity in excess of the

threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The CONSULTANT will advise the City immediately if it becomes aware of any violation of this statute.

SECTION 22: NOTICE. All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the CITY shall be sent to:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and if sent to the CONSULTANT, shall be sent to:

POWER Engineers, Inc.
Attn: Ivette Sanchez, Project Manager
1060 Maitland Center Commons
Suite 110
Orlando, FL 32751

POWER Engineers, Inc.
Attn: Eric Schultz, Senior Project Manager/Regional Manager
16041 Foster
Overland Park, KS 66085

The foregoing names and addresses may be changed if such change is provided in writing to the other party. Notice shall be deemed given upon receipt.

SECTION 23: ENTIRETY OF AGREEMENT AND CONTROLLING PROVISIONS. This Agreement consists of the terms and conditions set forth in this Agreement (inclusive of all exhibits hereto) and any City issued Task Orders. The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between the terms and conditions of this Agreement (inclusive of all exhibits hereto) and a City issued Task Order, the terms and conditions of this Agreement shall prevail with the City issued Task Order next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 24: WAIVER. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

SECTION 25: PREPARATION AND NON-EXCLUSIVE. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation. This is a non-exclusive Agreement and the City reserves the right to contract with individuals or firms to provide the same or similar services. Further, CONSULTANT shall have the right to enter into agreements with third parties to perform services not contemplated by this Agreement or which do not conflict with the services provided under this Agreement or any approved task order.

SECTION 26: MATERIALITY. All provisions of the Agreement shall be deemed material. In the event CONSULTANT fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and City may at its option provide notice to the CONSULTANT to terminate for cause.

SECTION 27: LEGAL EFFECT. This Agreement shall not become binding and effective until approved by the City Commission. The Effective Date is the date this Agreement is executed by the City.

SECTION 28: NOTICE OF COMPLAINTS, SUITS AND REGULATORY VIOLATIONS. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

SECTION 29: SURVIVABILITY. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 30: COUNTERPARTS. This Agreement may be executed in one or more counterparts electronically or digitally, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as all the signatories hereto have signed a counterpart of this Agreement.

SECTION 31: PALM BEACH COUNTY IG. In accordance with Palm Beach County ordinance number 2011-009, the CONSULTANT acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSULTANT has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

SECTION 32: REPRESENTATIONS AND BINDING AUTHORITY. By signing this Agreement, on behalf of the CONSULTANT, the undersigned hereby represents to the City that he or she has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of the CONSULTANT for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

SECTION 33: PUBLIC RECORDS. The CONSULTANT shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the CONSULTANT does not transfer the records to the City.
- (d) Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of the CONSULTANT or keep and maintain public records required by the City to perform the service. If the CONSULTANT transfers all public records to the City upon completion of the Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential or exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's

custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR 7 N. DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

SECTION 34: CONFIDENTIAL AND PROPRIETARY INFORMATION. Each party (the "Receiving Party") will keep confidential and not disclose to any other person or entity or use (except as expressly and unambiguously authorized by this Agreement) information, technology or software ("Confidential Information") obtained from the other party (the "Disclosing Party"); provided, however, that the Receiving Party will not be prohibited from disclosing or using information (i) that at the time of disclosure is publicly available or becomes publicly available through no act or omission of the Receiving Party, (ii) that is or has been disclosed to the Receiving Party by a third party who is not under, and to whom the Receiving Party does not owe, an obligation of confidentiality with respect thereto, (iii) that is or has been independently acquired or developed by the Receiving Party without access to the Disclosing Party's Confidential Information, (iv) that is already in the Receiving Party's possession at the time of disclosure, or (v) that is required to be released by law.

SECTION 35: EXPORT ADMINISTRATION. Each party agrees to comply with all export laws and regulations of the United States ("Export Laws") to assure that no software deliverable, item, service, technical data or any direct product thereof arising out of or related to this Agreement is exported directly or indirectly (as a physical export or a deemed export) in violation of Export Laws.

SECTION 36: NO THIRD-PARTY BENEFICIARIES. There are no third party beneficiaries under this Agreement.

SECTION 37: SCRUTINIZED COMPANIES.

(a) The CONSULTANT certifies that it and its subconsultants are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Agreement at its sole option if the CONSULTANT or any of its subconsultants are found to have submitted a false certification; or if the CONSULTANT or any of its subconsultants, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

(b) If this Agreement is for one million dollars or more, the CONSULTANT certifies that it and its subconsultants are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Agreement at its sole option if the CONSULTANT or any of its subconsultants are found to have submitted a false certification; or if the CONSULTANT or any of its subconsultants are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

(c) The CONSULTANT agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(d) The CONSULTANT agrees that the certifications in this section shall be effective and relied upon

IN WITNESS WHEREOF, the parties hereto have made and executed this Continuing Professional Services Agreement for Energy Management & Engineering Services as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Betty Resch, Mayor

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONSULTANT: POWER ENGINEERS, INC.

[Corporate Seal]

By:  Jay Keeling, P.E.
VP, PM Division Manager
POWER Engineers, Inc
2023.04.03 16:51:28-06'00'

STATE OF Florida)
COUNTY OF Orange)

Jay Keeling, VP, Project Management Division Manager
April 3, 2023

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 3 day of April, 2023, by **Power Engineers, Inc.**, an Idaho Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.



Notary Public Signature

Notary Seal:



EXHIBIT "A"
(Sample Task Order)

Note: Task Order Number will be issued by the City, leave the line number empty.

TASK ORDER No. _____

**CONTINUING PROFESSIONAL SERVICES
(Energy Management & Engineering Services)**

THIS TASK ORDER FOR CONTINUING PROFESSIONAL SERVICES (“Task Order”) is made on the day of _____, between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Power Engineers, Inc.**, a Florida CORPORATION (“CONSULTANT”).

1.0 Project Description:

The City desires the CONSULTANT to provide those services as identified herein for the Project. The Project is described in the CONSULTANT’s Proposal, dated _____ and services are generally described as: _____ (the “Project”).

2.0 Scope

Under this Task Order, the CONSULTANT will provide the City of Lake Worth Beach _____ with Energy Management & Engineering Services for the Project as specified in the **CONSULTANT’s proposal attached hereto and incorporated herein as Exhibit “1”**.

3.0 Schedule

The services to be provided under this Task Order shall be completed within _____ calendar days from the City’s approval of this Task Order or the issuance of a Notice to Proceed.

4.0 Compensation

This Task Order is issued for a lump sum, not to exceed amount of _____. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

5.0 Project Manager

The Project Manager for the CONSULTANT is _____, phone (_____; email:_____; and, the Project Manager for the City is _____, phone:_____; email:_____.

6.0 Progress Meetings

The CONSULTANT shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Limitation of Liability

[The CONSULTANT may propose a limitation of liability provision which the City reserves the right to accept, modify or reject in its sole discretion. If modified, the City and Consultant must agree to the modifies provision. See Section 10.

8.0 Authorization

This Task Order is issued pursuant to the Continuing Professional Services Agreement (Energy Management & Engineering Services) based on RFQ#23-300 between the City of Lake Worth and the CONSULTANT, dated _____ (“Agreement” hereafter). If there are any conflicts between the terms and conditions of this Task Order and the Agreement, the terms and conditions of the Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have made and executed this Task Order No. _____ as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By:
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONSULTANT: **POWER ENGINEERS, INC.**

By: **DO NOT SIGN – SAMPLE ONLY**

[Corporate Seal]

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____, 2023, by **Power Engineers, Inc.**, an Idaho Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.

Notary Public Signature

Notary Seal:

Exhibit "B" Consultant's Rate Schedule

POWER ENGINEERS, INC.

Page 1

This standard Schedule of Charges is for professional services.

PERSONNEL CLASSIFICATION

President	\$250.00/hr.
Executive Vice President	
Senior Project Manager IV	
Project Manager Director	\$250.00/hr.
Senior Project Manager III	
Senior Project Manager II	\$250.00/hr.
Senior Program Manager II	
Senior Project Manager I	\$250.00/hr.
Senior Program Manager I	
Senior Project Engineer III	
Strategic Consultant III	
Project Manager III	\$234.00/hr.
Project Lead IV	
Construction Manager III	
Senior Project Engineer II	
Strategic Consultant II	
Senior Consultant III	
Project Manager II	\$210.00/hr.
Project Lead III	
Strategic Consultant I	
Senior Consultant II	
Project Engineer III	
Construction Manager II	
Senior Project Engineer I	
Engineer V	
Project Manager I	\$181.00/hr.
Project Lead II	
Construction Manager I	
Environmental Specialist IV	
Project Engineer II	
Engineer IV	
Designer V	
Project Administrator III	
Senior Consultant I	
Consultant III	
Project Lead I	\$169.00/hr.
Project Engineer I	
Engineer III	
Designer IV	
Environmental Specialist III	
Procurement Specialist III	
Scheduling Specialist III	
Project Administrator II	
Consultant II	
Engineer II	\$157.00/hr.
Designer III	
Technician IV	
Environmental Specialist II	
Procurement Specialist II	
Scheduling Specialist II	
Project Administrator I	
Consultant I	
Engineer I	\$144.00/hr.
Designer II	
Technician III	
Environmental Specialist I	
Procurement Specialist I	
Field Representative IV	
Scheduling Specialist I	
Project Managers Assistant III	
Designer I	\$129.00/hr.
Drafter III	
Technician II	
Administrative Assistant I	
Field Representative III	
Staff Assistant II	
Project Managers Assistant II	
Drafter II	\$106.00/hr.
Staff Assistant	
Field Representative II	
Project Managers Assistant I	
Drafter I	\$85.00/hr.
General Office Assistant	
Field Representative I	

Exhibit "C"

Federal Contract Provisions

The Consultant hereby agrees that the following terms, at a minimum, will be incorporated into any subsequent contract resulting from this RFQ, which is funded in whole or in part with any federal or other funding where the following terms are applicable:

Equal Employment Opportunity. During the performance of the resulting contract, the Consultant agrees as follows:

(1) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant's legal duty to furnish information.

(4) The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The

Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Consultant debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No Consultant or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Consultant and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. DOJ, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these

clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Clean Air Act

- (1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Consultant agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Federal Water Pollution Control Act

- (1) The Consultant agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The Consultant agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Suspension and Debarment.

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Consultant is required to verify that none of the Consultant’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment.

Consultants who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of

Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Procurement of Recovered materials.

- (i) In the performance of this contract, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.
- (ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iii) The Consultant also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

Access to Records.

- (1) The Consultant agrees to provide the State of Florida, the CITY, the DOJ Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Consultant agrees to provide the Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the City and the Consultant acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DOJ Administrator or the Comptroller General of the United States.

DHS Seal, Logo, and Flags.

The Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DOJ pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders.

By signing this agreement, the Consultant acknowledges that federal financial assistance may be used to fund all or a portion of the contract. The Consultant will comply with all applicable Federal law, regulations, executive orders, federal policies, procedures, and directives.

No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Consultant, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant’s actions pertaining to this contract.

Affirmative Steps. Required Affirmative Steps

If the Consultant intends to subcontract any portion of the work covered by this Contract, the Consultant must take all necessary affirmative steps to assure that small and minority businesses, women’s business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Domestic preferences for procurements.

(1) As appropriate and to the extent consistent with law, the Consultant should purchase, acquire, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

(2) For purposes of this section:

(a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Prohibition on certain telecommunications and video surveillance services or equipment.

(1) The Consultant is prohibited from obligating or expending loan or grant funds to:

(a) Procure or obtain;

(b) Extend or renew a contract to procure or obtain; or

(c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), the City shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - LOWER-TIER COVERED TRANSACTIONS

This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Consultant is required to confirm that none of the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Certification, the Consultant, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Consultant to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that

the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Signature of Consultant's Authorized Official

Jay Keeling, VP, Project Management Division Manager

Name and Title of Consultant's Authorized Official

April 3, 2023

Date

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant _____ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Consultant's Authorized Official

Jay Keeling, VP, Project Management Division Manager

Name and Title of Consultant's Authorized Official

April 3, 2023

Date

CONTINUING PROFESSIONAL SERVICES AGREEMENT

RFO#23-300

(Energy Management & Engineering Services)

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Kiewit Engineering Group, Inc.**, a Delaware Corporation registered to do business in the State of Florida (“CONSULTANT”).

RECITALS

WHEREAS, the City issued Request for Qualifications (No. 23-300) for civil engineering, geotechnical engineering, surveying, architecture, hydrogeological services, transportation and mobility planning, energy management and engineering services, construction management and project management and related professional services in accordance with the Consultants’ Competitive Negotiations Act, section 287.055, Florida Statutes (“RFQ”); and

WHEREAS, the CONSULTANT submitted its qualifications in response to the RFQ; and

WHEREAS, the City desires to award the RFQ to the CONSULTANT based on CONSULTANT’s qualifications and experience to provide Energy Management & Engineering Services; and

WHEREAS, the CONSULTANT has significant experience in assisting municipal organizations in providing engineering services; and

WHEREAS, this Agreement may be funded, in whole or in part, by the Federal agencies, in which case, the CONSULTANT agrees that any services performed pursuant to the RFQ and this Agreement will comply with all applicable Federal law, Federal regulations, executive orders, FEMA policies, procedures, and directives and special clauses as provided for in **Exhibit “C”**; and

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for the provision of services by the CONSULTANT to the City; and,

WHEREAS, the City finds entering this Agreement with the CONSULTANT serves a valid public purpose.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and the CONSULTANT agree as follows:

SECTION 1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Agreement by reference and acknowledged as true and correct statements.

SECTION 2: CONSULTANT’S SERVICES. The City has awarded the CONSULTANT the non-exclusive right to provide the City with Energy Management & Engineering Services (“services”).

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP. No relationship of employer or employee is created by this Agreement, it being understood that CONSULTANT will act hereunder as an independent contractor and none of the CONSULTANT’s, officers, directors, employees, independent contractors, representatives or agents performing services for CONSULTANT pursuant to this Agreement shall have any claim under this Agreement or otherwise against the City for compensation of any kind under this Agreement. The relationship between the City and CONSULTANT is that of independent contractors, and

neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

SECTION 4: TERM, TIME AND TERMINATION.

(a) Term. This non-exclusive Agreement shall become effective upon approval by the City Commission and execution by the City, and shall have an initial term of three (3) years with three (3) optional, one (1) year renewals. The City Manager is authorized to exercise the optional one (1) year renewals. Each fiscal year of this Agreement and any renewals will be subject to the availability of funds lawfully appropriated for its purpose by the City Commission. Notwithstanding the foregoing, this Agreement may be terminated as stated herein. The term may be extended by written agreement of the parties for further services related to those services identified herein.

(b) Time for Completion. Time is of the essence in the performance of this Agreement. The CONSULTANT shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the project schedule set forth by the City.

(c) Force Majeure. Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, regulations, epidemic or pandemic. The CONSULTANT or City may suspend its performance under this Agreement as a result of a force majeure without being in default of this Agreement, but upon the removal of such force majeure, the CONSULTANT or City shall resume its performance as soon as is reasonably possible. Upon the CONSULTANT's request, the City shall consider the facts and extent of any failure to perform the services and, if the CONSULTANT's failure to perform was without its or its sub-consultants' fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the services at any time. No extension shall be made for delay occurring more than seven (7) days before a notice of delay or claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) notice of delay or claim is necessary.

(d) Termination without cause. Either party may terminate this Agreement at any time with or without cause by giving not less than thirty (30) days written notice of termination.

(e) Termination for cause. Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have three (3) days from the date of the notice in which to commence to remedy the breach. If such corrective action is not taken within three (3) days, then this Agreement shall terminate at the end of the three (3) day period without further notice or demand.

(f) Early Termination. If this Agreement is terminated before the completion of all services by either party, the CONSULTANT shall:

1. Stop services on the date and to the extent specified including without limitation services of any sub-consultants.
2. Transfer all work in progress, completed work, and other materials related to the terminated services to the City in the format acceptable to City.
3. Continue and complete all parts of the services that have not been terminated.

(g) Effect of Termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination. Notwithstanding the foregoing, the parties acknowledge and agree that the City is a municipal corporation and political subdivision of the state of Florida, and as such, this Agreement is subject to budgeting and appropriation by the City of funds sufficient to pay the costs associated herewith in any fiscal year of the City. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the City's governing board in any fiscal year to pay the costs associated with the City's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the City to be, insufficient to pay the costs associated with the City's obligations hereunder in any fiscal period, then the City will notify CONSULTANT of such occurrence and either the City or CONSULTANT may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the City of any kind whatsoever; however, City shall pay CONSULTANT for all services performed under this Agreement through the date of termination.

SECTION 5: COMPENSATION.

(a) Fee Schedule. The fee schedule attached as **Exhibit "B"** shall remain firm for the first three (3) years of this Agreement. After the first three (3) years, the CONSULTANT may request a change to the fee schedule. No changes to the fee schedule shall occur unless approved in writing by the City, which may be by an approved amendment signed by the City Manager. The fee schedule shall be the basis for all fees proposed by the CONSULTANT and in any approved task order. Notwithstanding anything in the Agreement to the contrary, CONSULTANT may submit a written request for an equitable adjustment of the fees or other compensation payable by the City to CONSULTANT if, after the date of this Agreement, there is a change in applicable laws increasing the amount of taxes (excluding taxes based on net income or equity), tariffs, levies, customs, or duties directly payable by CONSULTANT under the Agreement or any applicable task order. The written request must include supporting documentation for the equitable adjustment and provide sufficient detail for the City's consideration. The City shall consider the written request and if the documentation provided establishes that the CONSULTANT is entitled to the equitable adjustment, the City may approve the equitable adjustment subject to the City's annual budgeting limitations.

(b) Task Order(s). This non-exclusive Agreement does not guarantee that the City will utilize CONSULTANT in any capacity or for any services identified herein. When the City identifies a need for the CONSULTANT's services, the City will request a proposal from the CONSULTANT to provide the services requested. The CONSULTANT's proposal shall be submitted in the format of the sample task order, attached hereto and incorporated herein as **Exhibit "A"** and shall be based on the CONSULTANT's currently hourly fee set forth in the CONSULTANT's proposal and attached hereto as **Exhibit "B"**. If a sub-consultant(s) is to be utilized for services under a task order, the CONSULTANT shall obtain a written proposal from the sub-consultant(s) and attach the same with to the CONSULTANT's proposal submitted to the City. Upon receipt of the CONSULTANT's proposal, the City shall decide in its sole discretion whether to award the task order to the CONSULTANT. Depending on the lump sum, not to exceed amount of each proposed task order, the task order may be awarded by the City Manager (if within her purchasing authority of \$50,000 or less) or the City Commission. If the task order is awarded to the CONSULTANT, the CONSULTANT shall commence the identified services upon receipt of a Notice to Proceed from the City or upon the CONSULTANT's receipt of a fully executed task order for the services. The City reserves the right to reject any and all proposals submitted by the CONSULTANT.

(c) Invoices. Unless otherwise agreed in an issued Task Order, the CONSULTANT shall

render monthly invoices to the City for services that have been rendered in conformity with this Agreement in the previous month. The invoices shall specify the services performed and the time spent on such work. All reimbursable expenses shall also be clearly identified on the invoice with supporting documentation. Invoices will be paid within thirty (30) days following the City's receipt of the CONSULTANT's invoice.

(d) Reimbursable Expenses. The CONSULTANT's reimbursable, out-of-pocket expenses including, but not limited to, travel, per diem and other living expenses, shall be identified in an approved task order. The City shall not be responsible for payment of any such reimbursable, out-of-pocket expenses except as provided for in an approved task order or amendment thereto. Reimbursement for mileage shall only be for travel required outside of Palm Beach County. CONSULTANT shall not be reimbursed for travel within Palm Beach County and all travel shall be proposed and reimbursed pursuant to section 112.061, Florida Statutes.

(e) Direct Project Expenses. Unless otherwise specifically stated in an approved task order, charges for printing, reproduction, use of computer-aided design equipment, field equipment, and any laboratory analysis performed by the CONSULTANT or its subconsultants or its subcontractors, and the use of the CONSULTANT's and employee's automobiles shall be identified in an approved task order. The City shall not be responsible for payment of any other direct project expenses. All direct project expenses shall be billed at cost to the City and the CONSULTANT shall not mark-up or charge an administrative fee in addition to the direct cost for such expenses.

(f) Additional Services. If the City seeks to utilize the CONSULTANT for any additional services related to the services identified herein, the City and CONSULTANT will meet and negotiate a reasonable fee for such services. The negotiated fee shall be approved by the City in the form of an Amendment prior to said services being provided.

(g) Status Report. The CONSULTANT shall complete and submit a technical summary and budgetary status report with each invoice at no additional cost to the City (format may be provided by City or CONSULTANT for each approved task order).

(h) Fiscal Non-funding. In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the CONSULTANT of such occurrence and this Agreement shall terminate on the last day of the current fiscal period without penalty or expense to the City. The CONSULTANT will be paid for all services rendered through the date of termination.

SECTION 6: TERMS OF PERFORMANCE

(a) Starting Work. The CONSULTANT will not begin any of the services until authorized in writing by a Notice to Proceed from the City or upon the CONSULTANT's receipt of an approved Task Order for the services.

(b) Ownership of Documents. The drawings, specifications, calculations, supporting documents, or other work products which are prepared for the City by the CONSULTANT under this Agreement, a City issued Task Order, or amendments thereto ("Work Product"), shall be and shall become the property of the City upon delivery or completion by the CONSULTANT or receipt of payment from the City for the same. The CONSULTANT may keep copies or samples thereof and shall have a royalty-free, non-exclusive license to use such Work Product. The City accepts sole responsibility for its reuse of any Work Product in a manner other than as initially intended, or for any use of incomplete Work Product unless prior written approval is obtained from the CONSULTANT.

(c) Accounting Records. The CONSULTANT's accounting records, insofar as they pertain to invoicing the City or for disbursements made from the CONSULTANT's account for services under this

Agreement shall be open to City's inspection and audit at the CONSULTANT's office upon reasonable prior notice and during normal business hours. Notwithstanding the foregoing, the City shall not be entitled to audit any records of the CONSULTANT which reveal individual pricing components, multipliers, or other unit pricing of the CONSULTANT's hourly rates charged to the City under this Agreement. Backup documentation for out-of-pocket expenses exceeding Twenty-Five Dollars (\$25.00) each shall be available at the CONSULTANT's office. These records will be retained by the CONSULTANT for five (5) years after the calendar year in which the services to which they pertain were rendered or the disbursements were made.

(d) Approval of Changes. The City, through the City Manager must approve in writing any changes in the scope of services which result in additional costs or expenses to the City, extension of the schedule or which would change the underlying purpose of the services. Changes include, but are not limited to, issuing additional instructions, requesting additional work, direct omission of work previously ordered, or changes in time of performance.

(e) Authorized Representative. Before starting work, the CONSULTANT shall designate an authorized representative acceptable to the City to represent and act for the CONSULTANT and shall inform the City in writing of the name and address of such representative together with a clear definition of the scope of their authority. The CONSULTANT shall keep the City informed of any subsequent changes in the foregoing. The authorized representative of the City shall be the City Manager or designee.

(f) Design/Construction Phase Services. Visits to construction sites and observations made by the CONSULTANT as part of construction phase services, if any, shall not relieve the construction contractor(s) of obligation to conduct comprehensive inspections of the work sufficient to insure conformance with the intent of the construction contract documents, and shall not relieve the construction contractor(s) of full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s) and for all safety precautions incidental thereto. Safety precautions administered by the CONSULTANT, if any, to protect the CONSULTANT's personnel shall meet those policies enacted by the City. Further, CONSULTANT shall endeavor to make reasonable efforts to guard the City against defects and deficiencies in the services of the construction contractor(s) and to help determine if the provisions of the construction contract documents are being fulfilled. This paragraph does not, however, release the CONSULTANT from any liability which might be attributable to its negligent acts, errors, or omissions, including but not limited to design, construction phase services, or other services as defined in this Agreement, of the CONSULTANT.

(g) Personnel. The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The CONSULTANT shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. All of the CONSULTANT's personnel (and all subconsultants) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of CONSULTANT's personnel furnished by the CONSULTANT upon written notice by City to CONSULTANT of the cause for such replacement.

(h) Conflict of Interest. The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes. The CONSULTANT further represents that no person having any such conflicting interest shall be employed for said

performance. The CONSULTANT shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the CONSULTANT. The City agrees to notify the CONSULTANT of its opinion within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the City shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the CONSULTANT under the terms of this Agreement.

(i) News Releases / Publicity. The CONSULTANT shall not make any news releases, publicity releases, or advertisements relating to this Agreement or the services hereunder without prior written City approval.

SECTION 8: CITY'S RESPONSIBILITIES

(a) Service of Others. The City shall furnish to the CONSULTANT, if required for performance of the Consultant's services, all available data prepared by or the result of the services of others, including without limitation (as may be appropriate): building plans and related drawings, core borings, probings, and subsurface explorations, hydraulic surveys, laboratory tests, and inspections of samples, materials, and equipment, appropriate professional interpretations of all of the foregoing; environmental assessments and impact statements, appropriate professional interpretations of all of the foregoing; property boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; zoning, deed, and other land use restrictions; and any other special data or consultations relating to the Project.

(b) Examine Work of the Consultant. Within a reasonable time so as not to delay the services of the CONSULTANT, the City shall examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the CONSULTANT, obtain advice of an attorney, insurance counselor, or other consultants, as the City deems appropriate, for such examinations and the rendering, if required, of written opinions pertaining thereto.

SECTION 9: SUSPENSION BY CITY FOR CONVENIENCE. The City may, at any time without cause, order CONSULTANT in writing to suspend, delay or interrupt its services in whole or in part for such period of time as City may determine for City's convenience. Such order shall be by written notice to the CONSULTANT providing at least ten (10) days advance notice unless such order is immediately necessary for the protection of the public health, safety or welfare or for the protection of property.

SECTION 10: INDEMNIFICATION. The CONSULTANT shall indemnify and hold harmless the City, including its officers and employees, from liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees (at the trial and appellate levels) to the extent caused by the negligence of the CONSULTANT, its officers, directors, employees, representatives, and agents employed or utilized by the CONSULTANT in the performance of the services under this Agreement. The City agrees to be responsible for its own negligence. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the CONSULTANT, nor shall this Agreement be construed as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes.

SECTION 11: COMPLIANCE AND DISQUALIFICATION. Each of the parties agrees to perform its

responsibilities under this Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Agreement.

SECTION 12: SUB-CONSULTANTS. The City reserves the right to accept the use of a subconsultant or to reject the selection of a particular subconsultant and approve all qualifications of any subconsultant in order to make a determination as to the capability of the subconsultant to perform properly under this Agreement. All subconsultants providing professional services to the CONSULTANT under this Agreement will also be required to provide their own insurance coverage identical to those contained in this Agreement for the CONSULTANT. In the event that a subconsultant does not have insurance or does not meet the insurance limits as stated in this Agreement, the CONSULTANT shall indemnify and hold harmless the City for any claim in excess of the subconsultant's insurance coverage, arising out of the negligent acts, errors or omissions of the subconsultant. Nothing contained herein shall create any contractual relationship between any subconsultant and the City.

SECTION 13: FEDERAL AND STATE TAX. The City is exempt from payment of Florida State Sales and Use Tax. The CONSULTANT is not authorized to use the City's Tax Exemption Number.

SECTION 14: INSURANCE. Prior to commencing any services, the CONSULTANT shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the City and the CONSULTANT. All such insurance policies may not be modified or terminated without the express written authorization of the City.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Professional liability/ Errors and Omissions	\$1,000,000 per occurrence
Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent CONSULTANT, personal injury)	\$1, 000,000 per occurrence \$2,000,000 annual aggregate
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker's Compensation	\$ statutory limits

The commercial general liability and automobile policies will name the City as an additional insured on primary, non-contributory basis and proof of all insurance coverage shall be furnished to the City by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification as required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve CONSULTANT of its liability and obligations under this Agreement.

Additional Insured status shall be provided pursuant and subject to ISO Form CG 20 10 12 19 (ongoing operations) and, if applicable, CG 20 37 12 19 (completed operations), or equivalent forms for coverages other than Commercial General Liability, to the extent that the loss or claim in question is caused by the CONSULTANT's negligence in its operations in and during the performance of the services, and to no greater extent than is necessary to provide insurance coverage for the covered indemnity obligations expressly assumed by CONSULTANT under this Agreement, it being the express intent and understanding of the Parties that, up to specified limits, additional insured status is provided hereunder as a support to

performance of CONSULTANT's expressly assumed, covered indemnity obligations hereunder.

SECTION 15: SUCCESSORS AND ASSIGNS. The City and the CONSULTANT each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as agreed in writing by all parties, this Agreement is not assignable.

SECTION 16: DISPUTE RESOLUTION, LAW, VENUE AND REMEDIES. All claims arising out of this Agreement or its breach shall be submitted first to mediation. The parties shall share the mediator's fee equally. The mediation shall be held in Palm Beach County, Florida. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. This Agreement shall be governed by the laws of the State of Florida. Venue for any and all legal action necessary to enforce the Agreement or disputes arising out of the Agreement will be held exclusively in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

SECTION 17: WAIVER OF JURY TRIAL. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

SECTION 18: NONDISCRIMINATION. The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

SECTION 19: AUTHORITY TO PRACTICE. The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the services required under this Agreement, and that it will at all times conduct its business and provide the services under this Agreement in a reputable manner. Proof of such licenses and approvals shall be submitted to the City upon request.

SECTION 20: SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 21: PUBLIC ENTITY CRIMES. CONSULTANT acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or subcontractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The CONSULTANT will advise the City immediately if it becomes aware of any violation of this statute.

SECTION 22: NOTICE. All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the CITY shall be sent to:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and if sent to the CONSULTANT, shall be sent to:

Kiewit Engineering Group, Inc.,
Attn: Luke Goss, Sr. Vice President
8900 Renner Blvd.
Lenexa, Kansas 66219

The foregoing names and addresses may be changed if such change is provided in writing to the other party. Notice shall be deemed given upon receipt.

SECTION 23: ENTIRETY OF AGREEMENT AND CONTROLLING PROVISIONS. This Agreement consists of the terms and conditions set forth in this Agreement (inclusive of all exhibits hereto) and any City issued Task Orders. The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between the terms and conditions of this Agreement (inclusive of all exhibits hereto) and a City issued Task Order, the terms and conditions of this Agreement shall prevail with the City issued Task Order next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 24: WAIVER. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

SECTION 25: PREPARATION AND NON-EXCLUSIVE. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation. This is a non-exclusive Agreement and the City reserves the right to contract with individuals or firms to provide the same or similar services.

SECTION 26: MATERIALITY. All provisions of the Agreement shall be deemed material. In the event CONSULTANT fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and City may at its option provide notice to the CONSULTANT to terminate for cause.

SECTION 27: LEGAL EFFECT. This Agreement shall not become binding and effective until approved by the City Commission. The Effective Date is the date this Agreement is executed by the City.

SECTION 28: NOTICE OF COMPLAINTS, SUITS AND REGULATORY VIOLATIONS. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

SECTION 29: SURVIVABILITY. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 30: COUNTERPARTS. This Agreement may be executed in one or more counterparts electronically or digitally, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as all the signatories hereto have signed a counterpart of this Agreement.

SECTION 31: PALM BEACH COUNTY IG. In accordance with Palm Beach County ordinance number 2011-009, the CONSULTANT acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSULTANT has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

SECTION 32: REPRESENTATIONS AND BINDING AUTHORITY. By signing this Agreement, on behalf of the CONSULTANT, the undersigned hereby represents to the City that he or she has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of the CONSULTANT for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

SECTION 33: PUBLIC RECORDS. The CONSULTANT shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the CONSULTANT does not transfer the records to the City.
- (d) Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of the CONSULTANT or keep and maintain public records required by the City to perform the service. If the CONSULTANT transfers all public records to the City upon completion of the Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential or exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR 7 N. DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

SECTION 34: CONFIDENTIAL AND PROPRIETARY INFORMATION. Each party (the "Receiving

Party”) will keep confidential and not disclose to any other person or entity or use (except as expressly and unambiguously authorized by this Agreement) information, technology or software (“Confidential Information”) obtained from the other party (the “Disclosing Party”); provided, however, that the Receiving Party will not be prohibited from disclosing or using information (i) that at the time of disclosure is publicly available or becomes publicly available through no act or omission of the Receiving Party, (ii) that is or has been disclosed to the Receiving Party by a third party who is not under, and to whom the Receiving Party does not owe, an obligation of confidentiality with respect thereto, (iii) that is or has been independently acquired or developed by the Receiving Party without access to the Disclosing Party’s Confidential Information, (iv) that is already in the Receiving Party’s possession at the time of disclosure, or (v) that is required to be released by law. Notwithstanding the foregoing, the parties may share confidential information with their affiliates, officers, employees, agents, subcontractors, and similar persons but only to the extent such confidential information is necessary for the performance of the services and this Agreement.

SECTION 35: EXPORT ADMINISTRATION. Each party agrees to comply with all export laws and regulations of the United States (“Export Laws”) to assure that no software deliverable, item, service, technical data or any direct product thereof arising out of or related to this Agreement is exported directly or indirectly (as a physical export or a deemed export) in violation of Export Laws.

SECTION 36: NO THIRD-PARTY BENEFICIARIES. There are no third party beneficiaries under this Agreement.

SECTION 37: SCRUTINIZED COMPANIES.

(a) The CONSULTANT certifies that it and its subconsultants are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Agreement at its sole option if the CONSULTANT or any of its subconsultants are found to have submitted a false certification; or if the CONSULTANT or any of its subconsultants, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

(b) If this Agreement is for one million dollars or more, the CONSULTANT certifies that it and its subconsultants are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Agreement at its sole option if the CONSULTANT or any of its subconsultants are found to have submitted a false certification; or if the CONSULTANT or any of its subconsultants are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

(c) The CONSULTANT agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(d) The CONSULTANT agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Agreement, including any and all renewals.

(e) The CONSULTANT agrees that if it or any of its subconsultants’ status changes in regards to any certification herein, the CONSULTANT shall immediately notify the City of the same.

(f) As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above stated contracting prohibitions then they shall become inoperative.

SECTION 38: E-VERIFY. Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021,

the CONSULTANT shall:

- (a) Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subconsultants (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subconsultants' newly hired employees;
- (b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subconsultant does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
- (c) Maintain copies of all subconsultant affidavits for the duration of this Agreement and provide the same to the City upon request;
- (d) Comply fully, and ensure all subconsultant comply fully, with Section 448.095, Florida Statutes;
- (e) Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized Aliens; Employment Prohibited) shall be grounds for termination of this Agreement; and,
- (f) Be aware that if the City terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the CONSULTANT may not be awarded a contract for at least one (1) year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Agreement.

SECTION 39: WAIVER OF CONSEQUENTIAL DAMAGES. In no event shall either party (including their subcontractors and affiliates) be liable to the other in contract, in tort, by operation of law, or otherwise for any loss of profit or revenue or for any special, consequential, incidental, indirect, exemplary or punitive damages of any kind arising out of or relating to performance or non-performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Continuing Professional Services Agreement for Energy Management & Engineering Services as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: Betty Resch, Mayor

By: Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONSULTANT:

KIEWIT ENGINEERING GROUP, INC.

By: _____
Luke Goss, Sr. Vice President

[Corporate Seal]

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 13 day of April, 2023, by **Kiewit Engineering Group, Inc.**, a Delaware Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.

Janeen Renea Cooper
Notary Public Signature

Notary Seal:



EXHIBIT "A"
(Sample Task Order)

Note: Task Order Number will be issued by the City, leave the line number empty.

TASK ORDER No. _____

**CONTINUING PROFESSIONAL SERVICES
(Energy Management & Engineering Services)**

THIS TASK ORDER FOR CONTINUING PROFESSIONAL SERVICES (“Task Order”) is made on the day of _____, between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Kiewit Engineering Group, Inc.**, a Delaware CORPORATION (“CONSULTANT”).

1.0 Project Description:

The City desires the CONSULTANT to provide those services as identified herein for the Project. The Project is described in the CONSULTANT’s Proposal, dated _____ and services are generally described as: _____ (the “Project”).

2.0 Scope

Under this Task Order, the CONSULTANT will provide the City of Lake Worth Beach _____ with Energy Management & Engineering Services for the Project as specified in the **CONSULTANT’s proposal attached hereto and incorporated herein as Exhibit “1”**.

3.0 Schedule

The services to be provided under this Task Order shall be completed within _____ calendar days from the City’s approval of this Task Order or the issuance of a Notice to Proceed.

4.0 Compensation

This Task Order is issued for a lump sum, not to exceed amount of _____. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

5.0 Project Manager

The Project Manager for the CONSULTANT is _____, phone (_____; email: _____; and, the Project Manager for the City is _____, phone: _____; email: _____.

6.0 Progress Meetings

The CONSULTANT shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Limitation of Liability, Standard of Care, and/or Warranty.

For each Task Order, the CONSULTANT may propose a limitation of liability, standard of care, and/or warranty provision based on the services requested by the City and proposed by the CONSULTANT. The City will consider the proposed provision and determine in its sole discretion whether to agree to the proposed provision, negotiate the proposed provision, or to seek the services from another consultant of the City.

8.0 Authorization

This Task Order is issued pursuant to the Continuing Professional Services Agreement (Energy Management & Engineering Services) based on RFQ#23-300 between the City of Lake Worth and the CONSULTANT, dated _____ (“Agreement” hereafter). If there are any conflicts between the terms and conditions of this Task Order and the Agreement, the terms and conditions of the Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have made and executed this Task Order No. _____ as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _ Betty Resch, Mayor

ATTEST:

By: Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONSULTANT: KIEWIT ENGINEERING GROUP, INC.

By: **DO NOT SIGN – SAMPLE ONLY**

[Corporate Seal]

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____, 2023, by **Kiewit Engineering Group, Inc.**, a Delaware Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.

Notary Public Signature

Notary Seal:

Exhibit "B"

Consultant's Rate Schedule

Kiewit Engineering Group Inc.	
SCHEDULE OF RATES	
2023-2025 Fee Schedule	
Schedule A Billing Rates (effective until March 31, 2026)	
Job Category	Hourly Rate (USD)
Administrative Support 1	\$89.00
Administrative Support 2	\$113.00
Designer 1	\$96.00
Designer 2	\$105.00
Designer 3	\$128.00
Designer 4	\$161.00
Designer 5	\$192.00
Designer 6	\$233.00
Engineer 1	\$132.00
Engineer 2	\$149.00
Engineer 3	\$163.00
Engineer 4	\$191.00
Engineer 5	\$223.00
Engineer 6	\$259.00
Project Controls 1	\$117.00
Project Controls 2	\$146.00
Project Controls 3	\$213.00
Project Manager 1	\$208.00
Project Manager 2	\$243.00
Project Manager 3	\$293.00
Subject Matter Expert	\$298.00

Exhibit "C"

Federal Contract Provisions

The Consultant hereby agrees that the following terms, at a minimum, will be incorporated into any subsequent contract resulting from this RFQ, which is funded in whole or in part with any federal or other funding where the following terms are applicable:

Equal Employment Opportunity. During the performance of the resulting contract, the Consultant agrees as follows:

(1) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant's legal duty to furnish information.

(4) The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of

September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Consultant debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No Consultant or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Consultant and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. DOJ, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Clean Air Act

(1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Consultant agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Federal Water Pollution Control Act

(1) The Consultant agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Consultant agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Suspension and Debarment.

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Consultant is required to verify that none of the Consultant’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment.

Consultants who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated

funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Procurement of Recovered materials.

(i) In the performance of this contract, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

(ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(iii) The Consultant also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

Access to Records.

(1) The Consultant agrees to provide the State of Florida, the CITY, the DOJ Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Consultant agrees to provide the Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the City and the Consultant acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DOJ Administrator or the Comptroller General of the United States.

DHS Seal, Logo, and Flags.

The Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DOJ pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders.

By signing this agreement, the Consultant acknowledges that federal financial assistance may be used to fund all or a portion of the contract. The Consultant will comply with all applicable Federal law, regulations, executive orders, federal policies, procedures, and directives.

No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Consultant, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to this contract.

Affirmative Steps. Required Affirmative Steps

If the Consultant intends to subcontract any portion of the work covered by this Contract, the Consultant must take all necessary affirmative steps to assure that small and minority businesses, women's business

enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Domestic preferences for procurements.

(1) As appropriate and to the extent consistent with law, the Consultant should purchase, acquire, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

(2) For purposes of this section:

(a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Prohibition on certain telecommunications and video surveillance services or equipment.

(1) The Consultant is prohibited from obligating or expending loan or grant funds to:

(a) Procure or obtain;

(b) Extend or renew a contract to procure or obtain; or

(c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), the City shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - LOWER-TIER COVERED TRANSACTIONS

This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Consultant is required to confirm that none of the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Certification, the Consultant, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Consultant to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that

the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Luke Goss

Signature of Consultant's Authorized Official

Luke Goss, Sr. VP - Power Delivery

Name and Title of Consultant's Authorized Official

4/13/23

Date

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant Kiewit Engineering Group, Inc. certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Luke Goss

Signature of Consultant's Authorized Official

LUKE GOSS, Sr. VP - Power Delivery

Name and Title of Consultant's Authorized Official

4/13/23

Date

STAFF REPORT UTILITY MEETING

AGENDA DATE: April 25, 2023

DEPARTMENT: Electric Utility

TITLE:

Agreement with Solar Energy Loan Fund (SELF)

SUMMARY:

Agreement to between City and SELF for SELF to provide energy conservation and solar project financing and implementation assistance services directly to City's electric and water utility customers.

BACKGROUND AND JUSTIFICATION:

City has been in discussions with SELF with a mutual desire to work together to expand SELF's financing programs to homeowners and property owners within the City's Utility Service Area to achieve more energy efficiency, solar, storm resilience, and other sustainable building practices, with a focus on SELF's Green Home Loans, which typically include: home repairs, most often roofs and HVAC; as well as upgrades, such as impact windows and doors, central water and sewer conversions, solar and battery technologies, home EV charging stations, and mobility and aging in place.

SELF is a non-profit Loan Fund established in 2010 and certified by the U.S. Treasury Department as a Community Development Financial Institution (CDFI), with a mission to increase access to innovative and affordable financing for sustainable property improvements, with a focus on LMI households (Green Home Loans) and special programs for veterans, female heads of household, disabled people, and individuals with less than stellar credit scores who must otherwise rely on high interest rate credit cards, payday loans, pawn shops, and/or have no financing options at all.

SELF is also developing new loan products for landlords (SEER loans) and affordable housing developers (SAGE loans) to retrofit existing affordable housing units and to build new sustainable/resilient affordable housing projects.

The historic new Climate Bill will provide new and unprecedented opportunities in the coming months and years to achieve energy equity and clean energy all across America through low-cost capital and grants; and, as the first and only non-profit Green Bank in Florida, with a 12-year track record of nationally-recognized success and a focus on energy equity, SELF is well positioned to help the City and/or Utility secure additional low-cost capital and grants.

Under the terms of the proposed Agreement, City would provide SELF with up to \$100,000 annually for a period of three (3) years, referred to as a "seed grant". SELF would use the majority of the seed grant to hire a fulltime loan officer who would be a SELF employee and would serve as the program manager for the City initiative, supported by SELF staff.

City Staff have conducted well over 1,000 free energy audits and are desirous of seeing recommended energy conservation initiatives implemented by customers. Unfortunately, many of our customers may not be familiar or comfortable with retaining contractors or purchasing materials to undertake the needed projects. SELF's team helps bridge that gap with access to unsecured personal loans at low interest rates not otherwise available to LMI households, contractor selection assistance, and bring needed energy conservation projects to fruition. For many customers, meaningful and sustainable energy conservation is a daunting task they may not undertake without the assistance of an entity like SELF.

In order to promote SELF's services City would provide access to City's 1,000+ free energy audits conducted of customers' homes and businesses, and provide meeting/office space at City buildings for

SELF staff to interact with customers desirous of assistance. City would also see to help promote SELF's services using City's web site (already being promoted) and notices on City Utility bills.

City's Electric Utility Advisory Board (EUAB) has met with SELF to discuss their proposal in detail and has reached a consensus supportive of SELF's service.

MOTION:

Move to approve/disapprove a contract with SELF for a period of up to three (3) years in the aggregate amount of \$300,000 using current operating electric funds or ARPA funds.

ATTACHMENT(S):

- SELF Lake Worth Beach Proposal
- SELF Agreement
- SELF Scope of Services

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Current Appropriation	0	0	0	0	0
Operating	\$100,000	\$100,000	\$100,000	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	\$100,000	\$100,000	\$100,000	0	0
No. of Addn'l Full-Time Employee Positions					
	0	0	0	0	0

	Expenditure
Department	Electric Utility
Division	Power Generation
GL Description	Other Contractual Services
GL Account Number	401-6031-531-34-50
Project Number	N/A
Requested Funds	\$100,000



PROPOSAL

Three-year seed grant proposal requested by the LWB City Commission and customized with staff.

Doug Coward

Executive Director



Background:

SELF is a nonprofit green bank (“Loan Fund”) certified as a Community Development Financial Institution (CDFI) by the U.S. Department of the Treasury. The CDFI Fund plays an important role in generating economic growth and opportunity in some of our nation's most distressed communities by offering tailored resources and innovative programs that invest federal dollars alongside private and philanthropic capital. The CDFI Fund serves mission-driven financial institutions, such as SELF, which take a market-based approach to supporting economically disadvantaged communities.

SELF is the first and only nonprofit green bank in Florida and one of the few green banks in America focused on helping low- and moderate-income (LMI) residents. SELF is one of the few CDFIs in America that offers unsecured personal loans to homeowners to advance energy efficiency, resilience, solar, and more. SELF started out as a pilot program in St. Lucie County, Florida in 2010, and has since grown to four (4) states, including: FL; AL; GA; and, SC. SELF has expanded rapidly over the last 4 years and opened up new satellite programs in St. Petersburg, Tampa, Orlando, Atlanta, and Miami-Dade County.

As a 501.c.3, SELF has partnered with more than a dozen local governments in multiple regions and states to seed the organization and grow our organizational capacity. SELF serves as an **“implementation tool”** for local, state, and the federal governments to achieve a variety of important goals and transformational impacts, most notably, energy equity, preserving and retrofitting existing affordable housing and making these homes safer, more resilient, more valuable and cost-effective, healthier, and more sustainable. SELF also strives to support generational wealth and local businesses and green jobs, including minority contractors.



SELF also has special programs for seniors, veterans, female heads of household, disabled homeowners, hurricane storm victims, and individuals with poor credit.





SELF's mission-driven lending programs provide **FINANCIAL INCLUSION**, by approving unsecured loans based on the applicant's ABILITY TO PAY, *not* credit scores. SELF fills an important financial gap in unbanked and underbanked communities and provides direct benefits to low- and moderate-income (LMI) homeowners as well as the contractors who perform the home improvement work. With an estimated 30-40% of the Florida population outside of traditional banking options, SELF's inclusive underwriting policies enable the organization to further penetrate LMI and BIPOC communities that need additional financing options for much needed home repairs and improvements. SELF also reports these loans to the Credit Bureau so our clients are building their credit scores as they pay off their loans. The home improvement projects also increase property value and home equity, and create stability and generational wealth for LMI families.

In order to fully appreciate the life circumstances of many of our clients and the subsequent impacts from SELF's small microloans, you need to meet Carol. She had just been discharged from the hospital after major back surgery, and when she arrived home, already uncomfortable, she learned her A/C was broken and the sweltering Florida heat and humidity were unbearable. Worse yet, as a widower who had not established much credit in her own name during her marriage, her low credit score prevented her from qualifying for traditional financing from banks or assorted financing available through most contractors. Carol was suffering and desperate for help to fill this financial gap, and fortunately her contractor recommended SELF. Despite her low credit score, Carol was found to be credit worthy with the ability to pay a loan for a small, energy efficient AC. Without SELF, she could not gain access to capital, and particularly not at market or even below market-rates. Carol was faced with either suffering the consequences of a broken AC or resort to predatory lenders for financing. SELF's mission is to knock down these financial barriers so more LMI homeowners can make fundamental repairs and upgrades to their homes and take advantage of the fast-emerging clean energy economy – both as homeowners and local businesses and entrepreneurs. SELF will lend to any qualified homeowners, but we generally focus on those individuals with few other financing options. Below is a picture of Carol as she was informed that she had been approved for a SELF loan and a new AC would be installed the next day.



Types of Improvements:

SELF finances much more than just solar technologies, including a broad array of sustainable building practices and technologies. Many LMI neighborhoods and buildings consist of older housing stock which typically need more fundamental repairs (e.g., weatherization, AC, roof) before being considered “solar-ready”. SELF provides affordable and accessible financing options for sustainable home improvement projects and helps guide homeowners through contract-vetting, pricing, and steps for energy conservation and efficiency, resilience, and clean energy (based on energy audits and more than a decade of experience). SELF would also work hand-in-hand with the City Utility’s energy auditing program to help local homeowners implement these identified priorities. Here is a summary of the broad types of sustainable home improvements that SELF finances:



SELF typically finances high efficiency ACs and Roof repairs and replacement, which are fundamental home improvement projects needed every 10-15 years. These projects advance energy efficiency and resilience and help make homes solar-ready. SELF also finances a variety of solar technologies, water and sewer conversions, disability and aging in place, electrical and plumbing repairs, health-related projects, and more. These sustainable home improvement projects build home equity, increase comfort, health and livability, and reduce operating costs, vulnerability to storms, and carbon footprint.

Results:

Over the last 12 years, SELF has financed more than 3,000 sustainable home improvement projects totaling more than \$30 million, with an impressive 74% LMI penetration rate and 2% default rates. SELF has helped nearly 10,000 people so far and, in the process, become a national leader in energy equity. SELF has also fostered more than \$30 million of clean economic development activity for our 900+ participating contractors (i.e., green jobs) with the majority of these projects located in partnering jurisdictions in the Treasure Coast, Gulf Coast, and Central Florida regions.



Seed Grant Proposal:

SELF is honored that the City of Lake Worth Beach is interested in potentially partnering with our non-profit organization to achieve more energy equity, clean energy, and resilience in the City's Utility Service Area. As a follow-up to SELF's previous submittal to the City regarding Partnership Opportunities, city staff subsequently requested a proposal for Option 3, which includes full-time assistance for \$100,000 per year for three (3) years ("seed-grant").

If approved, SELF would use the seed grant to grow our organizational capacity and to leverage outside expertise and affordable loan capital to better serve local property owners and contractors. More specifically, SELF would use the majority of the seed grant to **hire a fulltime loan officer** who would serve as the program manager for the City initiative. This individual would ideally be local and they would work with local clients, local contractors, participate in community events, and collaborate closely with the City and Utility to establish, launch, and expand a new satellite office. A portion of these funds would also be needed for marketing/marketing collateral, office supplies and equipment, fintech and licensing expenses, travel expenses, loan loss reserve fund, and other related costs.

The first step of such an Agreement would include a 90-day ramp-up period with the most pressing issue being the selection of the Program Manager (i.e., Loan Officer) for the City of Lake Worth Beach. SELF would strive to work with local entities to help recruit the best possible local person for this position. The ramp-up period also provides SELF with adequate time to finalize system upgrades, equipment purchases, on-boarding and training of new staff, and to start collaboration with City and Utility.

The entire SELF team, currently 19 staff persons with decades of experience, will also support the new full-time LWB Program Manager, including: Executive Director, Chief Financial Officer, Chief Operating Officer, Operations Manager, Underwriting, Marketing, Accounting, and more.

As a part of Option 3, SELF typically commits to raising \$2-3 million of low-cost and accessible loan capital to deploy locally through our Green Home Loan programs over the subsequent three (3) years; however, the City of Lake Worth Beach is notably smaller than our previous partners so we don't want to overcommit or over promise our results in the City of Lake Worth Beach. SELF is willing and able to raise these funds if there is sufficient demand in the local community; but we caution against raising expectations too high. For example: In Pinellas County, SELF was able to complete \$2.42 million of projects over the first three (3) years and has now reached \$3.4 million of projects in 4.5 years. Pinellas County has nearly 1 million people, so the City of Lake Worth Beach is less than 5% of its size. Most importantly, SELF will need strong and on-going support from the City and Utility to assist with community awareness and outreach and contractor recruitment to help make this partnership successful and enduring.

Other Grant Opportunities:

If the City is interested in forging ahead with this ambitious plan to more deeply penetrate LMI markets, then we strongly recommend coupling our low-cost and accessible green financing programs with existing and new grants to the greatest extent feasible. Very low income homeowners will need grants, low income homeowners will need mini-grants to reduce the overall cost of these projects and therefore make



them more affordable via SELF loans, and moderate income homeowners have the ability to pay if they can access affordable financing. SELF would strongly recommend close consideration of CDBG, SHIP, and other grant programs to further assist low-income homeowners. With the passage of the historic \$370 Billion Climate Bill, SELF would also commit to work with the City and Utility to try and secure additional low-cost capital and grant funds. There is an estimated \$60 Billion specifically earmarked for Energy Equity, and SELF is well positioned to assist the City and the utility with these opportunities.

Additional Lending Products:

This proposal focuses primarily on green home loans, but SELF has also created additional lending products which may also be applicable in the City of Lake Worth Beach, including: septic-to-sewer conversion loans, special loans for hurricane victims and disabled homeowners, working capital loans for small contractors via our partnership with NDC (national CDFI), new landlord loans to help renters in high energy burden areas, and gap financing for affordable housing projects. These new lending programs are designed to help achieve a broader array of sustainable building practices and rehabilitate existing affordable housing units and build new affordable, resilient and sustainable affordable housing units. SELF is open to exploring all of these additional lending products in the City's Utility Service Area.

Contractor Recruitment:

SELF has over 900 businesses in our 4-state contractor network, and these companies have indicated they lose about 20-40% of their potential projects because homeowners cannot qualify for traditional financing, which is based largely on credit scores. SELF's inclusive underwriting policies help more LMI homeowners qualify for much-needed affordable financing, and typically saves our clients 10-20% on their interest rates, compared to credit cards at 20-30%. SELF's inclusive lending programs fill a critical financial gap which helps more LMI homeowners cost-effectively complete much needed home improvement projects, while simultaneously creating more jobs for local contractors.

SELF also does *not* charge dealer fees to contractors in order to secure financing for their projects; which private financiers typically charge an extra 10-20%. SELF inclusive financing programs help open up new LMI markets to participating contractors and reduces the cost of their projects, which makes them more competitive and provides better pricing to SELF clients. Once a local company has been prescreened and approved to join the SELF contractor network, they can use our inclusive financing to grow their businesses throughout the city, county, region, and/or state, and these extra-jurisdictional impacts will create meaning economic benefits to local participating contractors from the City of Lake Worth Beach.

As a part of this proposal, SELF and the new loan officer would focus on building a network of local contractors to help launch, grow, and sustain the new satellite office in the City of Lake Worth Beach. SELF and the new loan officer would work diligently with the City, trade groups, builders' associations, and many others to recruit local general contractors, roofers, HVAC and solar companies, and much more. SELF is also working with the U.S. Minority Contractors Association (USMCA) and their Florida Chapter to recruit more minority contractors. One of the primary goals of this proposal is to build the local contractor network because they generate the majority of our projects.



Summary:

As a part of this proposal, the SELF team would focus on scaling the green home loans program in the City's Utility Service Area, with a focus on LMI homeowners and local contractors. SELF would commit to raising up to \$1.5 million in low-cost loan capital over the first three (3) years, and possibly more if there is sufficient demand and/or additional opportunities evolve through SELF's other loan products. SELF will also finance extra-jurisdictional projects generated by and benefitting local participating contractors.

The SELF team would also be available to assist with additional grants and resources from the Climate Bill and other grant programs to further advance energy equity in the City's Utility Service Area.

The Seed grant would be used generally by SELF as follows:

- Program Manager/Loan Officer (60-70%)
- Marketing/Marketing Collateral (10-15%)
- Equipment/Fintech/Licenses (5-10%)
- Loan Capitalization/Underwriting/Servicing (5-10%)
- Strategic Support from SELF HQ (5-10%)
- Loan Loss Reserve Fund (5-10%)
- Travel Costs (<5%)

SELF would also need critical in-kind support from the City of Lake Worth Beach and the Utility for on-going community outreach to property owners and local contractors. SELF will also need occasional use of an office space for private consultations with local clients and public meeting spaces for assorted community and contractor recruitment events.

Please see attached (draft) Agreement and Scope for further details and consideration.

PROFESSIONAL SERVICES AGREEMENT
(Financial Services for Sustainable Property Improvements)

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on _____, by and between the **CITY of Lake Worth Beach**, a Florida municipal corporation (“CITY”) and **Solar and Energy Loan Fund of St. Lucie County, Inc.**, a Florida not-for-profit corporation (“SELF”).

RECITALS

WHEREAS, low- and moderate-income (LMI) communities are disproportionately affected by the rising costs of housing, inflation, property insurance, and energy bills, and the increasing frequency and impacts of heat waves and major storm events, and they often include older structures which may be outdated, inefficient, unhealthy, and/or unsafe, and therefore exacerbate these many problems; and

WHEREAS, Florida is facing an affordable housing crisis, inflation and stagnant wages, rising interest rates and restricted credit markets, and is still recovering from multiple major hurricanes and a global pandemic, so there are many critical needs for innovate and accessible financing to help LMI property owners, landlords, and affordable housing developers retrofit and upgrade existing affordable housing units and build new sustainable and resilient affordable housing units; and

WHEREAS, many LMI households and individuals with lower credit scores are unable to secure financing from traditional lenders at affordable rates, if at all, in order to complete much needed repairs and improvements, such as energy efficiency and resilience, and most LMI households have not participated in or benefited from the fast-emerging clean energy economy and related rebates and tax-credits; and

WHEREAS, SELF is a non-profit Loan Fund established in 2010 and certified by the U.S. Treasury Department as a Community Development Financial Institution (CDFI), with a mission to increase access to innovative and affordable financing for sustainable property improvements, with a focus on LMI households (Green Home Loans) and special programs for veterans, female heads of household, disabled people, and individuals with less than stellar credit scores who must otherwise rely on high interest rate credit cards, payday loans, pawn shops, and/or have no financing options at all; and

WHEREAS, SELF provides financial inclusion to underbanked and unbanked communities to advance energy equity and sustainable building practices via unsecured micro-loans based on the applicant’s financial history and ability to pay, not credit scores; and therefore fills financial gaps to help LMI households and businesses advance efficiencies, safeguard families and properties, and utilize state-of-the-art technologies to achieve meaningful savings in energy, water, and insurance bills; and

WHEREAS, SELF and the CITY desire to work together to expand SELF’s financing programs to homeowners and property owners within the CITY’s Utility Service Area to achieve more energy efficiency, solar, storm resilience, and other sustainable building practices, with a focus on SELF’s Green Home Loans, which typically include: home repairs, most often roofs and HVAC; as well as upgrades, such as impact windows and doors, central water and sewer conversions, solar and battery technologies, home EV charging stations, and mobility and aging in place; and

WHEREAS, SELF is also developing new loan products for landlords (SEER loans) and affordable housing developers (SAGE loans) to retrofit existing affordable housing units and to build new sustainable/resilient affordable housing projects; which may also be useful in the CITY; and

WHEREAS, the historic new Climate Bill will provide new and unprecedented opportunities in the coming months and years to achieve energy equity and clean energy all across America through low-

cost capital and grants; and, as the first and only non-profit Green Bank in Florida, with a 12-year track record of nationally-recognized success and a focus on energy equity, SELF is well positioned to help the CITY and/or Utility secure additional low-cost capital and grants; and,

WHEREAS, the CITY and SELF desire to enter this Agreement, which both parties find is in the best interests of the CITY and its residents and serves a valid public purpose.

NOW THEREFORE, in consideration of the promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows.

SECTION 1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Agreement as true and correct statements.

SECTION 2: SELF’S SERVICES. As more specifically set forth in the SELF’s scope of services which is attached hereto as **Exhibit “A”** and incorporated herein, SELF shall provide below market rate financing (i.e., unsecured personal loans) to all qualifying homeowners in the CITY’s Utility Service Area, with an emphasis on Green Home Loans for LMI homeowners, seniors, veterans, and female heads of household, and disabled homeowners. Sustainable home renovation projects shall focus on energy efficiency, storm resilience and solar ready roofs, assorted solar technologies, accessibility and aging in place, septic to sewer conversions, and water conservation and water quality improvement projects. The local SELF representative will provide private consultations with local homeowners and engage in extensive community outreach. The new fulltime Loan Officer for the CITY will also focus on local contractor recruitment and work closely with CITY staff and local elected officials, as reasonably requested. SELF will also consider further opportunities for landlord loans and gap financing for affordable housing developers as well as potential collaboration regarding the new Climate Bill. This Agreement does not authorize SELF as a Property Assessed Clen Energy (PACE) provider in the City of Lake Worth Beach, Florida or Palm Beach County, Florida.

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP. No relationship of employer or employee is created by this Agreement, it being understood that SELF will act hereunder as an independent contractor and none of the SELF’s, officers, directors, employees, independent SELF, representatives or agents performing services for SELF pursuant to this Agreement shall have any claim under this Agreement or otherwise against the CITY for compensation of any kind under this Agreement. The relationship between the CITY and SELF is that of independent contractors, and neither shall be considered a joint venture, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

SECTION 4: TERM, TIME AND TERMINATION.

(a) **Term.** The term of this Agreement shall commence upon the effective date of this Agreement (as defined below) and shall be for a three (3) year term unless earlier terminated as stated herein. The term may be extended by written agreement of the parties for further services related to those services identified herein.

(b) **Time for Completion.** Time is of the essence in the performance of this Agreement. The SELF shall at all times carry out its duties and responsibilities as expeditiously as possible.

(c) **Termination without cause.** Either party may terminate this Agreement at any time with or without cause by giving not less than thirty (30) days written notice of termination.

(d) **Termination for cause.** Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the other party

with written notice specifying the nature of the breach. The party receiving the notice shall then have three (3) days from the date of the notice in which to remedy the breach. If such corrective action is not taken within three (3) days, then this Agreement shall terminate at the end of the three (3) day period without further notice or demand.

(e) Early Termination. If this Agreement is terminated before the completion of all services by either party, SELF shall:

1. Stop services on the date and to the extent specified including without limitation services of any sub-consultants.
2. Transfer all work in progress, completed work, and other materials related to the terminated services to the CITY in the format acceptable to CITY.
3. Continue and complete all parts of the services that have not been terminated.

(f) Effect of Termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination. Notwithstanding the foregoing, the parties acknowledge and agree that the CITY is a municipal corporation and political subdivision of the state of Florida, and as such, this Agreement (and the Exhibit hereto) are subject to budgeting and appropriation by the CITY of funds sufficient to pay the costs associated herewith in any fiscal year of the CITY. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the CITY's governing board in any fiscal year to pay the costs associated with the CITY's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the CITY to be, insufficient to pay the costs associated with the CITY's obligations hereunder in any fiscal period, then the CITY will notify SELF of such occurrence and either the CITY or SELF may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the CITY of any kind whatsoever; however, CITY shall pay SELF for all services performed under this Agreement through the date of termination.

SECTION 5: COMPENSATION

(a) Payments. The CITY agrees to pay SELF **One Hundred Thousand Dollars (\$100,000)** per year for the services to be provided by SELF as set forth herein and Exhibit "A" to wit: upon receipt of SELF's quarterly report and invoice and approval of the same by the CITY, the CITY shall make a quarterly payment of **Twenty-Five Thousand Dollars (\$25,000)** to SELF. The CITY shall not reimburse the SELF for any additional costs incurred as a direct or indirect result of the SELF providing services under this Agreement.

(b) Invoices. The SELF shall render quarterly reports as described in Exhibit "A" and invoices to the CITY for services that have been rendered in conformity with this Agreement in the previous quarter. The invoices shall specify the services performed consistent with the requirements of Exhibit "A". Invoices will normally be paid within thirty (30) days following the CITY's receipt of SELF's invoice and approval of the same.

SECTION 6: CITY SUPPORT. In addition to the compensation to be paid to SELF as set forth herein, the CITY also agrees to provide office and meeting space for SELF to meet with residents in its performance of this AGREEMENT. Office space will include space for the fulltime SELF personnel to meet privately with clients during regular CITY business hours. SELF will coordinate with the CITY's Electric Utility Director or designee on the office space. Meeting space includes space for public meetings and for larger

group client consultation meetings. The meeting space will be of adequate size for the attendees and be based on availability. SELF will coordinate with the CITY and communicate its needs for meeting space for public meetings at least two (2) months in advance and for client consultation meetings preferably one (1) week, but no less than one (1) business day in advance of the desired meeting. The meeting space will be provided at no cost to SELF and will include internet access. The CITY will not provide telephone, copying, printing, or computer services or equipment. The CITY also agrees to allow SELF to disseminate public information about financing opportunities available through SELF in CITY facilities. The CITY also agrees to recognize SELF as a financing option for residents in conjunction with various CITY programs, and to assist SELF with broad community outreach through the CITY's website, utility bill inserts, and other appropriate means as determined by the CITY. Any news release or other type of publicity pertaining to the services performed by SELF pursuant to this Agreement must recognize the contribution of the CITY. SELF must recognize the CITY for its contribution in all promotional materials and at any event or workshop for which CITY funds are allocated or the CITY hosts (in whole or in part). Any news release or other type of publicity must identify the CITY as a funding source. In written materials, the reference to CITY must appear in the same size letters and font type as the name of any other funding sources. All such public recognition must be reviewed and approved by the CITY's City Manager, as to the recognition of the CITY, prior to its release.

SECTION 7: COMPLIANCE AND DISQUALIFICATION. Each of the parties agrees to perform its responsibilities under this Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Agreement.

SECTION 8: PERSONNEL. SELF represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CITY. All of the services required hereunder shall be performed by SELF or under its supervision, and all personnel engaged in performing the services shall be fully qualified and authorized or permitted under federal, state and local law to perform such services.

SECTION 9: SUB-CONSULTANTS. The CITY reserves the right to accept the use of a sub-consultant or to reject the selection of a particular sub-consultant and approve all qualifications of any sub-consultant in order to make a determination as to the capability of the sub-consultant to perform properly under this Agreement. All sub-consultants providing professional services to SELF under this Agreement will also be required to provide their own insurance coverage identical to those contained in this Agreement. In the event that a sub-consultant does not have insurance or does not meet the insurance limits as stated in this Agreement, the SELF shall indemnify and hold harmless the CITY for any claim in excess of the sub-consultant's insurance coverage, arising out of the negligent acts, errors or omissions of the sub-consultant.

SECTION 10: FEDERAL AND STATE TAX. The CITY is exempt from payment of Florida State Sales and Use Tax. SELF is not authorized to use the CITY's Tax Exemption Number.

SECTION 11: INDEMNIFICATION AND INSURANCE.

(a) SELF on behalf of its officers, employees, contractors, assigns, agents, and representatives shall indemnify, hold harmless, and defend the CITY, its officers, employees, agents, and representatives (all of the foregoing shall hereinafter collectively be referred to as the "INDEMNIFIED PARTIES") from and against any and all liabilities, losses, claims, damages, demands, expenses or actions, either at law or in equity, including court costs and attorneys' fees (at all times including trial and appellate levels), that may hereafter at any time be made or brought by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, as a result of any negligent, wrongful, or intentional act or omission, or based on any act of fraud or defalcation by SELF, its employees, agents, contractors, assigns, and officers during performance of this Agreement. The extent of this indemnification shall not be limited in any way as to the amount or types of damages or compensation payable to any of the INDEMNIFIED PARTIES by any employee of SELF, any contractor, assign, or

anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. The indemnification obligation under this Section shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for SELF or any contractor under workers' compensation acts, disability benefit acts or other employee benefit acts. For avoidance of doubt, this indemnification provision shall survive the expiration or termination of this Agreement.

(b) Prior to commencing any services, SELF shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the CITY and SELF. All such insurance policies may not be modified or terminated without the express written authorization of the CITY.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Professional liability/ Errors and Omissions	\$1,000,000 per occurrence
Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent Contractor, personal injury)	\$1, 000,000 per occurrence \$2,000,000 annual aggregate
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker's Compensation	\$ statutory limits

The commercial general liability and automobile policies will name the CITY as an additional insured on primary, non-contributory basis and proof of all insurance coverage shall be furnished to the CITY by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that SELF has obtained insurance of the type, amount, and classification as required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve SELF of its liability and obligations under this Agreement.

SECTION 12: SUCCESSORS AND ASSIGNS. The CITY and SELF each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as agreed in writing by all parties, this Agreement is not assignable.

SECTION 13: DISPUTE RESOLUTION, LAW, VENUE AND REMEDIES. All claims arising out of this Agreement or its breach shall be submitted first to mediation. The parties shall share the mediator's fee equally. The mediation shall be held in Palm Beach County. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held exclusively in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

SECTION 14: WAIVER OF JURY TRIAL. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

SECTION 15: ACCESS AND AUDITS. SELF shall maintain adequate records to justify all payments made by the CITY under this Agreement for at least three (3) years after completion of this Agreement and longer if required by applicable federal or state law. The CITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at SELF's place of business. In no circumstances will SELF be required to disclose any confidential or proprietary information regarding its products and service costs.

SECTION 16: NONDISCRIMINATION.

(a) SELF shall not discriminate on the basis of actual or perceived race, color, sex, age, religion, national origin, physical handicap or other disability, marital status, sexual orientation, or gender identity or expression, in employment, public accommodations, real estate transactions and practices, contracting and procurement activities, and credit extension practices.

(b) SELF shall also comply with the requirements of all applicable federal, state, and local laws, rules, regulations, ordinances, and executive orders prohibiting and/or relating to discrimination, as amended and supplemented. All of the aforementioned laws, rules, regulations, ordinances, and executive orders are incorporated herein by reference.

SECTION 17: AUTHORITY TO PRACTICE. SELF hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the services required under this Agreement, and that it will at all times conduct its business and provide the services under this Agreement in a reputable manner. Proof of such licenses and approvals shall be submitted to the CITY upon request.

SECTION 18: SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 19: PUBLIC ENTITY CRIMES. SELF acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The SELF will advise the CITY immediately if it becomes aware of any violation of this statute.

SECTION 20: NOTICE. All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the CITY shall be sent to:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and if sent to SELF, shall be sent to:

Solar and Energy Loan Fund of St. Lucie County, Inc.
ATTN: Executive Director for SELF

2400 Rhode Island Avenue
Ft. Pierce, FL 34950

The foregoing names and addresses may be changed if such change is provided in writing to the other party. Notice shall be deemed given upon receipt.

SECTION 21: ENTIRETY OF AGREEMENT. The CITY and SELF agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 22: WAIVER. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

SECTION 23: PREPARATION AND NON-EXCLUSIVE. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation. This is a non-exclusive Agreement and the CITY reserves the right to contract with individuals or firms to provide the same or similar services.

SECTION 24: MATERIALITY. All provisions of the Agreement shall be deemed material. In the event SELF fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and CITY may at its option provide notice to SELF to terminate for cause.

SECTION 25: LEGAL EFFECT. This Agreement shall not become binding and effective until approved by the CITY's City Commission. The Effective Date is the date this Agreement is executed by the CITY.

SECTION 26: NOTICE OF COMPLAINTS, SUITS AND REGULATORY VIOLATIONS. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

SECTION 27: SURVIVABILITY. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 28: COUNTERPARTS. This Agreement may be executed in one or more counterparts electronically, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement.

SECTION 29: PALM BEACH COUNTY IG. In accordance with Palm Beach County ordinance number 2011-009, the SELF acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. SELF has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

SECTION 30: AGREEMENT DOCUMENTS AND CONTROLLING PROVISIONS. This Agreement consists of the terms and conditions of this Agreement and Exhibit "A". The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between the terms and conditions of this Agreement and Exhibit "A", the terms and conditions of

this Agreement shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

SECTION 31: OWNERSHIP OF DELIVERABLES. The deliverables, work product, specifications, calculations, supporting documents, reports, invoices, or other work products which are listed as deliverables by the SELF in Exhibit “A” to the CITY shall become the property of the CITY. SELF may keep copies or samples thereof and shall have the right to use the same for its own purposes. The CITY accepts sole responsibility for the reuse of any such deliverables in a manner other than as initially intended or for any use of incomplete documents.

SECTION 32: REPRESENTATIONS AND BINDING AUTHORITY. By signing this Agreement, on behalf of SELF, the undersigned hereby represents to the CITY that he or she has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of SELF for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

SECTION 33: PUBLIC RECORDS. SELF shall comply with Florida’s Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the CITY as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the CITY to perform the service.
- (b) Upon request from the CITY’s custodian of public records or designee, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if SELF does not transfer the records to the CITY.
- (d) Upon completion of this Agreement, transfer, at no cost, to the CITY all public records in possession of SELF or keep and maintain public records required by the CITY to perform the service. If SELF transfers all public records to the CITY upon completion of the Agreement, SELF shall destroy any duplicate public records that are exempt or confidential or exempt from public records disclosure requirements. If SELF keeps and maintains public records upon completion of the Agreement, SELF shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY’s custodian of public records or designee, in a format that is compatible with the information technology systems of the CITY.

IF SELF HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SELF'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE CITY OF LAKE WORTH BEACH, ATTN: CITY CLERK, AT (561) 586-1662, CITYCLERK@LAKEWORTHBEACHFL.GOV, 7 N. DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.

SECTION 34: CONFIDENTIAL AND PROPRIETARY INFORMATION. Each party (the “Receiving Party”) will keep confidential and not disclose to any other person or entity or use (except as expressly and unambiguously authorized by this Agreement) information, technology or software (“Confidential

Information”) obtained from the other party (the “Disclosing Party”); provided, however, that the Receiving Party will not be prohibited from disclosing or using information (i) that at the time of disclosure is publicly available or becomes publicly available through no act or omission of the Receiving Party, (ii) that is or has been disclosed to the Receiving Party by a third party who is not under, and to whom the Receiving Party does not owe, an obligation of confidentiality with respect thereto, (iii) that is or has been independently acquired or developed by the Receiving Party without access to the Disclosing Party’s Confidential Information, (iv) that is already in the Receiving Party’s possession at the time of disclosure, or (v) that is required to be released by law.

SECTION 35: EXPORT ADMINISTRATION. Each party agrees to comply with all export laws and regulations of the United States ("Export Laws") to assure that no software deliverable, item, service, technical data or any direct product thereof arising out of or related to this Agreement is exported directly or indirectly (as a physical export or a deemed export) in violation of Export Laws.

SECTION 36: NO THIRD-PARTY BENEFICIARIES. There are no third-party beneficiaries under this Agreement.

SECTION 37: SCRUTINIZED COMPANIES.

(a) SELF certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the SELF or any of its subcontractors are found to have submitted a false certification; or if SELF or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

(b) If this Agreement is for one million dollars or more, SELF certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the SELF, or any of its subcontractors are found to have submitted a false certification; or if ELF or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

(c) SELF agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(d) SELF agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

(e) SELF agrees that if it or any of its subcontractors’ status changes in regard to any certification herein, the SELF shall immediately notify the CITY of the same.

(f) As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above stated contracting prohibitions then they shall become inoperative.

SECTION 38: E-VERIFY. Pursuant to Section 448.095(2), Florida Statutes, to the extent applicable, SELF shall:

(a) Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this

Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

(b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

(c) Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;

(d) Comply fully, and ensure all subcontractors comply fully, with Section 448.095, Florida Statutes;

(e) Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized Aliens; Employment Prohibited) shall be grounds for termination of this Agreement; and,

(f) Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the SELF may not be awarded a contract for at least one (1) year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have made and executed this Professional Services Agreement (Financial Services for Sustainable Property Improvements) as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Betty Resch, Mayor

By: _____
Melissa Ann Coyne, CITY Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, CITY Attorney

By: _____
Financial Services Director

SELF: **Solar and Energy Loan Fund of St. Lucie County, Inc.**

[Corporate Seal]

By: _____
Print name:
Print Position:

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this ____ day of _____, 2023, by _____, as the _____ **Solar and Energy Loan Fund of St. Lucie County, Inc.**, a Florida not-for-profit corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind SELF to the same.

Notary Public Signature

Notary Seal:

EXHIBIT A SCOPE OF SERVICES

SELF shall provide the following services in accordance with the Agreement.

1. General Financing program:

- A. SELF shall raise up to \$1.5 million of low-cost loan capital from multiple outside sources, including but not limited to, banks, faith-based organizations, foundations, private investors, worldwide crowd funding, and *potentially* the CDFI Fund and forthcoming Climate Bill.
- B. SELF shall deploy low-cost loan capital to homeowners for sustainable building practices, energy efficiency, resilience, clean energy alternatives, health and safety, and local green jobs.
- C. SELF shall provide below-market rate financing for unsecured personal loans with interest rates starting as low as 5% fixed.
- D. SELF Green Home Loan financing may be used for a variety of sustainable home improvement projects, including but not limited to the following:
 - (1) Energy conservation and efficiency (e.g. weatherization, high-efficiency AC, LED);
 - (2) Renewable energy (e.g. solar water heaters, solar PV, and solar attic fans);
 - (3) Wind-hazard mitigation (e.g. roofs, impact windows and doors, and hurricane shutters);
 - (4) Water conservation (e.g. low-flow irrigation systems and rain barrels);
 - (5) Water quality loans, including but not limited to septic to sewer conversions and lateral line repairs and rehabilitations;
 - (6) Disability products (e.g., wheelchair ramps, bathroom retrofits); and
 - (7) Other projects authorized under Community Development Financial Institution (CDFI) guidelines and SELF's governing documents.
- E. SELF shall expand its lending activities in the City of Lake Worth Beach and provide a minimum of \$500,000 in financing capital annually for homeowners within the CITY's utility service area.
- F. SELF will also explore and consider additional financing options for local solar co-op projects, landlord loans (SEER) and affordable housing developers (SAGE).

2. **Client Project Coordination:** SELF shall provide basic project coordination b prescreening all contractors, checking pricing, and assisting with quality control (i.e., building inspections) for participating homeowners to guide them from the early stages of financing to the completion of their project(s). Specifically, SELF will prescreen all participating contractors to verify proper licenses and insurance, review individual quotes to ensure fair pricing and protect against price gouging, and confirm the quality of contractor's work with local building inspections and the homeowner before making final direct payment to the contractor. Project management shall also include steering potential clients to other, better-suited and/or lower cost options if they are available. SELF does not serve as the participating homeowners' project manager or contractor, who is/are responsible for the design, product type, warranties, workmanship, subcontractors, building permits, and the overall success of the construction project.

3. SELF Network & Job Creation:

- A. SELF shall establish a network of local contractors approved to complete SELF financed projects and maintain an adequate network of contractors for the work to be performed and provide quality control of the contractors in its network.
- B. SELF shall work with local builders' associations, local businesses, and other interested parties to increase contractor participation in the program, including female and minority-owned contractors, through the following activities:
 - (1) Establish a network of locally approved contractors to complete SELF financed projects. SELF shall prescreen all contractors to confirm proper licenses, insurance, and a good track record, including possible complaints against the contractor and shall perform periodic quality control

on each contractor in the network. SELF will remove contractors from the network for failure to maintain the required documentation and good standards. SELF shall not charge contractors for participation in the network or for receiving financing for individual projects. SELF may make optional bridge loans available for qualified contractors on a per project basis for a nominal fee. SELF shall pay the contractors directly after the projects have been inspected and approved by local building officials.

- (2) Strive to have projects completed by local contractors within the City of Lake Worth Beach, to the greatest extent possible.
 - (3) Hold quarterly meetings and outreach events with local contractors to foster participation in the program and advance full understanding of program guidelines, parameters, and benefits.
4. **Reporting and Coordination:** SELF shall provide the CITY with impact reports, as described in this Section 4, and meet regularly with CITY staff and elected officials to discuss those reports and on-going activities.
- A. SELF shall submit reports on a quarterly basis, in accordance with the schedule set forth in Section 7 of this Exhibit. The Annual Report submitted at the conclusion of each year must provide information for the SELF's activities during the fourth quarter and during the year, and it will be considered an Annual Report for purposes of the Agreement.
 - B. Each report must contain the following information:
 - (1) Summary of the deliverables completed, including any item listed in Section 8 of this Exhibit;
 - (2) Each Performance Measure, as described in Section 5 of this Exhibit;
 - (3) Success stories, including testimonials from clients and participating contractors; and
 - (4) Summary of challenges and issues to resolve.
 - C. Each report shall be provided in a format agreed upon by SELF and the CITY along with a summary of any challenges or issues that are ongoing or anticipated to arise in the next twelve months.
5. **Reporting of Performance Measures:** Each report shall describe SELF's success in meeting the Performance Measures listed in Section 8 of this Exhibit as follows:
- A. Each Performance Measure must be accounted for over the following time periods (as applicable):
 - (1) Quarterly;
 - (2) Year-To-Date; and,
 - (3) Trailing Twelve Months.
 - B. Each Performance Measure must be separated into the following groups when applicable:
 - (1) Target Markets;
 - (2) CITY limits; and,
 - (3) Lake Worth Beach Utility Service Area.
6. **Community Outreach:**
- A. SELF shall conduct at least four (4) community outreach events in the CITY each year to promote and educate the general public, targeted populations, and area contractors about assorted programs and services.
 - B. SELF shall work with the City on assorted community outreach events, and coordinate closely with the City's utility on its energy auditing program.
 - C. SELF shall work in partnership with area banks, credit counseling organizations, the City, and other interested parties to help populations in financial distress rebuild their credit by doing at least the following:
 - i. Facilitate a minimum of two (2) credit rebuilding seminars per year to help SELF's clients and City residents improve their credit, qualify for the program, and obtain lower interest rates; and
 - ii. Assist credit-impaired, or individuals with no credit history to secure financing for sustainable home improvement projects and thereby help them build and improve their

credit scores in the process.

7. Deliverables & Schedule:

Item	Deliverables	Schedule
A	<u>90-Day Ramp Up Period</u> -Recruit, hire, and train new LWB Loan Officer -Purchase equipment and finalize licenses and set-up -Begin collaborative meetings with CITY staff, including co-marketing opportunities -Complete Strategic Action Plan (MS Word, PDF, PowerPoint formats) -Complete summary report of Ramp-Up period	90 days after effective date
B	<u>Launch “Green Home Loan” program</u> -Develop marketing materials and co-marketing opportunities -Begin client consultations and loan closings -1 Community outreach event -Begin contractor recruitment -1 Contractor recruitment and training meeting	First Quarter after Ramp Up
C	-Complete Green Home Loans -Continue <u>contractor recruitment</u> efforts -1 Contractor recruitment and training meeting -Continue with community outreach and marketing -1 Community event or targeted outreach program	Second Quarter after Ramp Up
D	-Complete Green Home Loans -Continue <u>contractor recruitment</u> efforts -1 Contractor recruitment and training meeting -Continue with community outreach and marketing -1 Community event or targeted outreach program	Third Quarter after Ramp Up
E	Annual Report (summary of activities for Year 1) 1 Credit Rebuilding seminar 1 Contractor recruitment and training meeting List of contractors added to SELF’s network, including location, trade/specialty 1 Community event or targeted outreach program	Fourth Quarter after Ramp Up
F	Reporting 90-Day Ramp-Up Period (January – March 2023) First Quarter (April – June 2023) Second Quarter (July – September 2023) Third Quarter (October – December 2023) Fourth Quarter/Annual Report (January – March 2024) Continue sequence for second and third years	Reporting Dates: April 2023 July 2023 October 2023 January 2024 April 2024
G	Audited Financials	Upfront and Annually within 90 days after end of SELF’s fiscal year

8. Summary of Performance Measures

SELF shall, as part of each quarterly report, provide the following Performance Measures to demonstrate the effectiveness of the services provided pursuant to the Agreement.

Item	Performance Measures	Year 1 Target	Year 2 Target	Year 3 Target
A	Number of community/contractor events/credit rebuilding events	6/6	6/6	6/6
B	Number of participants in a community event	25	25	25
C	# of Green Home Loans (“Stretch goals”)	10-20	20-30	30-40
D	Amount of financing available per year	\$500,000	\$500,000	\$500,000

Please note:

SELF will provide up to \$1.5 million for the Green Home Loans program in the CITY over the first three (3) years; but, due to the small population in the City of Lake Worth Beach’s utility service area, SELF will need very strong collaboration with the CITY and UTILITY to achieve these ambitious stretch goals.

SELF will also bring all of its other available lending programs to the City for consideration and use, including Landlord Loans, Gap Financing for affordable housing developers, and much more. **PACE program is excluded as that is a Palm Beach County program.**

EXHIBIT A

SCOPE OF SERVICES

SELF shall provide the following services in accordance with this AGREEMENT.

1. General Financing program:
 - A. SELF shall raise up to \$1.5 million of low-cost loan capital from multiple outside sources, including but not limited to, banks, faith-based organizations, foundations, private investors, worldwide crowdfunding, and *potentially* the CDFI Fund and forthcoming Climate Bill.
 - B. SELF shall deploy low-cost loan capital to homeowners for sustainable building practices, energy efficiency, resilience, clean energy alternatives, health and safety, and local green jobs.
 - C. SELF shall provide below-market rate financing for unsecured personal loans with interest rates starting as low as 5% fixed.
 - D. SELF Green Home Loan financing may be used for a variety of sustainable home improvement projects, including but not limited to the following:
 - (1) Energy conservation and efficiency (e.g. weatherization, high-efficiency AC, LED);
 - (2) Renewable energy (e.g. solar water heaters, solar PV, and solar attic fans);
 - (3) Wind-hazard mitigation (e.g. roofs, impact windows and doors, and hurricane shutters);
 - (4) Water conservation (e.g. low-flow irrigation systems and rain barrels);
 - (5) Water quality loans, including but not limited to septic to sewer conversions and lateral line repairs and rehabilitations;
 - (6) Disability products (e.g., wheelchair ramps, bathroom retrofits); and
 - (7) Other projects authorized under Community Development Financial Institution (CDFI) guidelines and SELF's governing documents.
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 - (1) Establish a network of locally approved contractors to complete SELF financed projects. SELF shall prescreen all contractors to confirm proper licenses, insurance, and a good track record, including possible complaints against the contractor and shall perform periodic quality control

on each contractor in the network. SELF will remove contractors from the network for failure to maintain the required documentation and good standards. SELF shall not charge contractors for participation in the network or for receiving financing for individual projects. SELF may make optional bridge loans available for qualified contractors on a per project basis for a nominal fee. SELF pays the contractors directly after the projects have been inspected and approved by local building officials.

- (2) Strive to have projects completed by local contractors within the City of Lake Worth Beach, to the greatest extent possible.
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 - (1) Target Markets;
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 - A. SELF shall conduct at least four (4) community outreach events in the CITY each year to promote and educate the general public, targeted populations, and area contractors about assorted programs and services.
 - B. SELF shall work with the City and Utility on assorted community outreach events, and coordinate closely with the local energy auditing program.
 - C. SELF shall assist credit-impaired and individuals with no credit history to secure financing for sustainable home improvement projects and thereby help them build and improve their credit scores in the process.

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G	Audited Financials	Upfront and Annually within 90 days after end of fiscal year

8. Summary of Performance Measures

SELF shall, as part of each quarterly report, provide the following Performance Measures to demonstrate the effectiveness of the services provided pursuant to this AGREEMENT.

Item	Performance Measures	Year 1 Target	Year 2 Target	Year 3 Target
A	Number of community/contractor events	4/4	4/4	4/4
B	Number of participants in a community event	25	25	25
C	# of Green Home Loans ("Stretch goals")	10-20	20-30	30-40
D	Amount of financing available per year	\$500,000	\$500,000	\$500,000

Please note:

SELF will provide up to \$1.5 million for the Green Home Loans program in the CITY over the first three (3) years; but, due to the small population in the City of Lake Worth Beach's utility service area, SELF will need very strong collaboration with the CITY and UTILITY to achieve these ambitious stretch goals.

SELF will also bring all of its other available lending programs to the City for consideration and use, including Landlord Loans, Gap Financing for affordable housing developers, and much more.

STAFF REPORT UTILITY MEETING

AGENDA DATE: April 25, 2023

DEPARTMENT: Electric Utility

TITLE:

FMPA Municipal Solar Phase III Project Power Sales Contract

SUMMARY:

Request for approval to enter into a Power Sales Contract for purchase of electric power from the Florida Municipal Power Agency (“FMPA”) Municipal Solar Phase III Project (“Project”)

BACKGROUND AND JUSTIFICATION:

FMPA has undertaken a competitive process on behalf of its members to purchase solar energy on their behalf at a scale otherwise not available to individual municipal electric utility members (“Members”). In undertaking this task FMPA has received Member interest in ~300 megawatts of solar production capacity. Lake Worth Beach’s previously expressed non-binding interest is for up to 30 megawatts of solar production capacity from the proposed Project, subject to approval by the City Commission. FMPA is seeking formal approval from Members of their desired participation level in the Project. City Staff and wholesale power consultant “Vantage” have evaluated various levels of City participation, detailed later in this document.

As structured by FMPA in negotiations with the selected developer, the Project will entail building solar power plants at up to four sites in the state of Florida, with FMPA entering into a Power Purchase Agreement (PPA) with the developer, and FMPA entering into Power Sales Contracts (PSC) with individual participating Members such as the City.

The Project is to be constructed and owned by a subsidiary of Origis Energy, a Miami, Florida based company (“Origis”). Based on information available on their web site, Origis Energy is bringing clean and cost effective solar and energy storage solutions within reach for utility, commercial and industrial as well as public sector clients. The Origis team has worked to ensure the interests of all stakeholders are upheld in over 170 projects worldwide totaling more than 5 gigawatts (“GW”) to date of developed solar and energy storage capacity. Headquartered in Miami, FL, Origis Energy delivers excellence in solar and energy storage development, financing, engineering, procurement and construction (EPC) and operations, maintenance and asset management for investors and clean energy consumers in the US.

FMPA and Origis have negotiated a fixed price per Megawatt-Hour of electricity, and agreed to keep the price confidential other than to state publicly that the PPA price is less than \$45 per megawatt-hour (MWhr). Under the terms of the PPA and PSC the price will remain flat for the duration of the twenty (20) year PPA with deliveries expected in 2026. City officials may view the actual confidential pricing and unredacted contract(s) in private with City and/or FMPA Staff.

City’s participation in the Project is a key component of its commitment to reduce greenhouse gas emissions associated with the production of electricity for its electric utility customers, and will further reduce its exposure to rising natural gas prices and market volatility. Under Resolution 05-2023 (approved February 28, 2023) City has committed to reducing its Electric Utility’s greenhouse gas emissions to net-zero by 2045.

Electric power received by City’s electric utility under the Power Sales Contract with the Project is anticipated to begin by December of 2026 and will immediately reduce its purchases under its supplemental electricity contract which is reliant on fossil fuels, and will directly replace like amounts of its electricity generated using fossil fuels.

City's has made substantial commitments to solar energy with its own 1.7 MW project atop the City's closed landfill, its popular and growing net metering program with 2.3 MW of customer-owned solar projects (includes 1.803 MW of existing installations plus 0.502 MW of projects under development but not yet operational), and its participation in the FMPA Municipal Solar Phase II Project anticipated to begin deliveries in December 2023 and 2024. Modeling performed by City's wholesale power consultant "Vantage" and City Staff anticipates that we may experience periods of time in calendar year 2027 when contracted solar deliveries exceed its needs, requiring implementation of battery energy storage projects which are recognized as being an integral element of achieving the City goal of net-zero greenhouse gas emissions by 2045, or alternatively, selling excess contracted electricity in the wholesale electricity market.

The periods of time in which the City may have excess contracted electricity involve daylight hours outside of summer months. During periods of high customer demand such as in summer months the issue is largely negated as customer energy needs increase significantly during that period of time. Staff has modeled multiple scenarios being mindful that its popular net metering program is essential and must have room to grow, as well as in-City community solar projects including an expansion of the solar project atop the City's landfill, as may be approved by the City Commission as a part of an in-City community solar initiative.

Table 1 provided in the backup details the potential exposure of excess electric purchases. This is a highly unlikely scenario and should only be considered to be the maximum potential exposure, it is likely that under certain market conditions as experience recently with high natural gas prices, that any excess purchases that are not able to be utilized by City's growing customer base could be stored in battery energy systems, or may even be sold in wholesale electricity markets. It is also likely that with growing electrification of additional appliances in homes, as well as growing electrification of vehicles expected to be mandated by the federal government, that City's need for renewable energy will grow significantly.

MOTION:

Move to approve/disapprove City's execution of a FMPA Municipal Solar Phase III Project Power Sales Contract at a participation level of ____ MW.

ATTACHMENT(S):

- Fiscal Impact Analysis- N/A
- Lake Worth Beach Solar III Approval; FMPA Presentation
- FMPA PPA with Origis (Redacted)
- Table 1; Solar III Commitment Analysis
- FMPA Power Sales Contract with City (Pending)

Table 1 - Solar III Commitment Analysis (2027)		
Solar III Commitment	Annual Production in MWhrs	Annual Cost
10 MW	26,951	\$1,212,795
15 MW	40,427	\$1,819,215
20 MW	53,903	\$2,425,635
25 MW	67,378	\$3,032,010
30 MW	80,854	\$3,638,430



Florida Municipal Solar Project Phase III

Lake Worth Beach City Commission

April 25, 2023



Florida Municipal Solar Project

Phase III Discussion

- Florida Municipal Solar Project Background, Update and Schedule
- Power Purchase Agreement (PPA) Structure
- Solar III Project – FMMPA Board and Executive Committee Approvals
- Solar III Project Governance
 - Solar III Project Committee and Charter



Florida Municipal Solar Project Background, Update and Schedule

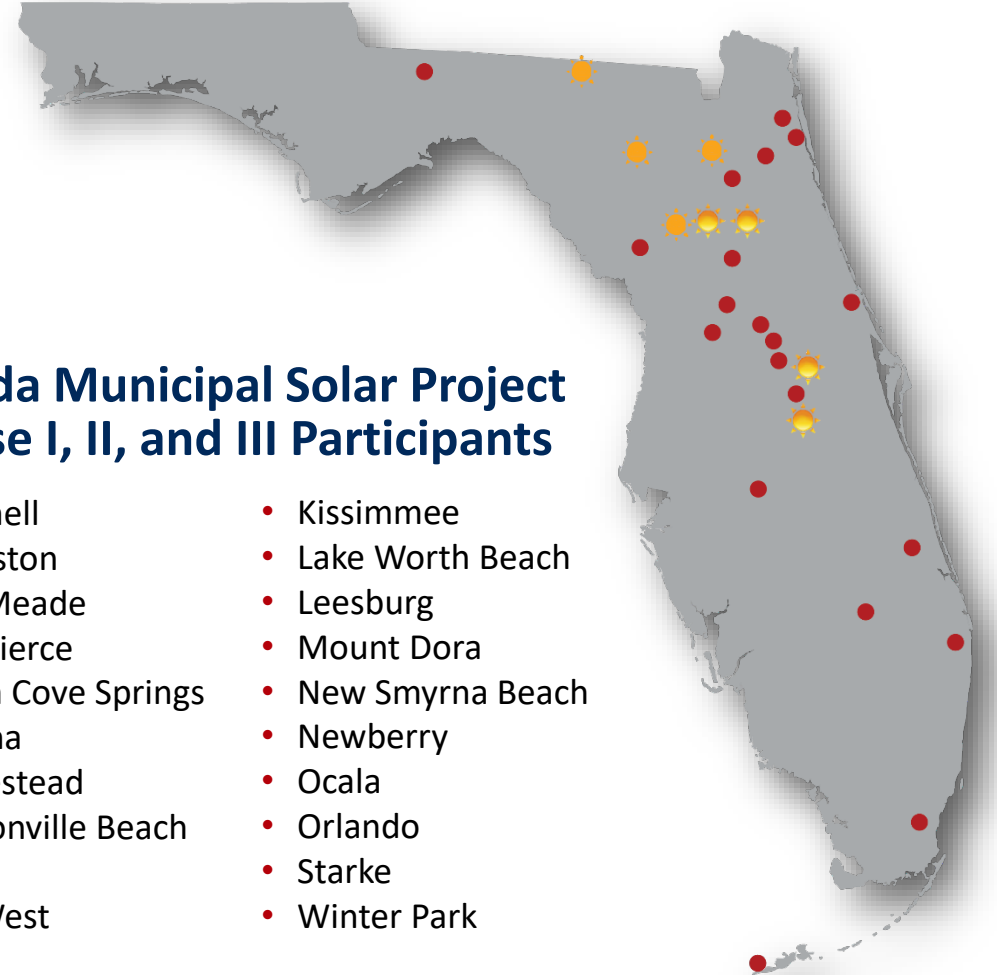
FMPA to Provide 20 Cities Low-Cost Solar

Growing Solar from 1% Today to 7% by 2027

- Florida Municipal Solar Project **Phase I**
 - Two sites totaling 149 MW
 - Enough to power 30,000 homes
 - Third Phase I facility (Poinsett) contract terminated December 2022
- Two **Phase II** sites coming in 2023-2024
- Four additional **Phase III** solar sites
 - COD 2025 and 2026
 - Includes former Poinsett participants
- Most cost-effective way to provide solar to customers

Florida Municipal Solar Project Phase I, II, and III Participants

- Bushnell
- Clewiston
- Fort Meade
- Fort Pierce
- Green Cove Springs
- Havana
- Homestead
- Jacksonville Beach
- JEA
- Key West
- Kissimmee
- Lake Worth Beach
- Leesburg
- Mount Dora
- New Smyrna Beach
- Newberry
- Ocala
- Orlando
- Starke
- Winter Park



Phase III Participants

Phase III to double size of Florida Municipal Solar Project

Participant (* former Poinsett)	Total MW
FMPA Board / ARP	72.5
Fort Meade	1.0
Fort Pierce*	0.9
Homestead*	10.0
JEA	139.8
Key West*	12.4
Lake Worth Beach*	30.0
Leesburg	10.0
Ocala*	3.0
Winter Park*	20.0

- Total MWs include former Poinsett allocations
- Lake Worth Beach is redirecting 10MW from Poinsett and considering additional 20MW in Phase III

Florida Municipal Solar Project

Lake Worth Beach to receive 56.55 MW solar energy by 2025

- Phase I: Total 10.0 MW initially planned for LWB
 - Lake Worth Beach was scheduled to receive 10.0 MW* from Phase I Poinsett facility, which was terminated in December 2022
- Phase II: Total 26.55 MW
 - 13.275 MW from Rice Creek (scheduled for December 2023)
 - 13.275 MW from Whistling Duck (scheduled for December 2024)
- Phase III: Total 30.0 MW (Approval requested at April 25 meeting)
 - 20 MW New solar share (scheduled for December 2025)
 - 10 MW* redirected from Phase I Poinsett facility

Project Developer is Origis Energy

Most competitive pricing with multiple facilities

- Power Purchase Agreement price < \$45/MWh
 - 20-year term; flat rate throughout term of PPA
 - Does not include incremental cost of transmission service needed for delivery
 - Nominal A&G adder
- Duke and FPL-interconnected facilities
- Network upgrade costs (if any) paid by project, refundable from transmission provider
- Four proposed facilities with diverse geographical locations
- COD Dec. 2025 (Duke), Dec. 2026 (FPL)



Phase III Schedule

Target: FMPA Approvals at May Board and EC Meetings

Activity	Date
Solar III participant informational workshop	March 15
Negotiation and PPA development with Origis and FRP	March 31
Member participation agreement/enabling agreement development	March 31
Member local governing board approvals	May 17
FMPA Board and Executive Committee approvals	May 18
Final execution of PPAs	May 31

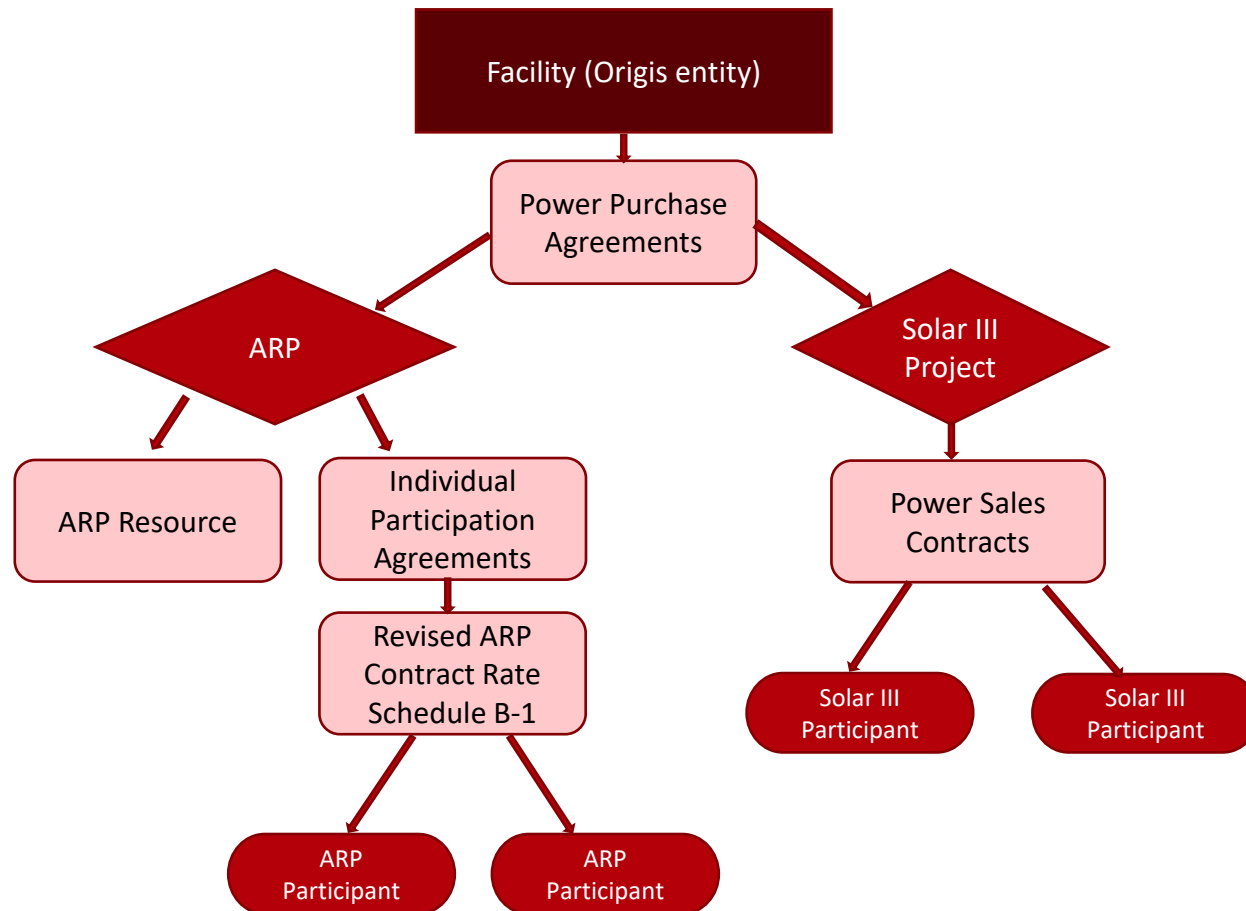
NOTE: FMPA staff available to support local governing board approvals



Power Purchase Agreement (PPA) Structure

Project PPA Structure

ARP and Solar III Project Will Have Separate PPA's



Solar III Project to include Homestead, JEA, Lake Worth Beach and Winter Park



Solar III Project – FMIPA Board and Executive Committee Approvals

FMPA Board Approvals

Documents Required for Final Approval on May 18

Board Approvals:

- **Power Purchase Agreements** between FMPA Solar Project III and Origis
- Solar Project **power sales contracts** between FMPA and Solar Project III participants (following confirmation of individual member approvals)
- **Resolution 2023-BXX** to form FMPA Solar Project III

PPA Key Terms

Pricing Terms Confidential

Key Term	Definition
20-Year Term	Term extension subject to mutual agreement
Delivery Point	Two facilities Duke Interconnect; two facilities FPL Interconnect
Commercial Operation Date (COD)	Dec. 31, 2025 or 2026 with permitted extensions; Origis pays for delays after permitted COD extensions
Production Guarantee	Damages paid for under-performance measured over rolling two years
Network Upgrades	Cost not included in price; If network upgrades are required, payment will be refunded by DEF and/or FPL
Energy Price	<\$45/MWh (exact pricing confidential); flat pricing over 20-year PPA term

Solar III Project Power Sales Contract Terms

Approval by FMPA Board of Directors

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

Board Resolution 2023-Bxx

Approval by Board of Directors

Designates Solar III Project as a project under the Interlocal Agreement

Establishes Solar III Project participants' power entitlement share in the Solar III Project

Approves Solar III Project PPAs between FMPA (Solar III Project) and Origis Energy

Approves separate power sales contracts between FMPA and the Solar III Project participants

Designates authorized officers

Provides for severability

Provides an effective date

Energy Exchange Agreement

Allows optimal allocation between Duke and FPL-interconnected facilities

- ARP will enter into an Energy Exchange Agreement with Lake Worth Beach for 30MW in Phase III Duke facility
 - Allows Lake Worth Beach to participate in Phase III facility with earliest scheduled operational date
 - Allows Lake Worth Beach to avoid transmission wheeling charges from Duke-interconnected facility
 - Limited additional cost risk to LWB if exchange cannot be delivered or received for rare load conditions or unit issues
- Similar to Phase II Exchange Agreement between LWB and ARP
 - ARP receives LWB solar energy from DEF facility
 - ARP delivers equal amount of energy to the FPL transmission system



Solar III Project Governance



Solar III Project Committee and Charter

Key Terms (Based on Solar I and Solar II Project Templates)

1. Purpose – to govern project
2. Mission – oversee administration and establish budget
3. Organization and Term – termination of Solar Power Sales Contracts
4. Membership – representative for each participating member
5. Meetings – public notice, frequency and details determined by Committee members
6. Quorum – Discretionary Term Decisions (in PPA), budget, minutes, other Committee business
7. Voting – Discretionary Term Decisions, other decisions
8. Election of Chair – selection, term of service
9. Changes to Charter – unanimous consent of Committee



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RESOLUTION NO. 12-2023 – A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, PALM BEACH COUNTY, FLORIDA, (I) PROVIDING FOR AUTHORITY; (II) PROVIDING FOR THE INCORPORATION OF CERTAIN FINDINGS, DEFINED TERMS, AND GENERAL PROVISIONS; (III) APPROVING AND AUTHORIZING THE EXECUTION OF A SUBSTITUTE POWER SALES CONTRACT BETWEEN FLORIDA MUNICIPAL POWER AGENCY (SOLAR PROJECT) AND THE CITY OF LAKE WORTH BEACH, PROVIDING FOR THE MAKING OF PAYMENTS PURSUANT TO SUCH SUBSTITUTE POWER SALES CONTRACT, AND MAKING CERTAIN COVENANTS IN CONJUNCTION WITH SUCH PAYMENTS; (IV) REQUESTING A NUMBER OF MEGAWATTS OF CAPACITY AND ENERGY FROM THE SOLAR III PROJECT WHICH WILL SERVE AS THE BASIS FOR THE CALCULATION OF EACH PROJECT PARTICIPANT'S SOLAR ENTITLEMENT SHARE AND AUTHORIZING THE AUTHORIZED OFFICER OF THE CITY OF LAKE WORTH BEACH TO APPROVE A FINAL SOLAR ENTITLEMENT SHARE; (V) AUTHORIZING THE INCLUSION OF SUCH FINAL SOLAR ENTITLEMENT SHARE IN THE RENEWABLE ENERGY POWER PURCHASE AGREEMENT BETWEEN FLORIDA MUNICIPAL POWER AGENCY (SOLAR III PROJECT) AND THE SELLER; (VI) PROVIDING FOR SECURITY FOR PAYMENT BY THE CITY OF LAKE WORTH BEACH PURSUANT TO THE SUBSTITUTE POWER SALES CONTRACT; (VII) PROVIDING FOR THE NATURE OF THE OBLIGATIONS UNDERTAKEN BY THE CITY OF LAKE WORTH BEACH PURSUANT TO THE SUBSTITUTE POWER SALES CONTRACT; (VIII) ESTABLISHING A RATE COVENANT; (IX) PROVIDING FOR THIS RESOLUTION TO CONSTITUTE A CONTRACT; (X) DESIGNATING AUTHORIZED OFFICERS OF THE CITY OF LAKE WORTH BEACH, DESIGNATING AUTHORITY OF AUTHORIZED OFFICERS, AND PROVIDING FOR FURTHER ACTIONS; (XI) TAKING OF OTHER ACTIONS; (XII) PROVIDING FOR SEVERABILITY; AND (XIII) PROVIDING AN EFFECTIVE DATE

Whereas, on March 21, 2018, the Florida Municipal Power Agency (“**FMPA**”) Board of Directors adopted Resolution 2018-B5, which approved and established the Solar Project, and designated the Solar Project as a project under the Interlocal Agreement (as hereinafter defined), with the following members of FMPA being the “**Project Participants**,” with the Power Entitlement Share ascribed to each as shown below:

Project Participant	Power Entitlement Share	
	MW	Percentage
City of Alachua	9.0	15.789%
City of Bartow	13.0	22.807%
City of Homestead, doing business as Homestead Public Utilities	10.0	17.544%
City of Lake Worth Beach	10.0	17.544%
City of Wauchula	5.0	8.772%
City of Winter Park	10.0	17.544%

The Solar Project’s generating resource consisted of the Solar Project PPA (as defined in Resolution 2018-B5), pursuant to which FMPA provided for the purchase of all of the capacity and energy output associated with a 57 MW undivided share of a 74.5 MW renewable solar generation facility that would be constructed and was anticipated to reach commercial operation by June 30, 2020, on behalf of the Project Participants.

Whereas, the City of Lake Worth Beach, Florida, and the other Project Participants in the Solar Project each have entered into a Power Sales Contract with FMPA to purchase the capacity and energy associated with its Power Entitlement Share of the Solar Project. The City of Lake Worth Beach, Florida], approved its Power Sales Contract for the Solar Project on **[INSERT DATE]**.

Whereas, on January 16, 2020, the FMPA Board of Directors approved an amendment to the Solar Project PPA that amended the guaranteed commercial operation date of the renewable solar generation facility from June 30, 2020 to June 30, 2023.

Whereas, Florida Municipal Power Agency (“**FMPA**”), on January 14, 2022, issued its Request for Proposals for Renewable Solar Generation Phase III, to solicit opportunities for FMPA, on behalf of the City of Lake Worth Beach, Florida and other members of FMPA, to acquire additional capacity and energy from one or more renewable solar generation projects in the State (collectively, the “**RFP**”).

Whereas, in May 2022, Poinsett Solar LLC, an affiliate of Florida Renewable Partners, LLC (an affiliate of NextEra Energy, Inc.) and FMPA’s contract counterparty to the Solar PPA (“**FRP**”), notified FMPA of substantial cost, equipment shortages, and other issues FRP was facing in prosecuting the engineering, procurement, and construction activities for the renewable solar generation facility to achieve the amended June 30, 2023 guaranteed commercial operation date.

Whereas, FMPA received a number of proposals in response to the RFP and evaluated and ranked those proposals for discussion with the City of Lake Worth Beach, Florida and other FMPA member utilities that may have an interest in participating in an additional renewable solar generation project, including the City of Lake Worth Beach, Florida, and the other Project Participants in the Solar Project.

Whereas, over the summer and fall of 2022 FMPA staff engaged in significant discussions with the City of Lake Worth Beach, Florida, and the other Project Participants in the Solar Project, and FRP, and reached unanimous consent among the Project Participants, and mutual consent between FMPA and FRP, to terminate the Solar PPA. The City of Lake Worth Beach, Florida, gave its approval and consent for terminating the Solar PPA on **[INSERT DATE]**.

Whereas, on December 8, 2022, the FMPA Board of Directors approved entering into a termination and release agreement with FRP to terminate the Solar PPA and provide for the payment of certain termination funds to FMPA, which were received by FMPA and used to pay initial costs of the Solar Project, and the remainder amount was distributed to the Project Participants as directed by the FMPA Board of Directors action on February 16, 2023.

Whereas, the Power sales Contact between FMPA and each of the Project Participants in the Solar Project was terminated, by its terms, upon the termination of the Solar PPA.

Whereas, FMPA has now chosen a winning proposal from the responsive submissions to the RFP and entered into negotiations of contracts to provide for FMPA's purchase of capacity and energy from one or more renewable solar generation facilities to be constructed, owned, and operated by Origis Development, LLC or its subsidiary or affiliated companies (collectively, "**Origis**").

Whereas, the staff of FMPA has kept the City of Lake Worth Beach, Florida and the other Project Participants in the Solar Project informed of the status of its discussions with Origis which have, now, progressed to the point of FMPA requesting a commitment from the City of Lake Worth Beach, Florida as to its desire to participate in a new renewable solar generation facility, and its request for up to a certain number of megawatts of capacity and energy from such new renewable solar generation facility, pursuant to the terms of this Resolution, so that FMPA may finalize and enter into the necessary contractual arrangements with Origis to provide such capacity and energy from such a new renewable solar generation facility to the City of Lake Worth Beach, Florida and the other Project Participants in the Solar Project, who likewise commit to participation in the new renewable solar generation facility, as a replacement to the Solar PPA.

Whereas, upon FMPA receiving the appropriate commitments from all Project Participants—including Project Participants that formerly executed and delivered Solar Project Power Sales Contracts to FMPA ("**Former Solar Project Participants**")—it is the intent of FMPA staff to request that the Board of Directors of FMPA create a power supply project, as provided for in the Interlocal Agreement Creating Florida Municipal Power Agency, for the acquisition and delivery to the Project Participants of renewable solar capacity and energy, to be known as the "**Solar III Project**."

Whereas, upon FMPA receiving the appropriate commitments from all would-be Project Participants for the Solar III Project (including the Former Solar Project Participants), it is the intent of FMPA staff to request that the Board of Directors of FMPA

approve a new Solar Power Purchase Agreement (“**Phase III Solar PPA**”) for the City of Lake Worth Beach, Florida, and the other Former Solar Project Participants in the Solar III Project, which will replace (i) the Former Solar Project Participants’ participation in the Solar Project with participation in the Solar III Project, and (ii) the Solar PPA with the Phase III Solar PPA as the generating resource for the Solar III Project.

Whereas, the City of Lake Worth Beach, Florida, hereby expresses its desire to continue to be a Project Participant in the Solar III Project and wishes to provide for the execution and delivery of a Substitute Power Sales Contract with FMPA pursuant to the provisions of this Resolution.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA THAT:

SECTION I. **Authority for this Resolution.** This Resolution is adopted pursuant to applicable provisions of Florida law, including Part II, Chapter 361, Florida Statutes, as amended; Section 163.01, Florida Statutes, as amended; and Part II, Chapter 166, Florida Statutes, as amended (collectively, the “**Act**”).

SECTION II. **Incorporation of Certain Findings, Defined Terms, and General Provisions.**

(A) The recitals set forth in the “whereas” clauses above are hereby incorporated into and are a material part of this Resolution. Any capitalized term used in this Resolution and not defined herein shall have the meaning given to such term in the form of the Substitute Power Sales Contract [as defined in Section III (--)], and attached to this Resolution in substantial form as Exhibit A. The Project Participant hereby approves, ratifies, and confirms all actions taken by it and FMPA, as set forth in the “whereas” clauses above and otherwise, to bring the opportunity for the Project Participant to execute and deliver the Substitute Power Sales Contract for its participation in the Solar III Project. All previously adopted resolutions and actions of the Project Participant, to the extent in conflict with this Resolution, including all documents attached as exhibits hereto, are hereby declared to be and are void. References in this Resolution and in the Substitute Power Sales Contract to “**MW**” or “**MWh**” are megawatts or megawatt hours, respectively (associated with the capacity or energy of the renewable solar generation project), as measured after conversion from direct current into alternating current by the renewable solar generation project invertors.

(B) It is hereby found, determined, and declared as follows:

- (i) The Project Participant has heretofore entered into the Interlocal Agreement Creating the Florida Municipal Power Agency, as amended (the “**Interlocal Agreement**”) pursuant to the Act.
- (ii) The Project Participant is authorized by terms of the Act and other applicable provisions of law to plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend or otherwise participate jointly in any electric project.

- (iii) It is necessary and desirable and in the best interests of the Project Participant and the residents of the State to whom the Project Participant furnishes, supplies, or distributes electrical energy that the Project Participant, together with the other Project Participants, share in the costs of the Solar III Project in the manner and under the terms and conditions provided in the Substitute Power Sales Contract.
- (iv) The Project Participant now owns an electric or integrated utility system for the production or distribution, or both, of electric energy within its boundaries and service area.
- (v) The payments required to be made by the Project Participant pursuant to the Substitute Power Sales Contract shall constitute an obligation of the Project Participant payable as an operating expense of the Project Participant's electric or integrated utility system solely from the revenues and other available funds of the Project Participant's electric or integrated utility system, and such payments shall not be subject to any reduction, whether by offset, counterclaim, or otherwise, and shall not be conditioned upon the performance of FMPA or Origis under the Phase III Solar PPA or the performance of FMPA under the Substitute Power Sales Contract or any other agreement or instrument or the validity or enforceability of any other Substitute Power Sales Contract or any other agreement between FMPA and any other Project Participant.
- (vi) The Project Participant shall not be required to make such payments from taxes or revenues other than the revenues of the Project Participant's electric or integrated utility system. The obligations of the Project Participant to make payments under the Substitute Power Sales Contract 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. The Project Participant shall never be required under the Substitute Power Sales Contract to levy ad valorem taxes on any real property to make such payments, and the obligations of the Project Participant thereunder shall not give rise to or constitute a lien upon any properties owned by or any property located within the boundaries or the service area of the Project Participant, but shall be payable solely from the aforementioned revenues. No obligee under the Substitute Power Sales Contract shall ever have the power to require or compel the levy of ad valorem taxes upon any property of the Project Participant or any property located within its boundaries or service area to make any of the payments required to be made under the Substitute Power Sales Contract.
- (vii) The estimated revenues to be derived by the Project Participant from the operation of its electric or integrated utility system shall be sufficient to make the payments, if any, required to be made by the Project Participant pursuant to the Substitute Power Sales Contract, to make all payments of principal and interest on its outstanding debt obligations, and to make other payments

required by the resolutions which authorized the issuance of the Project Participant's outstanding debt obligations, as the same shall become due.

(C) The Substitute Power Sales Contract referenced in this Resolution shall be substantially similar in all terms and conditions to each Solar III Project Power Sales Contract between FMPA (Solar III Project) and every other Project Participant in the Solar III Project that is not a Former Solar Project Participant, howsoever denominated in this or any other resolution.

SECTION III. Approval and Authorization to Execute a Substitute Power Sales Contract Between Florida Municipal Power Agency (Solar III Project) and the City of Lake Worth Beach, Florida, Providing for the Making of Payments Pursuant to such Substitute Power Sales Contract, and Making Certain Covenants in conjunction with such Payments. Subject to Sections IV and V, the terms of the Substitute Power Sales Contract authorized and attached hereto as Exhibit A are expressly approved and the Authorized Officers (as hereinafter defined) of the Project Participant are hereby authorized, on behalf of the Project Participant, to execute the Substitute Power Sales Contract and deliver the same to FMPA with such changes therein as the Authorized Officers of the Project Participant may approve as necessary or desirable, such approval to be evidenced conclusively by execution and delivery of the Substitute Power Sales Contract. The (i) payment obligations of the Project Participant as set forth in the Substitute Power Sales Contract and the (ii) covenants of the Project Participant in conjunction with such payments, as also provided for therein, are hereby ratified, confirmed, and approved.

SECTION IV. Requesting a Number of Megawatts of Capacity and Energy from the Solar III Project which will serve as the Basis for the Calculation of Each Project Participant's Solar Entitlement Share, and Authorizing the Authorized Officer of the City of Lake Worth Beach, Florida to Approve a Final Solar Entitlement Share.

- (A) The Project Participant hereby requests to be assigned a Solar Entitlement Share in the Solar III Project which will be equivalent to approximately MW.
- (B) After the execution of the Substitute Power Sales Contract and delivery thereof to FMPA, Schedule 1 to each of such Substitute or other Power Sales Contracts shall be completed by FMPA to set forth the names and addresses of each Project Participant and the Solar Entitlement Shares of the Project Participants (which shall aggregate to 100%), and which in the case of the Project Participant shall be that percentage (rounded to the nearest one-thousandth percentage point) equivalent to approximately MW. Such Solar Entitlement Shares shall be determined by FMPA by assigning to each Project Participant a Solar Entitlement Share equal to the percentage (rounded to the nearest one-thousandth percentage point) determined by (i) dividing the number of MW or capacity and energy requested by each Project Participant by the aggregate number of MW of capacity and energy requested by all Project Participants and (ii) multiplying the result by 100, with the Solar Entitlement Shares of all Project Participants adjusted (as nearly as possible on a pro rata basis) as necessary so that the aggregate of all Solar Entitlement Shares equals 100%. The

Project Participant hereby approves such method of calculation of its Solar Entitlement Share and those of all other Project Participants.

(C) The Solar Entitlement Shares expressed as percentages and the corresponding capacity and energy expressed in MW set forth above will be based upon an assumed capacity and energy of up to [five] 74.9 MW renewable solar generation projects of Origis to be associated with the Solar III Project, as determined by the FMPA Board of Directors. The Project Participant hereby approves such method of calculation of the total capacity and energy of the Solar III Project.

SECTION V. Authorizing the Inclusion of such Final Solar Entitlement Share in the Renewable Energy Power Purchase Agreement between Florida Municipal Power Agency (Solar III Project) and Seller.

(A) The Project Participant hereby (i) accepts and approves its Solar Entitlement Share in the Solar III Project as computed in accordance with Section IV(B) and (ii) approves the method of computation as set forth in Section IV(C) of the total capacity and energy of the Solar III Project.

(B) After execution of the Substitute Power Sales Contract and delivery thereof to FMPA, the blanks (if any) in such contract for the total capacity and energy of the Solar III Project shall be completed by FMPA by insertions of the MW of total capacity and energy as determined pursuant to Section IV(C), and the blanks in each of such Substitute or other Power Sales Contracts for all Project Participants for the Solar Entitlement Shares and the total capacity and energy of the Solar III Project shall be completed by FMPA inserting the appropriate values as set forth in this Resolution.

SECTION VI. Providing for Security for Payment by [the City of _____, Florida] Pursuant to the Solar III Project Substitute Power Sales Contract.

(A) The payments required to be made by the Project Participant pursuant to the Substitute Power Sales Contract shall constitute an obligation of the Project Participant payable as an operating expense of the Project Participant's electric or integrated utility system solely from the revenues or other available funds of the Project Participant's electric or integrated utility system.

(B) The Project Participant shall not be required to make payments under the Substitute Power Sales Contract from taxes or revenues other than revenues of the Project Participant's electric or integrated utility system. The obligations of the Project Participant to make payments under the Substitute Power Sales Contract do 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. The Project Participant shall never be required under the Substitute Power Sales Contract to levy ad valorem taxes on any real property to make such payments, and the obligations of the Project Participant thereunder shall not give rise to or constitute a lien upon any properties owned by or any property located within the boundaries or the service area of the Project Participant, but shall constitute a lien only upon the aforementioned revenues. No obligee under the Substitute Power Sales Contract shall ever have the power to require or compel the levy of ad valorem taxes upon

any property of the Project Participant or any property located within its boundaries or service area to make any of the payments required to be made under the Substitute Power Sales Contract.

SECTION VII. Providing for the Nature of the Obligations Undertaken by the City of Lake Worth Beach, Florida Pursuant to the Solar III Project Substitute Project Power Sales Contract.

(A) The obligation of the Project Participant to make payments required by the terms of the Substitute Power Sales Contract is conditioned only as provided in the Substitute Power Sales Contract and is not subject to any reduction, whether by offset, counterclaim, or otherwise, and is not otherwise conditioned upon the performance of FMPA or Origis under the Phase III Solar PPA or the performance of FMPA under the Substitute Power Sales Contract or any other agreement or instrument or the validity or enforceability of any other Substitute Power Sales Contract, or any other agreement between FMPA and any other Project Participant.

(B) The Project Participant will not fail or refuse to make any payments under the Substitute Power Sales Contract and, except as provided therein, will not terminate the Substitute Power Sales Contract for any cause whatsoever, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute a failure of consideration, or commercial frustration of purpose, or any event which constitutes *force majeure*, or any bankruptcy, insolvency, receivership, or similar proceeding, whether voluntary or involuntary, with respect to or affecting FMPA, including any disaffirmance, rejection, or postponement in any such proceeding of any of FMPA's obligations under the Phase III Solar PPA, or any change in the laws of the United States, or any State or political subdivision thereof, or any failure of FMPA to perform and observe its agreements under the Substitute Power Sales Contract or to discharge any duty or obligation arising out of or connected with the Substitute Power Sales Contract or any other circumstance or condition, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge or defenses of the Project Participant (whether or not the Project Participant shall have any knowledge or notice thereof).

SECTION VIII. Establishing a Rate Covenant in Favor of the Solar Project. The Project Participant hereby confirms its agreement under the Substitute Power Sales Contract that it will establish, levy, and collect rents, rates, and other charges for the products and services provided by its electric or integrated utility system which rents, rates, and other charges shall be at least sufficient to (i) meet the operation and maintenance expenses of such electric or integrated 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 of other evidences of indebtedness issues or to be issued by the Project Participant; (iii) to generate funds sufficient to fulfill the terms of all other contracts or agreements made by the Project Participant, including, without limitation, the Substitute Power Sales Contract, and (iv) to pay all other amounts payable from or constituting a lien or charge on the revenues of its electric or integrated utility system.

SECTION IX. **This Resolution shall Constitute a Contract.** This Resolution shall be deemed to be and shall constitute a contract between the Project Participant and FMPA, with respect to the Solar III Project. The covenants and agreements herein set forth to be performed by the Project Participant shall be solely for the benefit, protection, and security of FMPA.

SECTION X. **Designating Authorized Officers of the City of Lake Worth Beach, Florida; Designating the Authority of Such Authorized Officers, and providing for Further Actions.**

(A) The **City Manager** and the **Director of the Electric Utility** of the Project Participant are each hereby designated as an “**Authorized Officer**” for the purposes of executing and delivering the Substitute Power Sales Contract and other documents or instruments requested by FMPA related to the Solar III Project, and taking all other actions authorized by this Resolution. Each Authorized Officer may act individually in exercising the authority given to them pursuant to this Resolution, it hereby being expressly intended that both Authorized Officers need not act or execute a contract, document, or instrument to bind the Project Participant as authorized pursuant hereto.

(B) In addition to the authority provided in Section X(A) of this Resolution, each Authorized Officer of the Project Participant is hereby authorized and empowered to execute and deliver, in the name of and on behalf of the Project Participant, such other documents, certificates, and papers, not specifically referred to in this Resolution, as are required or contemplated by the provisions of the Substitute Power Sales Contract and take all such further action as may be necessary or desirable in carrying out the terms and provisions of the Substitute Power Sales Contract.

SECTION XI. **Certain Other Actions.** Each Authorized Officer designated hereunder is hereby authorized and empowered, individually, to take all further actions as may be necessary or desirable, or as otherwise requested by FMPA, in carrying out the terms and provisions of this Resolution and each of the documents and instruments referred to herein, and in effecting the Project Participant’s coordination with FMPA for the Project Participants’ participation in the Solar III Project, including approving changes or modifications to the substantial form of documents or instruments referred to, or attached in substantial form as Exhibits to, this Resolution; *provided, however, that* for the purposes of approving subsequent changes or modifications to the documents or instruments substantially in the form of the Exhibits attached hereto each Authorized Officer may only act (1) on or pursuant to the grants of authority under this Resolution, and (2) if in the exercise of such authority the Authorized Officer determines that such subsequent changes or modifications do not present a material adverse change from the substantial form of such documents and instruments attached hereto. For purposes of the foregoing sentence, “**material adverse change**” means any material adverse change in the terms and conditions of a document or instrument to which the Project Participant would become a signatory, and which imposes on the Project Participant some additional, material risk of financial loss, indemnity obligation, covenant, warranty, or restriction of its legal rights in a manner that is not already contemplated, referenced, or within the scope of the documents substantially in the form of the Exhibits attached hereto.

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

SECTION XIII. **Effective Date.** This Resolution shall take effect immediately upon its adoption.

The passage of this resolution was moved by Commissioner _____, seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Christopher McVoy
- Commissioner Sarah Malega
- Commissioner Kimberly Stokes
- Commissioner Reinaldo Diaz

The Mayor thereupon declared this resolution duly passed and adopted on the _____ day of April, 2023.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

SOLAR POWER PURCHASE AGREEMENT

between

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

as Buyer

and

as Seller

dated as of

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Exhibit M	Form of Limited Assignment Agreement

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

This SOLAR POWER PURCHASE AGREEMENT (this “**Agreement**”) is made this [REDACTED] day of [REDACTED], 202[REDACTED], (the “**Effective Date**”), by and between **the Florida Municipal Power Agency**, a separate governmental legal entity creating and existing pursuant to Section 163.01, Florida Statutes, and exercising powers under that provision or Part II, Chapter 361, Florida Statutes or both (“**Buyer**”) and [REDACTED], a [REDACTED] (“**Seller**”). Buyer and Seller are each individually referred to herein as a “**Party**” and collectively as the “**Parties**.”

RECITALS

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

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

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

**ARTICLE 1
DEFINITIONS AND INTERPRETATION**

1.1 Definitions.

“**AC**” means alternating current.

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

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

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

policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

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

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

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

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

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

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

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

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

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

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

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

“Buyer’s Share” means _____%.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Daily Delay Damages” [REDACTED]

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

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

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

“Default Commercial Operation Date” means [REDACTED].

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

and electrical losses associated with the transmission of the Energy to the Delivery Point, including, if applicable, any transmission or transformation losses between the Metering System and the Delivery Point.

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

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

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

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

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

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

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

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

“Environmental Attribute” means any and all presently existing or future benefits, emissions reductions, environmental air quality credits, emissions reduction credits, greenhouse gas emissions, Renewable Energy Credits, offsets and allowances, green tag or other transferable indicia attributable to the Project during the Term, howsoever entitled or named, resulting from the generation of renewable energy or the avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including

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

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

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

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

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

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

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

“**FMPA Solar III Project**” [TBD]

“**FMPA Solar III Project Participant Covenants**” [TBD]

“**FMPA Solar III Project Participant**” [TBD]

“**FMPA Solar III Project Participant Entitlement Share**” [TBD]

“**FMPA Solar III Project Power Sales Contract**” [TBD]

“**Forced Outage**” means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Project in an amount greater than ten percent (10%) of the Installed Capacity in response to a mechanical, electrical, or hydraulic control system

trip or operator-initiated trip in response to an alarm or equipment malfunction, or any other unavailability of the Project for maintenance or repair that is not a Planned Outage, due to a Buyer Curtailment Order or during a Curtailment Period, or the result of a Force Majeure Event.

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

- (a) Subject to the foregoing, events that could qualify as a Force Majeure Event include, but are not limited to the following:
 - (i) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;
 - (ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation;
 - (iii) except as set forth in subpart (b)(vii) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable);
 - (iv) environmental and other contamination at or affecting the Project;
 - (v) accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to or adjuncts of shipping or navigation, or quarantine;
 - (vi) nuclear emergency, radioactive contamination or ionizing radiation or the release of any hazardous waste or materials;
 - (vii) air crash, shipwreck, train wrecks or other failures or delays of transportation;
 - (viii) vandalism beyond that which could be reasonably prevented by Seller;
 - (ix) the discovery of Native American burial grounds not evidenced in Seller’s Phase I environmental assessment of the Site;

- (x) the discovery of endangered species, as defined by Law; and
- (xi) breakdown or failure of equipment as a result of a serial manufacturer defect or flaw.

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

- (i) Buyer's inability economically to use or resell the Product purchased hereunder;
- (ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;
- (iii) Seller's inability to obtain Governmental Approvals or other approvals of any type for the construction, operation, or maintenance of the Project, except to the extent caused by a Force Majeure Event;
- (iv) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Project, except to the extent Seller's inability to obtain sufficient labor, equipment, materials, or other resources is caused by a Force Majeure Event;
- (v) Seller's failure to obtain 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 4.2(b)(iii).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“MWh” means a megawatt hour of Energy.

“NERC” means the North American Electric Reliability Corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Qualified Transferee” means any person or entity that (a) has an equal or better credit rating than the Seller and satisfies the collateral requirements of the Seller set forth in the Agreement, (b) provides replacement Performance Assurance from a PA Provider with an Investment Grade Credit Rating and assets of at least [REDACTED], (c) has (or has contracted with for the purpose of this Agreement), or is the subsidiary of an entity that has, a record of owning and/or operating, for a period of at least three (3) years, solar photovoltaic generating facilities with an aggregate nameplate capacity of no less than 100 MW, and (d) that expressly assumes in writing all obligations of the Seller under this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Target Commercial Operation Date” means the date that is the latter of (a) 365 days after the Transmission Service Deadline and (b) [REDACTED].

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

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

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

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

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

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

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

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

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

“Transmission Interruption” means a transmission outage or curtailment directed or caused by the Transmission Owner, Transmission Provider or a Governmental Authority in connection with a System Emergency on the Transmission System that prevents or limits

Buyer's ability to receive Energy at the Delivery Point not due to actions or omissions of Buyer or an Affiliate of Buyer.

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

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

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

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

"Transmission System" means the distribution or transmission system to which the Project interconnects.

1.2 Interpretation.

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

- (a) the gender (or lack of gender) of all words used in this Agreement includes the masculine, feminine, and neuter;
- (b) words used or defined in the singular include the plural and vice versa;
- (c) references to Articles and Sections refer to Articles and Sections of this Agreement;
- (d) references to Annexes, Exhibits and Schedules refer to the Annexes, Exhibits and Schedules attached to this Agreement, each of which is made a part hereof for all purposes;
- (e) references to Applicable Laws refer to such Applicable Laws as they may be amended from time to time, and references to particular provisions of an Applicable Law include any corresponding provisions of any succeeding Applicable Law and any rules and regulations promulgated thereunder;
- (f) terms defined in this Agreement are used throughout this Agreement and in any Annexes, Exhibits and Schedules hereto as so defined;
- (g) references to money refer to legal currency of the United States of America;

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

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

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

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

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

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

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

ARTICLE 2 TERM

2.1 Term.

The “**Initial Term**” of this Agreement shall commence on the date hereof and continue until the latter of (a) the date the Agreement is terminated in accordance with its terms, or (b) the date that is 20 Contract Years following the Commercial Operation Date. Buyer shall have the option to request an extension of the term of this Agreement twice (each, a “**Renewal Term**”) by providing Seller written request for extension no less than 425 days prior to the end of the Initial Term or the first Renewal Term, as applicable. Upon such request, Buyer and Seller shall commence good faith negotiations for the Contract Price for any such Renewal Term(s). Seller shall provide Buyer with written proposed Contract Price for such Renewal Term(s) no less than 395 days prior to the end of the Initial Term or the first Renewal Term, as applicable. Seller may extend the term of this Agreement by providing Seller written notice of extension no less than 365 days prior to the end of the Initial Term or the first Renewal Term, as applicable. If Buyer does not provide such written notice of extension, then Seller proposed Contract Price shall be deemed rejected and this Agreement shall terminate. Each Renewal Term shall commence at HE 0100 on the date immediately following the last day of the Initial Term or first Renewal Term, as applicable, and extend for a period of 5 years, unless sooner terminated in accordance with the terms hereof.

ARTICLE 3 OBLIGATIONS AND DELIVERIES

3.1 Product.

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

3.2 Purchase and Sale.

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

3.3 Contract Price.

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

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

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

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

3.4 Project Capacity.

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

3.5 Performance Excuses.

(a) The obligations of Seller to deliver or make available the Product to Buyer at the Delivery Point shall be excused only (i) during periods of Force Majeure, (ii) by Buyer’s failure to perform its obligation to receive the Product at the Delivery Point or other Buyer Event of

Default, (iii) during Curtailment Periods, (iv) during Buyer Curtailment Periods, and (v) during Planned Outages (“**Seller Excuses**”).

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

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

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

3.6 Offsets, Allowances and Environmental Attributes.

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

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

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

and Environmental Attributes, shall be effective regardless of whether the generation of Product or sale and delivery of any Delivered Energy from the Project is eligible for, or receives Tax Attributes or to qualify for accelerated or bonus depreciation during the Term.

3.7 Station Service.

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

3.8 Transmission.

(a) Seller shall be responsible for obtaining interconnection service for the Project so that Seller can deliver the Product to the Delivery Point in accordance with applicable Transmission Provider interconnection requirements. Seller shall be responsible for all costs to design, equip, construct and maintain the interconnection facilities necessary to deliver Energy from the Project to the Delivery Point. Seller shall be responsible for receiving Network Resource Interconnection Service (or its equivalent) from the Transmission Provider in accordance with the Transmission Provider's Large Generator Interconnection Procedures ("LGIP") including funding of any Network Upgrades, as defined in therein. In the event that Seller is not repaid all Seller-funded amounts for such Network Upgrades within five (5) years after the Commercial Operation Date, Seller may, subject to Buyer's consent, such consent not to be unreasonably withheld, assign to Buyer its rights under the LGIP and Interconnection Agreement to repayment of such unpaid amounts. For the avoidance of doubt, Buyer's consent may be withheld if, without otherwise limiting its right to reasonably withhold consent, Buyer is not reasonably satisfied with the terms and conditions of the Interconnection Agreement or other relevant agreement between Buyer and the Transmission Provider with regard to the Network Upgrade refunding or transmission credit procedures. If Buyer consents to such assignment, then Buyer shall pay to Seller each month an amount equal to the amount Buyer receives from Transmission Provider as a transmission credit or other form of reimbursement for such Network Upgrades during the preceding month until such time as Seller has been fully reimbursed for its Network Upgrade finding. Notwithstanding anything in this Section 3.8(a), Buyer shall not be obligated to pay Seller any amount related to the Network Upgrades for which Buyer has not received a related transmission credit or other form of reimbursement from the Transmission Provider.

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

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

3.9 Scheduling.

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

3.10 Sales for Resale.

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

3.11 Operating Procedures.

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

3.12 Regulatory Approvals.

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

(b) Buyer shall apply for and shall diligently pursue designation of the Expected Project Capacity as a network resource or otherwise secure a firm delivery path for the Delivered Energy

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

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

3.13 *Standards of Care.*

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

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

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

3.14 *Buyer Curtailment.*

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

3.15 *Outage Notification.*

(a) Seller shall schedule Planned Outages for the Project in accordance with Prudent Operating Practices and with the prior written consent of Buyer, which consent may not be unreasonably withheld, conditioned or delayed. The Parties acknowledge that in all circumstances, Prudent Operating Practices shall dictate when Planned Outages should occur. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a written Planned Outage schedule no later than August 1st of each year during the

Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld, conditioned or delayed. Buyer shall promptly respond with its approval or with reasonable modifications to the proposed Planned Outage schedule and Seller shall use its best efforts in accordance with Prudent Operating Practices to accommodate Buyer's requested modifications and deliver the final Planned Outage schedule to Buyer. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Prudent Operating Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld, conditioned or delayed. . Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage.

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

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

3.16 Operations Logs and Access Rights.

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

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

3.17 Forecasting.

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

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

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

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

3.18 Weather Station.

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

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

- (i) real and reactive power production by the Project for each hour;
- (ii) changes in operating status, outages and maintenance events;

(iii) any unusual conditions found during inspections;

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

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

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

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

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

3.19 Compliance Cost Cap.

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

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

3.20 Production Guarantee.

Seller shall cause the Project to be operated in accordance with Prudent Operating Practices. Seller guarantees that the Delivered Energy will equal or exceed the Annual Energy Output Guarantee

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

3.21 Purchase Option.

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

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

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

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

(e) Any purchase pursuant to this Section 3.2.1 shall be for the entire Project – either as an undivided ownership interest buy Buyer, or in conjunction with the purchase by the FMPA Solar III Project of the remaining ownership interest of the Project not purchase by Buyer, provided that any joint purchase by Buyer and the FMPA Solar III Project shall be a simultaneous purchase of 100% ownership interest in the Project, with each such purchase by Buyer and the FMPA Solar III Project being expressly conditioned upon successful purchase of the remaining ownership share by FMPA Solar III Project and Buyer, respectively.

ARTICLE 4
PROJECT DESIGN AND CONSTRUCTION

4.1 *Project Development.*

Seller, at no cost to Buyer shall:

- (a) Design and construct the Project.
- (b) Establish and maintain interconnection rights for the Project that permit the full Expected Project Capacity to interconnect to the Transmission System in compliance with the Transmission Provider's transmission tariff and the Interconnection Agreement.
- (c) Acquire all material Governmental Approvals for the construction, operation, and maintenance of the Project.
- (d) Complete any environmental impact studies necessary for the construction, operation, and maintenance of the Project.
- (e) At Buyer's reasonable request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project.
- (f) Within thirty (30) days after each calendar quarter following the Effective Date until the Commercial Operation Date, provide to Buyer a construction progress report substantially in the form attached in Exhibit L advising Buyer of the current status of the Project, the status of obtaining required Governmental Approvals, any significant developments or delays along with an action plan for making up delays, and Seller's best estimate of the Commercial Operation Date.

4.2 *Commercial Operation.*

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

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

(i) The Target Commercial Operation Date may be extended on a day-for-day basis for a cumulative period equal to no more than three hundred sixty (360) days if Seller has used Commercially Reasonable Efforts to have the Project physically interconnected to the Transmission System and to complete all Transmission Owner's Interconnection Facilities, if any, but such interconnection or Transmission Owner's Interconnection Facilities cannot be completed by the Target Commercial Operation Date for reasons beyond Seller's reasonable control and Seller has worked diligently to resolve the delay ("**Interconnection Delay**");

(ii) The Target Commercial Operation Date may be extended on a day-for-day basis for a cumulative period equal to no more than one hundred eighty (180) days if Seller has used commercially reasonable efforts to obtain permits necessary for the construction

and operation of the Project, but is unable to obtain such permits and Seller has worked diligently to resolve the delay (“**Permitting Delay**”);

(iii) The Target Commercial Operation Date may be extended on a day-for-day basis for a cumulative period equal to no more than three hundred sixty (360) days in the event of Force Majeure (“**Force Majeure Extension**”); provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer’s written request; and

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

(c) Notwithstanding the foregoing, if Seller claims more than one Permitted Extension under Section 4.2(b)(i)-(iii), such extensions cannot cumulatively exceed three hundred sixty (360) days and all Permitted Extensions taken shall be concurrent, rather than consecutive, during any overlapping days.

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

4.3 Cure Period and Delay Damages.

(a) Seller shall cause the Project to achieve the Commercial Operation Date by the Target Commercial Operation Date. If the Commercial Operation Date occurs after the Target Commercial Operation Date after giving effect to Permitted Extensions and for reasons other than Buyer’s failure to obtain transmission service by the Transmission Service Deadline in accordance with Section 3.8(b), then Buyer shall be entitled to draw upon the Seller’s Performance Assurance for liquidated damages equal to Daily Delay Damages for each day or portion of a day that the Commercial Operation Date occurs after the Target Commercial Operation Date after giving effect to Permitted Extensions until the earlier of (i) the date that is one hundred and eighty (180) days after such date, and (ii) the Commercial Operation Date (the “**Project Cure Period**”).

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

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

Regulatory Policies Act.

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

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

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

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

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

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

ARTICLE 5 METERING AND MEASUREMENT

5.1 *Metering System.*

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

5.2 *Inspection and Adjustment.*

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

(b) If any seal securing the metering is found broken, if the Metering System fails to register, or if the measurement made by a metering device is found upon testing to vary by more than one percent (1.0%) from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements of energy made by the Metering System during: (i) the actual period when inaccurate measurements were made by the Metering System, if that period can be determined to the mutual satisfaction of the Parties; or (ii) if such actual period cannot be determined to the mutual satisfaction of the Parties, the second half of the period from the date of the last test of the Metering System to the date such failure is discovered or such test is made ("**Adjustment Period**"). If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined: (A) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or (B) if not so ascertainable, by estimating on the basis of deliveries made under

similar conditions during the period since the last test. Within thirty (30) Days after the determination of the amount of any adjustment, Buyer shall pay Seller any additional amounts then due for deliveries of Energy during the Adjustment Period or Buyer shall be entitled to a credit against any subsequent payments for Energy, as the case may be.

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

ARTICLE 6 EARLY TERMINATION

6.1 *Early Termination.*

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

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

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

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

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

ARTICLE 7 EVENTS OF DEFAULT

7.1 *Events of Default.*

An “**Event of Default**” shall mean,

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

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

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

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

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

(v) such Party becomes Bankrupt;

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

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

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

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

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

- (ii) Seller Abandons the Project.

7.2 Remedies; Declaration of Early Termination Date.

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

- (a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”);
- (b) collect in connection with such Early Termination Date a Termination Payment;
- (c) accelerate all amounts owing between the Parties and end the Delivery Term effective as of the Early Termination Date;
- (d) withhold any payments due to the Defaulting Party under this Agreement;
- (e) suspend performance; and
- (f) exercise its rights pursuant to Section 9.3 to draw upon and retain Performance Assurance.

7.3 Termination Payment.

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

7.4 *Notice of Payment of Termination Payment.*

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

7.5 *Disputes with Respect to Termination Payment.*

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

7.6 *Rights and Remedies Are Cumulative.*

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

7.7 *Mitigation.*

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

ARTICLE 8 PAYMENT

8.1 *Billing and Payment.*

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

excluding the date the delinquent amount is paid in full. Invoices shall be sent by e-mail to address specified by Buyer, initially accounts.payable@fmpa.com.

8.2 *Disputes and Adjustments of Invoices.*

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

ARTICLE 9 INSURANCE, CREDIT AND COLLATERAL REQUIREMENTS

9.1 *Insurance.*

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

9.2 *Grant of Security Interest.*

To the extent a PA Provider delivers Performance Assurance hereunder, it hereby grants to the other Party (the "**PA Beneficiary**") a present and continuing first priority security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the PA Beneficiary, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the PA Beneficiary's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence and during the continuation of an Event of Default by the PA Provider or an Early Termination Date as a result thereof, the PA Beneficiary may do any one or more of the following: (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under Applicable Law then in effect; (ii)

exercise its rights of setoff against such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all or any portion of any Performance Assurance then held by or for the benefit of the PA Beneficiary free from any claim or right of any nature whatsoever of PA Provider, including any equity or right of purchase or redemption. PA Beneficiary shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the PA Provider's obligations under the Agreement (the PA Provider remaining liable for any amounts owing to the PA Beneficiary after such application), subject to PA Beneficiary's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

9.3 *Performance Assurance.*

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

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

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

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

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

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

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

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

ARTICLE 10

REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 *Representations and Warranties.*

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

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

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

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

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

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

(f) except as may be set forth in its reports filed with the SEC, there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could

reasonably be expected to materially adversely affect its ability to perform its obligations under this Agreement; and

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

10.2 General Covenants.

Each Party covenants that throughout the Term:

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

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

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

10.3 Seller Covenants.

Seller covenants as follows:

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

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

10.4 Buyer's Covenants.

Buyer covenants as follows:

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

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

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

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

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

ARTICLE 11 TITLE, RISK OF LOSS, INDEMNITIES

11.1 *Title and Risk of Loss.*

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

11.2 *Indemnities by Seller.*

Seller shall release, indemnify, defend, and hold harmless Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all actions, suits, losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest, including

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

11.3 Indemnities by Buyer.

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

ARTICLE 12 GOVERNMENTAL CHARGES

12.1 Cooperation.

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

12.2 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any governmental authority ("**Governmental Charges**") on or with respect to the Product or the transaction under this Agreement arising prior to and at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the transaction under this Agreement at and after the Delivery Point. In the event Seller is required by Applicable Law or regulation to remit or pay Governmental Charges which are Buyer's

responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Applicable Law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Law.

ARTICLE 13 CONFIDENTIAL INFORMATION

13.1 *Confidential Information.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 14 ASSIGNMENT

14.1 *Successors and Assigns; Assignment.*

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

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

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

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

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

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

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

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

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

(f) The provisions of this ARTICLE 14 are for the benefit of the Project Investors as well as the Parties hereto, and shall be enforceable by the Project Investors as express third-party

beneficiaries hereof. Buyer hereby agrees that none of the Project Investors, nor any bondholder or participant for whom they may act or any trustee acting on their behalf, shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to Buyer with respect to this Agreement except to the extent any of them becomes a party hereto pursuant to this ARTICLE 14.

14.2 Collateral Assignment.

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

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

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

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

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

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

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

(iv) Upon the receipt of a written request from Seller or any Project Investor, Buyer shall use Commercially Reasonable Efforts to execute, or arrange for the delivery of, such certificates, opinions and other documents as may be reasonably necessary in order for Seller to consummate any financing or refinancing of the Project or any part thereof

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

14.3 *Buyer Limited Assignment Right.*

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

ARTICLE 15 FORCE MAJEURE

15.1 *Force Majeure Events.*

To the extent either Party is prevented by a Force Majeure Event from carrying out, in whole or part, its obligations under this Agreement and such Party gives Notice and details of the Force Majeure Event to the other Party as detailed below, then, the Party impacted by the Force Majeure Event shall be excused from the performance of its obligations to the extent impacted. As soon as practicable after commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of a Force Majeure Event (or such longer period as reasonably required given the

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

15.2 *Extended Force Majeure Events.*

This Agreement may be terminated by either Party with no further obligation to the other Party if a Force Majeure Event prevents the performance of a material portion of the obligations hereunder and such Force Majeure Event is not resolved and full performance is resumed within twelve (12) months after the commencement of such Force Majeure Event, subject to Seller's right to extend in this Section 15.2. If Seller is the non-performing Party due to damage to the Project caused by a Force Majeure Event, Seller shall have up to one hundred and eighty (180) Days following the start of such Force Majeure Event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced within fifteen (15) additional months from the date of the report. Seller shall promptly provide Buyer a copy of the engineer's report at no cost to Buyer. If such engineer's report concludes that the Project is capable of being repaired or replaced within such 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 until the expiration of the period deemed necessary by the engineer's report (not to exceed fifteen (15) months), after which time, either Party may terminate by Notice to the other Party unless the Project has been repaired or replaced, as applicable, and the Seller has resumed and is satisfying its performance obligations under this Agreement. If the Parties resume performance following a Force Majeure Event that lasted more than twelve (12) consecutive months, then the Term will automatically extend for the duration of such Force Majeure Event.

ARTICLE 16 LIMITATIONS ON LIABILITY

16.1 *Disclaimer of Warranties.*

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

16.2 *Limitations on Liability.*

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

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

16.3 *Buyer Liability.*

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

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

ARTICLE 17 DISPUTE RESOLUTION

17.1 *Intent of the Parties*

Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement (a "**Dispute**") is the dispute resolution procedure set forth in this Article 12. Either Party may seek a preliminary injunction or other

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

17.2 Management Negotiations

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

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

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

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

17.3 Specific Performance and Injunctive Relief.

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

ARTICLE 18
NOTICES

18.1 Notices.

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

If to Seller:

[Seller]
Attn: Management Team
800 Brickell Avenue, Suite 1000
Miami, FL 33131
Email: OrigisManagement@origisenergy.com

With a copy to:

[Seller]
Attn: General Counsel
800 Brickell Avenue, Suite 1000
Miami, FL 33131
Email: [REDACTED]

If to Buyer: Florida Municipal Power Agency

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

ARTICLE 19
MISCELLANEOUS

19.1 *Effectiveness of Agreement; Survival.*

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

19.2 *Audits.*

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

19.3 *Amendments.*

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

19.4 *Waivers.*

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

19.5 *Severability.*

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

19.6 *Standard of Review.*

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

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

19.7 *Governing Law.*

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

19.8 *Waiver of Trial by Jury.*

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

19.9 Attorneys' Fees.

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

19.10 No Third-Party Beneficiaries.

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

19.11 No Agency.

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

19.12 Cooperation.

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

19.13 Further Assurances.

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

19.14 Captions; Construction.

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

19.15 *Entire Agreement.*

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

19.16 *Forward Contract.*

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

19.17 *Service Contract.*

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

19.18 *Counterparts.*

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

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

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

[_____]

Florida Municipal Power Agency

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

CONTRACT PRICE & PURCHASE OPTION PRICE

I. CONTRACT PRICE

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

II. PURCHASE OPTION PRICE TABLE

Contract Year	Purchase Option Price
10	
15	
20	

EXHIBIT B

DESCRIPTION OF PROJECT

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

- 74.9 MWac solar PV plant with single-axis tracker, (1) [REDACTED] MVA [REDACTED] kV, three-winding transformer ([REDACTED])
- ([REDACTED]) [REDACTED] inverters, each with an integrated pad mount transformer [REDACTED] kVA, [REDACTED]-kV Dy
- [REDACTED] MVAR capacitor bank at the [REDACTED] kV bus of the substation to which the Project interconnects

Point(s) of Interconnection: The Project will interconnect with the transmission facilities of [REDACTED] at a point to be determined in the interconnection study process.

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

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

EXHIBIT C

DESCRIPTION OF DELIVERY POINT

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

EXHIBIT D

PRODUCTION GUARANTEE

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

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

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

Table A	
Contract Year	Annual Energy Output (MWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
Renewal Terms (if applicable)	
21	
22	
23	
24	

25	
26	
27	
28	
29	
30	

“Damages Rate” means an amount equal to the lesser of (1) the Contract Price or (2) the positive difference between Buyer’s annual average avoided energy rate minus the Contract Price per MWh of Production Shortfall.

“Excused Energy” means (a) any Energy, measured in MWh, that Seller is unable to schedule or deliver to the Delivery Point as a result of Buyer Curtailment Orders, Buyer’s failure to obtain transmission service or Buyer’s failure to perform, including for reasons outside its control, as contemplated in Section 3.8(c) (other than due to a breach by Seller of its obligations under the Agreement); plus (b) Buyer’s Share of any Energy, measured in MWh, that Seller is unable to schedule or deliver to the Delivery Point as a result of a (i) Curtailment Period, (ii) System Emergency (other than a System Emergency caused by Seller’s breach of the Interconnection Agreement), (iii) Force Majeure Event, or (iv) Planned Outages (but only to the extent the aggregate MWh for all Planned Outages does not exceed 2% of the Annual Energy Output Guarantee in the applicable Contract Year).

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

II. Guarantee and Damages.

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

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

EXHIBIT E
FORM OF GUARANTY

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

A. RECITALS

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

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

AGREEMENT

Guarantee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to Guarantor:

Attn: _____

If to Guaranteed Party:

Attn: _____

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

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

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

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

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

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

[Guarantor]

By: _____

—
Name:

Title:

Acknowledged and agreed

[Guaranteed Party]

By: _____

Name:

Title:

EXHIBIT F
FORM OF IRREVOCABLE LETTER OF CREDIT

Irrevocable Standby Letter of Credit No.

Date of Issuance:

Beneficiary:

[Buyer Name]

Applicant/Account Party:

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

Initial expiration date at our counter (unless evergreen):

Final expiration date at our counter:

Ladies and Gentlemen:

We, [Bank Name]

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

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

This Letter of Credit is available in one or more drafts drawn on [Bank Name] and may be drawn hereunder for the account of up to an aggregate amount not exceeding [Amount]. This Letter of Credit is drawn against by presentation to us at our office located at [Bank Address] of a drawing certificate (i) signed by an officer of the Beneficiary; (ii) dated the date of presentation; and (iii) the following statement:

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

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

--or--

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

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

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

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

This Letter of Credit may be transferred in its entirety (but not in part) by Issuing Bank only upon presentation to us of a Request for Transfer signed by the Beneficiary in the form of Exhibit A accompanied by this Original Letter of Credit and any amendment(s), in which the Beneficiary irrevocably transfers to such transferee all of its rights hereunder, whereupon we agree to either issue a Transferred letter of credit to such transferee or endorse such transfer on the reverse of this Letter of Credit. Any transfer fees assessed by the issuer will be payable solely by the applicant.

Payments under the Letter of Credit shall be in accordance with the following terms and conditions:

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

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

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

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

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

Partial drawings and multiple drawings are permitted.

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

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

EXHIBIT A UNDER STANDBY LETTER OF CREDIT NO.

REQUEST FOR TRANSFER OF LETTER OF CREDIT IN ITS ENTIRETY

Date: _____

[Bank Name and Address]

Re: Standby Letter of Credit No.

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

NAME OF TRANSFEREE _____

ADDRESS OF TRANSFEREE _____

CITY, STATE/COUNTRY ZIP _____

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

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

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

In payment of your transfer commission in amount equal to $\frac{1}{4}\%$ of the amount transferred, minimum of \$250.00

The applicant has wired funds to you through _____ bank and in addition thereto, we agree to pay you on demand any expenses which may be incurred by you in connection with this transfer

Very truly yours, [BENEFICIARY NAME]

Authorized Signature

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

(Signature of Authenticating Bank)

(Name of Bank)

(Printed Name/Title)

(Date)

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

EXHIBIT G
INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

EXHIBIT H
FORM OF SURETY BOND

BOND NUMBER _____

POWER PURCHASE AGREEMENT BOND

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

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

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

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

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

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

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

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

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

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

Sealed with our seals and dated this _____ day of _____ 20__.

WITNESS:

PRINCIPAL:

(Name & Title)

(Signature) (SEAL)

(Name & Title)

WITNESS:

SURETY:

(Name & Title)

(Signature) (SEAL)

(Name, as Attorney-in-Fact)

EXHIBIT I

ENVIRONMENTAL ATTRIBUTES ATTESTATION AND BILL OF SALE

I. Seller Information

Name of Seller: _____

Address of Seller: _____

Contact Person: _____ Title: _____

Telephone: _____ Fax: _____ Email Address: _____

II. Declaration

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

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

I further declare that:

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

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

Signature

Date

Place of Execution

EXHIBIT J

FORM OF LENDER CONSENT

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

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

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

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

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

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

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

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

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

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

[ATTACHMENT A TO EXHIBIT J]

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

[Date]

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

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

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

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

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

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

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

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

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

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

[Signature page follows]

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

By:

Title:

Name:

EXHIBIT K
PARTICIPANT LIST

(If Applicable)

EXHIBIT L

FORM OF PROGRESS REPORT

Project:

Recipient:

PROJECT PROGRESS REPORT

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

I. Overview

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

II. Status Updates

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

Report Completed: [Date, Sender Initials]

EXHIBIT M
FORM OF LIMITED ASSIGNMENT AGREEMENT

[Buyer to Provide]¹

FORM OF ASSIGNMENT SCHEDULE
[PROJECT NAME]

Assigned Product: [_____]

Assigned Delivery Point: [_____]

Assigned Prepay Quantity: As set forth [in the Limited Assignment Agreement]; provided that (i) all Assigned Products shall be delivered pursuant to the Limited Assignment Agreement during the Assignment Period and (ii) the Assigned Prepay Quantity is defined for the convenience of PPA Buyer and [J. Aron] and shall have no impact on the obligations of the Parties under the Limited Assignment Agreement.

APC Contract Price: \$[_____] /MWh

Assignment Period: [_____]

Other Provisions: [_____]

¹ Seller NTD: Limited Assignment Agreement remains under review by both Parties.

FMPA Municipal Solar III Commitment Analysis	
Solar III Commitment	Annual Surplus; Expressed in MWhrs per Year
10 MW	691
15 MW	1,976
20 MW	4,190
25 MW	7,456
30 MW	11,879

Table 1

Solar III Project

Power Sales Contract

Between

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

and

City of Lake Worth Beach, Florida

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SOLAR III PROJECT
POWER SALES CONTRACT

This POWER SALES CONTRACT is made and entered into as of [DATE], by and between FLORIDA MUNICIPAL POWER AGENCY, a legal entity organized under the laws of the State of Florida ("FMPA") and the City of Lake Worth Beach, Florida, a political subdivision and public agency of the State of Florida and a member of FMPA (the "Project Participant").

WITNESSETH:

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

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

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

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

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

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

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

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

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

Allocable A&G Costs shall mean administrative and general costs incurred by FMPA that have been allocated to the Solar III 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 [date], and shall expire at 12:00 a.m. the next succeeding October 1.

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

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

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

Electric Energy shall mean kilowatt hours (kWh).

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

Energy Share shall mean FMPA's 53.55 MW share under the Solar PPA in the Solar Product produced by or associated with the Solar Facility.

Facility Attributes has the meaning given in the Solar PPA.

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

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

Month shall mean a calendar month.

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

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

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

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

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

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

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

Renewable Attributes has the meaning given in the Solar PPA.

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

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

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

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

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

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

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

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

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

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

Working Capital Allowance shall mean funds acquired by the Solar III 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 III Project’s ability to pay the Seller in the event of non-payment by one or more Project Participants. The initial Working Capital Allowance and the method of funding is described in “Attachment C” to this Power Sales Contract.

SECTION 2. Term & Termination.

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

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

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

SECTION 3. Sale and Purchase.

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

SECTION 4. Project Budget.

(a) In accordance with the FMPA Board of Directors' annual schedule for budget development, the Solar III Project Committee shall develop and approve a budget for the Solar III Project and submit the same to the FMPA Board of Directors for approval. As part of the budget process, the Solar III 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 III Project.

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

SECTION 5. Billing, Payment, Disputed Amounts.

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

(b) Monthly payments required to be paid to FMPA pursuant to this SECTION 5SECTION 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 that is known by Project Participant, or should have reasonably been known, as to any portion of any monthly statement, the Project Participant shall nevertheless pay the full amount of such disputed charges when due and shall give written notice of such dispute to FMPA not later than the date such payment is due. Such notice shall identify the disputed bill, state the amount in dispute and set forth a full statement of the grounds on which such dispute is based. No adjustment shall be considered or made for disputed charges unless notice is given as aforesaid. FMPA shall give consideration to such dispute and shall advise the Project Participant with regard to its position relative thereto within thirty (30) days following receipt of such written notice. Upon final determination (whether by agreement, adjudication or otherwise) of the correct amount, any difference between such correct amount and such full amount shall be properly reflected in the statement next submitted to the Project Participant after such determination. If it is determined that the disputed amount is in the favor of the Participant, to the extent that FMPA earned any interest on the amount withheld, then interest actually earned shall be applied to the overpaid amount.

(e) The obligation of the Project Participant to make the payments under this SECTION 5 shall constitute an obligation of the Project Participant payable as an operating expense of the Project Participant's electric utility system solely from the revenues and other available funds of the electric utility system. The obligation of the Project Participant to make payments under this Power Sales Contract shall not be subject to any reduction, whether by offset, counterclaim, or otherwise, and shall not be otherwise conditioned upon performance of FMPA or Seller under the Solar PPA or the performance by FMPA under this or any other agreement or instrument or the validity or enforceability of any other Power Sales Contract or any other agreement between FMPA and any other Project Participant; provided, however, that the Monthly Energy Costs payable by Project Participant shall reflect the Project Participant's Solar Entitlement Share of the quantity of Solar Product made available by the Seller at the Point of Delivery, and payable by FMPA under the Solar PPA, during that month. The obligation of the Project Participant to make payments under this SECTION 5SECTION 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 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 Open Access Transmission Tariff ("OATT") regarding the transmission service provider's obligation to make such upgrades.

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

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

(a) The Solar PPA includes several provisions that allow the Solar III Project to exercise discretion regarding whether to extend the Term of the Solar PPA or to continue the existing Term of the Solar PPA despite a triggering event under the terms of the Solar PPA that permit early termination (hereinafter referred to as "Discretionary Term Decisions"). Such Discretionary Term Decisions may include, for example but without limitation, options for extension of the Term of the Solar PPA beyond the Initial Term, options for continuing or terminating obligations related to portions of the solar capacity that do not make commercial operation deadlines, and options for early termination of the Solar PPA if certain conditions precedent are not met. Project Participant and all other Project Participants will each designate a representative to serve on the Solar III 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 III Project Committee shall meet not less than 180 days prior to the expiration of the Initial Term or a Renewal Term, as defined in the Solar PPA, if any, to decide whether to extend the Term of the Solar PPA. In making any Discretionary Term Decision, the Solar III Project Committee will vote on the matter. If the Solar III 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 III Project Participants do not wish to exercise a Discretionary Term Decision, then the other Solar III 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 III Project Power Sales Contract shall be terminated, and the Power Sales Contract of the assuming Project Participant(s)' shall be amended to reflect the revised Solar Entitlement Shares. In the event that the Project Participant(s) that wish to exercise the Discretionary Term Decision cannot agree to assume 100% of the terminating Project Participant(s)' Solar Entitlement Share, then the Discretionary Term Decision shall not be exercised.

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

SECTION 8. Availability of Entitlement Shares.

Except as provided otherwise by this Power Sales Contract, and subject to the provisions of the Solar PPA, the Project Participant's Solar Entitlement Share shall be made available for delivery to each Project Participant by 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 III 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 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 PPA, at intervals requested by Project Participant, FMPA will prepare and issue to the Project Participant the following reports:

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

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

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

SECTION 11. Covenants.

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

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

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

SECTION 12. Event of Default – Project Participant.

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

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

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

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

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

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

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

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

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

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

SECTION 13. Default by FMPA.

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

SECTION 14. Abandonment of Remedy.

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

SECTION 15. Waiver of Default.

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

SECTION 16. Relationship to and Compliance with Other Instruments.

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

SECTION 17. Measurement of Electric Energy.

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

SECTION 18. Liability of Parties.

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

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

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

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

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

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

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

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

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

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

SECTION 21. Termination or Amendment of Contract.

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

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

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

SECTION 22. Notice and Computation of Time.

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

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

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

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

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

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

SECTION 23. Applicable Law; Construction.

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

SECTION 24. Severability.

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

SECTION 25. Solar III Project Responsibility

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

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

FLORIDA MUNICIPAL POWER AGENCY

(SEAL)

By: _____
General Manager & CEO

Attest:

Date: _____

Secretary or Assistant Secretary

CITY OF LAKE WORTH BEACH, FLORIDA

(SEAL)

By:

Title: Betty Resch, Mayor

Attest:

Date: _____

By: Melissa Coyne, City Clerk

Approved as to form and legal sufficiency:

By: Glen J. Torcivia, City Attorney

ATTACHMENT A
POWER PURCHASE AGREEMENTS

ATTACHMENT B

FMPA PROCESS FOR DETERMINING ALLOCABLE A&G COSTS

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

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

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

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

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

ATTACHMENT C

WORKING CAPITAL ALLOWANCE

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

ATTACHMENT D

PROJECT DEVELOPMENT FUND COSTS

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

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

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

SCHEDULE 1
SCHEDULE OF PROJECT PARTICIPANTS

<u>Name of Project Participant</u>	<u>Solar Entitlement Share (MW)</u>	<u>Solar Entitlement Share (%)</u>
Homestead Public Services	5	9.337%
City of Lake Worth Beach	26.55	49.580%
City of Mount Dora	2	3.735%
New Smyrna Beach Utilities Commission	10	18.674%
Winter Park Electric Utility	10	18.674%
Total	53.55	100%

Notice Information of Project Participants

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

STAFF REPORT UTILITY MEETING

AGENDA DATE: April 25, 2023

DEPARTMENT: Electric Utility

TITLE:

Exercise of City's extension rights under the OUC Supplemental Energy and Capacity Agreement

SUMMARY:

City's initial Term under the Agreement with Orlando Utility Commission (OUC) expired December 31, 2022. In April of 2022, the City approved the first of two (2) unilateral one (1) year extension. The first one-year extension is set to expire December 31st 2023. Under the Agreement, City has until June 1, 2023 to exercise its extension rights for the second additional one-year Extension Term extending the Agreement until December 2024.

BACKGROUND AND JUSTIFICATION:

The City's electric utility provides electricity to its customers using a variety of electric production resources. Among them are the City's entitlements in various Florida Municipal Power Agency (FMPA) projects, the City's own solar farm build atop City's closed landfill, the City's power plant, and a contract with Orlando Utilities Commission for supplemental energy and capacity effective 1/1/2019 with a term of up to seven years ("OUC Agreement"). City's entitlements and/or contracts with FMPA include participation in the St. Lucie Project, Stanton I Project, and the FMPA Municipal Solar Project (Solar I) which will begin delivering electric energy to City by December 2023.

OUC's selection as City's provider of supplemental energy and capacity was the result of City's competitive bid process conducted in 2018 and which has resulted in an estimated \$9 million per year in savings to City. City's competitive agreement with OUC has played a large role in City's achieving residential electric utility rates ranked among the lowest in the state of Florida. The OUC Agreement typically provides for approximately 50% of the City's electric supply annually.

The term of the OUC Agreement is comprised of an Initial Term of four (4) years expiring December 31, 2022, with extension rights for up to three (3) one-year terms which if exercised extend the overall term until December 31, 2025. Under the OUC Agreement, OUC performs various tasks on behalf of City, among them are: A) OUC coordinates, schedules, and dispatches electric energy to the City to supplement energy supplied from the City's contractual entitlements described in the opening paragraph above; B) OUC schedules and dispatches the City's power plant units in the Florida Municipal Power Pool ("FMPP") for City and/or FMPP benefit; C) OUC provides City with electric capacity as nominated by City annually and monthly in order for City to remain in compliance with regulatory requirements for electric generation reserves; and D) OUC arranges for and schedules electric energy deliveries to City via the FPL network transmission system.

The City's electric utility provides electricity to its customers using a variety of electric production resources. Among them are the City's entitlements in various Florida Municipal Power Agency (FMPA) projects, the City's own solar farm build atop City's closed landfill, the City's power plant, and a contract with Orlando Utilities Commission for supplemental energy and capacity effective 1/1/2019 with a term of up to seven years ("OUC Agreement"). City's entitlements and/or contracts with FMPA include participation in the St. Lucie Project, Stanton I Project, and the FMPA Municipal Solar Project (Solar I) which will begin delivering electric energy to City by December 2023.

OUC's selection as City's provider of supplemental energy and capacity was the result of City's competitive bid process conducted in 2018 and which has resulted in an estimated \$9 million per year in savings to City. City's competitive agreement with OUC has played a large role in City's achieving

residential electric utility rates ranked among the lowest in the state of Florida. The OUC Agreement typically provides for approximately 50% of the City's electric supply annually.

City's Electric Utility Staff is pleased with OUCs performance under the agreement, the flexibility the OUC Agreement provides City in its ability to vary electric capacity nominations monthly to match changes in system requirements, transparency, and ease of verifying monthly billings, and the competitive pricing and measurable savings achieved on behalf of City's electric utility customers.

In April of 2022 the City Commission approved the first one-year (1) extension under which the City is currently receiving service.

MOTION:

Move to approve/disapprove the exercise of the City's right to a second one-year (1) extension of the OUC Agreement and for Staff to provide such notification to OUC by June 1st, 2023.

ATTACHMENT(S):

Fiscal Impact Analysis
Redacted Agreement

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Operating	0	\$11,233,117	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	\$11,233,117	0	0	0
No. of Addn'l Full-Time Employee Positions					
	0	0	0	0	0

New Appropriation Fiscal Impact:	
	Revenue Source
Department	Expenditure
	Electric
Division	Power Generation
GL Description	Cont. Services/Purchase Power
GL Account Number	401-6031-531-34.20
Project Number	N/A
Requested Funds	\$11,233,117

**AGREEMENT FOR BASE, INTERMEDIATE AND PEAKING
PURCHASE AND SALE
OF ELECTRIC ENERGY AND CAPACITY,
BETWEEN
THE CITY OF LAKE WORTH
AND
ORLANDO UTILITIES COMMISSION
[REDACTED COPY]**

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**AGREEMENT FOR BASE, INTERMEDIATE AND PEAKING PURCHASE AND SALE
OF ELECTRIC ENERGY AND CAPACITY**

This AGREEMENT FOR BASE, INTERMEDIATE AND PEAKING PURCHASE AND SALE OF ELECTRIC ENERGY AND CAPACITY (this "Agreement") is entered into as of the: day of _____, 2018, by and between THE CITY OF LAKE WORTH, a municipal corporation in the State of Florida, duly constituted under Florida law ("LAKE WORTH"), and the ORLANDO UTILITIES COMMISSION, a municipal quasi-governmental agency organized under the State of Florida ("OUC"). LAKE WORTH and OUC are referred to also individually as a ("Party"), or collectively as the ("Parties")

WHEREAS, LAKE WORTH is a public agency and it owns and operates electric utility and related generation, transmission and distribution assets and properties;

WHEREAS, OUC is a public agency and it owns and operates electric utility and related generation, transmission and distribution assets and properties;

WHEREAS, LAKE WORTH is seeking Base Product, Intermediate Product and Peaking Product (Electric and Capacity) wholesale power supplies ("Wholesale Electric Service") to serve its Load Obligations (as defined below) to its customers and to that end has issued an Invitation To Negotiate ("ITN") for the provision by third parties of such power supplies;

WHEREAS, LAKE WORTH has evaluated the proposal submitted by OUC as one of the lowest and best proposal received in response to the ITN and the supply of a portion of the wholesale power by OUC will help to enable LAKE WORTH to fulfill a municipal purpose to deliver a reliable supply of electricity to customers in its service territory;

WHEREAS, Lake Worth is the owner of an electric generating plant in Lake Worth, Florida, currently consisting of ten generating units with a total summer rating capacity of 91.98 MW, as follows: The capacity of each unit is: Unit GT1, 26 MW; Unit GT2 & S5, 29.28 MW; Unit S3, 25.0 MW; Unit M 1-5, 10.0 MW, and the Lake Worth Solar, 1.7MW AC. Units GT2 and S5 normally operate together in combined-cycle operation and are referred to collectively as the "Lake Worth CC". These generating units are hereinafter referred to collectively as the "Lake Worth Power Plant"; and

WHEREAS Lake Worth has ownership shares under contracts with the Florida Municipal Power Agency ("FMPA") through the St. Lucie 2 Project (22.0 MW) and Stanton 1 Project (10.5 MW) , as well as a 10 MW PPA share in a Solar Project referred to as "Generation Entitlement Contracts". Generation Entitlement Contracts and the energy and capacity generated by the Lake Worth CC are referred to in this Agreement collectively as the "Generation Entitlements". Generation Entitlements shall be amended as changes in generation such as up-rates or down-rates are applied to each Unit. The Solar Project shall receive credit per Prudent Utility Practice. For example during the summer months the Solar Project shall have 50% credit of max generation.

WHEREAS, OUC wishes to supply Wholesale Electric Service to LAKE WORTH to enable LAKE WORTH to meet its Load Obligations to its customers, and LAKE WORTH desires to acquire such power supplies from OUC, on the terms and conditions set forth herein;

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

ARTICLE 1 - DEFINITIONS

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

“Ancillary Services” shall mean interconnected operations services identified by the Federal Energy Regulatory Commission or other regulatory bodies or agreements as necessary to effect a transfer of capacity and energy from OUC to LAKE WORTH which OUC provides hereunder from time to time, as are further described in Appendix A.

“Base Product” shall be up [REDACTED] every hour and associated energy delivered during the Term (as nominated per Article 5(c))

“Capacity” shall have the meaning as the highest 60 minute integrated peak for the month

“Capacity Charge” shall have the meaning set forth in Section 6.1

“Capacity Credit” shall mean the Entitlement Credit for St. Lucie, Stanton and the Lake Worth CC (or in simple cycle mode) totaling up to 61.78 MW. In the event of certain conditions, Lake Worth’s S3 may be a substitute Capacity replacement for the Combined Cycle unit at a value of 25.0 MW. The Capacity Credit represents the MW floor for determining capacity charges.

“Capacity Nomination - Annual” shall mean the Capacity amount in MW nominated by Lake Worth to be purchased for each month. This nomination is provided by June 1, prior year. For example, the Capacity Nomination – Annual for Calendar year 2020 shall be provided by no later than June 1, 2019.

“Capacity Nomination - Monthly” shall mean the Capacity amount in MW that might be nominated by Lake Worth to be purchased for a particular month. This nomination can be exercised 30 days prior the beginning of any subsequent month.

“Capacity Rates” shall be the Capacity Rate-Base, the Capacity Rate-Intermediate and the Capacity Rate Peaking.

“Capacity Rate-Base” shall mean \$/MW/Month for the Base Product under Appendix A

“Capacity Rate-Intermediate” shall mean \$/MW/Month for the Intermediate Product under Appendix A

“Capacity Rate-Peaking” shall mean \$/MW/Month for the Peak Product under Appendix A

“Charges” shall mean the Capacity Charge, the Fuel Energy Charge, the Non-Fuel Energy Charge, the Ancillary Services charge, and other charges as allowed by this Agreement.

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

“Dispatchable Units” shall refer to S3 and the Lake Worth CC unit, which will be made available for dispatch as needed.

“FPL” shall mean Florida Power and Light Company.

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

“Delivery Point(s)” shall mean the points of interconnection between FPL and OUC or other points as agreed to by the Parties.

“Economic Dispatch” shall mean accepted utility practices for the dispatching of generating assets to meet the Florida Municipal Power Pool (“FMPP”) system load based upon the lowest possible cost, subject to transmission and operational constraints. Dispatch variables such as startup costs, heat rate, and Variable O&M costs will be updated as necessary but must follow FMPP protocol

“Effective Date” shall mean the date on which the last Party executes the Agreement.

“Fuel Energy Charge” shall have the meaning set forth in Section 6.1.

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

“Event of default” shall have the meaning, with respect to OUC set forth in Section 15.1, and, with respect to LAKE WORTH set forth in Section 15.2, of this Agreement.

“FERC” shall mean the Federal Energy Regulatory Commission.

“Firm Load” shall mean service with priority equal to that of OUC's retail customers and other OUC wholesale customers with service from OUC system resources equivalent to that of retail customers of OUC.

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

“FMPP” shall mean the Florida Municipal Power Pool.

“FRCC” shall mean the Florida Reliability Coordinating Council, Inc.

‘

“Interest Rate” shall have the meaning set forth in Section 6.2(b).

“Intermediate Product” shall be [REDACTED] of capacity every hour and associated energy delivered during the Term (as nominated per Article 5(c)).

“KWh” shall mean kilowatt-hour.

“MWh” shall mean Megawatt-hour or 1,000 KWh.

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

“Load Obligations” shall mean the power supplies required for LAKE WORTH to meet its obligations to provide retail electricity service in its electric service territory, including power supplies consumed by LAKE WORTH's municipal facilities, required reserves, and FPL transmission losses.

“Meters” shall have the meaning set forth in Section 7.1.

“Metering Point(s)” shall mean the point(s) of interconnection between the FPL transmission system and the LAKE WORTH transmission system.

“Minimum Base Capacity” shall mean for the months of January, February March November and December, 15 MW per month as the

minimum amount of capacity to be purchased each month . For the months of April, May, June, July August, September and October, the Minimum Base Capacity shall be 25 MW per month

“Monthly Peak Load” shall mean the highest Load Obligation for Lake Worth for any 60 minute integrated reading during the calendar month. The highest hour load shall determine the monthly peak load except as described in Section 6.1(b).

“Monthly Wholesale Electric Capacity” shall mean the combination of the Base, Intermediate and/or Peaking Product(s) for each calendar month.

“Monthly Wholesale Electric Energy” shall mean the MWhs delivered at the Delivery Point(s) during each calendar month.

“Non-Fuel Energy Charge” shall have the meaning set forth in Section 6.1.

“Non-Fuel Energy Rate” shall mean the rate as specified in Appendix A.

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

“Payment Date” shall have the meaning set forth in Section 6.2(b).

“Peaking Product” shall be up to 40 MWs of capacity every hour and associated energy delivered during the Term (as nominated per Article 5(c)).

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

“Rates” shall mean the Capacity Rates, the Monthly Fuel Energy Rates and the Non-Fuel Energy Rate.

“Requesting Party” shall have the meaning set out in Section 18.2.

“S3” shall have the meaning of the Lake Worth unit S3 at a Capacity Rate of 25.6 MW.

“Service Date” shall mean the later of a) the date on which the conditions precedent under Section 12.1 and 12.2 have been satisfied or waived in writing by the applicable Party and (b) January 1, 2018.

“Substitute Capacity” shall mean the substitution by Lake Worth of the S3 unit for the Lake Worth CC (or running the Lake Worth CC under simple cycle mode) with a value of 25.0 MW for S3 and or 19.5 MW for the simple cycle mode).

“Supplemental Energy and Capacity Costs” shall have the meaning set forth in Section 4.2.

“Term” shall mean the period from the Service Date until December 31, 2025, unless sooner terminated in accordance with the terms of this Agreement.

“Transmission Service” shall mean FPL Network Integration Transmission Service between the Delivery Point(s) and LAKE WORTH transmission ties with FPL.

“Wholesale Electric Capacity” shall mean no less than 15 MWs of electric capacity (For the Months of January, February, March, November and December) Otherwise it shall be no less than 25MW of electric Capacity as made available to LAKE WORTH by OUC at the Delivery Point(s) during the Term and under the terms and conditions of this Agreement.

“Wholesale Electric Energy” shall mean electric energy delivered by OUC at the Delivery Point(s) during the Term and under the terms and conditions of this Agreement.

“Wholesale Electric Service” shall have the meaning set forth in Article 2.

ARTICLE 2 - WHOLESALE ELECTRIC SERVICE

Commencing on the Service Date and during the Term, in accordance with the terms and subject to the conditions hereof, OUC shall provide and deliver Wholesale Electric Service (at the Delivery Point(s), contingent on LAKE WORTH acquiring sufficient Transmission Service) and LAKE WORTH shall purchase electric capacity and electric energy to serve its Load Obligation, which services shall be referred to as "Wholesale Electric Service" and consist of the following:

- (a) Ancillary Services described in Appendix A;
- (b) Supply of Monthly Wholesale Electric Energy; and,
- (c) Supply of Monthly Wholesale Electric Capacity.

ARTICLE 3 - TERM

This Agreement shall be in force and effect as of the Effective Date. The obligations of the Parties in respect of the supply and acceptance of Wholesale Electric Service shall commence on the Service Date and shall continue until December 31, 2022 (“Initial Term”). LAKE WORTH will have two (2) unilateral one (1) year extension until December 31, 2024. LAKE WORTH shall have until June 1st of the preceding to exercise each of the one (1) year extensions. The parties will also have a mutual option to extend until December 31 2025 (“Extended Term”), which shall be mutually agreed to by no later than June 1, 2024. This Agreement shall remain in effect for the Term and Extended Term, unless terminated earlier under the terms of this Agreement. Termination or expiration of this Agreement shall not affect or excuse the performance of either Party under any provision of this Agreement that by its nature or terms survives any such termination or expiration.

ARTICLE 4 - OBLIGATIONS OF LAKE WORTH AND OUC

Section 4.1 Obligations of LAKE WORTH

- (a) LAKE WORTH shall, during the Term and Extended Term, buy and receive from OUC Wholesale Electric Capacity and will receive Wholesale Electric Energy to serve its Load Obligations.
- (b) LAKE WORTH shall pay OUC a monthly payment in accordance with Section 6.2.
- (c) As of the Service Date, LAKE WORTH shall for the Term and Extended Term maintain Transmission Service to accept energy and capacity under this Agreement. In the event that LAKE WORTH is unable to maintain the Transmission Service, LAKE WORTH is still obligated to make all applicable payments to OUC for the Term and the Extended Term.
- (d) LAKE WORTH shall pay OUC for any Ancillary Services procured by LAKE WORTH from OUC pursuant to Appendix A in accordance with Section 4.2(c).
- (e) LAKE WORTH acknowledges and agrees that OUC shall have no responsibility for the distribution and resale to LAKE WORTH's electric system customers of the electricity delivered by OUC and the collection of any payments from LAKE WORTH's electric system customers.

Section 4.2 Obligations of OUC

- (a) OUC shall sell and deliver to LAKE WORTH at the Delivery Point(s) Wholesale Electric Service for the duration of the Term and the Extended Term with a firmness and priority of service equal to that of OUC's Firm Load. LAKE WORTH acknowledges and agrees that OUC shall not be responsible for reductions in Wholesale Electric Service during the period of time that deliveries

of Wholesale Electric Energy and Ancillary Services to the Delivery Point(s) cannot be made as a result of problems or limitations on any transmission system other than OUC's; provided, however, in the event of a problem or limitation affecting OUC transmission system, there is insufficient Transmission Service, or LAKE WORTH requires additional Capacity and Energy, due to one of the Generation Entitlements not being available, OUC shall use commercially reasonable efforts to arrange for delivery of the Wholesale Electric Energy and Ancillary Services at alternate delivery points or, if permissible, to the Delivery Point (s). In the event that OUC is able to find viable supply during such periods of time, LAKE WORTH shall reimburse OUC for any such additional direct costs OUC incurs to provide Wholesale Electric Energy and Ancillary Services to such alternate delivery points or, if applicable, to the Delivery Point ("Supplemental Energy and Capacity Costs"). If scheduling requirements of such resources allow sufficient time for OUC to confer with LAKE WORTH, OUC will contact LAKE WORTH's designated representative and provide LAKE WORTH the opportunity to direct OUC not to pursue the alternate delivery points.

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

(c) OUC shall provide Ancillary Services set forth in Appendix A. Each such Ancillary Service shall at OUC's option be provided by OUC either directly or through the FMPP and charged to LAKE WORTH on a direct cost pass-through basis (the "Ancillary Services Charge"). If the Ancillary Service is being provided through the FMPP, the costs to be passed through shall be calculated in a manner consistent with the allocation methodology used by the FMPP, which method is, as of the date of this Agreement, based on the pro rata energy share that the Ancillary Services required to serve LAKE WORTH under this Agreement bears to OUC's total cost of Ancillary Services during the applicable billing period. If the Ancillary Service is provided directly by OUC, the cost shall be calculated as referenced in Appendix A, Section 4.

(d) OUC shall calculate the amount due on a monthly basis for all Wholesale Electric Service provided in the prior calendar month as measured at the Metering Point (as adjusted for FPL transmission losses per the FPL transmission tariff), and shall submit an invoice to LAKE WORTH for payment. The monthly invoice shall be calculated for the Charges by applying the Rates in accordance with Section 6.1.

ARTICLE 5 - SALE AND PURCHASE

a) OUC shall during the Term and Extended Term at its cost and expense sell Wholesale Electric Service including delivery of Wholesale Electric Energy and Ancillary Services to the Delivery Point(s) or, in the event of a problem or limitation affecting OUC transmission system or there is not enough

transmission through OUC-FPL, to such alternate delivery points as OUC with commercially reasonable efforts can arrange to accept delivery of such Wholesale Electric Service. LAKE WORTH shall during the Term and Extended Term buy from Wholesale Electric Capacity and will receive at the Delivery Point(s) Wholesale Electric Energy to serve its Load Obligations. The Charges and Rates for such sale and purchase shall be as set forth in Section 6.1 and Appendix A.

b) Prior to June 1st of every year, the Parties will agree on the forecasted peak load for the following year as well as peak load for each calendar month. Monthly Electric Capacity is defined as (i) Lake Worth's projected or forecasted peak load for such year, as agreed by mutual Parties, less (ii) the total capacity of the Generation Entitlements including any Substitute Capacity with the resultant quantity then multiplied by (iii) 1.15 to account for reserve margins. Appendix F has the 2019 Nominations on a monthly basis.

[(1) For illustration: The monthly peak load forecasted for this example is 96 MW. The amount of the Generation Entitlements will then be subtracted from the forecasted peak, and the resulting value will then be multiplied by 1.15 to account for reserve requirements to yield the Monthly Electric Capacity. The Monthly Electric Capacity will be multiplied by the Monthly Capacity Rate (Appendix A) to determine the Monthly Capacity Charge.

Illustration:

Load Obligation	101.0	MW
-Minus St Lucie	(22.0)	MW
-Minus Stanton 1	(10.5)	MW
-Minus LW CC	(29.28)	MW
Total Supplied by OUC for month MW(Base)	39	MW

Under this example, Lake Worth would pay OUC Capacity Charges equal to the 39 MW of Base nominated for the month.

c) LAKE WORTH shall have the capability to modify their monthly Capacity Nomination – Monthly by the 1st of the prior month. For example, the original schedule (5.b) was to take 39 MW of Base for September 2019, but LAKE WORTH now would like to change to 25 MW for September 2019, LAKE WORTH will have until August 1, 2019 to change such nomination. If the modified nomination is an increase, such increase shall be contingent on FPL transmission availability

d) When a Generation Entitlement (or S3 if applicable) is offline but available for Economic Dispatch, and if LAKE WORTH's load requires such

energy, OUC shall provide such replacement at the OUC costs for energy without charging LAKE WORTH a Capacity Charge.

1) For illustration: In a given month, the Lake Worth CC is not dispatched under Economic Dispatch protocols. Stanton and St. Lucie are both available for dispatch. Lake Worth will be credited 61.78 MW for Capacity Deficiency purposes

e) When Generation Entitlements used for capacity purposes are offline for planned maintenance, (including refueling in the case of St. Lucie) and load requires such energy, OUC shall provide such replacement at the OUC cost for energy without charging LAKE WORTH a Capacity Charge. Such planned maintenance will be agreed upon and scheduled in advance.

f) When Generation Entitlements used for capacity purposes are unavailable for reason other than Article 5 (d) & (e) above and load requires such energy, OUC will, if sufficient Transmission and Energy is available, provide Energy and Capacity at the OUC cost (including Capacity Charge).

g) If LAKE WORTH's load, in any particular hour, exceed the Total of the available Generation Entitlements and OUC PPA as nominated (in the illustration above, 40MW) then OUC will, if sufficient Transmission and Energy is available, provide Energy and Capacity at the OUC intermediate cost for capacity and associated energy.

Example 1:

LAKE WORTH load, is 110 MW (includes reserve requirement); Generation Entitlements are 61.78 MW, OUC PPA 40 MW = 8.220 MW Short ($-110+60.60+40=-8.22$ plus gross-up for FPL transmission losses).

If Transmission and Energy is available, OUC will deliver the 9.0 (8.22 rounded up to the next integer) MW to cover LAKE WORTH Load. The price for 9.0 MW will then be OUC costs for energy for each applicable hour plus the applicable Capacity rate for the Intermediate Product for such year in Appendix A.

Example 2: (Change in nomination)

LAKE WORTH load is 96 MW; Generation Entitlements are 61.78MW, OUC PPA (LAKE WORTH changed the nomination) to 25 MW = 9.2MW Short ($-96+61.78+25=-9.2$).

If Transmission and Energy is available, OUC will deliver the 9.0 MW to cover LAKE WORTH Load. The price will then be OUC costs for

energy plus the applicable Capacity rate for the Intermediate Product for such year in Appendix A.

Example 3: Lake Worth CC is unavailable, substitute S3, insufficient Capacity nomination

LAKE WORTH load is 96 MW (Including Reserves); Original Generation Entitlements are 61.78 MW, Combined Cycle LW is unavailable for reasons other than an agreed upon planned outage and for more than 72 hours resulting in a 29.28MW reduction in entitlements. Lake Worth substitutes Unit S3 for Capacity which provides 25.0MW bringing entitlements to 57.0 MW. Then the calculation shall be as follows: $96 - (61.78 - 29.28 + 25.0) = -38.5$ required MW. OUC PPA (LAKE WORTH nomination for the month is 35 MW. If Transmission and Energy is available, OUC will then deliver the 4.0 MW to cover LAKE WORTH Load. The price will then be OUC costs for energy and plus the applicable Capacity rate for the Intermediate Product for such year in Appendix A.

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

i) LAKE WORTH has the right but not the obligation to retire existing generation and replace or add additional renewable generation (upon 6 month notice to OUC, with the exception of catastrophic failure of any of the units)

ARTICLE 6 - PRICE AND BILLING

Section 6.1 Billing for Services

Section 6.1.1 For the Wholesale Electric Service that OUC delivers to the Delivery Point(s) based on data from the Metering Point(s), OUC shall deliver an invoice to LAKE WORTH (Sample calculation in Appendix F) and LAKE WORTH shall pay OUC the following Charges as follows:

(a) Monthly Capacity Charge

The Monthly Capacity Rate as set forth in Appendix A times the amounts scheduled for each of the Base, Intermediate and Peaking Capacity.

(b) Shortfall Capacity Charge

When the monthly Capacity exceeds the Forecasted Capacity for the month, and as long as such shortfall is more than 5 MW for longer than 2 hours, LAKE

WORTH will be charged the Capacity Charge under the Intermediate Capacity under Appendix A.

(c) Lake Worth Capacity Exception-Planned Outage

Lake Worth and OUC shall, in coordination, plan for up to 30 days annual planned outage for the CC. This planned outage will be agreed upon by both parties and will take place during the months of November-March unless otherwise agreed upon by both parties. During this planned outage, Lake Worth will make available as necessary S3 as an Economic Dispatch substitute for up to 25MW of Capacity.

(d) Lake Worth Capacity Exception-72 Hours

If the Lake Worth Combined Cycle is called upon for Economic Dispatch and is unavailable (for any other reason than lack of Fuel), Lake Worth will have up to 72 hours to make the unit available, including ramp up, before the Combined Cycle is considered unavailable for Capacity Pricing purposes. Prior to the 72 hours, Lake Worth may elect to make S3 and or Lake Worth CC in simple cycle mode available for Economic Dispatch for up to 25 MW Capacity credit. The 72 hours exception can be exercised once every calendar month.

(e) Monthly Fuel Energy Charge

The Monthly Fuel Energy Rates as set forth in Appendix A multiplied by the Monthly Wholesale Electric Energy for the Base, Intermediate and Peaking Products sold in the applicable billing period

(d) Monthly Non-Fuel Energy Charge

The Non-Fuel Energy Rate multiplied by the Monthly Wholesale Electric Energy for the Base, Intermediate and Peaking Products sold in the applicable billing period.

(e) Monthly Ancillary Service Charge

The monthly Ancillary Services Charge shall be the sum of the Monthly Ancillary Service Charges, as outlined in Appendix A and computed in accordance with Section 4.2(c).

Additional Charges for either (i) energy and/or capacity is bought from other vendors (outside OUC) or (ii) other charges incurred by OUC.

Section 6.2 Payment

(a) On or before the tenth (10th) day following the end of each calendar month in which OUC provides LAKE WORTH with Wholesale Electric Service, OUC shall calculate the amount due and payable by LAKE WORTH for Wholesale Electric Service delivered in such prior month in accordance with this Article 6. The amount payable shall be calculated as the sum of the Capacity Charges, the Fuel Energy Charges, the Non-fuel Energy Charge, Ancillary Services Charge and/or any additional charges allowable in this Agreement (if any) for the prior month and shall be itemized on the monthly invoice along with any other information and detail reasonably requested by LAKE WORTH.

(b) Unless otherwise specified herein, payments due under this Agreement shall be due and payable by wire transfer, on or before the later of the fifteenth (15th) business day following receipt of the invoice or the twenty-fifth day of the calendar month in which the invoice is received (the "Payment Date"). If an undisputed amount owed is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based upon the annual interest rate equal to the prime lending rate plus 100 basis points as published on the date of the invoice in the Wall Street Journal (or, if the Wall Street Journal is not published on that day, the next succeeding date of publication) or the highest rate allowable under Florida's usury laws, whichever is less ("Interest Rate"). If the due date occurs on a weekend or holiday, the late payment charge shall begin to accrue on the next succeeding business day and shall cease accruing on the day prior to payment. Disputes relating to invoicing shall be resolved in accordance with the pre-litigation procedures set forth in Section 19.

(c) In the event an invoice or portion thereof is disputed, the disputing Party shall provide notice of the dispute to the other Party and detail therein the basis for the dispute and its proposed correction or adjustment to the invoice within fifteen (15) business days of receipt of the disputed invoice. Representatives of the Parties shall promptly confer in person or telephonically in a good faith attempt to resolve the dispute within five (5) business days of the notice of dispute. If a correction of or adjustment to the disputed invoice is agreed upon, a revised invoice shall be promptly issued. Payment of the disputed portion shall be made under protest when due, with notice of the objection given to the other Party. Any invoice dispute shall be in writing and shall state the basis for the dispute. Upon resolution of the dispute in accordance with this paragraph or Section 19, any required refund shall be made within five (5) business days of such resolution along with interest accrued at the Interest Rate from and including 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.

Section 6.3 Taxes, Fees and Levies. Sales for Resale

(a) OUC shall process payment for all present (from the execution of this Agreement and the Service Date) and any future taxes, fees and levies that may be assessed upon OUC by any governmental authority not controlling or controlled by OUC on the sale to LAKE WORTH of Wholesale Electric Service or any component thereof. OUC shall promptly notify LAKE WORTH of the commencement of any legislative, regulatory, administrative or other governmental action, of which it becomes aware, imposing such taxes, fees and/or levies upon the sale of Wholesale Electric Service. Each such tax, fee and levy shall be identified in a separate line item on the monthly invoice from OUC to LAKE WORTH for Wholesale Electric Service. LAKE WORTH shall reimburse OUC for the increase in any such taxes, fees and levies paid by OUC as a result of providing Wholesale Electric Service to LAKE WORTH under this Agreement. In the event of the imposition of any such taxes, fees or levies on the sale of Wholesale Electric Service hereunder, each Party shall use reasonable efforts to minimize all such taxes, fees or levies so long as neither Party is materially adversely affected by such efforts and no such measures will create a subsidy for LAKE WORTH by OUC's retail or other wholesale customers or a subsidy by LAKE WORTH of OUC's retail or other wholesale customers.

(b) All Wholesale Electric Service delivered by OUC to LAKE WORTH hereunder shall be sales for resale by LAKE WORTH. LAKE WORTH shall obtain and provide OUC with any certificates reasonably requested by OUC to evidence that the deliveries hereunder are sales for resale.

Section 6.4 Audit Rights.

Each Party has the right, after reasonable notice, at its sole expense and during normal business hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any invoice, bill, statement, Charges or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantity of Wholesale Electric Service delivered at the Delivery Point(s) or alternate delivery points (as applicable). If any such examination reveals any inaccuracy in any invoice, bill or statement, the necessary adjustments in such invoice, bill or 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 invoice, bill 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.

ARTICLE 7 - SERVICE FACILITIES AND METERING

Section 7.1 Measurement

Wholesale Electric Energy shall be measured by metering equipment approved by

OUC at or adjacent to the Metering Points, which metering equipment shall constitute the basis of measuring energy, and computation of bills for energy consumption.

Section 7.2 Testing

OUC, upon notice to Lake Worth, shall have the right in the presence of a representative of Lake Worth, to read and check Lake Worth's meters and/or metering equipment, for any reason, including when there is any disagreement as to the correctness of the readings or the accuracy of said meters or metering equipment. In the event of such disagreement, the Parties shall retain a mutually agreeable independent inspector, the cost of which shall be borne equally by each Party. The determination of the independent inspector as to the correctness of the meter reading shall be accepted by the Parties as final. The Parties agree that said meters and metering equipment will be considered accurate provided calibration is within one (1) percent, fast or slow, of accuracy. Should any meter be beyond this range of accuracy, an adjustment shall be made for the period of known accuracy, based upon the average of three (3) months consumption, prior to the period in question, but no adjustment shall extend over a period of more than three (3) months.

Section 7.3 Meter Fails

If a Metering Device fails to register, or if the measurement made by a Metering Device is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Metering Device, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

- (a) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (a) the last one-half of the period from the last previous test of the Metering Device to the test that found the Metering Device to be defective or inaccurate, or (b) the ninety (90) days immediately preceding the test that found the Metering Device to be defective or inaccurate.
- (b) To the extent that the adjustment period covers a period of deliveries for which billings have already been made by OUC, OUC shall use the corrected measurements as determined in accordance with this Article 7 to compute the adjustment necessary for the period of the inaccuracy and shall adjust billing for this period from such recomputed amount.

ARTICLE 8 - CONTINUITY OF SERVICE

Section 8.1 Interruptions.

OUC shall supply and deliver Wholesale Electric Energy and Ancillary Services hereunder to the Delivery Point(s) on a firm basis with priority equal to that of OUC's Firm Load. OUC shall not be responsible for any failure to deliver Monthly Wholesale Service due to (a) transmission system operations outside of OUC's transmission system or (b) interruptions of transmission service within OUC's transmission system if initiated by the FRCC security coordinator. OUC shall not be liable for third-party Claims arising out any failure to supply Wholesale Electric Service hereunder, or for interruption, reversal or abnormal voltage of the supply, unless such failure, interruption, reversal or abnormal voltage is the result of gross negligence or intentional misconduct on its part, and any liability of OUC for any Claims arising out of or related to such failure, interruption, reversal or abnormal voltage of the supply by OUC shall be limited to \$100,000 per occurrence.

Section 8.2 Capacity Shortfalls.

In the event of an OUC capacity shortfall that requires load interruption, OUC shall affect load interruption of OUC Firm Load (including other wholesale customers with equal firmness) and LAKE WORTH retail customers on a pro rata basis showing no adverse distinction between LAKE WORTH, or OUC' s Firm Load.

Section 8.3 Shortfall Notification.

OUC will promptly inform LAKE WORTH as soon as possible under the circumstances upon becoming aware of any event, occurrence or circumstance that will result in load shedding or otherwise cause a material reduction or an interruption or suspension of delivery of Wholesale Electric Service to LAKE WORTH.

ARTICLE 9 - DELIVERY VOLTAGE

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

ARTICLE 10 - DELIVERY AND LOSSES

Section 10.1 Delivery

Title to and risk of loss related to the Wholesale Electric Service shall transfer from OUC to LAKE WORTH at the Delivery Point(s) (or alternate delivery point(s)) free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point(s). OUC shall not incur any expense or risk beyond the Delivery Point(s) (or alternate delivery point(s)) and LAKE WORTH shall not incur any expenses or risk up to and at the Delivery Point(s).

Section 10.2 FPL Losses

Losses for Monthly Wholesale Electric Energy between the Delivery Point(s) (or alternate delivery point(s)) and the Metering Point(s) for LAKE WORTH's electric distribution system shall be determined in accordance with FPL's approved transmission tariff.

ARTICLE 11 - CONDITIONS PRECEDENT

Section 11.1. Conditions to Obligations of LAKE WORTH.

The obligations of LAKE WORTH under this Agreement to purchase and receive Wholesale Electric Service shall commence on the Service Date, and such obligations are subject to the fulfillment and satisfaction of each of the following conditions on or before December 31, 2018, any one or more of which may be waived only in writing, in whole or in part, by LAKE WORTH:

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

(i) All representations and warranties of OUC contained in this Agreement shall be true and correct in all material respects as of the date when made and at and as of the Effective Date as though such representations and warranties had been made or given on such date (except to the extent such representations and warranties specifically pertain to an earlier date), except

(A) for changes contemplated by this Agreement and

(B) where the failure to be true and correct will not have a material adverse effect on LAKE WORTH's rights, remedies or benefits under this Agreement;

(ii) OUC shall have performed and complied with, in all material respects, its obligations that are to be performed or complied with by it hereunder prior to or on the Effective Date; and

(b) No Material Adverse Change. No change in the business, properties, assets, generation resources, transmission system, financial condition, results of operations or prospects of OUC shall have occurred and be continuing or with the passage of time, the giving of notice or both, shall be reasonably likely to occur which have a material adverse effect on OUC's ability to perform its obligations under this Agreement.

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

(d) Required Approvals. All the approvals and authorizations set forth in Appendix B hereto, shall have been received.

Section 11.2. Conditions to Obligations of OUC.

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

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

(i) All representations and warranties of LAKE WORTH contained in this Agreement shall be true and correct in all material respects when made and at and as of the Effective Date and at and as of the Service Date as though such representations and warranties had been made or given on such date (except to the extent such representations and warranties specifically pertain to an earlier date), except for;

(A) for changes contemplated by this Agreement and

(B) where the failure to be true and correct will not have a material adverse effect on OUC's rights, remedies or benefits under this Agreement;

(ii) LAKE WORTH shall have performed and complied with, in all material respects, its respective obligations that are to be performed or complied with by them hereunder prior to or on the Effective Date or the Service Date (as applicable); and

(b) Required Approvals. All the approvals and authorizations set forth in Appendix B hereto, shall have been received on or before December 31, 2018.

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

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

(e) PSC Regulation. No new law shall be pending or passed which would cause OUC to become regulated by the Florida PSC by virtue of its service duties under this Agreement.

Section 11.3. Coordination:

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

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

ARTICLE 12 - TERMINATION PRIOR TO SERVICE DATE

Section 12.1. Termination Prior to Service Date.

(a) If the conditions precedent to LAKE WORTH's and OUC's obligations hereunder set forth in Article 11 hereof have not been satisfied or waived on or prior to the express date specified therein or December 31, 2018, notwithstanding the reasonable effort of the Party to satisfy or waive the condition, then at any time thereafter, either Party may terminate this Agreement on written notice of termination to the other Party, without any liability or obligation of any Party to the others as a result of such termination, unless prior to the delivery of any such written notice of termination the condition or conditions precedent which had not been satisfied are satisfied.

(b) If the Agreement is terminated by OUC pursuant to Section 11.2 or by LAKE WORTH under 11.1, then the following shall apply:

(i) If OUC exercises its right to terminate this Agreement under Section 11.2, then neither party shall thereafter have any further obligations to the other hereunder.

(ii) If LAKE WORTH terminates this Agreement pursuant to Section 11.1 then OUC shall thereafter (a) have no further obligations hereunder and (b) shall have the right to require LAKE WORTH to assume OUC's rights, obligations and liabilities under any or all contracts entered into by OUC with LAKE WORTH's prior written approval solely for the purpose of providing electric energy and capacity to LAKE WORTH under this Agreement that are described in Appendix D.

Section 12.2. Notice.

Each Party shall notify the other Party promptly if any information comes to its attention prior to the Effective Date or prior to the Service Date, as applicable that it believes will potentially excuse such Party from the performance of its obligations under this Agreement or might reasonably cause any condition set forth in Article 11 not to be satisfied on or prior to the Service Date

ARTICLE 13 - REPRESENTATIONS AND WARRANTIES

Section 13.1. General Representations and Warranties.

Each Party hereby represents and warrants to the other that:

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

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

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

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

(e) Except for those approvals listed in Appendix B and approval of a transmission service agreement between LAKE WORTH and FPL by the FERC, no consent, waiver, order, approval, authorization or order of, or registration, qualification or filing with, any court or other governmental agency or authority or other person is required for the execution, delivery and performance by such Party of this Agreement and the consummation by such Party of the transactions contemplated hereby. No consent or waiver of any party to any contract to which such Party is a party or by which it is bound is required for the execution, delivery and performance by such Party

of this Agreement that has not been or will by the Effective Date have been duly obtained.

(f) There is no action, suit, grievance, arbitration or proceeding pending or, to the knowledge of such Party, threatened against or affecting such Party at law or in equity, before any federal, state, municipal or other governmental court, department, commission, board, arbitrator, bureau, agency or instrumentality which prohibits or impairs its ability to execute and deliver this Agreement or to consummate any of the transactions contemplated hereby. Such Party has not received written notice of and otherwise is not aware of any such pending or threatened investigation, inquiry or review by any governmental entity.

Section 13.2. Disclaimers.

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

ARTICLE 14 - SECURITY

Section 14.1. OUC Security

OUC shall maintain a rating on senior unsecured debt securities of OUC by Standard and Poor's Corporation, Moody's Investors Service, Inc., Fitch IBCA or another nationally recognized rating service reasonably acceptable to LAKE WORTH of BBB+ its equivalent or a rating equivalent to LAKE WORTH senior unsecured debt securities, if any, whichever is lower. In the event that OUC's credit rating fails to meet said credit standing and OUC fails to restore its credit rating to said standing within 12 months after its rating has fallen, OUC shall notify LAKE WORTH thereof and shall upon request by LAKE WORTH provide a Letter of Credit, cash or bond sufficient to assure OUC's due performance under this Agreement.

Section 15.2. LAKE WORTH Security

The LAKE WORTH shall maintain a rating on senior unsecured debt securities of LAKE WORTH, if any such securities are rated, by Standard and Poor's Corporation, Moody's Investors Service, Inc., Fitch IBCA or another nationally recognized rating service reasonably acceptable to OUC of BBB+ or its equivalent, or a rating equivalent to OUC senior unsecured debt securities, whichever is lower. In the event that LAKE WORTH issues any senior unsecured debt securities and the rating on such securities falls below such specified minimum rating and LAKE WORTH fails to restore its credit rating to such specified minimum rating standing within 12 months after its rating has fallen below the rating described above, LAKE WORTH shall within thirty (30) days of a written request by OUC therefor provide a Letter of Credit, cash or bond or other

assurances reasonably sufficient to assure LAKE WORTH's due performance of its purchase and payment obligations under this Agreement.

ARTICLE 15 - EVENTS OF DEFAULT

Section 15.1. Events of default by OUC.

Any one or more of the following shall constitute an "Event of default" hereunder with respect to OUC:

(a) OUC shall fail to pay any amounts to be paid by OUC hereunder to LAKE WORTH and such failure shall continue for a period of more than ten (10) Business Days after notice by LAKE WORTH.

(b) A default shall occur in the performance of any other material covenant or condition to be performed by OUC hereunder (other than a default specified in Section 16.1(a)) and such default shall continue un-remedied for a period of thirty (30) days after notice from LAKE WORTH specifying the nature of such default; provided, however, that if such default (other than the failure to make payments when due) cannot reasonably be remedied by OUC within thirty (30) days, subject to commencement of action to remedy the default within such thirty (30) day period, OUC shall have up to an additional sixty (60) days to remedy the default.

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

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

Section 15.2. Events of default by LAKE WORTH.

Any one or more of the following shall constitute an "Event of default" hereunder with respect to LAKE WORTH:

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

(b) default shall occur in the performance of any material covenant or condition to be performed by LAKE WORTH hereunder (other than a default specified in Section 16.2 (a)) and such default shall continue un-remedied for a period of thirty (30) days after notice from OUC specifying the nature of such default; provided, however, that if such default cannot reasonably be remedied by LAKE WORTH within thirty (30) days, subject to commencement of action to remedy the default within such thirty (30) day period, LAKE WORTH shall have up to additional sixty (60) days to remedy the default.

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

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

Section 15.3. Remedies.

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

(a) Upon the occurrence of an Event of default by either Party hereunder, the non-defaulting Party shall have the right to (i) invoice and collect all amounts then due to it from the defaulting Party hereunder (subject to any applicable limitation of liability or cap on damages), and (ii) terminate this Agreement at any time during the continuation of such Event of default upon written notice to the

defaulting Party. Notwithstanding any other provision of this Agreement, after the occurrence of an Event of default and for so long as the Event of default is continuing and has not been cured, the non-defaulting Party shall have the right, upon written notice to the defaulting Party, to suspend all performance under this Agreement until such Event of default has been cured.

(b) If LAKE WORTH terminates this Agreement as a result of the occurrence of an Event of default by OUC, then LAKE WORTH shall thereafter have no further obligations hereunder and shall have all rights and remedies available to it under applicable law, including the right to recover damages and shall thereafter have no further obligations hereunder other than (upon OUC's request) assume OUC's rights, and further obligations and liabilities under any or all contracts entered into by OUC with LAKE WORTH's express, prior written approval solely for the purpose of providing electric energy and capacity to LAKE WORTH under this Agreement.

(c) If OUC terminates this Agreement as a result of the occurrence of an Event of default by LAKE WORTH, then OUC shall thereafter (a) have no further obligations hereunder and shall have all rights and remedies available to it hereunder and under applicable law, including the right to recover damages and (b) to have the right to require LAKE WORTH to assume OUC's rights, obligations and liabilities under any or all contracts entered into by OUC with LAKE WORTH's express, prior written approval solely for the purpose of providing electric energy and capacity to LAKE WORTH under this Agreement.

(d) The remedies provided for in this Section 15.3 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise). The remedies provided for in this Section 15.3 shall be subject to the limitations of liability and caps on damages set forth in Article 16.

ARTICLE 16 - LIMITATION OF LIABILITY

Section 16.1. No Consequential Damages.

NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER INDEMNITY PROVISIONS OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, COST OF CAPITAL; LOSS OF USE, LOSS OF GOODWILL, REPLACEMENT POWER OR CLAIMS OF CUSTOMERS, UNLESS SUCH DAMAGES ARE A COMPONENT OR ELEMENT OF A CLAIM THAT IS SUBJECT TO INDEMNIFICATION HEREUNDER AND COVERED UNDER A PRIMARY POLICY OF LIABILITY INSURANCE, IF ANY, ISSUED BY A THIRD PARTY SURETY.

Section 16.2. Aggregate Cap on Liability.

NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, THE TOTAL AGGREGATE LIABILITY OF OUC TO LAKE WORTH AND OF LAKE WORTH TO OUC UNDER THIS AGREEMENT, WHETHER BASED ON CLAIMS ARISING UNDER TORT, CONTRACT, STRICT LIABILITY OR ANY OTHER THEORY OF RECOVERY, SHALL NOT EXCEED THE FOLLOWING:

(i) FOR EITHER PARTY, OTHER THAN AS TO THE CONDITIONS SET FORTH IN 16.2 (ii) (FOR OUC) AND 16.2 (iii) (FOR LAKE WORTH), THE AMOUNT(S) SET FORTH IN APPENDIX D;

(ii) FOR OUC, WHERE LAKE WORTH CAN DEMONSTRATE OUC HAS BREACHED THIS AGREEMENT FOR PURPOSES OF PURSUING MORE FAVORABLE MARKET SALES FOR ENERGY OR CAPACITY, THE AMOUNT(S) SET FORTH IN APPENDIX D;

(iii) FOR LAKE WORTH, WHERE OUC CAN DEMONSTRATE LAKE WORTH HAS BREACHED THIS AGREEMENT FOR PURPOSES OF PURSUING OTHER POWER SUPPLY OPTIONS, INCLUDING THE PARTIAL OR FULL SALE OF THE LAKE WORTH UTILITY SYSTEM, THE AMOUNT(S) SET FORTH IN APPENDIX D.

ARTICLE 17 - INDEMNIFICATION

Section 17.1. Indemnification by OUC.

To the extent permitted by Florida law and subject to the limitations set out in Article 16, OUC shall indemnify, defend and hold harmless LAKE WORTH and its respective officials, officers, directors, agents, representatives and employees from and against any and all loss, costs, expense, Claims, demands, liabilities (including reasonable attorneys' fees), judgments, fines, settlements and other amounts arising from any and all Claims relating to or arising out of:

(a) any willful misconduct or illegal acts of OUC;

(b) any damages awarded against LAKE WORTH in a Claim by a third party to the extent arising from the negligent acts or omissions of OUC or any of its agents or employees in exercising its rights or performing its obligations hereunder after the Effective Date.

Section 17.2. Indemnification by LAKE WORTH.

To the extent permitted by Florida law and subject to the limitations set out in Article 16, LAKE WORTH shall indemnify, defend and hold harmless OUC, its officers, directors, agents, employees and Affiliates from and against any and all loss, costs, expense, Claims, demands, liabilities (including reasonable attorneys' fees), judgments, fines,

settlements and other amounts arising from any and all Claims relating to or arising out of:

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

ARTICLE 18 - DISPUTE RESOLUTION

Section 18.1. Resolution by Officers of the Parties.

Except as otherwise expressly, specifically set forth herein, in the event of any dispute between the Parties as to a matter referred to herein or as to the interpretation of any part of this Agreement, including this Section 18.1 or as to the determination of any rights or obligations or entitlements arising from or related to this Agreement or as to the calculation of any amounts payable under this Agreement, the Parties shall refer the matter to their respective duly authorized representatives, for resolution. Should such representatives of the respective Parties fail to resolve the dispute within twenty (20) days from such referral, the Parties agree that any such dispute shall be first referred to non-binding mediation in accordance with Section 18.2. Should mediation be unsuccessful within the times specified in Section 18.2, the Parties may pursue any legal or equitable remedies available under Florida Law.

Section 18.2. Mediation Procedures.

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

shall pay the costs of its own counsel and share equally the fee and cost of the mediator.

Section 18.3. Settlement.

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

Section 18.4. Legal Remedies.

If mediation is unsuccessful, either Party may pursue any legal rights and remedies made available under Florida Law. The Parties agree that the exclusive venue for any dispute arising hereunder that is not resolved through the dispute resolution procedures set forth in Section 18.1 and 18.2 shall be the State Circuit Court in Orange County, Florida.

Section 18.5. Continued Performance.

Except to the extent a Party has the right to suspend performance under Section 15.3 hereof no dispute shall interfere with the Parties' continued fulfillment of their obligations under this Agreement pending the outcome of the mediation process or a decision by the Florida courts.

ARTICLE 19 - FORCE MAJEURE

Section 19.1. Force Majeure Standard.

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

Section 19.2. Force Majeure definition.

An event of "Force Majeure" means an event or circumstance that prevents or unduly frustrates the performance by a Party of its obligations under this Agreement (other than the duty to make payments when due, which shall not be excused by Force Majeure) which is not within the reasonable control of, or the result of the negligence of, such Party and which by the exercise of due diligence such Party is unable to overcome or avoid. Force Majeure includes, without limitation, hurricanes, tornadoes, flood, lightning, drought, earthquake, fire, explosion, terrorist attack, civil disturbance, strikes, acts of God, acts of the public enemy, orders, directives (including the state security coordinator), restraints and requirements of the government and governmental agencies, either federal, state or local, civil or military, or any other cause beyond a Party's control. Force Majeure shall not include (i) events solely

affecting the cost of operating any generating facility, (ii) changes in market conditions which cause the price of energy or capacity to fluctuate including, without limitation, weather, fuel prices and supply and demand, or (iii) the inability of a Party to make a profit or avoid a loss in performing its obligations under this Agreement.

Section 19.3. Obligation to Diligently Cure Force Majeure.

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

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

(a) Exercise all reasonable efforts to continue to perform its obligations hereunder;

(b) Expeditiously take reasonable action to correct or cure the event or condition excusing performance, provided that settlement of strikes or other labor disputes shall be completely within the sole discretion of the affected Party; and

(c) Exercise all commercially reasonable efforts to mitigate or limit damages to the other Party.

ARTICLE 20 - MISCELLANEOUS

Section 20.1. Assignment; Successors and Assigns.

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

as to ensure that such Party's obligations under this Agreement will be assumed, accepted and honored fully and timely by any transferee, assignee or successor party.

Section 20.2. Notices.

With the exception of communications within the ordinary course of the day to day performance and administration of this Agreement, all notices, requests and other communications hereunder (herein collectively a "notice" or "notices") shall be deemed to have been duly delivered, given or made to or upon any Party if in writing and delivered by hand against receipt, or by certified or registered mail, postage pre-paid, return receipt requested, or to a courier who guarantees next business day delivery to such Party at its address set forth below or to such other address as such Party may at any time, or from time to time, direct by notice given in accordance with this Section 20.2.

IF TO OUC:

Vice President, Electric and Water Production
100 W. Anderson Street
Orlando, Florida 32801
Tel: 407-423-9100
Facsimile: 407-275-4120

IF TO LAKE WORTH:

Utilities Director
City of Lake Worth
1900 2nd Avenue North
Lake Worth, Florida 33461
Telephone: 561-533-7369

The date of delivery of any such notice, request or other communication shall be the earlier of (i) the date of actual receipt or (ii) three (3) Business Days after such notice, request or other communication is sent by certified or registered mail, (iii) if sent by courier who guarantees next business day delivery, the business day next following the day such notice, request or other communication is actually delivered to the courier.

Section 20.3. Governing Law.

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

Section 20.4. Confidentiality.

Each Party shall keep confidential, and shall not disseminate to any third party (other than such Party's Affiliates) or use for any purpose other than the performance, administration, management and enforcement of this Agreement (except with the written authorization of the other Party), any information received from the other that is

designated as confidential or proprietary by the other Party unless legally compelled by the Florida Sunshine Law disclosure requirements, deposition, inquiry, request for documents, subpoena, civil investigative demand or similar process, or by order of a court or tribunal of competent jurisdiction or in order to comply with applicable rules or requirements of any stock exchange, government department or agency or other regulatory authority, or by requirements of any securities law or regulation or other legal requirement or as necessary to enforce the terms of this Agreement. This Section 20.4 shall survive the termination of this Agreement for a period of two (2) years. If any Party is compelled to disclose any confidential information of the other Party that is exempt from the disclosure requirements of the Florida Sunshine Law, such Party shall, at the cost and expense of the other Party, provide the other Party with prompt notice of the requirement to disclose confidential information in order to enable the other Party, at such other Party's costs and expense, to seek an appropriate protective order or other remedy, and such Party shall consult with the other Party with respect to the other Party taking steps to resist or narrow the scope of any required disclosure. The Parties shall reasonably coordinate in the preparation and issuance of all publicity relating to this Agreement.

Section 20.5. No Partnership.

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

Section 20.6. Fees and Expenses.

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

Section 20.7. Captions.

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

Section 20.8. Entire Agreement and Amendments.

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

Section 20.9. Severability.

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

Section 20.10. Further Assurances.

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

Section 20.11. Laws and Regulations; Changes in Law.

This Agreement and the rights, obligations, and performances of the Parties under this Agreement are subject to all applicable state and federal laws, and to all duly promulgated orders and other duly authorized actions of governmental authorities having jurisdiction. Each Party hereto shall be responsible for taking all necessary actions to satisfy any regulatory and other requirements that may be imposed by any federal, state, or municipal statute, rule, regulation, or ordinance that may be in effect from time to time relative to the performance of such Party hereunder.

If and to the extent that, after the Effective Date of this Agreement, any laws or regulations which govern any transaction or duty of a Party contemplated herein shall change so as to (a) make this Agreement or any provision hereof unlawful or (b) subject either Party to regulation by the Florida PSC to OUC of providing Wholesale Electric Service, then the affected Party may require the other to negotiate and use reasonable efforts to agree on such modifications to this Agreement as shall be reasonably necessary for the Agreement to accommodate any such legal or regulatory changes. If the Parties are unable to agree on terms, conditions or such other measures to prevent (x) the Agreement from being illegal or (y) a Party being subject to Florida PSC regulation then the affected Party(ies) may terminate this Agreement upon 180 day's prior written notice with no further obligation to the other.

If and to the extent that, after the Effective Date of this Agreement, any laws or regulations which govern any transaction or duty of a Party contemplated herein shall result in any additional or new costs, expenses, charges, fees and/or assessments that are attributable or related (in whole or in part) to the production and/or provision of Wholesale Electric Energy or Wholesale Electric Capacity to LAKE WORTH, including environmental-related costs, renewable portfolio standards (only if applicable to wholesale contracts), charges, fees, or expenses incurred by OUC to supply the

Wholesale Electric Energy or Wholesale Electric Capacity, LAKE WORTH shall reimburse OUC for LAKE WORTH's pro-rata share of such costs, expenses, charges, fees and/or assessments, which amounts shall be calculated and recovered as determined by OUC in a commercially reasonable manner. OUC shall allocate increases in variable operating costs to Fuel Charges and increases in fixed operating costs to Capacity Charges. Any such cost increases resulting from capital expenditures shall be allocated to LAKE WORTH based on the cost of the capital expenditure annualized over the economic life of the capital addition and the ratio of Wholesale Electric Capacity to the total capacity of OUC's firm obligations. Change in costs for which LAKE WORTH might become liable to pay under this Section 20.11 shall not include any costs recovered in the Fuel Energy Charge. OUC shall promptly notify LAKE WORTH upon the determination of any additional or new costs, expenses, charges, fees and/or assessments and the calculation of the pro rata portion of such costs proposed to be recovered from the LAKE WORTH.

Section 20.12. Counterparts.

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

Section 20.13. Interpretation.

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

Section 20.14. Independent Relationship.

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

Section 20.15. No Third-Party Beneficiaries.

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

Section 20.16. Waivers.

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

Section 20.17. Duty to Mitigate.

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

[REMAINDER OF PAGE INTENTIONALLY BLANK-

SIGNATURE PAGE(S) FOLLOW]

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

Orlando Utilities Commission

By: _____
Clint Bullock
General Manager and CEO

Attest:

Name: _____
Title: _____

Approved as to form and legality,
OUC Legal Department

By: _____
Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by Clint Bullock, General Manager and Chief Executive Officer of the Orlando Utilities Commission, who is personally known to me or who has produced _____ as identification and who (did/did not) take an oath.

NOTARY PUBLIC
Printed Name of Notary _____
My Commission expires: _____

ATTEST:

CITY OF LAKE WORTH

By: _____

By: _____

(seal)

Approved as to correctness and form:

Approved as to substance:

By: _____
_____, City Attorney

By: _____
_____, City Manager

APPENDIX A

PRICING FOR WHOLESALE ELECTRIC SERVICE

Section 1 Monthly Fuel Energy Rates

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED]

[REDACTED]

APPENDIX B

REQUIRED APPROVALS AND AGREEMENTS

OUC

1. Approval of this Agreement by the OUC Board.

LAKE WORTH

1. Approval of this Agreement by the City Commission of LAKE WORTH.
2. Execution and delivery of an agreement for Transmission Service between LAKE WORTH and FPL and the filing of such agreement with the FERC by FPL and the approval of such agreement by the FERC.

APPENDIX C
DELIVERY POINTS AND METERING POINTS

DELIVERY POINTS

1. Interconnection(s) between OUC and FPL transmission systems.

METERING POINTS

1. Interconnections between FPL and Lake Worth transmission systems (Hypoluxo Substation).

Metering Points may be added or deleted upon the mutual written agreement of the Parties.

APPENDIX D

LIMITATION OF LIABILITY

- 1 The limitation of liability applicable to each of the Parties under Section 16.2(i) is as follows:

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

- 2 The limitation of liability applicable to OUC under Section 16.2(ii) and applicable to LAKE WORTH under Section 16.2(iii), respectively, is as follows:

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

EXHIBIT E - GENERATION ENTITLEMENT CONTRACTS

St. Lucie Power Sales Contract, by and between the Florida Municipal Power Agency and the Lake Worth Utilities Authority, dated June 1, 1982, as amended by Amendment No. 1, dated January 1, 1983 and Amendment No. 2 dated April 1, 1983.

St. Lucie Project Support Contract, by and between the Florida Municipal Power Agency, and the Lake Worth Utilities Authority, dated June 1, 1982; as amended by Amendment No. 1, dated January 1, 1983, and Amendment No. 2, dated April 1, 1983.

Nuclear Reliability Exchange Agreement, by and between Florida Power & Light and Florida Municipal Power Agency dated March 26, 1982; as amended by Amendment 1 dated February 18, 1983, as amended by Amendment 2 dated February 12, 1991, and as amended by Amendment 3 dated August 19, 2004.

Stanton I Power Sales Contracts, by and between the Florida Municipal Power Agency and the Lake Worth Utilities Authority, dated January 16, 1984.

Stanton I Project Support Contract, by and between the Florida Municipal Power Agency and the City of Lake Worth, dated January 16, 1984.

EXHIBIT E – CAPACITY CREDITS

For purposes of Capacity Pricing the following MW capacity will be applied:

St. Lucie 22.0 MW

Stanton I 10.5 MW

Lake Worth Combined Cycle 29.28 MW

Lake Worth Unit 3 25.0MW

STAFF REPORT UTILITY MEETING

AGENDA DATE: April 25, 2023

DEPARTMENT: Electric Utility

TITLE:

Work Order No. 10 with L.E. Myers Co. to complete construction work for the French Ave Voltage Conversion Project

SUMMARY:

Work Order No.10 to L.E. Myers Co. to complete construction work for the French Ave Voltage Conversion Project at a cost not to exceed \$1,667,727. This project has been identified as a component of the City's electric utility System Hardening and Reliability Improvement Project (SHRIP) and for which bonds were sold in November 2020 and May 2022.

BACKGROUND AND JUSTIFICATION:

The City previously issued a Request for Proposals in 2018 (RFP 18-206), seeking proposals from qualified companies to build and construct numerous system hardening and reliability improvements on the City's Utility System grid. The L.E. Myers Co., was one of six electrical contractors selected to provide these services. The term of this agreement is for (3) three years with (2) two additional single-year renewal options. The French Ave Voltage Conversion Project and aerial primary feeder relocation to underground work is a component of this agreement.

Two distribution feeders are currently located in residential backyards along French Avenue and along a canal bank, which at times is heavily vegetated and is a habitat for iguanas. These feeders are labeled 1W13 and 0704, operating respectively at 26kV and 4kV. Both feeders provide electric service to large residential and commercial areas within the electric service territory. Furthermore, feeder 1W13 is the alternate feeder to the 7th Ave. N Substation. Due to the location of these feeders, faults or other damage caused by vegetation and animal contacts, extreme weather conditions such as hurricanes prove to generate long outage times and are difficult and costly to repair as the feeders on the canal bank are difficult to access by our bucket trucks. To increase the resilience and reliability of these feeders, staff conceived of a design that relocates approximately a half mile of overhead conductors to underground while also converting the 0704 to the higher 26kV operating voltage. Additionally, moving this section of our system underground will increase resilience and reliability of service for residential and commercial customers west of I-95.

Efforts already underway in support of this project include engineering and design, as well as procurement of long lead time materials which will arrive by the end of June of this year.

Work Order No. 10 to The L.E. Myers Co. authorizes them to proceed with construction, maintenance of traffic activities (MOT), and commissioning of the relocated feeders. The scope of this project includes directional boring and installation of approximately 5,000 feet of 6" conduit and 15,000 feet of 1,000 MCM 28kV conductor primary cable. All secondary open wire will be removed and replaced with 4/0 Triplex conductors. Additionally, this project includes the installation of poles, switch cabinets, transformers, and other cut-out equipment for fault protection. The work plan includes removal of all existing primary conductors along the canal bank, and "topping" poles left located within the residential backyards to a shorter height.

MOTION:

Move to approve/disapprove Work Order No.10 to L.E. Myers Co. to complete construction work for the French Ave Voltage Conversion Project at a cost not to exceed \$1,667,727.

ATTACHMENT(S):

Fiscal Impact Analysis
Work Order No. 10

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Current Appropriation	0	\$1,667,727	0	0	0
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

Contract Award - Existing Appropriation	
	Expenditure
Department	Electric Utility
Division	T & D
GL Description	Improve Other than Build / Infrastructure
GL Account Number	421-6034-531-63.15
Project Number	SH2128 & SH2228
Requested Funds	\$1,667,727

**CONTRACT FOR SYSTEM HARDENING AND RELIABILITY IMPROVEMENT
WORK ORDER NO. 10
French Ave., Voltage Conversions.**

THIS WORK ORDER for System Hardening and Reliability Improvements (“Work Order” hereafter) is made on _____, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 (“City”) and **The L. E. Myers Co.**, a Florida corporation (“Contractor”).

1.0 Project Description:

The City desires the Contractor to provide all goods, services, materials and equipment identified herein related to the System Hardening and Reliability Improvements project generally described as: **French Ave., Voltage Conversions.** (the “Project”). The Project is more specifically described in the proposal prepared by The L.E. Myers Co., dated June 30th, 2023 and plans prepared by Power Engineers and are incorporated herein by reference.

2.0 Scope

Under this Work Order, the Contractor will provide the City of Lake Worth with construction services for the Project as specified in the **Contractor’s proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 Schedule and Liquidated Damages

Substantial completion of all services and work under this Work Order shall be within **150** calendar days from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within **180** calendar days from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City **100** dollars (\$100 .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation

This Work Order is issued for a not to exceed amount of \$ 1,667,727.69. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:
None.

5.0 Project Manager

The Project Manager for the Contractor is Raymond Richards, phone: 407-466-4663; email: RRichards@mygroup.com; and, the Project Manager for the City is David Martyniuk phone: 561-586-1629 ; email: dmartyniuk@lakeworthbeachfl.gov

-

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty

Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

7.0 Authorization

This Work Order is pursuant to the System Hardening and Reliability Improvements Contract for between the City of Lake Worth and the Contractor, dated May 15, 2018 ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF the parties hereto have made and executed this Work Order No. 8 to the System Hardening and Reliability Improvements Agreement as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

By: _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: The L.E. Myers Co.,

By: [Signature]

[Corporate Seal]

Print Name: RAYMOND RICHARDS

Title: Sr. ops Manager

STATE OF Florida)
COUNTY OF Lake)

The foregoing instrument was acknowledged before me this 7th day of March, 2023, by Raymond Richards who was physically present, as Sr. Ops. manager (title), of The L.E. Myers Co., which is authorized to do business in the State of Florida, and who is personally known to me or who has produced the following Personally Known as identification.

Notary Public

[Signature]
Print Name: Megan Heer
My commission expires: 10/7/24

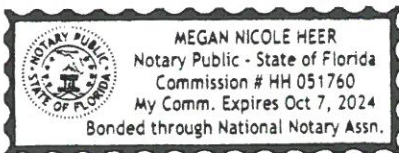
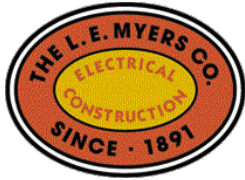


EXHIBIT "1"
Contractors Proposal



The L.E. Myers Co.
24925 State Road 46
Sorrento, FL 32776

407-466-4663 Phone

Raymond Richards
District Manager

Equal Opportunity Employer

December 12th, 2022
Brian King
Assistant Director
Transmission & Distribution
City of Lake Worth

RE: French Ave., Voltage Conversions.
Prices effective until June 30th, 2023

Dear Brian:

Thank you for allowing us the opportunity to work with you and the City of Lake Worth for your upcoming French Ave project. The L.E. Myers recognizes that this work is critical to your system, and we are committed to working hand and hand with the City to achieve the success of this project as well as their system wide program goals.

The L.E. Myers Co. shares the City's insistence and commitment to providing a safe working culture and environment for our employees and the public.

Total Lump Sum Price: \$1,652,165.02

Pricing Breakdown:

- \$ 649,099.60 (Labor & Exp.)
 - \$ 232,678.09 (Equip.)
 - \$ 27,500.00 (Restoration)
 - \$ 694,300.00 (Wilco_UG)
 - \$ 64,150.00 (MOT)
- Total \$1,667,727.69**

Crew Composition:

Our crew structure will be compromised of one (1), five (5) man crew, and below we will detail their composition:

These five (5) men will complete all make ready work, switching, hardening, conversion, while partnering with the city to perform essential customer outreach/notifications regarding all upcoming circuit work contained within the designed work package. They will be equipped with conventional aerial equipment and backlot to support these operations.

- Crew
 - 1-GF
 - 1-FM
 - 2-JL
 - 2-Ap
- Equipment
 - Pick-up
 - 55' Material Handler Bucket
 - 55' Material Handler Bucket
 - 30/60 Line Truck
 - 40T Crane
 - Skylift Backlot Machine
 - Pole Trailer
 - Material Trailer
 - Air Compressor x2
 - Light Tower

Schedule:

Estimated duration for this project, is eight (8) weeks. We anticipate construction starting March and ending early May.

In closing, we truly appreciate the opportunity and look forward to working with you and your team, to complete another portion of the system conversion/hardening.

We hope this meets with your approval. If you have any questions, do not hesitate to contact Raymond Richards @ 407-466-4663.

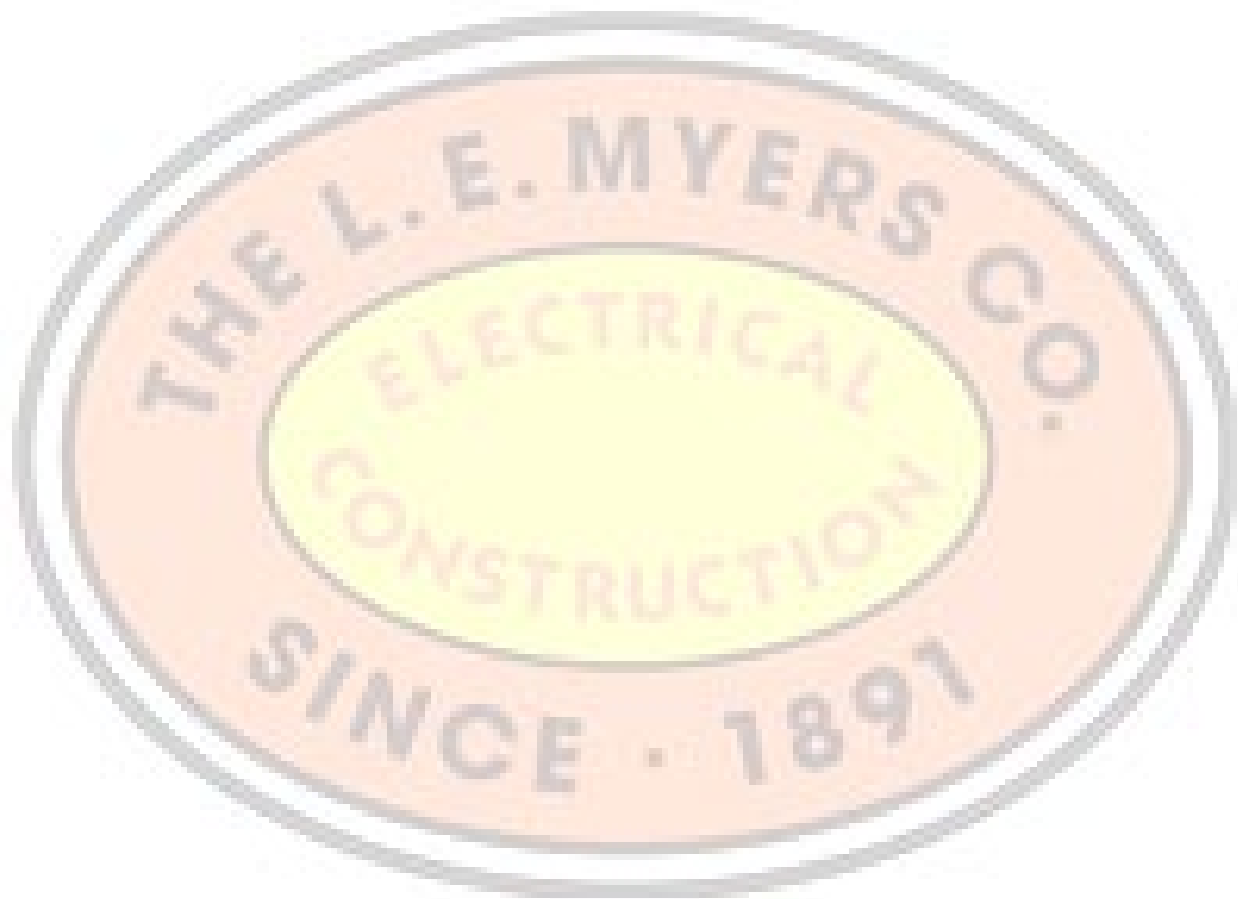
Sincerely,
The L. E. Myers Co.

Raymond Richards
District Manager



Assumptions / Clarifications:

- *Backyard fences, patios, rutting, or other access and restoration costs will be the responsibility of the City of Lake Worth. The L.E. Myers Co. can perform the work at subcontractor cost +5%.*
- *Night work not included.*
- *Materials shall be furnished by the city of Lake Worth and on site prior to LEM mobilization.*
- *MOT will be the responsibility of the L.E. Myers Co.*
- *If road permits have not been acquired prior to issuance of contract P.O., delays may be encountered, and shall constitute a full contractual schedule extension.*
- *Wilco is our selected vendor for installation and termination of all underground components of the French Ave. project.*



STAFF REPORT UTILITY MEETING

AGENDA DATE: April 25, 2023

DEPARTMENT: Electric Utility

TITLE:

Rate Stabilization Fund

SUMMARY:

Establishment of a Rate Stabilization Fund and desired working balances to be maintained.

BACKGROUND AND JUSTIFICATION:

City's electric utility rates resolution has had a long-standing option for a Rate Stabilization Fund which has not been used in many years. The purpose of a Rate Stabilization Fund is to provide a temporary buffer against rising Purchased Power Cost Adjustments (PCA) which might otherwise have an impact on customer rates. In practice Rate Stabilization Funds are often funded by setting aside a portion of PCA revenues in specific dollar amounts, or percentages of PCA budgets, over a period of time.

City's Electric Rate Consultant (Leidos) has prepared a series of slides with examples taken from other Florida municipal electric utilities as a guide for discussion. The goal of the meeting is to achieve a consensus on next steps, ideally to include the desired funding level, timing of contributions, and governance over the use of the fund.

MOTION:

Direction is sought regarding the establishment of the fund.

ATTACHMENT(S):

Presentation; Electric Utility Rate Stabilization Fund

CITY OF LAKE WORTH BEACH, FLORIDA

Electric Utility Rate Stabilization Fund

PRESENTED BY: Craig Shepard, Project Manager

April 25, 2023



Rate Stabilization Fund - Goals

- ▶ Provide Rate Stability
- ▶ Mitigate Fluctuating Power Costs
- ▶ Help Determine Power Cost Adjustment (PCA)
- ▶ Smooth the Impact to Customers
- ▶ Recover Power Costs Over Time
- ▶ Continue to Provide Competitive Rates

Rate Stabilization Fund

- ▶ Many Municipal Electric Utilities in Florida have a Rate Stabilization Fund
- ▶ Amounts are Deposited or Withdrawn from the Fund During Times of Fluctuating Costs to Smooth the Impact to Customers Through the PCA
- ▶ Set a Target Fund Balance
- ▶ Fund Balance Can Fluctuate During the Year

Power Cost Adjustment (PCA)

PURCHASE POWER COST ADJUSTMENT (PCA)

Purchased Power Cost Adjustment (PCA): A Purchased Power Cost Adjustment Charge (PCA) shall be established for a projected 3 month period for energy sales during that period as follows:

$PCA = (A + B + C) / D$, where:

A = The projected purchased power costs for the projected 3 month period comprised of costs such as the FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity, energy and directly related costs, Lake Worth Beach electric utility power generating fuel, and transmission costs

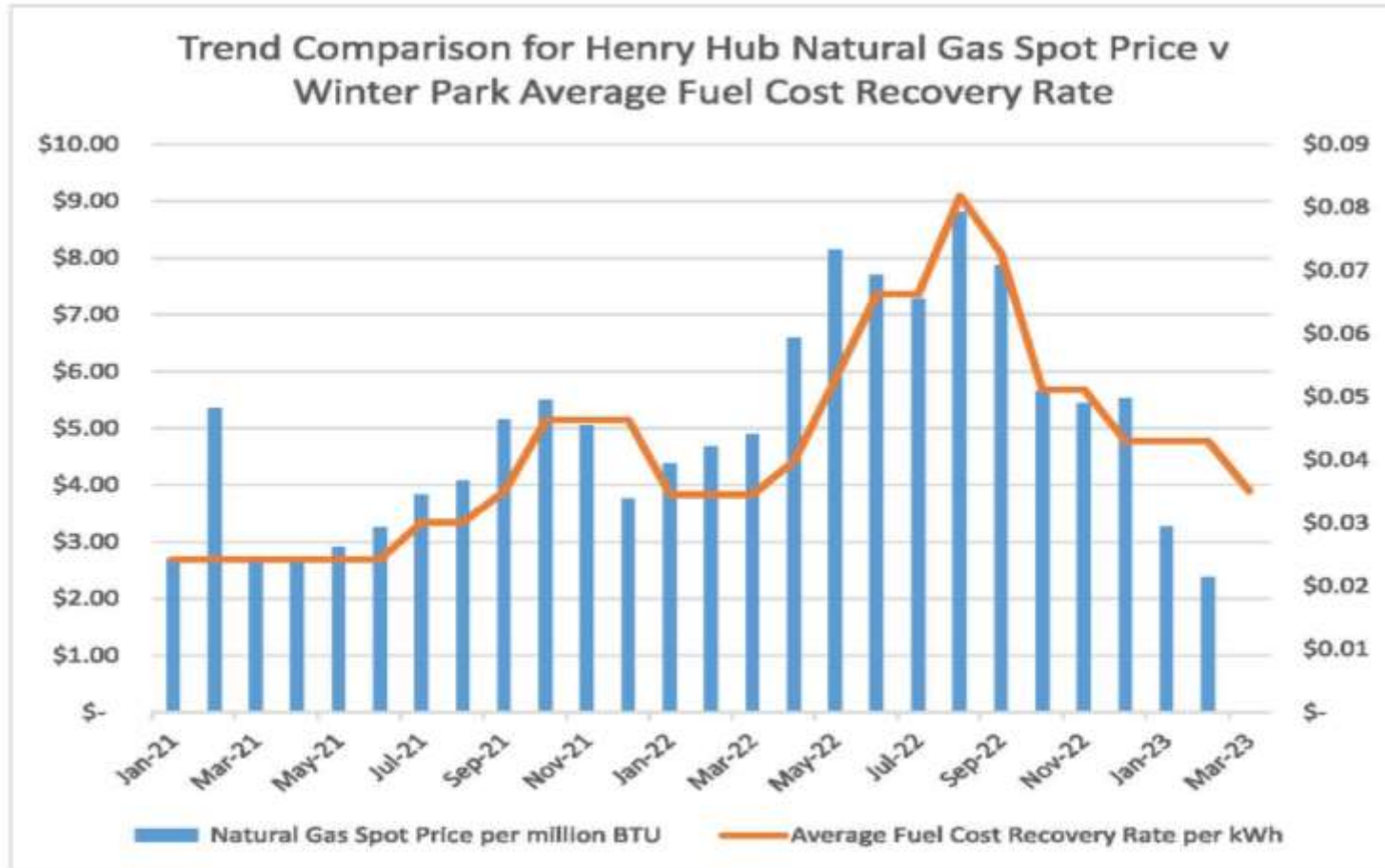
B = A true-up amount representing the over or under recovery of purchased power costs from the prior period

C = The amount transferred to or from the Rate Stabilization Fund for the projected period

D = The projected total retail sales in MWh for the projected 3 month period

The purchased power cost adjustment charge will be reconciled quarterly and trued up between estimated costs and billing units and actual costs and billing units.

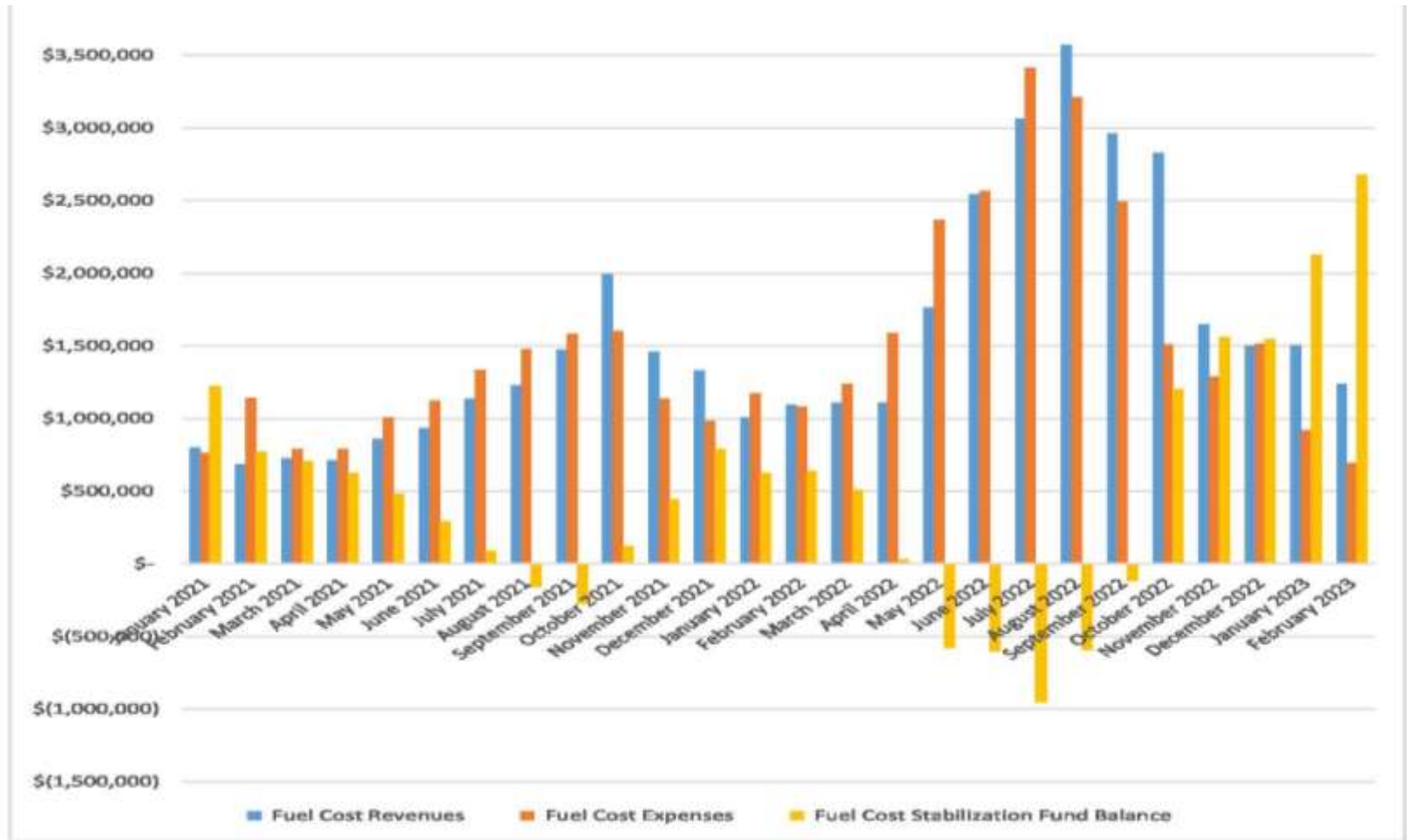
Natural Gas Prices and PCA Example – City of Winter Park



Source: City of Winter Park

Rate Stabilization Fund Balances

Example – City of Winter Park



Source: City of Winter Park

Comparison of Rate Stabilization Funds

<u>Utility</u>	<u>Annual GWh</u>	<u>Rate Stabilization Fund</u>
Keys Energy Services	744	\$3.0 Million Balance
Kissimmee Utilities Authority	1,620	\$5.0 Million Minimum 25% of Annual Budget Maximum
Ocala Utility Services	1,300	15% of Projected Fuel Costs Minimum 25% of Projected Fuel Costs Maximum
City of Winter Park	420	10% of Annual Fuel Budget
City of Lake Worth Beach	480	15% - 25% of Projected PCA Costs

Proposed Rate Stabilization Fund

- ▶ Fiscal Year 2023 PCA Projected Power Costs = \$15,851,000
- ▶ 15% x \$15,851,000 = \$2,338,000
- ▶ 25% x \$15,851,000 = \$3,963,000
- ▶ Keys Energy Ratio = \$3,000,000 x 480/744 = \$1,935,000
- ▶ KUA Ratio = \$5,000,000 x 480/1620 = \$1,481,000

Recommendations

- ▶ Establish Rate Stabilization Fund
- ▶ Plan to Make Deposits into Fund
- ▶ Set Target of 15% - 25% of Annual Power Costs or \$2.4 - \$4.0 Million for Fund Balance

Questions / Comments

POINTS OF CONTACT

Craig R. Shepard

PRINCIPAL ANALYST / PROJECT MANAGER

407.648.3538

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Orlando, FL 32826

craig.r.shepard@leidos.com

Selvin H. Dottin

QUALITY ASSURANCE / QUALITY CONTROL REVIEWER

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