Agenda
CITY OF LAKE WORTH BEACH
Regular City Commission Meeting
City Hall Commission Chamber
Tuesday, March 03, 2020 - 6:00 PM

ROLL CALL:

INVOCATION OR MOMENT OF SILENCE: led by Mayor Pam Triolo

PLEDGE OF ALLEGIANCE: led by Commissioner Omari Hardy

AGENDA - Additions / Deletions / Reordering:

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

A. Lake Worth Middle School update by Principal Mike Williams
B. Neighborhood Planning Program Presentation

COMMISSION LIAISON REPORTS AND COMMENTS:

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:

APPROVAL OF MINUTES:

A. Electric Utility Meeting - January 28, 2020
B. Regular Meeting - February 4, 2020

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

A. Award of continuing services contract to Anchors Emergency Board-Up Service, Inc. for board and secure services
B. Resolution No. 07-2020 – approving Amendment 001 to the CDBG Agreement for the development of the Royal Poinciana neighborhood park
C. Proclamation declaring March 14, 2020, as Arbor Day
D. Proclamation declaring April 19-25, 2020, as National Volunteer Week
E. Proclamation declaring March 2020 as Palm Beach Pride Month
F. Payments of Fiscal Year 2019 Invoices
G. Amendment #2 to the agreement with GT Supplies, Inc. for Fleet Services
H. Ratification of the Second Amendment to Economic Development Incentive Agreement with The Mid

PUBLIC HEARINGS:

A. Ordinance No. 2020-02 - second reading and public hearing - amending Chapter 23 Entitled "Land Development Regulations" of the Code of Ordinances by amending article I "General provisions" relating to "Definitions" and Article 3 "Zoning Districts" by creating a Cultural Arts District Overlay zone

UNFINISHED BUSINESS:

NEW BUSINESS:

A. Ordinance 2020-03 - adopting the official City seal and setting the second reading and public hearing for April 7, 2020

LAKE WORTH ELECTRIC UTILITY:

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

1) FMPA Solar Project Power Sales Contract Amendment
2) First Addendum Cost Increase and Second Addendum to the Master Services Agreement with Level One LLC

CITY ATTORNEY'S REPORT:

CITY MANAGER'S REPORT:

ADJOURNMENT:

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)

EXECUTIVE BRIEF
REGULAR MEETING

AGENDA DATE: March 3, 2020 **DEPARTMENT:** Community Sustainability

TITLE:

Neighborhood Planning Program Presentation

SUMMARY:

Presentation from the Community Sustainability Department regarding a Neighborhood Planning Program including its purpose, deliverables and time frames.

BACKGROUND AND JUSTIFICATION:

The City's Comprehensive Plan states that the City of Lake Worth Beach shall establish a Neighborhood Planning program and incorporate neighborhood plans as part of the strategies to become a city of diverse, distinct, and well-structured neighborhoods that meet the community's needs for complete, sustainable, and high-quality living environments with a strong sense of place and identity. The city affectionately is known as the "Community of Neighborhoods". The program is designed to build capacity in neighborhoods and to assess and prioritize strengths, weaknesses, opportunities and challenges as well as threats and needs. Plans will focus on how neighborhoods can assist themselves with City guidance as well as the variety of resources and programming that the City can offer at this time.

The presentation outlines the purpose of the neighborhood plans, the work that has been completed thus far, how each neighborhood will be approached, deliverables and anticipated timeframes.

MOTION:

N/A

ATTACHMENT(S):

Presentation

Neighborhood Plan Template

CITY OF LAKE WORTH BEACH

Community Sustainability℠

What is a Neighborhood Plan?

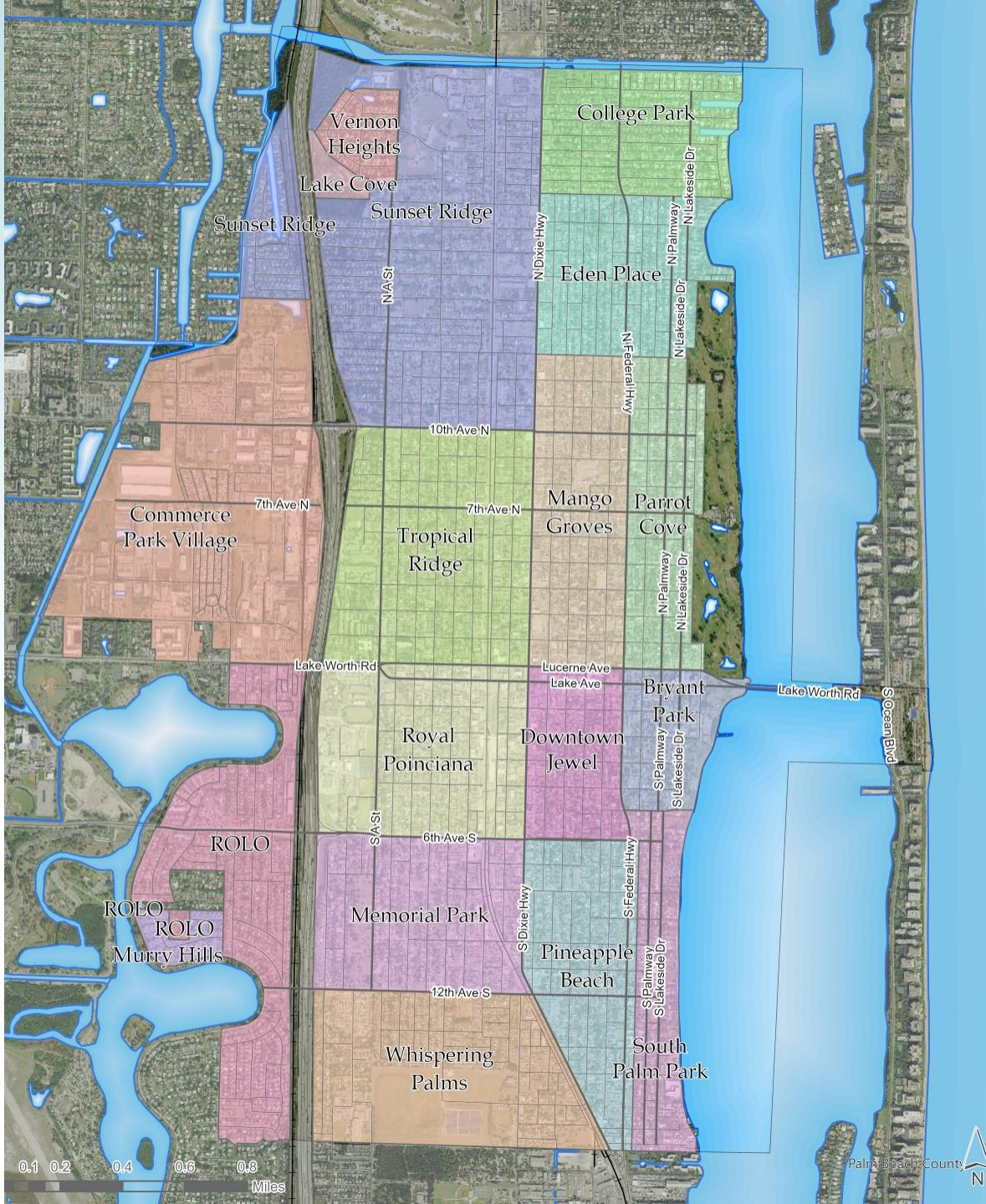
- A plan that establishes the existing conditions and needs of a neighborhood, and provides guidance for future improvement projects and redevelopment
  - Lake Worth Beach is often referred to as “A community of neighborhoods”
  - The City’s Comprehensive Plan states that “The City of Lake Worth shall establish a Neighborhood Planning program and incorporate neighborhood plans as part of the strategies to become a city of diverse, distinct, and well-structured neighborhoods that meet the community’s needs for complete, sustainable, and high-quality living environments with a strong sense of place and identity.”


Purpose

- To build mutual collaboration between a neighborhood's residents, business community, and the City, to create a sense of place, foster safer neighborhoods, encourage community pride, and build a vibrant and diverse economy
- To produce a plan, specialized for each neighborhood, highlighting its strengths, areas for improvement, and community needs
- To promote more City-neighborhood coordination, and work towards lining up the City's goals with the neighborhood's goals
- To identify potential funding opportunities for neighborhood improvement projects and business assistance programs

Lake Worth Beach's Neighborhoods

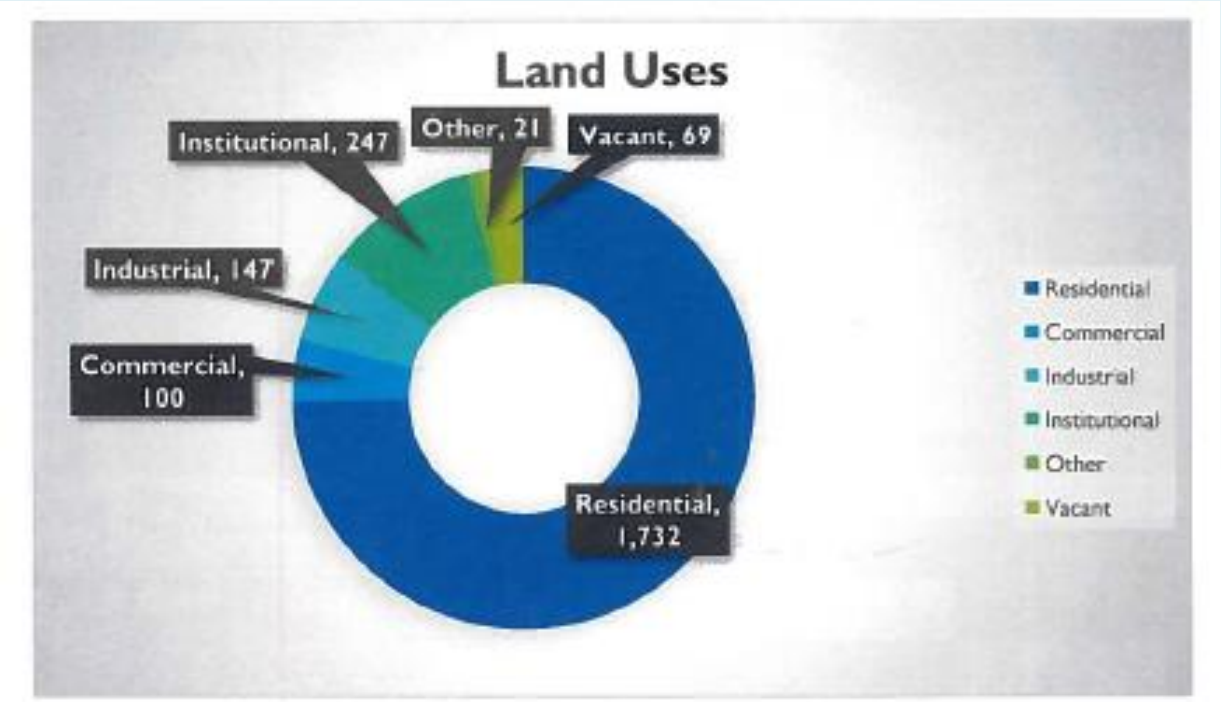
- Vernon Heights
- Lake Cove
- Sunset Ridge
- College Park
- Eden Place
- Commerce Park Village
- Tropical Ridge
- Mango Groves
- Parrot Cove
- Bryant Park
- Downtown Jewel
- Royal Poinciana
- Residents of Lake Osborne (ROLO)
- Murry Hills
- Memorial Park
- Whispering Pines
- Pineapple Beach
- South Palm Park



Data and Analysis

- Current data gathered:
  - Total number of Code Cases per Neighborhood from 2016-2018
  - Top 10 Code Cases per Neighborhood
  - Code Case data by Neighborhood from 2016-2018
  - School boundaries
  - Demographic data by Neighborhood
  - Neighborhood Bylaws
  - Types of uses by Neighborhood

Sample Neighborhood Data



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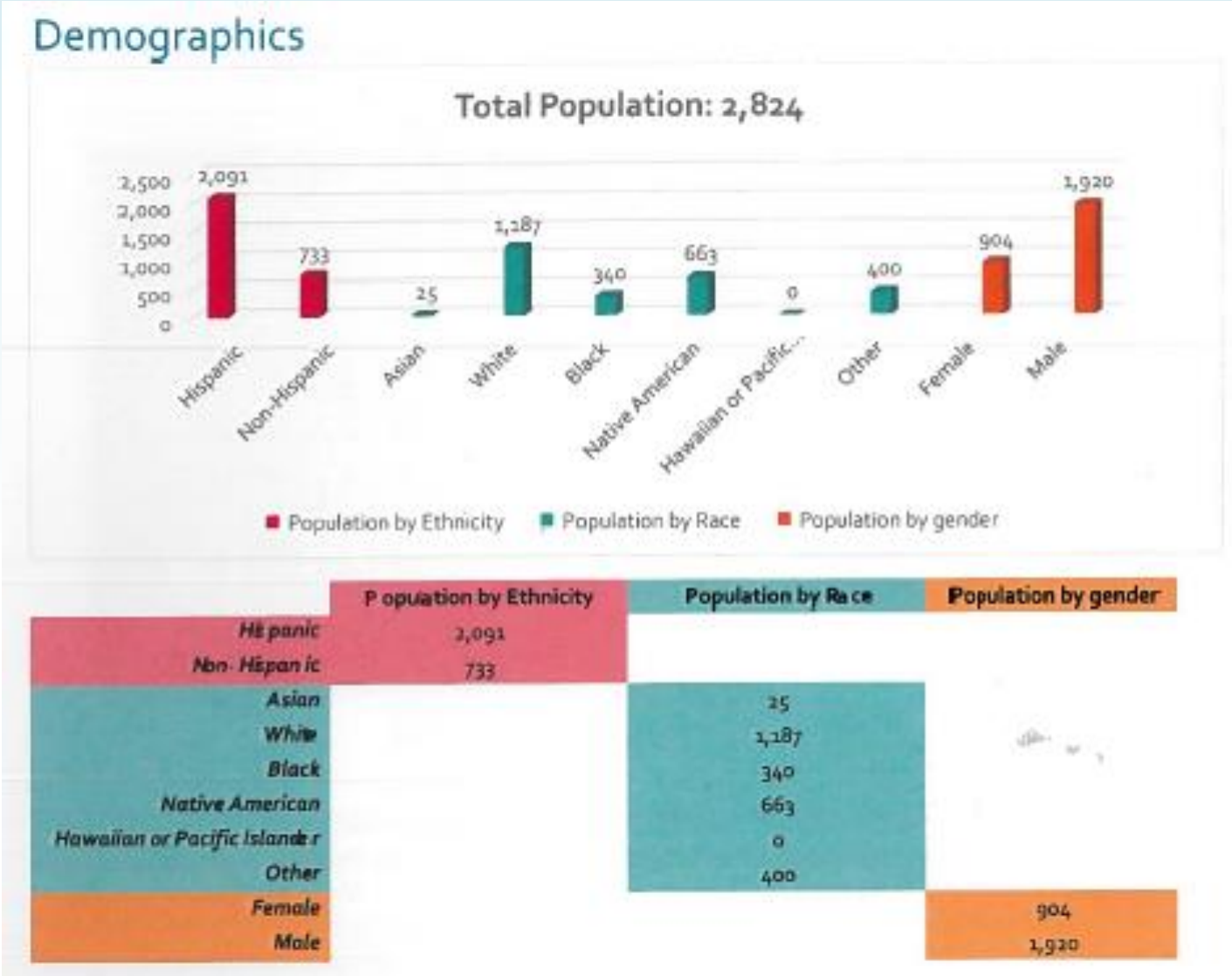

	Population by Ethnicity	Population by Race	Population by gender
Hispanic	2,091		
Non-Hispanic	733		
Asian		25	
White		1,287	
Black		340	
Native American		663	
Hawaiian or Pacific Islander		0	
Other		400	
Female			904
Male			1,920

Sample Neighborhood Data

Neighborhood Cases and Issues

TOP TEN NARRATIVE

The Top ten include: General requirements/Condition of structures, Yard maintenance standards, disposal of trash and waste, fences and walls, signs, recreational vehicles and boats, abandoned vehicles, shopping carts, work without permit, and business tax receipts.

Neighborhood SALIENT cases

The Top Ten violations for SAMPLE FROM ACTUAL NEIGHBORHOOD (College Park 2016-2018):

Use/Occupation & BTR License Req'd	58
Landscape Regulations	51
General Requirements	41
Park/Keep/Store MV, RV	24
Building Permit	17
Foreclosure Registration	12
Areas Free of Garbage /Trash	09
Use and Occupancy Certificate	09
Adm. Amend. to Florida Building Code	08
Lots and Lands Nuisances	08

Next Steps

- Hold two workshops with City Commission
  - First, go over blank Neighborhood Template
  - Second, finalize Neighborhood Template
- Conduct public outreach meetings by end of May
  - Have four regional district meetings with Commissioners and Neighborhood representatives
- Neighborhood survey
  - Work on finalizing a Neighborhood survey to send out to residents and business owners via water bill, electronic link, etc.
- Timeline
  - Once the formal neighborhood planning begins, it will take about two to three years to draft a plan for each neighborhood

CITY OF LAKE WORTH BEACH

Community Sustainability℠

City of Lake Worth Beach FLORIDA

NZ consultants

NEIGHBORHOOD LOGO

NEIGHBORHOOD NAME

NEIGHBORHOOD PLAN

NEIGHBORHOOD MAP

(To be provided by DCS Staff)

ACKNOWLEDGEMENTS

This document was developed in collaboration between the

CITIZENS OF THE NEIGHHBORHOOD

And the City of Lake Worth Beach

COMMUNITY SUSTAINABILITY DEPARTMENT

And assistance of the following:

Leisure Services

Public Works

Water & Sewer Utility

Electric Utility

Finance

Information Technology

Code Compliance

Community Redevelopment Agency (CRA)

Palm Beach County Sheriff Office

Public Information

And the Consultants:

NZ consultants

Date:

PAM TRIOLO, MAYOR

ANDY AMOROSO, VICE MAYOR – DIST. 3

SCOTT MAXWELL, VICE MAYOR PRO TERM – DIST. 1

OMARI HARDY- DIST. 2

HERMAN ROBINSON – DIST. 4

MICHAEL BORNSTEIN – CITY MANAGER

JUAN RUIZ- ASSIST. CITY MANAGER

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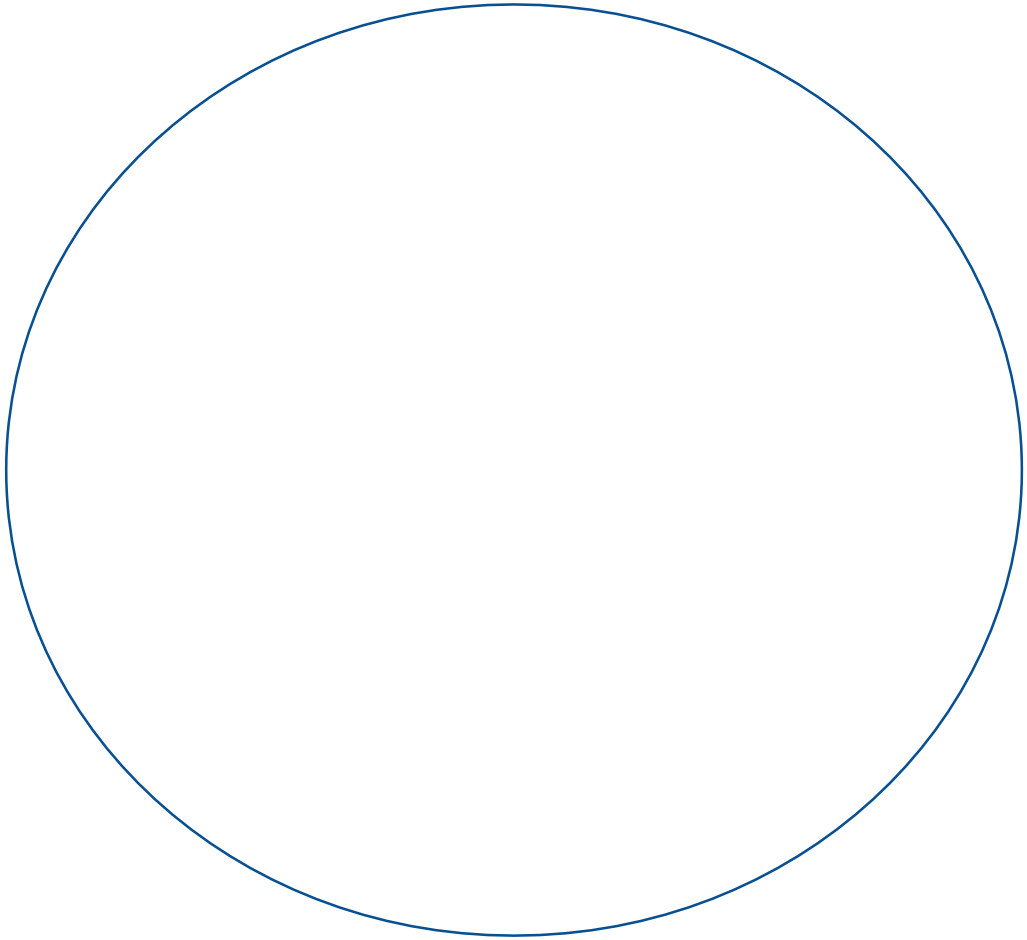
ILLUSTRATION OR PICTURE OF THE NEIGHBORHOOD



Executive Summary

THIS IS AN EXAMPLE / THE ACTUAL EXECUTIVE SUMMARY FOR EACH NEIGHBORHOOD DOCUMENT WILL BE WRITEN AFTER A NEIGHBORHOOD PLAN HAS BEEN DEVELOPED WITH THE RESIDENTS

(Excerpts from each of the chapters)

The purpose of the neighborhood plan is to build mutual collaboration between a neighborhood's residents, business community and the City, to create a sense of place, foster safer neighborhoods, encourage community pride, and build a vibrant and diverse economy.

The steps utilized to develop each Neighborhood Action Plan are (summarize). The neighborhood plan is the catalyst to build mutual collaboration between the City and each neighborhood to create a sense of place by promoting awareness, training and organization.

Action Plan Implementation and Development of Strategic Partnerships –

- The Strategic Plan and Comp Plan inform and guide neighborhood planning program
- Twelve areas of review with neighborhood residents
- Neighborhoods need to tap existing resources and associate with entities providing services and assistance, including (LIST) (City, County, State, Federal, Other entities and NGOs

Summary of Existing Conditions and Assessment

Includes topics such as, Location within the City, history of the neighborhood and its association, demographic and structure use data, future land use and zoning analysis, Code compliance issues, Infrastructure (Public Works, Water and Sewer, Electric, Leisure Services) and other agencies services (PBSO, Fire Rescue and the CRA)

Summary of Opportunities and Constraints

Presents an assessment of opportunities and challenges for neighborhood improvement organized in two topic areas:

- Impact of the City and other agencies initiatives on neighborhood improvement and
- Main neighborhood issues as opportunities for future improvement

Summary of Action Plan

Introduction

Goal of the Neighborhood Plan Program

The purpose of the neighborhood plan is to build mutual collaboration between a neighborhood's residents, business community and the City, to create a sense of place, foster safer neighborhoods, encourage community pride, and build a vibrant and diverse economy.

The City of Lake Worth Beach strategies express the desire to "position Lake Worth Beach to be a competitive viable location of choice" to bring economic development to the City, while "strengthening Lake Worth Beach as a Community of Neighborhoods". The Neighborhood Planning Program is focused on improving the character and lifestyle of the neighborhoods.[1]

Therefore, the Neighborhood Planning Program would be "part of the strategies to become a city of diverse, distinct, and well-structured neighborhoods that meet the community's needs for complete, sustainable, and high-quality living environments with strong sense of place and identity." [2]

Renovated Single-Family Homes. Source

New Publix on Dixie Highway. Source

[1] Lake Worth Beach Strategic Plan
[2] Lake Worth Beach Comprehensive Plan

Neighborhood Plan Process

The neighborhood plan is the catalyst to build mutual collaboration between the City and each neighborhood to create a sense of place by promoting awareness, training and organization. The steps utilized to develop each Neighborhood Action Plan are described below:

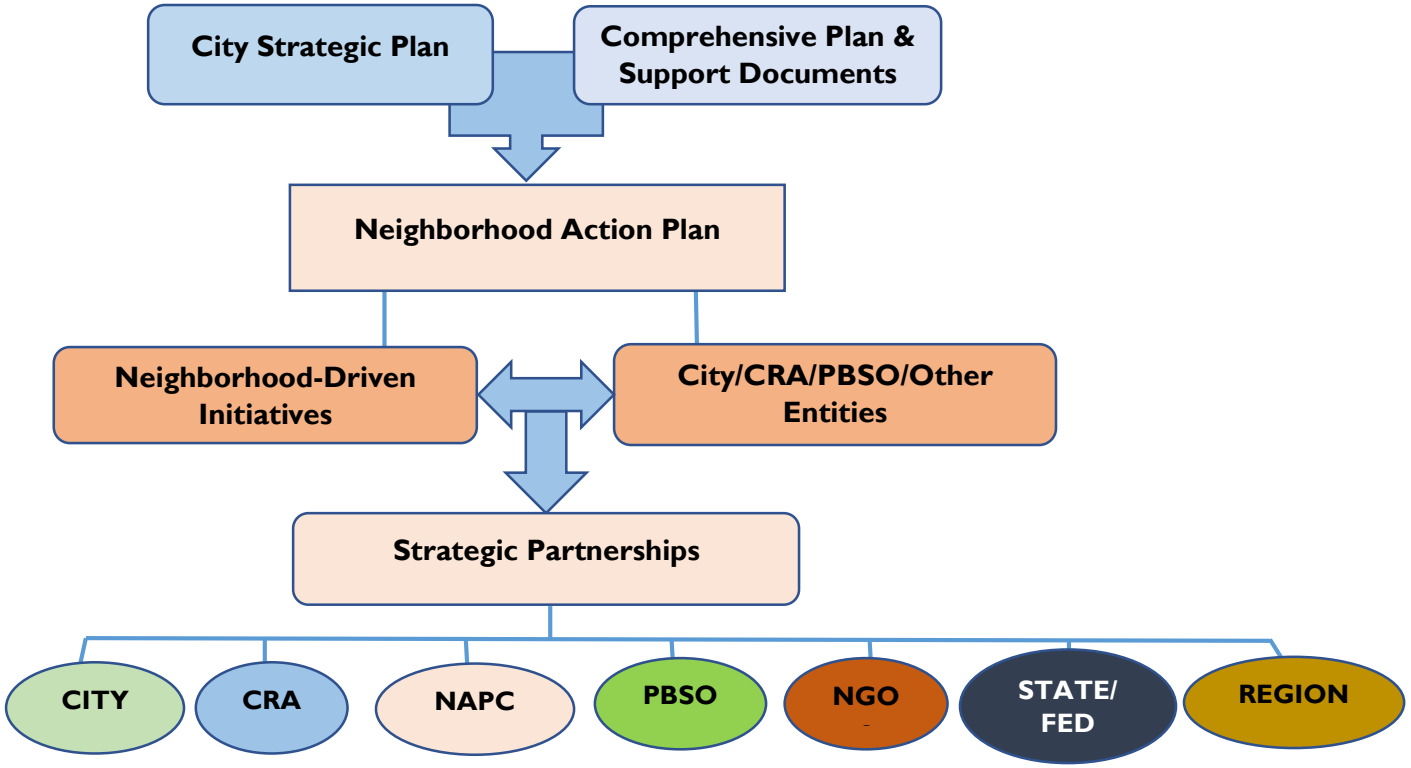
1. **Neighborhood identification**: Determine and confirm the boundaries of each neighborhood. Determine whether there is an established neighborhood association and their legal status.
2. **Meeting with City Departments and other entities**: Learn what are the programs, projects and resources available to residents for neighborhood improvement.
3. **Determination of Existing Conditions**: Data Collection and Analysis to provide a more in-depth identification of issues and opportunities to improve conditions in the neighborhood.
4. **Neighborhood Assessment**: Summarize each neighborhood's conditions and determine the main issues, challenges and opportunities for change.
5. **Neighborhood Meetings:** Meet with each neighborhood association and other stakeholders to elicit feedback, ideas and suggestions to prepare a draft action plan, and to evaluate priorities and responsibilities for the implementation of the neighborhood plan.
6. **Draft Action Plan:** Initial blueprint for neighborhood improvement to be discussed with each neighborhood and its representatives, in order to receive additional comments and fine tune the action plan.
7. **Final Plan of Action:** Final Action Plan for Neighborhood Improvement.
8. **Presentation to City Commission and neighborhood:** For official acceptance and adoption.

NZC Photo Archive. Source

Multifamily Homes, South Federal Avenue. Source

Action Plan Implementation and Development of Strategic Partnerships

Building collaboration between neighborhoods, the City and other entities includes education, training on organization and management, and skills to identify and work with these "strategic partners". Neighborhoods need to tap existing resources and associate with entities providing services and assistance, including the City and all of its departments, the Neighborhood Association Presidents Council (NAPC), the Community Redevelopment Agency (CRA), the Sheriff's Office (PBSO), Non-Government Agencies (NGOs), as well as State and Federal Agencies (STATE & FED) and Regional Agencies and resources, such as, the Treasure Coast Regional Planning Council TCRPC), the School District of Palm Beach County (SDPBC), and the Palm Beach Transportation Planning Agency (TPA).



Existing Conditions and Assessment of Opportunities and Constraints

Includes topics such as, Location within the City, history of the neighborhood and its association, demographic and structure use data, future land use and zoning analysis, Code compliance issues, Infrastructure (Public Works, Water and Sewer, Electric, Leisure Services) and other agencies services (PBSO, Fire Rescue and the CRA) Also Presents an assessment of opportunities and challenges for neighborhood improvement organized in two topic areas:

- Impact of the City and other agencies initiatives on neighborhood improvement and
- Main neighborhood issues as opportunities for future improvement

Focus and Components of a Neighborhood Action Plan

After an assessment of the neighborhood is completed, City staff, the consulting firm, and other entities will work with neighborhood and business representatives to develop recommendations for Neighborhood-Driven initiatives.

Twelve areas of review for neighborhood improvement have been identified. Initiatives to address concerns affecting each specific neighborhood would be ranked and prioritized by neighborhood representatives. Strategic partners would be identified, and specific Action Plans would be finalized for presentation, acceptance and adoption by the City Commission. The areas of review for neighborhood planning include:

- Neighborhood Association Organization and Training
- Crime Reduction and Prevention
- Neighborhood Beautification
- Mobility
- Neighborhood Identification
- Code Compliance (Top Ten issues by neighborhood)
- Education and Empowerment
- Fundraising and Special Events
- Neighborhood Welcoming Courtesy Package
- Internal and External Communication
- Recycling Education
- Infrastructure

Each Introduction would have a summary of the recommendations for action in the areas of focus for the neighborhood, their ranking and priorities, and the list of strategic partners the neighborhood would need to implement the Action Plan.

EXAMPLES of the Neighborhood Improvement Action Plan are presented in the Neighborhood Improvement Action Plan Section

A Vision for the Future

THIS IS A VISION EXAMPLE / THE ACTUAL VISION WILL BE DEVELOPED IN COLLABORATION WITH THE NEIGHBORHOODS

The Neighborhood is expected to become a vibrant mixed-use community along its main corridors while achieving a safe environment and prosperous community in its residential core, after implementation of the neighborhood plan of action.

Main Corridor Vision Example, Source

Home Vision Example, Source

The Neighborhood Planning Program's goal is to promote neighborhood preservation, revitalization and stabilization with the purpose of enhancing the quality of life throughout the City.

Neighborhood Improvement Action Plan

Neighborhood Meetings, Conclusions and Recommendations

THIS SECTION WILL BE COMPLETED IN COLLABORATION WITH THE NEIGHBORHOODS AFTER CONDUCTING MEETINGS WITH RESIDENTS

NZC Neighborhood Meeting Photo Archive

Neighborhood-Driven Action Plan

Neighborhood-driven initiatives include a description of the issue, the action or actions recommended for neighborhood improvement, suggested strategic partners, and implementation timeframes.

This section describes the proposed Neighborhood Improvement Action Plan (Action Plan) for the neighborhood. The Action Plan is based on the analysis of existing conditions and the identification of the most important issues facing this neighborhood. It is also based on an assessment of programs and initiatives the City and its partner agencies are implementing, or will be implementing in the upcoming years, to address some of those key issues.

The assessment will be discussed with the neighborhood group to seek their feedback, comments and suggestions, and work together in the preparation of an initial plan for neighborhood improvement, and the role residents, business owners, city agencies and other strategic partners will have in the implementation of the Action Plan. For instance, by implementing neighborhood watch programs, promoting special neighborhood or city-wide fundraising events, or implementing a façade and frontage improvement program.

The resulting **Action Plan** provides a guide for neighborhood improvement with a set of actions that will be carried out in coordination with neighborhood groups. The tables in the next pages provide **EXAMPLES** of current and future actions for neighborhood improvement in the neighborhood.

INITIATIVES WILL BE RANKED AND PRIORITIZED BY THE NEIGHBORHOOD

NEIGHBORHOOD-DRIVEN SAMPLE INITIATIVES

SAMPLE INITIATIVES	STRATEGIC PARTER (S) / TIMEFRAMES EXAMPLE	CHECK BOX
Neighborhood Association Organization/ Training		
Establish a neighborhood association if not already established.	Neighborhood Association Presidents Council (NAPC), Lake Worth Beach Department of Community Sustainability	
Obtain training on management, funding and working with strategic partners.	Community Partners of the Palm Beaches	
Define tasks for neighborhood improvement and establish priorities.	Lake Worth Beach Department of Community Sustainability	
Increase membership and neighborhood participation	NACP, Neighborhood Association	
Establish and follow up funding strategy for Implementation of action plan	Neighborhood Association, NACP, Department of Community Sustainability.	
Crime Reduction and Prevention		
Establish and maintain operations for a Neighborhood Watch Program.	The PBSO assists neighborhood groups basic set up, data and logistics of for the establishment of a watch program and provides funding for neighborhood watch signs. Initial assistance requires a group of at least 10 people that meets at least 4 times a year. Contact: PBSO- District 14, Community Outreach Coordinator	
Participate in the Community-Based Crime Reduction (CBCR) Program and take advantage of its resources.	The PBSO is conducting this program in Lake Worth between 2019-2021to address critical crime areas in the City.	
Neighborhood Beautification	Nonprofits: Faith-Based; Paint Your Heart; Community Partners – CRA, Code Compliance Department	
Front Yard Maintenance, Tree Planting, Landscaping	1-3 Years	
Painting of Houses in Need	As needed on select homes	
Trash & Recycling Clean Ups	As needed	
Mobility		
Bike Lanes	Public Works, Engineering, TPA, TCRPC	
Traffic Calming	Public Works, Engineering, TPA, TCRPC	
Pedestrian Trails	Public Works, Engineering, TPA, TCRPC	
Utilization of Alleys and Truncated Streets	Public Works, Engineering, TPA, TCRPC	

NEIGHBORHOOD-DRIVEN SAMPLE INITIATIVES (CONTINUED)

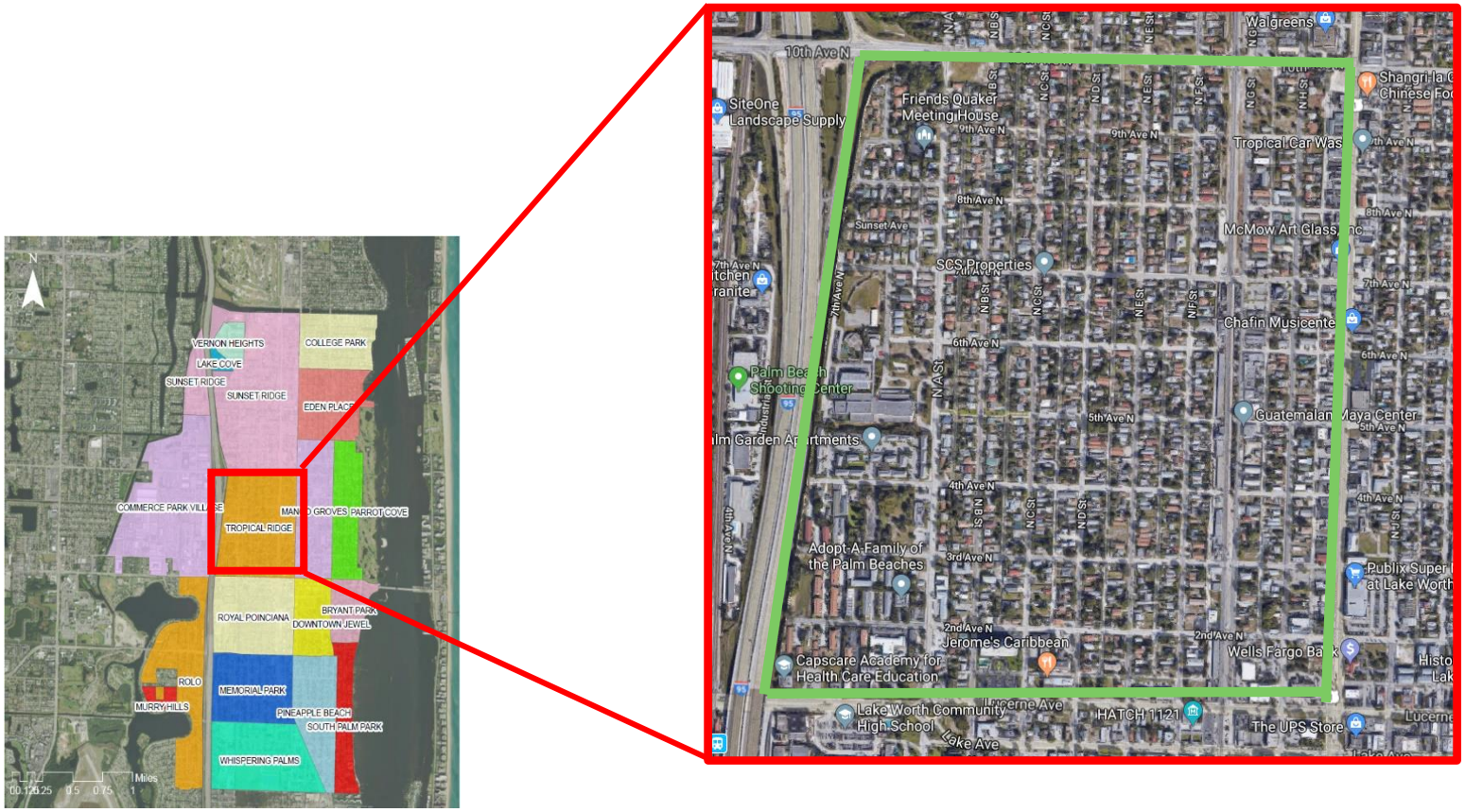
SAMPLE INITIATIVES	STRATEGIC PARTER (S) / TIMEFRAMES EXAMPLE	CHECK BOX
Neighborhood Identification		
Strategic Location of Neighborhood Signs	Public Works, Public Information, CRA	
Design and Construction of Identification Signs (Monument)	Public Works, CRA	
Street tree (s) "trademark" by neighborhood	Public Works, Leisure Services, Community Greening	
Neighborhood Logo on Sidewalks	Public Works, Public Information, CRA	
Code Compliance (Top Ten by Neighborhood)		
General Requirements	Code Compliance	
Areas Free of Garbage/Trash	Code Compliance, NAPC, Public Works	
Landscape Regulations	Code Compliance, NAPC	
Abandoned Property	Code Compliance, NAPC	
Lot and Lands Nuisances	Code Compliance, NAPC	
Fences, Walls and Gates	Code Compliance, NAPC	
Building Permit	Code Compliance, Business Association / Group, Building Dpt.	
Business Use/Occupation/BTR License Required	Code Compliance, Business Association / Group, City, County	
Business Use/Occupancy Certificate	Code Compliance, Business Association / Group, City	
Business License Required/Utility Service	Code Compliance, Business Association / Group, Utilities Dpt.	
Education & Empowerment	NGOs Faith-Based; Community Partners –	
School Activism for better schools	School District of Palm Beach County, Charter Schools.	
Pre and After Care Programs	Faith-based group. School District of Palm Beach County, Charter Schools.	
Parenting Resources	Children's Service Council	
Public Education	Public Information Officer	
Special Events Fundraising Support - Block Parties, Community Events	Leisure Services (LS) Department, Public Information, NGOs	
Fundraising	The LS Department provides booth space at city events to the NACP and offers free special permits up to 4 times/year for individual neighborhoods.	
Block Parties	LS Department, NGOs, Public Works, Public Information	
Community Events at neighborhoods	LS Department, NGOs, Public Works, Public Information	

NEIGHBORHOOD-DRIVEN SAMPLE INITIATIVES (CONTINUED)

SAMPLE INITIATIVES	STRATEGIC PARTER (S) / TIMEFRAMES EXAMPLE	CHECK BOX
Neighborhood Welcoming & Courtesy	Parrot Cove Style	
Monthly Get Together	NAPC, Neighborhood Associations	
Block Parties	NAPC, Neighborhood Association	
Welcoming Package Residential / Business	NAPC, Neighborhood Association, Chamber of Commerce	
Publicize Neighborhood Association	NAPC, Neighborhood Association	
Communications with City, Neighborhood and Community		
Bulletin Board Exchange	Online Sources	
Social Media	Online Sources	
Newsletter	Public Information Officer	
Kiosks	City of Lake Worth Beach	
Emergency Management	City, Palm Beach County, PBSO, Fire Rescue	
Recycling Education		
Promote Recycling Education through Neighborhood Association	Solid Waste Authority, Public Works Department	
Infrastructure		
Roads & Sidewalks	Public Works	
Street, Alley, Walk Trail Lighting	Electric Utility	
Waterworks	Water and Sewer Utility	
Public Art	Leisure Services, Public Works, Developer Contribution	
Parks and Open Space	Leisure Services	

Existing Conditions and Assessment

Neighborhood Description



Location within the City. Physical Boundaries. History of the neighborhood and the neighborhood association (to be provided by City staff)

General description, land uses / existing uses (single-family, two-family, multifamily, commercial, industrial, new trends (multifamily, townhomes, mixed use, etc.) Geographic distribution of those uses. Schools, Parks, Open Space, Churches, Banks.

Single-Family Location Aerial, Source

Multifamily Location, Source

Single-Family, Location, Source

New Multifamily, Location, Source

Main Corridor land uses / existing uses, trends, Geographic distribution, character

Name, Location, Source

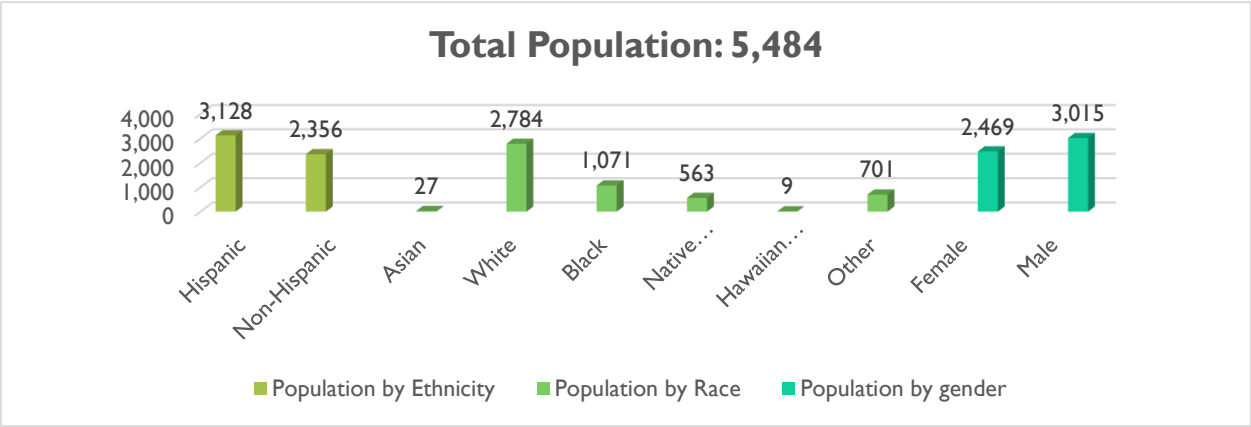
Name, Location, Source

Narrative description, characteristics

Name, Location, Source

Name, Location, Source

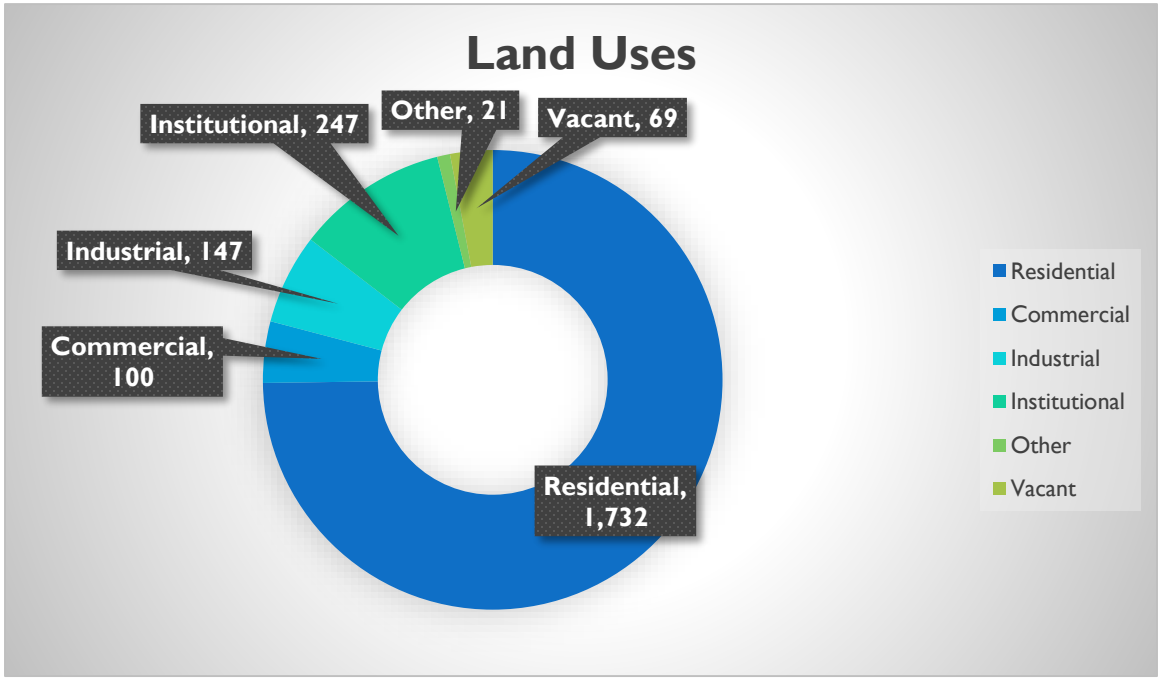
Demographics



	Population by Ethnicity	Population by Race	Population by gender
Hispanic	3,128		
Non-Hispanic	2,356		
Asian		27	
White		2,784	
Black		1,071	
Native American		563	
Hawaiian or Pacific Islander		9	
Other		701	
Female			2,469
Male			3,015

EXAMPLE DEMOGRAPHIC NARRATIVE: Based on Census data from 2010 the population in the NAME Neighborhood is predominately of Hispanic Ethnicity with a population of 3,128 followed closely by a White population of 2,784 and a Black population of 1.071. This neighborhood is composed of 3,015 males and 2,469 females, a difference of 546 more males than females, for a total population of 5,484 people.

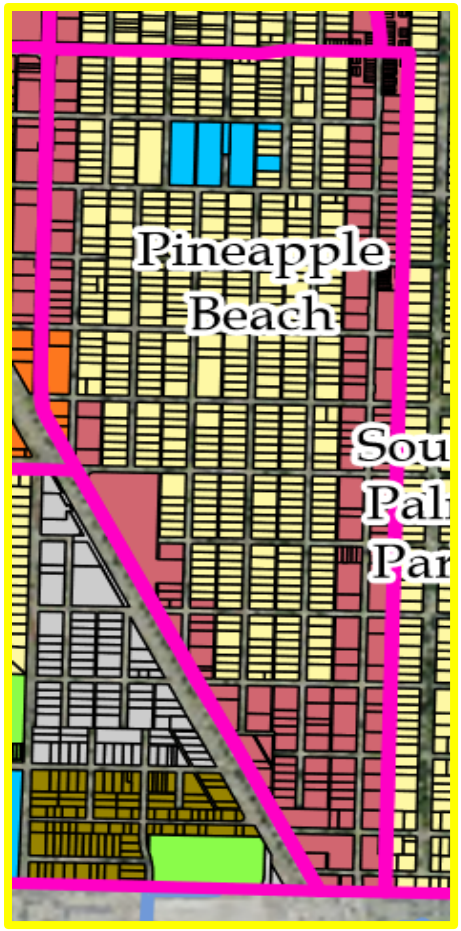
Existing Uses



EXAMPLE STRUCTURE USES NARRATIVE: The primary use composition of this neighborhood is residential with a reported 1,732 of such structures. Other significant uses include 247 Institutional, 147 Industrial and 100 Commercial structures. There is also identified, 69 structures as vacant and 21 as Other.

Future Land Use

SAMPLE MAP



SAMPLE MAP LEGEND

- Neighborhood Boundaries
- Public (P)
- Single Family Residential (SFR)
- Mixed Use - East (MU-E)

NARRATIVE: Description and Analysis

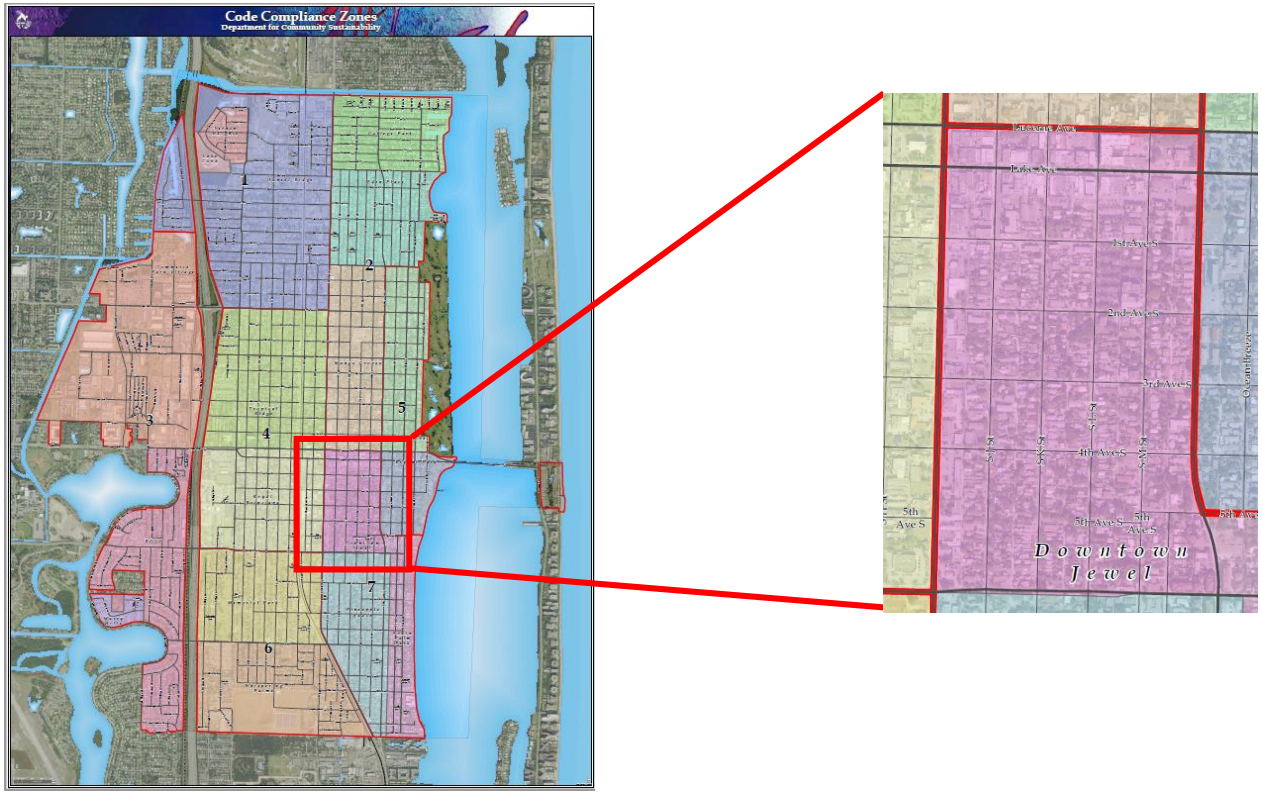
Zoning Map

SAMPLE MAP LEGEND

- Neighborhood Boundaries
- Single Family Residential (SFR)
- Medium-Density Multi-Family Residential, 30 du/net acre (MF-30)
- Transit Oriented Development West (TOD-W)
- Artisanal Industrial (AI)
- Public (P)

NARRATIVE: Description and Analysis

Code Compliance: Zones, Cases and Issues



NARRATIVE: Description and Analysis

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Neighborhood SALIENT cases

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- Use/Occupation & BTR License Req'd 58
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- Park/Keep/Store MV, RV 24
- Building Permit 17
- Foreclosure Registration 12
- Areas Free of Garbage /Trash 09
- Use and Occupancy Certificate 09
- Adm. Amend. to Florida Building Code 08
- Lots and Lands Nuisances 08

NARRATIVE

Recreation and Open Space (Leisure Services Department)

NARRATIVE: Description, parks location, amenities, events

Neighborhood Park Facilities: Narrative, Description, Source, etc.

Public Services

Status of the Neighborhood Road Program in the Neighborhood

The City's Public Services Department has been implementing this 40-million-dollar program in coordination with other City Departments with distinct funding sources, such as the Utilities Enterprise Zone for Lake Worth. Road improvements have been done in tandem with water main replacement and upgrades, bringing sidewalks in compliance with ADA requirements, and a complete replacement of street lighting with LED components has also been part of this effort, as part of the Siemens Performance Contract. The Public Services Department has an interactive Map in the City's web page indicating the status of the program, either completed (green), in process (orange) or in design (black), spanning for a period of 4 years, as shown in the map below for the neighborhood. The neighborhood roads are shown in the map to the right.

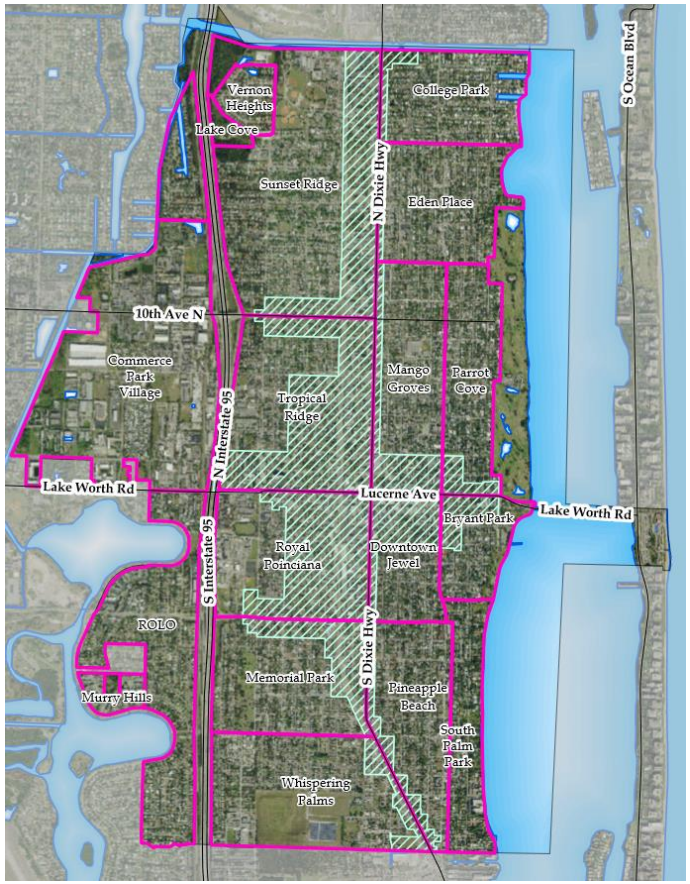
Garbage Collection and Recycling

The City switched in October 2018 from single stream recycling (all items in one container) to dual stream recycling which separates glasses, aluminum cans and plastics (blue container), from paper and cardboard material (yellow container). IN the first three months of the new program residents recycled 423 tons of material. The material delivered to the recycling facility was low in contamination and non-recyclable material, indicative that residents and businesses are actually following the recycling guidelines for this new program.

The City is divided in four refusal zones, each one including one collection day for recycling and vegetation and two collection days for household garbage.

Along with all cities in Palm Beach County, refusal and recycling materials are send to the Solid Waste Authority (SWA) facilities in central-western Palm Beach County, which include a unified landfill for the entire County and municipalities. There are several transfer stations throughout the County for the transfer of all materials from smaller trucks to the larger SWA trucks. The closer transfer station to the City of Lake Worth Beach is the Lantana Central Station on Lantana Road west of I-95.

Community Redevelopment Agency (CRA)



EXAMPLE NARRATIVE: The Lake Worth CRA's mission statements is "investing in our community to revitalize and rebuild our neighborhoods and commercial corridors. We are dedicated to maintaining the character of the City, responding to the community needs and encouraging sustainable economic growth to improve the quality of life for our residents and the future health of our City[3]".

[3] Source: Lake Worth CRA

EXAMPLE NARRATIVE: Development of the City's commercial corridors continues to be a priority for the CRA. Our main thoroughfare, Dixie Highway, has seen limited development over the years. The CRA played a role in several successful developments including the first Publix in the City, with the Art Deco style of the original 1950's stores; 1101-1113 N. Dixie and the Shops at Downtown, with Starbucks, and other stores and services. In addition, the CRA invested in numerous properties, in the form of façade and tenant improvement grants. Despite CRA initiatives, large-scale, mixed-use, developments did not make it past the conceptual phase until now.

ADDITIONAL NARRATIVE

Example Picture, Location, Source

CRA Projects in NEIGHBORHOOD

EXAMPLE NARRATIVE: The CRA purchased in early 2019 44 stainless steel receptacles to replace the old square shaped maroon cans that have been in the city for more than 11 years. Funding to purchase the new receptacles was obtained through the Palm Beach County's Solid Waste Authority's (SWA) Blighted & Distressed Grant Program. This is the second that the CRA received grant funding from the SWA. The new receptacles were installed by the City's Public Works Department.

Over the next few years, the CRA and the City will be working to replace all public trash receptacles and benches throughout the downtown business core.

New receptacles & Bench, Location, Source

Water Utilities

The City of Lake Worth beach provides potable water and wastewater services on a City-wide basis, and includes areas west of the city boundaries, including the Village of Palms Springs and portions of unincorporated Palm Beach County. Therefore, benefits deriving from continued improvements to these systems benefit the city residents as a whole and its neighborhoods in particular. The City's Water System ("System") includes: the raw water supply, the water treatment plant ("WTP"), water storage facilities, and the water distribution system. The City's Utilities Department oversees the City's water, local wastewater, and sub-regional wastewater.

NARRATIVE PROVIDED BY DEPARTMENT:

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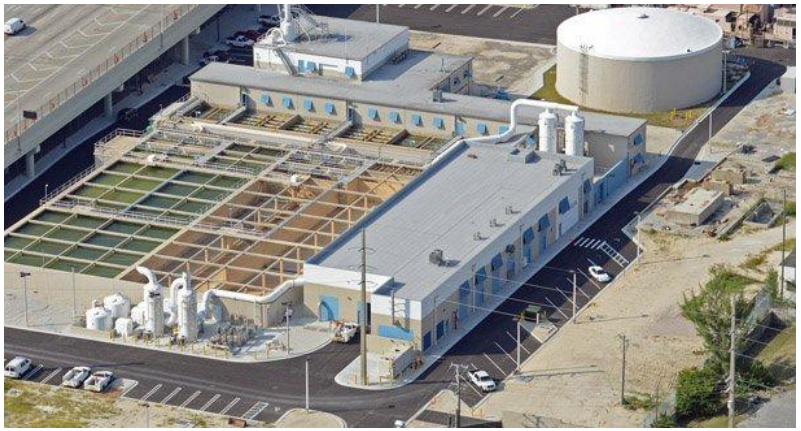
Lake Worth Beach Water Treatment Plant. Source: Google



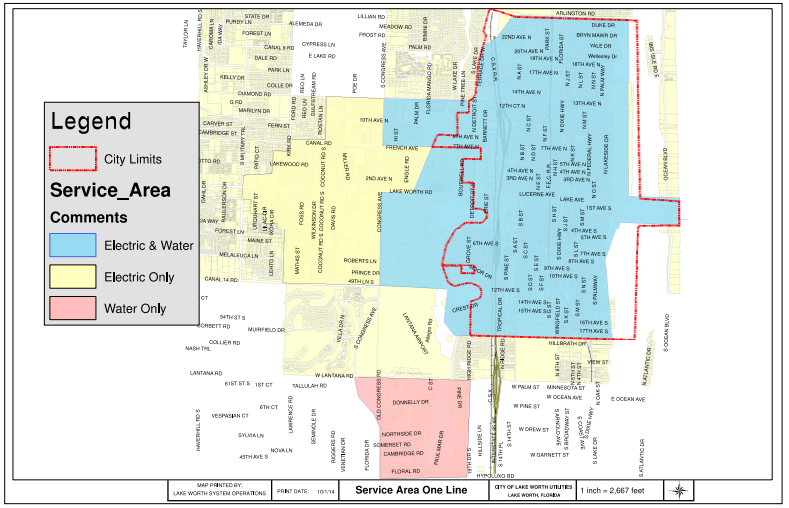
Existing Conditions and Improvements to the City's Water System

NARRATIVE PROVIDED BY DEPARTMENT:

Electric Service

The Electric utility service operates, as many other services in the City of Lake Worth Beach, on a city-wide basis, which means, its programs and operations benefit the entire City, including all of its neighborhoods.

NARRATIVES PROVIDED BY DEPARTMENT:



Capital Improvement Plan

Renewable and Carbon-Free Energy Sources

Blue Ocean Energy

NARRATIVES PROVIDED BY DEPARTMENT

Palm Beach County Sheriff Office (PBSO)

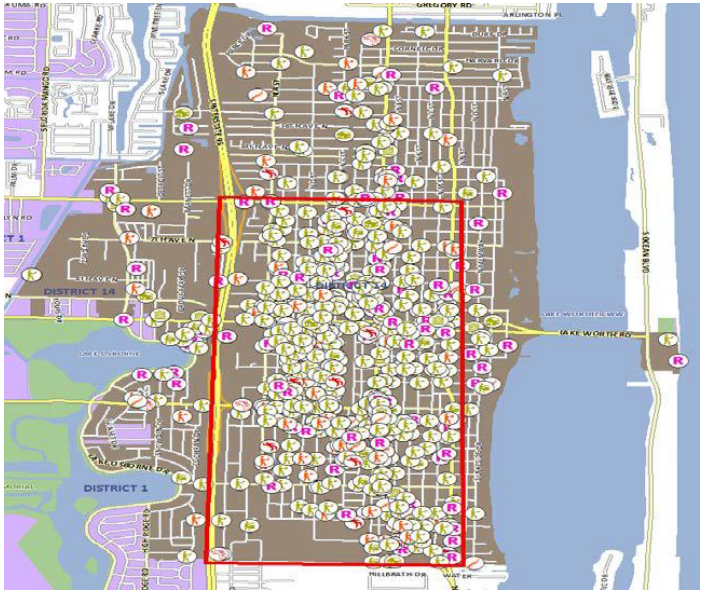
The Lake Worth Police Department merged with PBSO in 2008, I have a good understanding of the priorities and values held by the residents of Lake Worth. Police service in the City of Lake Worth Beach is provided through a contract with Palm Beach County's Sherriff Office. The city corresponds with PBSO 's District 14.

NARRATIVES PROVIDED BY DEPARTMENT

Crime Situation

Community-Based Crime Reduction (CBCR) Program

Other PBSO programs to combat crime



1. **Place-based Strategy**: To better integrate crime control efforts with revitalization strategies, targeting distressed areas and "hot spots" and tackling "crime drivers"
2. **Community-Oriented**: Values community stakeholders as the change agents, where the residents are active participants, along with business owners, service providers, resource centers, faith-based organizations, schools, etc.
3. **Data Driven:** To improve the use of data and research to problem solve and guide program strategy. And
4. **Capacity Building and Partnerships:** To promote sustainable collaboration with Cross-Sector partners and address problems from multiple angles.

Palm Beach County Fire Rescue Department

Palm Beach County Fire Rescue provides fire rescue services to the City of Lake Worth, through a station located at 1020 Lucerne Avenue, just south of the PBC Sheriff's District 14 (Lake Worth) Building.

NARRATIVE PROVIDED BY DEPARTMENT

Information and Communications

The Public Information Office of the City of Lake Worth Beach is in charge of most of the communications with the public, media communications, internet presence, etc. Advertising and disseminating public events, City government activities, programs and actions. This includes production of banners and posters, creation of brochures and promotional fliers. As a result, the office manages most of graphic works for the city, video production, etc.

The office conducts its activities on a citywide basis, for the benefit of all its residents, businesses and visitors. The Public Information Officer is in charge of producing the City's monthly newsletter "NewsWorthy – The Art of Florida Living". The newsletter brings information on up-coming events, art exhibits and cultural activities, City programs updates on issues such as, recycling, refusal schedule, PBSO Citizen Observer program, and much more.

City Hall Annex. Google Image

Identified Opportunities and Constraints

Impact of City and Other Agency Actions

SAMPLE NEIGHBORHOOD NARRATIVE, which is one of the neighborhoods at the heart of the City, has been the focus of actions by the City and other agencies during the last several years. A series of mixed-use districts have been created through amendments to the future land use and zoning districts maps, which benefit areas along the main commercial corridors, namely Lucerne Avenue, Dixie Highway, 10th Avenue North, and the areas around the FEC Railway and Dixie Highway. This has effectively:

1. Consolidated diverse kind of mixed-uses along these corridors, including transit-oriented uses into the downtown area, which have the very potential for more intense residential and non-residential uses at the edges of the neighborhood.
2. The residential section of the neighborhood has been effectively concentrated at the geographic center of the neighborhood, with new multifamily opportunities in the western limits of the neighborhood near Interstate 95.

These are examples of the potential positive impact these land use and zoning changes could bring about in the future, benefitting not only this neighborhood but the City a whole.

Main Neighborhood Issues Are Opportunities for Future Improvement

SAMPLE NEIGHBORHOOD NARRATIVE, this also brings the opportunity to consolidate the remaining residential area, improve its quality of life and make it a more integral part of the fabric of the City. This residential area is characterized by its large migrant population, mostly from Central America, which has brought diversity to the City. This residential area is however, impacted by the poverty and slow insertion process of its residents into the mainstream way of life. Hence the high incidence of code violations and criminal activity in this section of town. Also, to blame are the absentee landlords, which neglect their properties and contribute to the deteriorated appearance of portions of the residential area.

Therefore, the main issues where the City, residents and other agencies and organizations need to focus for this neighborhood are safety, addressed in partnership with the PBSO; and the physical improvement of the neighborhood, in coordination with the neighborhood-driven initiatives and strategic partners.

MINUTES
CITY OF LAKE WORTH BEACH
ELECTRIC UTILITY CITY COMMISSION MEETING
TUESDAY, JANUARY 28, 2020 – 6:00 PM

The meeting was called to order by Mayor Pam Triolo on the above date at 6:00 PM in the City Commission Chamber located at City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

ROLL CALL: Present were; Mayor Pam Triolo; Vice Mayor Andy Amoroso; and Commissioners Omari Hardy and Herman Robinson. Also present were City Manager Michael Bornstein, City Attorney Christy L. Goddeau and City Clerk Deborah Andrea. Commissioner Scott Maxwell was absent.

PLEDGE OF ALLEGIANCE: led by Vice Mayor Andy Amoroso.

AGENDA - Additions / Deletions / Reordering:

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

A. FY2019 Results and Scorecard

Ed Liberty, Electric Utility Director, gave a summary of the financial activity for FY 2019, comparing where the Electric Utility (EU) was to where it was currently. He reported that the plant was operating in good condition, working well and that the compensation for the workers had been increased to be close to the private sector; the staff had improved and they continued to recruit and bring people in. He compared the budgeted operating totals with the actual numbers for revenue and expenses, residential and commercial sales, and the balanced scorecard for financial and customer service quadrants. He said that although the actual revenue was a little less than budgeted, the actual expenses were $2.6 million under budget, resulting in higher operating income. He went into detail about the profit and loss statement for operating revenues and expenses and showed how salaries had decreased due to the reduction in overtime costs. He explained how the actual residential sales had been .74% under the budgeted number and that actual commercial sales were 4.258% under budget. He talked about the various payment methods that customers used and the outstanding balance due on the additional billed deposits.

Comments/requests summary:

1. Vice Mayor Amoroso asked about the $2.00 convenience fee and if it would end in 2020.

Mr. Liberty explained that the convenience fee would be zero after the first quarter of 2020. He said that customers had to go off site to make cash payments and the City did not have to pay for the service.

Mr. Liberty said that the pole attachments numbers were with Comcast and did not show AT&T; the numbers reflected the catch up for prior years and there had been an audit. He stated that AT&T was working on a pole count and there had been a difference in opinion about who owned which pole.

Vice Mayor Amoroso requested to see the numbers with Comcast and AT&T.

Mr. Liberty said they had been trying to stop the lashing where people tied on to the existing pole attachments. He iterated that there should a process when a pole was replaced because of an emergency, the City could charge a certain amount.

2. Vice Mayor Amoroso asked about the increase in investment revenue shown on the monthly portfolio.

   Clyde Johnson, Budget Manager, stated that the investment revenue flowed from the investment portfolio.

3. Commissioner Hardy asked about the investment portfolio, for an explanation of the CAIC and if there would be negotiations with any other companies for pole attachment agreements.

   Mr. Liberty replied that he did not manage the investment account and would need to ask the Finance Director. He stated that the CAIC was to cover the costs of installing a larger transformer or service wire and that one other company, Crown Castle, would be added to the pole attachment agreements, which would increase the revenue.

4. Vice Mayor Amoroso asked if the CAIC would be larger with the Mid and other development coming online next year. He asked if Crown Castle was the company that represented all the small cell companies.

   Mr. Liberty responded that yes, it would increase the revenues next year.

   City Attorney Goddeau said yes, that Crown Castle was the company for all the small cell companies.

   Mr. Liberty said Crown Castle was a company that came into a city to make sure everyone had cell service.

5. Commissioner Robinson asked what comprised other revenues.

   Mr. Liberty replied that it could be fees or sale of equipment, but not a power sale or other ordinary sales issue.

6. Commissioner Hardy asked what the maintenance what was the difference and Mr. Liberty said he would get back to them. He also asked about union people who were asking about overtime vs. contractual services.

   Mr. Liberty said that the EU did contract out work because there were only about a dozen linemen, and if they were called out for an emergency and the overtime was for eight hours, they could not work for the next eight hours. He stated that EU staff did minor work but could not be committed for larger projects. He reported that the vegetation management was contracted out, but the EU did not hire a contractor to do the line work and EU staff would maintain the work after construction. He stated that he made the decision to stop the unnecessary work and stopped paying overtime for the rodeo and for riding in parades, but they people were brought in when needed.

7. Mayor Triolo asked about preparation before major storms.

   Mr. Liberty responded that EU crews got ready for the storms, but mutual aid crews came from other states before the storm hit and remained until the storm was cleared, which cost between $2.5 and $2.9 million dollars in the insurance fund.

Mr. Liberty spoke about the declining costs for power and gas prices and said that benefits from the solar projects would felt in early 2024. He explained that there could be a spike because of an outage or a spike in power prices per month, which increase amounts up.

8. Commissioner Hardy inquired if the City was hedged in case of natural gas spikes.

   Mr. Liberty replied that the City did not hedge, except in our portfolio where about 50% was in natural gas, and would drop about 15 percentage points when solar began.

Mr. Liberty discussed the budget for salaries which had gone up, and overtime which had been cut significantly. He stated that staff had been very responsive and were doing great work; the expenses were being controlled. He spoke about the residential sales and showed the track they use to create the new budget and they still do not had all the numbers and they were trying to improve the forecasting of the sales.

9. Commissioner Robinson asked about the commercial rates.

   Mr. Liberty answered that the commercial rates were a little higher but did not know if commercial sales would increase if rates were lower.

10. Mayor Triolo said what she had heard from people in the community that big business owner's bills came down while small business owners were paying more and inquired if anything could be done.

    Mr. Liberty said that there would be a cost of service study presented in the near future.

    Mayor Triolo requested information about businesses for a comparison study.

Mr. Liberty spoke about the electric charging stations that would be installed.

11. Commissioner Robinson asked about putting stations at the Park of Commerce.

    Mr. Liberty replied that various locations were being considered and the placement would have to be strategic because they were expensive to install. He stated that the chosen locations were near transformers and would require minimal construction; the City would offer a value-added service in the hope of bringing more traffic to the commercial community.

    City Manager Bornstein relayed that there had been discussions about how to get homeowners interested in having electric car chargers and charging stations around the City would be a good first foray into the market.

    Mr. Liberty said that the EU would look at the cost of providing chargers to residents.

12. Commissioner Hardy asked what the impact of a high demand for electric cars would have on electric demand and the revenue profile.

    Mr. Liberty replied that it would help the City with revenue but could create a problem if the cars would charge immediately when they were plugged in rather than setting the charging for overnight.

Vice Mayor Amoroso left the meeting at 7:10 PM and returned at 7:12 PM.

Mr. Liberty spoke about the balanced scorecard, which was done on a monthly basis, and showed growth in residential but stayed the same in commercial. He said that more data was being analyzed than ever before and explained that more degree days and rainfall that cooled a house, resulted in the electric power costs decreasing. He reported that streetlights were monitored, there was less demand for conservation audits, meter tampering had decreased and customer disconnections had increased.

13. Commissioner Hardy stated that the City was doing well at getting streetlight outages repaired.

    Mr. Liberty said that there was a night crew to look for streetlights that were out. He announced that people could call in or check the website and someone would fix the light.

Mr. Liberty said that there had been between 4,000 to 4,700 customers coming in to pay their bills each month and stated that the focus would be better spent working with customers with real issues. He mentioned that office staff could help download the payment code and set up the payment app on customers' phones so they could pay their bills 24 hours a day, seven days a week.

14. Vice Mayor Amoroso asked if he needed to wait at utility customer service to obtain a bar code and if he could take his utility bill to one of the pay by me locations.

    Mr. Liberty replied that there would be bar codes printed on the utility bills for each payment vendor.

    Franco Bellitto, Customer Service Manager, answered that the bar codes would be on the utility bills in three to six months. He stated that there was a bilingual customer service representative to help with the codes the representatives or explaining new payment service.

15. Commissioner Robinson gave kudos to Mr. Bellitto and the customer service staff because of the increase the workload.

Mr. Liberty ended the presentation with the yearly reliability data, which exhibited the improvement in reliability in each category and the net metering data, which showed that there were 107 customers up and running, 19 of the interconnection packages were incomplete, 28 had not responded and there were 14 new applications in process.

16. Vice Mayor Amoroso asked if the non-responders were commercial or residential, how they had been notified and what would be the next step.

Mr. Liberty replied that it was a combination of commercial and residential. He stated that the residents and business owners would see an increase in their bills because they were no longer in the program.

Joel Rutsky, Revenue Protection Manager, responded that customers in the program had been sent certified mail but some never picked up the package. He iterated that a regular mail delivery was sent followed by emails and numerous attempts by certified and regular mail to their billing and services addresses. He reported that he had gone to the largest commercial location twice but had not heard back. He said that perhaps non-responders would contact the EU when they no longer received the solar credits on their bills.

City Attorney Goddeau said that the non-responders were no longer in the program nor grandfathered in and would be subject to the new rules.

17. Commissioner Hardy asked if people could use the Bert Harris Act.

    City Attorney Goddeau answered that usually the Bert Harris Act was tied to property rights.

City Manager Bornstein complimented Mr. Liberty on his leadership and praised his capable and amazing team. He stated that the refurbishment of the system as well as pursuing the system hardening and a second tie line would have to continue. He announced that there would be significant investments made to the citizen-owned electric utility; its revenues did a lot of good in the City. He said that the EU was competitive in the marketplace and they were working to be a progressive energy leader with the carbon footprint and the ocean current energy. He stated that the EU had gone from a liability to a valuable asset and would be come a desirable brand.

18. Mayor Triolo expressed pride in the EU team.

The meeting recessed at 7:52 PM and reconvened at 8:04 PM.

B. Lake Worth Beach (LWB) Electric Utility (EU) Web Page and News Page

Mr. Liberty said that the City had revamped its web presence and he would speak about the added EU section of the website, which would provide information about its vision and message regarding the future. He announced that the wording Citizen Owned Energy now belonged to Lake Worth Beach. He introduced Michael Taylor, Owner of Simple Mind Corporation, who had been contracted to set up and launch the EU website landing page and provide outreach strategy services.

He said that the EU page would be the reflection of a strategy for people to understand the concepts and educate residents about what would be planned for the future. He stated that communication was a tool and would be used to position LWB as an active and innovative city regarding sustainability and the exciting partnerships being fostered through the ocean current technology. He explained that the page would have a monthly feature with important information as well as issues that affected the system's reliability, how to pay your bill, what to do after a storm plus topics such as major solar events and electric cars with a calculator to

show what could be saved by driving one. He said that there could be email campaigns to disseminate information.

Comments/requests summary:

1. Mayor Triolo asked what Mr. Taylor's services would entail and if there would be a database of those who logged in.
   Mr. Taylor responded that he would be doing newsletters and search engine optimization as well as creating a wider audience for our content. He said that a database would be very important for getting information out.

   Mr. Liberty said that the FMPA would come to film the solar field and the footage would be used in an FMPA ad campaign.

   Mr. Taylor said that items would continue to be added to the archived section.

2. Vice Mayor Amoroso asked if they were working with the City's social media team.

   Mr. Taylor replied affirmatively.

   Mr. Liberty said that he met with Mr. Taylor to discuss what was happening in the City to make sure the information was marketed. He stated that Simple Mind would build on the Strategic Plan, the vision and what the electrical utility had accomplished.

3. Commissioner Hardy opined that the website looked great, and suggested having a summary of the annual report.

   Mr. Taylor said there would be a type of annual report, maybe in letter format, with some data and graphics.

4. Mayor Triolo said that this was a content driven web page and the information was only as good as the information you got to the web master because communication could have influence.

   Mr. Liberty said the EU was trying to control the message to those who needed to hear it.

5. Commissioner Robinson asked if residential solar was being addressed and promoted.

   Mr. Liberty replied that it would be addressed as it was part of the energy mix, but the City was not in the habit of promoting something that would reduce its business.

   Commissioner Robinson asked how the City could get a grant from the Volkswagen settlement.

   Mr. Liberty said that the City did not have the resources to go after this but perhaps it could be discussed with the City's lobbyist.

6. Mayor Triolo inquired about having a place for realtors to be able to give current information to new buyers and business owners.

   Mr. Liberty said they would work on that and give people a sense of pride in ownership of the utility.

Vice Mayor Amoroso asked about a "did you know" for realtors where they could get the information they about the electric utility.

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:

No one from the public spoke.

APPROVAL OF MINUTES:

Action: Motion made by Vice Mayor Amoroso and seconded by Commissioner Hardy to approve the following minutes:

A. October 29, 2019 meeting

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Hardy and Robinson. NAYS: None. ABSENT: Commissioner Maxwell.

ADJOURNMENT:

Action: Motion made by Vice Mayor Amoroso and seconded by Commissioner Hardy to adjourn the meeting at 8:45 PM.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Hardy and Robinson. NAYS: None. ABSENT: Commissioner Maxwell.

_____
Pam Triolo, Mayor

ATTEST:

_____
Deborah M. Andrea, CMC, City Clerk

Minutes Approved: February 25, 2020

A digital audio recording of this meeting will be available in the Office of the City Clerk.

MINUTES
CITY OF LAKE WORTH BEACH
REGULAR MEETING OF THE CITY
TUESDAY, FEBRUARY 4, 2020 - 6:00 PM

ROLL CALL: Present were Mayor Pam Triolo; Vice Mayor Andy Amoroso; and Commissioners Scott Maxwell, Omari Hardy and Herman Robinson. Also present were City Manager Michael Bornstein, City Attorney Christy L. Goddeau and City Clerk Deborah M. Andrea.

INVOCATION OR MOMENT OF SILENCE: on behalf of Commissioner Scott Maxwell.

PLEDGE OF ALLEGIANCE: led by Commissioner Herman Robinson.

AGENDA - Additions/Deletions/Reordering:

New Business Item B, Second Amendment to the Incentive Agreement with The Mid, was added to the agenda. Vice Mayor Amoroso asked to reorder The Mid Dixie Highway Corridor items.

Action: Motion made by Vice Mayor Amoroso and seconded by Commissioner Maxwell to change the order of New Business.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell and Robinson. NAYS: Commissioner Hardy.

Action: Motion made by Commissioner Maxwell and seconded by Commissioner Robinson to approve the agenda as amended.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell and Robinson. NAYS: Commissioner Hardy.

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

A. Nicole Patterson, Principal of North Grade Elementary School, gave an overview of the Title One School, including its history, demographics, extracurricular activities, partnerships and grants. She said that there was an additional teacher in each room for one hour a day to help prepare the kids to advance to the next grade and that the staff had worked hard to get the parents involved by having curriculum nights. She reported that the school was dual language and they anticipated that their grade would be a B+ by the summer. She spoke about the keys to her success like participation in motivating academic programs, parent training and extracurricular opportunities/clubs and some of the challenges such as demographics, attendance, math/writing/science proficiency, parent participation, teacher retention and having a transient population.

B. Commissioner Maxwell read the Proclamation declaring February 11-17, 2020 as 2-1-1 Awareness Week and presented it to Patrice Schroeder, Community Relations Specialist at 211 Palm Beach/Treasure Coast. Ms. Schroeder relayed that 2-1-1 had received approximately 2,300 calls from the City's residents including elderly facing financial crises, parents concerned about a child's development, veterans with PTSD and people contemplating suicide. She reported that the call volume would double or triple during a

storm and that many volunteers who called seniors would be the only call the elderly resident received all day. She stated that more mental health facilities and affordable housing were needed.

Commissioner Maxwell thanked 2-1-1 for all they did and mentioned the need for volunteers.

Vice Mayor Amoroso asked why no shelters had been open in Palm Beach County during the cold snap and said that the policy should be rewritten so people could get help before the temperature hit 30 degrees.

COMMISSION LIAISON REPORTS AND COMMENTS:

Commissioner Maxwell: said that abandoned shopping carts were still a problem and that there was an uptick in graffiti; he asked if the sheriff's office could help.

Commissioner Hardy: said the CDBG application cycle was beginning and urged the Commission to consider funds for the For the Children building, which was City-owned.

Vice Mayor Amoroso: stated that he attended the Sober Home Task Force and that there would be funding to assist veterans. He spoke about the importance of getting involved and being counted in the 2020 Census and gave a shout out to Yolanda Robinson, Community Code Manager, for responding to a bonfire and solving the problem on Dixie Highway on a Saturday.

Commissioner Robinson: thanked all City employees for their efforts to make Lake Worth Beach a better place to live. He said that the public should participate in the upcoming CDBG meeting and sent condolences to the two PBSO deputies who had passed.

Mayor Triolo: asked Captain Baer to notify the City of any important events related to the City's district. She described the incredible Mayor's Crime Walk, which had passed through some of the hot spots in the district to highlight and address the problems. She stated that new nuisance laws had recently been passed to give the City the ability to go after chronic offenders. She said that the chili cook-off and the Daddy-Daughter/Mother-Son event were great. She reported about the Pension Board meeting saying that the numbers were way up and the pensions were safe and secure.

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:

Cheryl Rashkin, President of the South Palm Park Neighborhood Association, thanked Mayor Triolo and Commissioner Robinson for getting the crime walk in her neighborhood, which was the start of something new and great for Lake Worth Beach and good for morale in the neighborhood.

Todd Townsend said that William Waters was working to get a hotel built on the beach.

Rachel Shapiro asked if a property sold on East Coast Drive had to be demolished within six months of purchase.

APPROVAL OF MINUTES:

Action: Motion made by Vice Mayor Amoroso and seconded by Commissioner Robinson to approve the following minutes:

A. Regular Meeting - January 7, 2020
B. Regular Meeting - January 21, 2020
C. Work Session - January 27, 2020

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell, Hardy and Robinson. NAYS: None.

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

Action: Motion made by Commissioner Maxwell and seconded by Vice Mayor Amoroso to approve the Consent Agenda.

A. Work Order #7 with JW Cheatham for the District 3, Year 4 Pushbutton Neighborhood Road Program Project

B. Task Order #12 with Baxter Woodman, Inc. for the Construction Engineering and Inspection Services (CEI) for the District 3, Year 4 Neighborhood Road Program

C. Agreement with Environmental Services, Inc. for Historic Resources Survey Update, Phase IV

D. Resolution No 04-2020 – Amending the fees and charges schedule

E. Purchase authorization for Quicklime from LHoist North America of Alabama, LLC for the Water Treatment Plant

F. Authorize Amendment 3 to Drinking Water State Revolving Fund Loan Agreement DW501710 for the 2-inch watermain phases 1A and 2 replacement projects

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell, Hardy and Robinson. NAYS: None.

PUBLIC HEARINGS:

A. Appeal by Daniel Hiatt and Frederick Schmidt of PZB case # 19-00500004: approval by the Planning and Zoning Board (PZB) of a Conditional Use Permit at 1812 Aragon Avenue, Unit A

Mayor Triolo read the title of the case into the record, that this was an appeal by Daniel Hiatt and Frederick Schmidt of PZB case number 19-00500004: approval by the Planning and Zoning Board of a Conditional Use Permit at 1812 Aragon Avenue, Unit A. She announced that the meeting was a quasi-judicial hearing to hear an appeal pursuant to section 23.2-17 of the City's Code of Ordinances. She said that, as we had stated in other cases, because this was an appeal, no new evidence would be taken. The City and the appellants would be given ten minutes to make a presentation and thereafter, public comment would be allowed.

Mayor Triolo asked if the Commissioners had had any *ex parte* communications, personal investigations or campaign contributions to disclose.

Commissioner Robinson stated that he visited the site with Dan Hiatt.

Vice Mayor Amoroso said that he had been to the site.

Commissioner Hardy stated that he had been on the site and spoken with the appellant after the first meeting. He said that he received campaign contributions from the appellant.

Commissioner Maxwell reported that he had been on the site and spoken with Mr. Hiatt. He said that he received campaign contributions from the appellant.

Mayor Triolo said that she drove by the site and had received campaign contributions from the appellant.

Mayor Triolo told all those giving testimony, presenting or speaking under public comment to stand, raise their right hands, face City Clerk Deborah Andrea, and be sworn-in. City Clerk Andrea swore in all those giving testimony and announced that those testifying should state their names and addresses for the record and whom they represented, if applicable.

Mayor Triolo told Community Sustainability staff to give their ten-minute presentation.

Mark Stivers, Community Sustainability Deputy Director, gave the background regarding the original request to the PZB for a conditional use permit to operate a 4400 square foot fabrication service excluding retail display and sales for fabricating stone countertops, which was approved on October 2, 2019. Mr. Stivers presented the timeline of the business, the site and floor plans and the lengthy conditions of approval. He reported that the City had received a notice of appeal from Mr. Hiatt and Mr. Schmidt on November 21, 2019 and the Basis of Appeal on December 5. He stated that the business was consistent with the Comp and Strategic Plans as well as specific standards for all conditional uses and industrial/manufacturing facilities design and performance standards.

Mayor Triolo stated that the applicant could make its presentation, which could be no longer than ten minutes.

Jason Bono spoke on the owners' behalf. He said that the appeal letter stated that the requirements were not met, but they were; the application was complete and had met all requirements. He stated that there were no residential neighborhoods within 400 feet of the location and if they had to keep their bay doors closed, then all other owners in the industrial park should do so. He iterated that wet saws were used to keep the dust down and they had met every demand, except for the fence and the business license, which were on hold pending the outcome of the hearing.

Mayor Triolo stated that the appellants could now make their presentation, which could be no longer than ten minutes. All other persons would be heard under public comment.

Frederick Schmidt said that he was a resident of Lake Worth Beach, the owner and broker of Cornerstone Realty and an industrial expert with knowledge of the impact of different industrial tenants on neighboring properties, especially granite shops. He opined that the

good volunteers of PZB did not understand granite shops issues. He stated that the fabrication shop was within several feet of their building and that the Conditional Use process was to assure the appropriateness and compatibility of the use and the standards that it must meet. He requested that the Commission overturn the approval of the conditional use permit for the granite shop.

Daniel Hiatt said that the site inspections had not been accurate; no one had studied the permit history so the owner had built out the site without one and that the mess making had been going on for four years. He stated that the owner had a token tenant to turn the electric on through the back door and the representative was not a zoning lawyer and had only been hired to get the project approved. He reported that the owner still had not complied with the ten items on the list from the last hearing and that the Applicant still did not had a license.

Mayor Triolo asked if any member of the public wished to make a public comment, which would be limited to two minutes per current policy.

Sherrie Schmidt said that she was associated with the affected party and that the tenants of the building had been compatible with the regulations and zoning of the City, but the granite business was not compatible.

Archie Kleopfer said that the business was not compatible with the area and was concerning for health reasons.

Christopher Bild said that he had an automobile business and stated that there was constant dust on the vehicles, which was affecting his business.

Michael Glaser reported that he was a commercial real estate broker serving on the Planning and Zoning Board and expressed great concern about the health issue arising from the dust from the granite.

Dennis Bucell stated that he had been in the location for 22 years working on high-end cars, the granite dust was causing damage, and health effects were a concern.

Joe Sciouti spoke on behalf of the owner, saying that he had done everything asked of him and if the Commission closed him down, they should close down every other granite shop in that area.

Mayor Triolo asked if the Commissioners had questions for staff, the applicant or the appellants.

1. Vice Mayor Amoroso asked how long the owner had worked without a license, who owned the building, whose name was on the utilities and how did they get power without a license.

   Mr. Stivers said that there had not been a license since 2015, Kadassa was the owner and the power was in Kadassa's name and had been turned on before the "no lights, no power" law went into effect.

Vice Mayor Amoroso asked where the water run-off went, where it was held, how seepage might happen and if the EPA had been called. He expressed concern about health and safety regarding the water run-off and the silt.

Mr. Stivers responded that he did not have information about the water and that he had not called the EPA.

Mr. Bono explained that the water and silt went into a water catchment basin where the silt settled to the bottom and the water was recycled, then the debris was emptied by hand into a roll-off dumpster, which was disposed of at a construction waste site.

Mr. Stivers said that the dumpster had to be on site and was currently in the right of way.

2. Commissioner Hardy stated that the "no greater harm" policy in the Code included a standard that a building had to be in harmony with existing property. He asked about the dust created by the granite cutting.

   Mr. Bono replied that the dust might not be from his area but could not say with certainty that it was not all his dust.

   Commissioner Hardy asked about having the site pressure cleaned.

   Mr. Bono responded that the inside was cleaned daily and mopped two or three times a week. He stated that there was only dust during polishing, and the wet screens were to contain the dust.

   Commissioner Hardy asked Mr. Bono if they had complied with the condition of outdoor storage and that all parking was supposed to be on site.

   Mr. Bono said that some employees parked on the street. He stated that they were waiting until the appeal was decided to comply with the dumpster issue.

3. Commissioner Robinson asked if the shop on Barnett had required a conditional use permit.

   Mr. Bono replied that there were no conditional use requirements nor regulations requiring an inspection because the space was smaller.

   Commissioner Robinson asked if the City could give the owner 60 days to get into compliance as a viable business in an industrial area.

   City Attorney Goddeau said that there were three options; grant the appeal, deny the appeal or remand it back to PZB with directions of what should be addressed. She stated that the Commission was looking at the criteria for granting this type of conditional use permit.

   Commissioner Robinson asked if the owner would be fined if there was no license after the 21st and opined that the City should enforce the existing "no license" requirements.

4. Commissioner Maxwell asked Mr. Bono what capacity he worked in at the site.

Mr. Bono stated that he worked for Integrity First, which had a business license; he had just moved in and got a license for the construction company for the office area.

Commissioner Maxwell went over the timeline for the business and asked why a license was not issued in 2015.

Mr. Stivers responded that he did not know why the license was not issued.

Commissioner Maxwell asked the Applicant why he had waited for two years to get a license.

Mr. Sciouti translated for Mr. Arias who said that it had been an ongoing process but some inspections had been delayed. He said that there was a language barrier; Mr. Arias' intention was to get a license.

Commissioner Maxwell asked if there had been a permit for the fence being in the right of way.

Mr. Sciouti replied that the City approved the permit for the fence based on a drawing from the owner.

Mr. Stivers stated that staff relied on the site plan and approved the permit, which turned out to inaccurate as the dumpster was in the right of way.

Mr. Sciouti said that it would be easy to move the fence.

Commissioner Maxwell asked if there were any code violations.

Mr. Stivers replied that the fence was not in compliance and the business was not permitted.

Commissioner Maxwell opined that the owner had not played by the rules nor done enough. He expressed concern about the gate not being closed all the time, which was a condition, and that the impact should not be greater than that made by the neighbors.

5. Mayor Triolo asked if wet saws had always been used or were purchased after complaints about the dust, about the installation of the drainage system and if the wet curtain system was used all the time.

   Mr. Sciouti replied that the smaller wet saws were purchased after the complaints. He stated that someone from the sewer department came out to inspect and said the drainage system was in compliance. He said that the wet system was always used, as the employees did not want to breathe in the dust either.

   Mayor Triolo said that there were several granite shops on the other side of 10th Avenue but they were not near other types of businesses. She asked staff if the spray booths had to be completely sealed and if there were any DEP regulations.

   Mr. Stivers responded that the DEP stipulated any type of business that created dust must maintain a healthy environment.

Mayor Triolo asked the Appellant if they had noted a difference since the wet system was installed.

Mr. Hiatt said no, it had not gotten better.

6. Commissioner Hardy asked the applicant who was engaged in business activity on the site.

   Mr. Bono stated that the applicant was Kadassa and all the employees worked for Kadassa. He said that he had been asked to get involved to help with licensing.

   Commissioner Hardy asked if there a permit for the fence.

   Mr. Bono stated that he filled out the application and Felipe Lofaso, Public Works Assistant Director, came out and looked at the dumpster location.

Discussion ensued regarding the documentation that was submitted regarding the placement of the fence.

7. Commissioner Maxwell inquired what happened when the slurry dried and if the slurry would create a problem if it got into the storm system.

   Mr. Sciouti replied that slurry was dried dust that became a hard clay-like substance and there was run-off every place in the county due to construction.

Mayor Triolo asked for a motion, stating that the considerations substantiating the decision shall be documented.

The meeting recessed at 8:39 PM and reconvened at 8:49 PM.

Action: Motion made by Commissioner Hardy and seconded by Commissioner Maxwell to grant the appeal on the grounds that: the conditional use exactly as proposed will result in greater harm than would result from use of the property from some use permitted by right or some other conditional use permitted on the property. I have to provide reasons according to our Code and the law. Basically, they have to show evidence that their use, exactly as proposed, won't cause greater harm and I didn't find that in the record, I found evidence to the contrary and in the record there was a bit of a back and forth between Mr. Hiatt, who's the Appellant, and the Applicant and this was at the August 7th meeting. Mr. Hiatt said screening won't dissipate the dust and that there's dust outside on the road near the drain. Staff showed us pictures of dust on the road and the drain. That's greater harm than would exist from any use permitted by right, dust running out into the street, dust running out into the drain. The Applicant himself said that despite his best efforts, and I'm just quoting him from the minutes, he said it's impossible to contain all the dust. Just on those grounds alone, I am going to move to grant the appeal.

Commissioner Maxwell seconded the motion because he agreed with Commissioner Hardy. He stated his observations when he was out at the site; there was a lot of dust everywhere he turned, a trail of slurry ran from their driveway to the storm drain and the drain was filled with white slurry. He stated that the conditions had not been met fully.

Commissioner Robinson agreed with the other Commissioners and said that the

involvement with the City was flawed and that the dumpster issued should be rectified.

Mayor Triolo stated that there were issues in communication between the Applicant and the City and the regulations should be tightened on these types of facilities. She said that she appreciated that the Applicant did take steps to make improvements, but she agreed with her fellow Commissioners and the law.

Commissioner Hardy said that there had been some breakdown of communication between the Applicant and the general contractor and the City following its procedures. He reported that he had observed several issues not in compliance, including the gate being open, the three bays had curtains that were not wet and the ground was covered with dust. He stated that there was a complete disregard for City rules and regulations.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell, Hardy and Robinson. NAYS: none.

UNFINISHED BUSINESS:

There were no Unfinished Business items on the agenda.

NEW BUSINESS:

A. (added and reordered) Second Amendment to the Incentive Agreement with The Mid

Action: Motion made by Commissioner Hardy and seconded by Vice Mayor Amoroso to approve the Second Amendment to the Economic Development Incentive Agreement with The Mid and authorize Mayor Triolo to sign the same.

Mayor Triolo announced that this was the time for public comment. No one from the public spoke.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell, Hardy and Robinson. NAYS: none.

B. (reordered) US-1 Multimodal Corridor Study

Action: This item was moved to the February 18, 2020, meeting.

CITY ATTORNEY'S REPORT:

City Attorney Goddeau did not provide a report.

CITY MANAGER'S REPORT:

Commissioner Maxwell asked the City Manager to give a report on shopping carts, graffiti and piles of garbage and said that citizens should have pride in the environment.

City Manager Bornstein reported that:

- The graffiti was being handled by the Sheriff's office and the man who had tagged many buildings had been arrested but was now out on the streets again.

- City employees were looking out for shopping carts and the issue of piles of garbage would be brought back soon.

ADJOURNMENT:

Action: Motion made by Commissioner Hardy and seconded by Vice Mayor Amoroso to adjourn the meeting at 9:10 PM.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell, Hardy and Robinson. NAYS: None.

_____
Pam Triolo, Mayor

ATTEST:

_____
Deborah M. Andrea, CMC, City Clerk

Minutes Approved: March 3, 2020

A digital audio recording of this meeting will be available in the Office of the City Clerk.

EXECUTIVE BRIEF
REGULAR MEETING

AGENDA DATE: March 3, 2020 **DEPARTMENT:** Community Sustainability

TITLE:

Award of continuing services contract to Anchors Emergency Board-Up Service, Inc. for board and secure services

SUMMARY:

Following a competitive selection process by West Palm Beach (ITB No. 18-19-136), West Palm Beach awarded a board and secure contract to Contractor valid through October 22, 2024 unless extended. This is an award of continuing services which will expire October 22, 2024

BACKGROUND AND JUSTIFICATION:

Boarding and securing of vacant structures within the City limits is a priority for the City's Code Compliance and Building Division as well as the Palm Beach Sheriff's Office (PBSO). Many abandoned, foreclosed structures present a life safely hazard and attract community nuisances. Code Compliance efforts have not resulted in the private undertaking of boarding and securing properties and the City is forced to undertake action at the public's expense.

MOTION:

Move to approve/disapprove a continuing services professional contract with Anchors Board-Up Service, Inc for board and secure services.

ATTACHMENT(S):

Fiscal Impact Analysis
Agreement

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	**2020**	**2021**	**2022**	**2023**	**2024**
Capital Expenditures	0	0	0	0	0
Operating Expenditures	30,000	35,000	35,000	35,000	35,000
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	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

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Account Number	Account Description	Project Number	FY20 Budget	Current Balance	Agenda Expenditure	Balance
160-2040-515.31-86	Professional Services/Boardups	N/A	30,000	15,390		

C. Department Fiscal Review:_____

AGREEMENT FOR BOARD AND SECURE SERVICES
(Utilizing the City of West Palm Beach Contract)

THIS AGREEMENT ("Agreement" hereafter) is made as of the _____ day of _____, 2020, by and between the **CITY OF LAKE WORTH BEACH**, 7 N. Dixie Highway, Lake Worth, FL 33460, a municipal corporation organized and existing under the laws of the State of Florida, ("CITY" hereafter), and **ANCHORS EMERGENCY BOARD-UP SERVICES, INC.**, 401 SE 3rd Terrace, Dania Beach, FL 34004, a Florida corporation ("CONTRACTOR" hereafter).

RECITALS

WHEREAS, the CITY desires to hire the CONTRACTOR to perform boarding and securing services for vacant structures throughout the City of Lake Worth Beach; and,

WHEREAS, on October 23, 2019, the City of West Palm Beach awarded a contract for board and secure services under Invitation to Bid (ITB) #18-19-136 to the CONTRACTOR (the "City of West Palm Beach Contract"); and,

WHEREAS, the CITY has requested and the CONTRACTOR (along with the City of West Palm Beach) has agreed to extend the terms and conditions of the City of West Palm Beach Contract to the CITY for board and secure services ; and,

WHEREAS, the CITY has reviewed the schedule of bid items from the City of West Palm Beach Contract (attached as Exhibit A) and determined that the City of West Palm Beach Contract and fee rate schedule prices are competitive and will result in the best value to the CITY.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The parties agree that the recitals set forth above are true and correct and are fully incorporated herein by reference.

2. City of West Palm Beach Contract. The City of West Palm Beach Contract (which includes the amendments executed by the City of West Palm Beach and the CONTRACTOR) and the City of West Palm Beach ITB are hereby incorporated by reference into and expressly made a part of this Agreement as if set forth at length herein. The term of this Agreement shall be consistent with the term of the City of West Palm Beach Contract valid until October 22, 2024 unless extended.

3. Purchase Orders. The CITY's ordering mechanism for the work under this Agreement shall be a CITY issued Purchase Order; however, in the event of a conflict, all contractual terms and conditions stated herein and as stated in the City of West Palm Beach Contract shall take precedence over the terms and conditions stated in the CITY issued Purchase Order. The CONTRACTOR shall not provide any work under this Agreement without a CITY issued Purchase Order specifically for the purpose stated in the Purchase Order, which shall include the applicable statement of work. The CONTRACTOR shall not perform work which is outside the scope of an issued Purchase Order and the CONTRACTOR shall not exceed the expressed amounts stated in the Purchase Order to be paid to the CONTRACTOR. The pricing in each Purchase Order shall be consistent with the pricing set forth in the City of West Palm Beach Contract. Each issued Purchase Order shall be incorporated into this Agreement and made a part hereof.

4. Conflict of Terms and Conditions. Conflicts between documents that make up this Agreement shall be resolved in the following order of precedence:

a. This Agreement;
b. The City of West Palm Beach Contract; and,
c. The City issued Purchase Order.

5. Compensation to CONTRACTOR. CONTRACTOR shall submit invoices to the CITY for review and approval by the CITY's representative, indicating that all goods and services have been provided and rendered in conformity with this Agreement and then will be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the CITY representative's approval. CONTRACTOR waives consequential or incidental damages for claims, disputes or other matters in question arising out of or relating to this Agreement. In order for both parties herein to close their books and records, CONTRACTOR will clearly state "final invoice" on the CONTRACTOR's final/last billing to the CITY. This certifies that all services have been properly performed and all charges have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the CONTRACTOR. The CITY will not be liable for any invoice from the CONTRACTOR submitted thirty (30) days after the provision of all services.

A. The CITY agrees to compensate the CONTRACTOR in accordance with the schedule of BID Items set forth in **Exhibit "A" provided that, the maximum amount not to exceed under this Agreement shall be Thirty-Five Thousand Dollars ($35,000.00) annually**. The CITY shall not reimburse the CONTRACTOR for any additional costs incurred as a direct or indirect result of the CONTRACTOR providing services to the CITY under this Agreement and not set forth in Exhibit "A".

6. Miscellaneous Provisions.

A. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in Palm Beach County. 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.

B. Except for any obligation of the CONTRACTOR to indemnify the CITY, if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall be liable and responsible for their own attorney's fees incurred in that enforcement action, dispute, breach, default or misrepresentation. FURTHER, 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.

C. 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.

D. All notices required in this Agreement shall be sent by certified mail, return receipt requested or by nationally recognized overnight courier, and sent to the addresses appearing on the first page of this Agreement.

E. The CITY and the CONTRACTOR agree that this Agreement (and the other documents described herein) 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. 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.

F. This Agreement may be executed in one or more counterparts, 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.

G. 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.

H. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

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

J. PUBLIC RECORDS. The Contractor 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:

1. Keep and maintain public records required by the City to perform the service.

2. 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.

3. 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 Contractor does not transfer the records to the City.

4. Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor 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 CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'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: DEBBIE ANDREA, AT (561) 586-1662, DANDREA@LAKEWORTHBEACHFL.GOV, 7 N. DIXIE HIGHWAY, LAKE WORTH, FL 33460.

K. SCRUTINIZED COMPANIES.

1. Contractor 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 Contractor or any of its subcontractors are found to have submitted a false certification; or if the Contractor 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.

2. If this Agreement is for one million dollars or more, the Contractor 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 Contractor, or any of its subcontractors are found to have submitted a false certification; or if the Contractor 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.

3. The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

4. The Contractor 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.

5. The Contractor agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the Contractor shall immediately notify the City of the same.

6. 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.

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement for Board and Secure Services on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Deborah M. Andrea, City Clerk

By: _____
Pam Triolo, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney
/mpa

APPROVED FOR FINANCIAL SUFFICIENCY

By: _____
Bruce T. Miller, Financial Services Director

CONTRACTOR: **ANCHORS EMERGENCY BOARD-UP SERVICES, INC.**

By: Kevin L Anchors

[Corporate Seal]

Print Name: KEVIN A. ANCHORS

Title: PRESIDENT

STATE OF Florida)
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me this 10th day of Feb., 2020, by Kevin L Anchors, who was physically present, as President (title), of **Anchors Emergency Board-Up Services, Inc.**, which is authorized to do business in the State of Florida, and who is personally known to me or who has produced the following _____ as identification.

Notary Public

Print Name: _____
My commission expires: _____

CHRISTA J SIMMONS
Notary Public - State of Florida
Commission # GG 333139
My Comm. Expires Jul 13, 2023
Bonded through National Notary Assn.

EXHIBIT A

WEST PALM BEACH

(B3)

ITB 18-19-136, Master Contract for Board & Secure Services

SCHEDULE OF BID ITEMS

It is the intent of the City to enter into a single or multiple agreement(s) with one or multiple contractor(s) to provide board and secure services, as is determined to best serve the interests of the City.

There is no obligation on the part of the City to award the bid to the lowest priced bidder, and the City reserves the right to award the contract to the bidder submitting the best overall responsive bid which is most advantageous and in the best interest of the City in achieving the board and secure services, and to waive any irregularity or technicality in the bids received. The City shall be the sole judge of the bids and the resulting agreement that is in its best interest and its decision shall be final.

The Contractor shall furnish all implements, machinery, equipment, transportation, tools, materials, supplies, labor and incidentals necessary for the performance and completion of the work. The contract shall be for a period five (5) year with a firm price for the entire term of the contract for the services.

No	Description	Fixed Cost	Unit of Measurement
1	Window opening, size 36"W x 48"H	78,00	per opening
2	Window opening, smaller than 36" x 48" H	50,00	per opening
3	Window opening, larger than 36" x 48" H	97,00	per opening
4	Exterior door opening	128,00	per opening
5	Garage opening, 9' W x 7' H (single)	432,00	per opening
6	Garage opening, 16' W x 7' H (double)	768,00	per opening
7	Single awning type window	78,00	per opening
8	Window A/C cutout	35,00	per opening
9	Double picture window	128,00	per opening
10	Sliding glass door, standard opening	260,00	per opening
11	Frame out any window, door, a/c opening, etc.	3,00	per linear foot
12	Over size opening not specified above	6,00	per square foot
13	Re-board service where plywood still good	100,00	per hour, labor only

ANCHORS EMERGENCY

Bidder Company Name: BOARD-UP SERVICES, INC **Initial:** KA

WEST PALM BEACH

(B3)

ITB 18-19-136, Master Contract for Board & Secure Services

SCHEDULE OF BID ITEMS

Other Related Costs

Bidder shall list all other cost related to securing services which may not be outlined above; or be outside the listed services (i.e. oversized apertures, special conditions, etc.) and the method of pricing:

ANY JOB ABOVE $ 10,000.00 WILL REQUIRE A 50% DEPOSIT

EMERGENCY SERVICE CALL (SAME DAY) $ 300.00

EMERGENCY SERVICE CALL (NEXT DAY) $ 300.00

EMERGENCY SERVICE CALL (NIGHT) $ 300.00

EMERGENCY SERVICE CALL (HOLIDAY) $ 500.00

* TO OPEN BUILDINGS FOR INSPECTION $ 100.00 PER HOUR 2 HOUR MINIMUM (FROM THE TIME WE LEAVE OUR SHOP TO THE TIME WE RETURN.) TRAVEL & LABOR.

Bidder Company Name: ANCHORS EMERGENCY BOARD UP SERVICES, INC

Authorized Signature: Kevin L Anchors Date 8/12/2019

Print Name: KEVIN L. ANCHORS Title: PRESIDENT

Bid Proposal must be signed in ink by an agent of the company having authority to bid the contractor. Failure to sign the bid proposal shall be cause for rejection.

EXECUTIVE BRIEF
REGULAR MEETING

AGENDA DATE: March 3, 2020 **DEPARTMENT:** Leisure Services

TITLE:

Resolution No. 07-2020 – approving Amendment 001 to the CDBG Agreement for the development of the Royal Poinciana neighborhood park

SUMMARY:

The resolution approves Amendment 001 to the Community Development Block Grant (CDBG) Agreement R2019-1764 between Palm Beach County and the City for the development of the Royal Poinciana neighborhood park. The amendment increases the allocation of CDBG funds for the project by $54,678.89 to $290,678.89. The amendment also modifies the monthly performance requirements for specific task benchmarks associated with the project.

BACKGROUND AND JUSTIFICATION:

On October 1, 2019, Palm Beach County and the City entered into an Agreement R2019-1764 for the provision of $235,870 in FY 2019-2020 CDBG funds for the acquisition of land and construction of improvement to create a park in the Royal Poinciana neighborhood. Accordingly, the City intends to acquire vacant land from Our Savior Evangelical Lutheran Church on South B Street for this purpose. In addition, the City has purchased a vacant lot adjacent to the Church property from the County's Lands Available inventory.

Resolution No. 07-2020 approves Amendment 001 to the CDBG Project Agreement to reallocate $54,678.89 in FY 2018-2019 CDBG funds not utilized for the previous year's CDBG Agreement R2018-1580 for the City's code compliance activity. The amendment also modifies the monthly performance requirements for the development of the park to more accurately reflect the current status of the project.

MOTION:

Move to approve/disapprove Resolution No. 07-2020 to approve Amendment 001 to the CDBG Agreement R2019-1764 for the development of the Royal Poinciana neighborhood park

ATTACHMENT(S):

Fiscal Impact Analysis
Resolution 07-2020
Amendment 001

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	**2020**	**2021**	**2022**	**2023**	**2024**
Capital Expenditures	54,678.89	0	0	0	0
Operating Expenditures	0	0	0	0	0
External Revenues	54,678.89	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	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

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Account Number	Account Description	Project Number	FY20 Budget	Current Balance	Agenda Expenditure	Balance
180-0000-331.70-00	Fed Grant Culture/Rec	FG 2002	$235,870	$235,870	$54,678.89	$290,548.89
180-9700-539.63-15	Infrastructure	FG2002	$235,870	$235,870	$54,678.89	$290,549.89

C. Department Fiscal Review:_____

RESOLUTION NO. 07-2020 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, APPROVING AMENDMENT 001 TO THE AGREEMENT R2019-1764 BETWEEN PALM BEACH COUNTY AND THE CITY INCREASING THE AMOUNT OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS BY $54,678.89 TO $290,678.89 FOR THE ACQUISITION OF REAL PROPERTY AND CONSTRUCTION OF IMPROVEMENTS FOR THE DEVELOPMENT OF THE ROYAL POINCIANA NEIGHBORHOOD PARK; MODIFYING PROJECT TASK BENCHMARK DATES SET FORTH IN THE AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL RELATED DOCUMENTS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City desires to acquire vacant real property on South B Street between Lake Avenue and 1st Avenue South for the development of a park in the Royal Poinciana neighborhood; and

WHEREAS, Palm Beach County and the City entered into Agreement R2019-1764 to provide $235,870 in Fiscal Year 2019-2020 Fiscal Year Community Development Block Grant (CDBG) funds that have been made available to the City for this purpose; and

WHEREAS, the City has requested the reallocation of $54,678.89 in FY 2018-2019 not used under the previous year's Agreement R2018-1580 for code enforcement activities; and

WHEREAS, Amendment 001 to the Agreement R2019-1764 reallocates this funding to the development of the Royal Poinciana neighborhood park and modifies project task benchmark dates that more accurately reflect the current status of the project ; and

WHEREAS, the Palm Beach County has prepared Amendment 001 to the Agreement R2019-1764 that sets forth the terms and conditions for the use of these CDBG funds for this project; and

WHEREAS, the City desires to enter into Amendment 001 to Agreement R2019-1764 with Palm Beach County for the purpose of the development of a park in the Royal Poinciana neighborhood.

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

SECTION 1: The City Commission of the City of Lake Worth Beach, Florida, hereby approves Amendment 001 to Agreement R2019-1764 between Palm Beach County and the City to increase the amount of CDBG funds for the acquisition of vacant land and construction of improvements for the development of the Royal Poinciana neighborhood

park by $54,678.89 and to modify project task benchmark dates to more accurately reflect the current status of the project.

SECTION 2: The City Commission of the City of Lake Worth Beach, Florida, hereby authorizes the Mayor to execute three originals of Amendment 001 to Agreement R2019-1764 between Palm Beach County and the City and all related documents for this stated purpose.

SECTION 3: Upon execution of the resolution, one copy shall be forwarded to the Leisure Services Department Director. The fully executed original shall be maintained by the City Clerk as a public record of the City.

SECTION 4: 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 Pam Triolo
Vice Mayor Andy Amoroso
Commissioner Scott Maxwell
Commissioner Omari Hardy
Commissioner Herman Robinson

The Mayor thereupon declared this resolution duly passed and adopted on the 3rd day of March, 2020.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Pam Triolo, Mayor

ATTEST:

_____
Deborah M. Andrea, CMC, City Clerk

AMENDMENT 001 TO THE AGREEMENT
WITH
CITY OF LAKE WORTH BEACH

Amendment 001 with an effective date of January 31, 2020, by and between **Palm Beach County** and the **City of Lake Worth Beach.**

W I T N E S S E T H:

WHEREAS, Palm Beach County entered into an Agreement (R2019-1764) on October 1, 2019, with the City of Lake Worth Beach, to provide $235,870 of Community Development Block Grant (CDBG) funds for the acquisition of land and construction of improvements to create a park in the Royal Poinciana neighborhood; and

WHEREAS, the City has requested reallocation of $54,678.89 in CDBG funds not used under its previous year's Agreement (R2018-1580) to the current Fiscal Year's Agreement (R2019-1764) for the park project funded therein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

A. **INCORPORATION OF RECITALS**
The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning as ascribed to them in the Agreement.

B. **SECTION 6: MAXIMUM COMPENSATION**
Replace "$235,870" with "290,548.89".

C. **EXHIBIT A. SECTION 1. G: MONTHLY PERFORMANCE REQUIREMENTS**
Delete the current requirements and replace them with the following:

Property Acquisition

Real Estate Closing:	March 2020

Park Construction

Complete Project Design by:	March 2020
Advertise, Accept Bids and Award Contract by:	May 2020
Start Construction by:	June 2020
Expend 50% of CDBG	July 2020
Complete Construction / Expend 100% of CDBG	October 2020
Submit Final Reimbursement request	November 2020

NOTE: All required reimbursement documentation to meet the City's CDBG expenditure requirement must be submitted to HES no later than November 30, 2020.

D. **EXHIBIT A. SECTION 2: COUNTY OBLIGATIONS**
Replace "$235,870" with "290,548.89".

E. **EXHIBIT B: MONTHLY PERFORMANCE REPORT**
Replace "$235,870" with "290,548.89".

Except as modified by this Amendment 001, the Agreement remains unmodified and in full force and effect in accordance with the terms thereof. This Amendment 001 is expressly contingent upon the approval of the County and shall become effective only when signed by all parties.

IN WITNESS WHEREOF, the Municipality and the County have caused this Amendment 001 to be executed on the date first above written.

(MUNICIPALITY SEAL BELOW)

CITY OF LAKE WORTH BEACH

By: _____
Pam Triolo, Mayor

By: _____
Deborah Andrea, City Clerk

By: _____
Attorney for Municipality (Optional)

PALM BEACH COUNTY, FLORIDA, a Political Subdivision of the State of Florida

For its BOARD OF COUNTY COMMISSIONERS

By: _____
Jonathan B. Brown, Director
Department of Housing & Economic Sustainability

Approved as to Form and Legal Sufficiency

By: _____
Howard J. Falcon III
Chief Assistant County Attorney

Approved as to Terms and Conditions
Department of Housing & Economic Sustainability

By: _____
Sherry Howard
Deputy Director

Z:\CDBG\FY 2019-20\Lake Worth\LakeWorth_Amend001_2_5_20.docx

CITY OF LAKE WORTH BEACH

PROCLAMATION

ARBOR DAY

WHEREAS, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, The holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and

WHEREAS, Arbor Day is now observed throughout the nation and the world; and

WHEREAS, Trees can reduce the erosion of our precious topsoil by wind and water, lower our heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife; and

WHEREAS, Trees are a renewable resource, giving us paper, wood for our homes, fuel for our fires and countless other wood products; and

WHEREAS, Trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community; and

WHEREAS, Trees, wherever they are planted, are a source of joy and spiritual renewal.

NOW, THEREFORE, I, Pam Triolo, Mayor or the City of Lake Worth Beach, Florida, by virtue of the authority vested in me, do hereby proclaim:

MARCH 14, 2020
as
ARBOR DAY

and urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands and to plant and care for trees to gladden the heart and promote the well-being of this and future generations.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Lake Worth, Florida, to be affixed this 14th day of March, 2020.

_____
Pam Triolo, Mayor

ATTEST:

_____
Deborah M. Andrea, City Clerk

CITY OF LAKE WORTH BEACH

PROCLAMATION

WHEREAS, The City of Lake Worth Beach recognizes the enormous contribution that volunteers and voluntary, community-based organizations make to the social, cultural and economic development of our City; and

WHEREAS, It has been recognized that the contributions made by volunteer hours result in a significant and positive impact on the quality of life of the residents of the City of Lake Worth Beach; and

WHEREAS, The City of Lake Worth Beach recognizes and shows its appreciation to all volunteers and encourage the continuation of volunteerism.

NOW THEREFORE, I, Pam Triolo, Mayor of the City of Lake Worth Beach, Florida, by virtue of the authority vested in me, do hereby proclaim:

APRIL 19-25, 2020
as
NATIONAL VOLUNTEER WEEK

and urge all residents to lend their time and skills to this worthwhile activity.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Lake Worth Beach, Florida, to be affixed this 14th day of March, 2020.

_____
Pam Triolo, Mayor

ATTEST:

_____
Deborah M. Andrea, City Clerk

CITY OF LAKE WORTH BEACH

PROCLAMATION

WHEREAS, The lesbian, gay, bisexual and transgender community is comprised of people from all walks of life who are active participants in our community; and

WHEREAS, Members of the lesbian, gay, bisexual and transgender community are engaged in endeavors of economic growth, retail, education, hospitality, community, professional and service industries; and

WHEREAS, The City of Lake Worth Beach has a proud history of striving for equal opportunity for all of its residents and employees; and in 2007, the City entered into a groundbreaking public-private partnership with Compass, the LGBTQ Community Center of the Palm Beaches, to provide social support and health and wellness services, and a state-of-the-art community center for all residents by renovating a city-owned surplus building; and

WHEREAS, People seeking to limit any rights of the lesbian, gay, bi-sexual, transgender and queer community are in conflict with the City's policies and anti-discrimination ordinances.

NOW, THEREFORE, I, Andy Amoroso, Vice Mayor of the City of Lake Worth Beach, Florida, by virtue of the authority vested in me, do hereby proclaim

MARCH 2020
as
PALM BEACH PRIDE MONTH

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Lake Worth, Florida, to be affixed this 3rd day of March 2020.

_____
Andy Amoroso, Vice Mayor

ATTEST:

_____
Deborah M. Andrea, City Clerk

EXECUTIVE BRIEF
REGULAR MEETING

AGENDA DATE: March 3, 2020 **DEPARTMENT:** Financial Services

TITLE:

Payments of Fiscal Year 2019 Invoices

SUMMARY:

Authorization for payment of multiple outstanding invoices for goods and services provided in Fiscal Year 2019 not paid prior to the closure of the accounts for the fiscal year.

BACKGROUND AND JUSTIFICATION:

Financial Services Division received multiple invoices for goods and services provided to City Departments during Fiscal Year 2019. Though the goods and services were approved and provided for in Fiscal Year 2019, the invoices for said goods and services provided by multiple Vendors were not paid prior to the Fiscal Year 2019's books being closed. As such, the payment for the services requires authorization of the use of Fiscal Year 2020 funds to cover the expenditures.

The item provides for the necessary authorization by the City Commission to utilize Fiscal Year 2020 funds in the amount of $30,530.44 to cover the expenses incurred and goods and services received in Fiscal Year 2019.

MOTION:

Move to approve/disapprove – Authorization of the use of Fiscal Year 2020 funds to pay for expenditures and services incurred in Fiscal Year 2019.

ATTACHMENT(S):

Fiscal Impact Analysis
List of outstanding Invoices with accounts

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	**2020**	**2021**	**2022**	**2023**	**2024**
Capital Expenditures	0	0	0	0	0
Operating Expenditures	$30,530.44	0	0	0	0
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
Net Fiscal Impact	$	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Account Number	Account Description	Project Number	FY20 Budget	Current Balance	Agenda Expenditure	Balance

C. Department Fiscal Review:_____

Company Name	Invoice Number	PO #	GL Account	Amount
Canon Financial Services	20958456	177736	001-8061-572-47-00	$3,784.94
Phase Design Print Web	7611	Special Events	001-8063-572-48-00	$540.00
Advanced Alarm Services	78081	162383	001-5062-519-34-50	$180.00
Advanced Alarm Services	80598	162383	001-5062-519-34-50	$180.00
Advanced Alarm Services	76245	162383	001-5062-519-34-50	$90.00
The Davey Tree Expert Company	912776851	179899	401-6034-531-34-10	$15,277.12
Canon	20281454	177736	001-8062-572-44-20	$873.85
Canon	20057850	177736	001-8062-572-44-20	$186.23
Canon	19946923	177736	001-8062-572-44-20	$707.10
Canon	19614571	177736	001-8062-572-44-20	$710.30
Canon	19284078	177736	001-8062-572-44-20	$654.87
Canon	19284079	177736	001-8062-572-44-20	$458.91
Canon	19614572	177736	001-8062-572-44-20	$458.91
Canon	19946924	177736	001-8062-572-44-20	$458.91
Advanced Alarm Services	77279	178376	401-1240-513-4690	$105.00
Advanced Alarm Services	77190	178376	401-1240-513-4690	$870.00
QuatreD	54619	181624	401-6034-531-46-91	$306.24
Xerox Corporation	96142126	175248	401-6010-531-44-20	$265.12
Xerox Corporation	95848761	175248	401-6010-531-44-20	$265.12
Xerox Corporation	97914583	179601	401-6010-531-44-20	$185.62
Xerox Corporation	91706437	175286	401-1240-513-46-21	$229.04
Xerox Corporation	92041631	175286	401-1240-513-46-21	$229.04
Xerox Corporation	91372855	175286	401-1240-513-46-21	$229.04
Fastenal	FLBOY34619	xx	401-6034-531-52-20	$576.08
Southern Awning Inc	1221	180978	001-5040-519-52-90	$2,469.00
PyeBarker Fire & Safety Inc.	PSI112182	179447	402-7022-533-46-21	$80.00
PyeBarker Fire & Safety Inc.	PSI128694	179447	402-7022-533-46-21	$80.00
PyeBarker Fire & Safety Inc.	PSI143122	179447	402-7022-533-46-21	$80.00
				$30,530.44

EXECUTIVE BRIEF
REGULAR MEETING

AGENDA DATE: March 3, 2020 **DEPARTMENT:** Public Works

TITLE:

Amendment #2 to the agreement with GT Supplies, Inc. for Fleet Services

SUMMARY:

Amendment #2 to the Agreement with GT Supplies authorizes the final contract renewal for the Fleet Services agreement

BACKGROUND AND JUSTIFICATION:

The City entered into an agreement with GT Supplies, Inc. on March 29, 2016 for Fleet Services for the Solid Waste Division's heavy equipment repairs and servicing. On March 19, 2019 the City Commission authorized Amendment #1 which renewed the agreement for one year expiring on March 29, 2020. The Second Amendment authorizes the final contract extension which will expire on March 29, 2021 at which time the contract will expire in its entirety. The agreement for Fleet Services for GT Supplies, Inc. has a cost limit of not to exceed $80,000.00.

MOTION:

Move to approve/disapprove Amendment #2 to GT Supplies for the Fleet Services contract

ATTACHMENT(S):

Fiscal Impact Analysis
Amendment #2

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	**2020**	**2021**	**2022**	**2023**	**2024**
Capital Expenditures	0	0	0	0	0
Operating Expenditures	80,000	40,000	0	0	0
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
Net Fiscal Impact	80,000	40,000	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Account Number	Account Description	Project Number	FY20 Budget	Current Balance	Agenda Expenditure	Balance
410-5081-534-46-27	Heavy Equip External Repairs	N/A	110,000	81,245	40,000	41,245
410-5082-534-46-27	Heavy Equip External Repairs	N/A	100,000	70,496	40,000	30,496

C. Department Fiscal Review:_____

SECOND AMENDMENT TO CONTRACT
(FLEET SERVICES)

THIS SECOND AMENDMENT ("Amendment") to the Fleet Services Contract is made as of the _____day of _____, 2020, by and between the City of Lake Worth, Florida, a municipal corporation of the State of Florida ("CITY") and GT Supplies, Inc., a Florida corporation, ("CONTRACTOR").

WHEREAS, the CITY issued a Request for Qualifications RFQ NO. 16-300 (hereinafter "RFQ") to provide general automotive and heavy equipment services for the CITY's fleet stock, (hereinafter the "Services"); and

WHEREAS, the CONTRACTOR submitted a response to perform the Services described and set out in the RFQ and the CITY and CONTRACTOR entered into a contract for services on March 29, 2016 (the "Contract"); and

WHEREAS, the Contract has an initial three (3) year term and the option to renew for up to two (2) additional one (1) year renewals; and

WHEREAS, the CITY and the CONTRACTOR wish to amend the Contract to renew the Contract for one additional year with all other terms, conditions and pricing remaining the same.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged by each party hereto, the CITY and the CONTRACTOR agree to amend the Contract, as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.

2. **Term of Contract.** The parties agree that the term of the Contract is hereby amended to March 29, 2021.

3. **Amount Not to Exceed**. The amount not to exceed for this renewal shall be $80,000.00.

4. **Entire Contract.** The CITY and the CONTRACTOR agree that the Contract and this Amendment set forth the entire Contract 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 Amendment may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. All other terms and conditions of the Contract remain in full force and effect.

5. **Counterparts.** This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Either or both parties may sign this Amendment via facsimile or email and such signature is as valid as the original signature of such party.

6. **Scrutinized Companies.**

6.1 CONTRACTOR 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 Amendment at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR 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 Amendment.

6.2 If this Amendment is for one million dollars or more, the CONTRACTOR 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 CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR 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.

6.3 The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Amendment.

6.4 The CONTRACTOR 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.

6.5 The CONTRACTOR agrees that if it or any of its subcontractors ' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the City of the same.

6.6 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.

REST OF PAGE LEFT BLANK INTENTIONALLY
SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment to the Fleet Services Contract on the day and year first above written.

CITY OF LAKE WORTH, FLORIDA

By: _____
Pam Triolo, Mayor

ATTEST:

_____
Deborah M. Andrea, City Clerk

Approved as to form and legal sufficiency:

_____
Glen J. Torcivia, City Attorney
/mpa

GT SUPPLIES, INC.

By: _____

[Corporate Seal]

Print Name: _____

Title: _____

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, as _____ (title) of _____ _____, a Florida corporation, and who is personally known to me or who has produced the following _____ as identification.

By: _____
Notary Public

Print Name: _____

My commission expires: _____

EXECUTIVE BRIEF
REGULAR MEETING

AGENDA DATE: March 3, 2020 **DEPARTMENT:** City Attorney

TITLE:

Ratification of the Second Amendment to Economic Development Incentive Agreement with The Mid

SUMMARY:

The purpose of the Second Amendment is to ensure payments made by the City for infrastructure improvements are received by The Mid's construction contractor and the City's rights as a dual oblige under the public construction bond remain in effect for the duration of the bond. This item ratifies the finalized Second Amendment as executed by the City Manager.

BACKGROUND AND JUSTIFICATION:

In May 2018, the City entered the Economic Development Incentive Agreement with The Mid to provide financial incentives for The Mid's proposed 200+ apartment community at 1601 N. Dixie Highway in the City of Lake Worth Beach. Under the Agreement, the City agreed to pay $1,035,000 to The Mid to construct infrastructure improvements adjacent to the property, which the City had budgeted to accomplish under its 5-year CIP. The Mid is required under the Agreement to provide a public construction bond (or letter of credit) to secure its obligation to the City to construct the improvements. In order to address The Mid's request to have the bond provided by its construction contractor, the Second Amendment is necessary to ensure the bond remains in effect for the duration of the bond and the City's payments are properly made to The Mid's construction contractor.

On February 4, 2020, the City Commission considered the Second Amendment. At that time, the City Attorney's Office requested that the Second Amendment be approved subject to City staff confirming a scope issue with the included construction contract. Thereafter, The Mid requested further changes to the Second Amendment. In order to keep The Mid project moving forward, the Manager signed the finalized Second Amendment as approved by the City Attorney's Office. The attached version of the Second Amendment is the final version that has been executed by The Mid and the City Manager.

MOTION:

Move to ratify / not ratify the Second Amendment to Economic Development Incentive Agreement with The Mid.

ATTACHMENT(S):

Fiscal Impact – N/A
Second Amendment

SECOND AMENDMENT TO
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

THIS SECOND AMENDMENT TO ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (this "Second Amendment") is made and entered into as of this 24th day of February, 2020, by and between the CITY OF LAKE WORTH BEACH, FLORIDA, a Florida municipal corporation ("City"), 1601 DIXIE, LLC, a Florida limited liability company ("Owner").

WHEREAS, City (formerly known as the City of Lake Worth) and Owner entered into that certain Economic Development Incentive Agreement with Effective Date of May 1, 2018 as modified by that Amendment dated December 13, 2019 (the "Agreement"); and

WHEREAS, City and Owner acknowledge that Owner has entered into a separate contract with Moss & Associates, LLC ("Moss") for the construction of the Infrastructure Improvements (the "Infrastructure Contract"), a copy of which is attached hereto as **Exhibit "A-1"**; and

WHEREAS, Owner has applied for and City has issued the building permits for Owner to commence the Project; and

WHEREAS, Owner has proposed to have Moss provide a public construction bond for the Infrastructure Improvements; and

WHEREAS, the public construction bond to be provided includes the bond and dual obligee rider ("Bond"), which are attached hereto as **Exhibit "A-2"**; and

WHEREAS, the parties have agreed to enter into this Second Amendment to modify certain terms and conditions of the Agreement in order to address the savings clause in the Bond's dual obligee rider and ensure the bond remains in effect until all conditions of the bond are satisfied in full; and

WHEREAS, this Second Amendment is necessary to further the objectives of the Agreement, and do not change the substance of the Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein in the sum of Ten and no/00 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Owner agree as follows:

1. In the event of any conflict between the terms of this Second Amendment and the terms of the Agreement, then the terms of this Second Amendment shall control. The foregoing recitals are true and correct and are incorporated herein by reference.

2. Unless otherwise defined herein all capitalized but undefined terms used herein shall have the same meanings assigned to the same in the Agreement.

3. Section 3(g) is hereby added as follows:

(g) City and Owner acknowledge that Owner has entered into the Infrastructure Contract directly with Moss. The Infrastructure Contract provides that City is a third party beneficiary thereof; however, City shall have no obligation and shall not be liable for any costs, claims, fees or expenses under the Infrastructure Contract.

4. Section 5(b)(1) is hereby replaced with the following:

(1) Payment of Infrastructure Improvements Fund.
Within three (3) business days of the date the Second Amendment to this Agreement is approved by City's City Commission, Owner shall cause the Bond to be executed and recorded, and shall execute, the escrow agreement attached hereto as Exhibit "**A-3**" (the "Escrow Agreement") with the escrow agent provided therein ("Escrow Agent"). Within two (2) business days of the City's receipt of a copy of the recorded Bond and a copy of the executed Escrow Agreement, City shall execute the Escrow Agreement and deposit with the Escrow Agent fifty percent (50%) of the Infrastructure Improvements Fund (the "Infrastructure Deposit"). Except as provided in this Second Amendment, such funds while placed with Escrow Agent shall be subject to all terms and conditions of this Agreement.

In the event of a default by Owner under the Infrastructure Contract which is continuing for more than fifteen (15) business days after notice from Moss to Owner, Moss shall deliver a copy of such written notice of default to City and to Escrow Agent, which shall identified reason for default and all amounts demanded to be paid to Moss under the Infrastructure Contract (a "Default Notice"). In the event that City receives a Default Notice from Moss then, within ten (10) business days, City shall in its sole discretion have the right, but not the obligation and in addition to any other remedy City may have, to direct Escrow Agent in writing to release the portion of the Infrastructure Deposit as is demanded in the Default Notice to Moss pursuant to the terms of the Infrastructure Contract. If Escrow Agent receives such written direction from City, Escrow Agent shall promptly (within three (3) business days of receipt of City's written direction) release the identified Infrastructure Deposit amount to Moss. Such payment shall constitute a cure of Owner's default evidenced by the Default Notice and Moss shall continue to perform under the Infrastructure Contract as stated therein.

If Escrow Agent has released all of Infrastructure Deposit to Moss pursuant to City's written direction (or the Escrow Agent released the Infrastructure Deposit to Owner as authorized herein) and City receives an additional Default Notice(s) from Moss, City shall in its sole discretion have the right, but not the obligation and in addition to any other remedy City may have, to pay the portion of the remaining Infrastructure Improvement Fund as is demanded in the additional Default Notice(s) to the Escrow Agent within ten (10) business days of receipt of the Default Notice(s). City may then direct Escrow Agent to pay the idenified portion of the remaining Infrastructure Improvement Fund as demanded in the additonal Default Notice(s) to Moss pursuant to the terms of the Infrastructure Contract. If Escrow Agent receives such funds and written direction from City, Escrow Agent shall promptly (within three (3) business days) release the identified Infrastructure Improvement Fund amount to Moss. Such payment shall constitute a cure of Owner's default evidenced by the Default Notice and Moss shall continue to perform under the Infrastructure Contract as stated therein.

If City directs Escrow Agent to make payments to Moss as provided above, Owner shall be responsible for all costs and expense to City including without limitation City's reasonable attorney's fees for reviewing the Default Notice and any related documents and all related legal services. Said costs may be deducted by City from the Infrastructure Improvement Fund amount remaining to be paid.

The City's City Manager is authorized to execute the Escrow Agreement for the City and to provide written direction to the Escrow Agent as set forth herein.

Once Moss has been paid an amount equal to the Infrastructure Deposit for work under the Infrastructure Contract (whether by the Owner, Lender or by the Escrow Agent), the Owner shall cause Moss to send a written notarized statement to the City, Lender, Owner and Escrow Agent of its receipt of an amount equal to the Infrastructure Deposit for work under the Infrastructure Contract, which shall include a statement that there is no pending default under the Infrastructure Contract and that the Bond remains in full force and effect ("Receipt Notice"). Upon delivery of the Receipt Notice, the Infrastructure Deposit (or the remaining Infrastructure Deposit amount) shall be released by the Escrow Agent to Owner (or, at Owner's election to a Lender controlled account).

Upon receipt of a certificate(s) of completion for the Infrastructure Improvements or other confirmation of completion of the Infrastructure Improvements as agreed to by City, Owner (or Lender on Owner's behalf) may submit a payment disbursement request to City for the balance of the Infrastructure Improvements Fund (less any payment previously paid by City to

the Escrow Agent and less any amount retained by City for City's costs). Within thirty (30) days following City's receipt of the Owner's (or Lender's) payment disbursement request, City shall verify that the Infrastructure Improvements have been completed, and if verified, pay to the Owner (or, at Owner's election, to a Lender controlled account) the balance of the Infrastructure Improvement Fund (less any payment previously paid by City to the Escrow Agent and less any amount retained by City for City's costs).

5. City shall have the right to audit all payments made by the Escrow Agent including, but not limited to, all documentation submitted to the Escrow Agent for disbursement of funds to Moss.

6. All costs, fees and expenses of the Escrow Agreement and Escrow Agent shall be paid by Owner.

7. This Second Amendment shall not become effective until signed by Owner and approved by City's City Commission and executed by the Mayor (or designee) and City Clerk.

8. This Second Amendment may be executed in one or more counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. A copy of this Second Amendment and any signatures hereon shall be considered for all purposes as originals. Except as otherwise amended and modified hereby, the Agreement shall remain unmodified and in full force and effect and shall be deemed effective.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have caused their representatives to execute this Second Amendment this 24th day of February, 2020.

Signed in the presence of:

Print Name Melissa Coyne

Print Name Beatrice Hollmer

CITY

CITY OF LAKE WORTH BEACH, FLORIDA

By: Michael Bornstein, City Manager

Date February 24, 2020

ATTEST:

By: Deborah M. Andrea, City Clerk

Approved as to form and legal sufficiency:

By: FOR Glen J. Torcivia, City Attorney

Approved as to Financial Sufficiency:

By: Bruce T. Miller, Financial Services Director

[OWNER SIGNATURE ON FOLLOWING PAGE]

OWNER

1601 DIXIE, LLC, a Florida limited liability company

Print Name Kenia Santos

By: _____

As President

Print Name Sal Adams

[Corporate Seal]

Date 02-14-2020

STATE OF Florida)
COUNTY OF Broward)

The foregoing instrument was acknowledged before me physically this 14th day of February 2020 by Jeffrey R Burns as the President of 1601 Dixie, LLC, a limited liability company authorized to do business in the State of Florida, and who is personally known to me or who has produced the following N/A as identification.

Notary Public: _____

Print Name: Michelle A. Rice

My commission expires: 11-13-2021

MICHELLE A RICE
State of Florida-Notary Public
Commission # GG 159518
My Commission Expires
November 13, 2021

EXHIBIT "A-1"

Infrastructure Contract

(attached hereto)

notwithstanding the watermark draft, the agreement is being signed as is and both parties agree it is in final form.

AIA® Document A102™ – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 30th day of January in the year 2020
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

1601 Dixie LLC
414 N Andrews Avenue, Fort Lauderdale, Fl 33301

and the Contractor:
(Name, legal status, address and other information)

Moss & Associates, LLC
2101 N. Andrews Avenue
Fort Lauderdale, FL 33311

for the following Project:
(Name, location and detailed description)

The Mid
1601 North Dixie Highway
Lake Worth Beach , FL 33460

The Architect:
(Name, legal status, address and other information)

Glidden Spina & Partners Architecture Interior Design Inc.
207 Sixth Street
West Palm Beach, FL 33401

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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TABLE OF ARTICLES

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the General Contract (the A201 General Conditions of the Contract for Construction, as modified in writing by the parties), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

In the event of any conflict among the Contract Documents, the Contract Documents shall be construed according to the following priorities:

Highest Priority: Change Orders and Construction Change Directives
Second Priority: Amendments and Addenda issued after the date of the Agreement with later date having greater priority
Third Priority: Contractor's Qualifications and Assumptions attached hereto
Fourth Priority: Agreement
Fifth Priority: General Conditions, as modified by the parties
Sixth Priority: Drawings, with detailed drawings taking precedence over large scale

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Seventh Priority: Specifications

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

The Contractor may provide incidental services involving construction consulting, including preconstruction consultation and value engineering. The Owner acknowledges that, notwithstanding any other provision of the Agreement, such services are advisory and are not to be considered professional design services. Owner will refer such matters to its own design professional for professional guidance, and accordingly, the Contractor shall have no liability to the Owner with respect to any such professional design services. Contractor is responsible for its own means and methods to perform hereunder.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests as made known to the Contractor. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the latter of the date of this Agreement, the date to be fixed in a notice to proceed issued by the Owner or when all the below conditions are met:

1) Governmental approvals and/or permits
have been issued for the applicable stage of the Work to commence.
2) Proper evidence of financing in accordance with the General Conditions
3) Filing of Notice of Commencement by Owner
4) Executed Owner-Contractor Agreement
5) Evidence of Builder's Risk Insurance (if to be provided by Owner)

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than March 17, 2021. ~~319 working days/ 458 calendar days from the date of commencement~~, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

~~See Exhibit E – Schedule~~

Portion of Work	Substantial Completion date
	03/17/2021

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion of the Work.)

If Contractor fails to Substantially Complete the Work within the Contract Time, then Contractor shall pay to Owner, as liquidated damages (but not as a penalty) the following:

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~~(i) for each Unit included within the Work, an amount equal to Thirty Five and 00/100 Dollars ($35.00) per Unit, per calendar day after the first sixty (60) calendar days following the expiration of the Contract Time. The liquidated damage rate shall increase to One Hundred and 00/100 Dollars ($100.00) per Unit, per calendar day for each and every calendar day after the first ninety (90)) calendar days and thereafter until Contractor Substantially Completes the Unit; and~~

~~(ii) for the Common Areas included within the Work, an amount equal to One Thousand and 00/100 Dollars ($1,000.00) per calendar day for each and every calendar day after the first sixty (60) calendar days following the expiration of the Contract Time until Contractor Substantially Completes the Common Areas. The total amount of liquidated damages shall not exceed one half (1\2) of the Contractor's Fee.~~

~~If Contractor achieves Substantial Completion of the entire Work before the Completion Date as modified, then Owner will pay Contractor a bonus of One Thousand dollars ($1,000) per day commencing on the date of Substantial Completion of the entire Work was achieved and ending on the date that is fourteen (14) days before the Completion Date. Any bonus payment will be in addition to the Contract Sum and GMP.~~

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

~~a lump sum amount that will be equivalent to____ percent (0%) of the direct costs of the Work, including the Contractor Controlled Contingency and the cost of bonds and insurance, as determined by the acceptance of the Guaranteed Maximum Price by the Owner, which fee will then be converted into a lump sum amount of ($0.00). This amount will be paid proportionately on a monthly basis in an amount equal to the percentage of Work in place for the current billing month. No retainage shall be withheld from the Contractor's Monthly Fee billings. Deductive Change Orders reductions in allowance items will not change the Contractor's Fee. However, to the extent that the Contractor Controlled Contingency is not used, and a deductive change therefore made to the GMP to reduce it by the unused amount, the fee will be reduced by 0% of the unused contingency.~~

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

NA

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed One Hundred percent (100%) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
NA		

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed $1,035,000.00, ~~or an amount set forth in the attached Exhibit A (Schedule of Values),~~ subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§5.2.1.1 Upon Final Completion of the Work, if the total Cost of the Work plus the Contractor's Fee is less than the Guaranteed Maximum Price, as adjusted in accordance with this Agreement, then the difference shall be "savings". The savings shall be allocated as follows:

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(a) (50%) to Owner and (b) (50%) to Contractor. Owner shall pay Contractor's share of savings as additional compensation as part of Contractor's Final Payment; provided, however, that savings shall not include any deletions from the scope of the Work to be performed under this Agreement.

(Insert specific provisions if the Contractor is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

Described within the GMP Qualifications

§ 5.2.3 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
~~See Exhibit B – Allowances~~ NA	

§ 5.2.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:

See Exhibit A – Qualifications and Assumptions

§ 5.2.5 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.3 CONTRACTOR'S CONTROLLED CONTINGENCY
The "Contractor's Controlled Contingency" shall be $0.00. The "Contractor's Controlled Contingency" is for the exclusive use of the Contractor to address unexpected circumstances and to defray unanticipated charges and additional expenses incurred by the Contractor due to errors in estimating both time and money and for the Contractor's costs and expenses incurred to correct subcontract scope and other deficiencies and subcontractor field errors and omissions, to the extent not paid for by Subcontractor, that are not otherwise reimbursable and do not constitute a change in the Work as defined in the General Conditions to this Agreement. No Owner approval is necessary in order for the Contractor to be able to access and utilize the Contractor's Controlled Contingency. However, such utilization shall be related to the Work and charges against the Contractor's Controlled Contingency will be tabulated and reported by the Contractor as part of the Contractor's Monthly Progress Report to the Owner. Contractor will also provide a tracking system for the measurement and transfers of contingency accounts. The full amount of any remaining Contractor's Controlled Contingency shall be considered to be within the GMP for purposes of the calculation of any "Shared Savings" at the Final Completion of the Work.

ARTICLE 6 CHANGES IN THE WORK
§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to

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subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7. Owner's written approval or consent as required hereunder shall not be unreasonably withheld.

§ 7.1.2 Where any cost is subject to the Owner's prior written approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site and personnel in the main or branch offices of Contractor who perform activities directly related to the Project, including Contractor's project management staff and safety engineer at the home office when engaged in performance of the Work under this Agreement, and usual vacation pay, incentive bonuses and profit sharing made by Contractor to its superintendents, foremen and managers on the Project with all such sums being included within the GMP.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior written approval.
(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or as part of employees' salary package and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and retirement, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3 and will be cost at the fixed rate of 69.43__% of wages and 69.43__% of salaries.

§ 7.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 7.3 SUBCONTRACT COSTS

Payments made by or due from the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

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§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ 7.5.1 Costs of transportation, storage, installation, maintenance, storage taxes, insurance, repairs, unloading, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval. Rental and/or leasing of automobiles (including leased automobiles and vehicle allowances paid by Contractor to employees providing services in connection with the Work).

§ 7.5.3 Costs of removal of waste and debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs incurred in the Contractor's home office or field in connection with the project for document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site, cell phones used by site personnel, reasonable petty cash expenses of the site office, and charges for electronic document management system, charges for on- site power consumption, water, sanitary facilities, first aid, elevator services and hoisting.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 Contractor shall provide the Owner with complete copies of all insurance certificates required by the Contract Documents within ten (10) days of date of execution of this Contract by the Owner and Contractor. Costs of premiums for all bonds and insurance, including Builder's Risk if to be provided by Contractor and Contractor's General Liability (general liability will cost a fixed rate of one half of one percent (0.50%) of the final Contract amount and the Contractor" Bond pursuant to Florida Statue 713.245 will cost a fixed rate of N/A for this phase), which Contractor is required by the Contract Documents to purchase and maintain and/or Contractor requires, including cost of Performance & Payment bonds for subcontractor and/or suppliers. If SDI is used on this project, the amount shall be at a fixed rate of one and one-quarter percent (1.25%) of the total subcontract and purchase order amounts. ~~No bond required for the Project.~~ A Florida Statute 255.05 bond shall be furnished and will be billed to the owner at eight tenths of one percent (0.8%). Builder's Risk insurance and deductibles thereunder will be paid for by Owner outside of the GMP. Contractor shall cooperate with Owner in administering the OCIP policy, provide all necessary information as may be reasonably requested and assist in obtaining refunds from all subcontractors.

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–~~2007~~ by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

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§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

~~**7.6.6** The Contract Sum as set forth in Exhibit "A" contains a General Conditions line item of $1,550,000.00. That dollar amount shall be amortized over 14.5 months payable once each consecutive month when a draw request is submitted for the month. Should the Project be delayed due to cause beyond Contractor's fault, the monthly payment shall continue at the same rate until final completion. Notwithstanding the foregoing, in the event of such a delay, Contractor shall provide evidence reasonably satisfactory to Owner of the application of the General Conditions payments during any month that exceeds the initial construction schedule, and any such payment shall be for direct actual costs, not based on a flat fee or lump sum.~~

§ 7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.8 Legal, and accounting support, including attorneys' fees and experts, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior written approval, which shall not be unreasonably withheld.

§ 7.6.9 Subject to the Owner's prior written approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.

§ 7.6.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work with Owner's written approval if expenditure is anticipated to be above $5,000.

§ 7.6.11 - N/A

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Any cost not specifically and expressly excluded by Section 8 which the Contractor reasonably and necessarily incurs in the performance of the Work or in the furtherance of the Project, with such sums being included within the GMP, provided, however that any such cost in excess of ten thousand dollars ($10,000) per item shall not be included as a Cost of Work, unless such cost is approved in writing in advance by the Owner, whose approval shall not be unreasonably withheld.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others. The parties will work together to recover such costs from available insurances, subcontractors or others.

§ 7.7.4 Losses and expenses, not compensated by insurance or otherwise, sustained by Contractor in connection with the Work, provided they have resulted from causes other than the negligence or the willful or wanton misconduct of Contractor. Such losses shall include deductibles on any insurance loss settlements made with the written consent and approval of Owner. No such losses and expenses shall be included in the Cost of Work for the purpose of determining Contractor's Fee nor shall such sums be included within the GMP. If, however, such loss requires

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reconstruction, and Contractor is placed in charge thereof, it shall be paid for this service a fee proportionate to that stated in Article 5.1.2.

§ 7.7.5 Not Used

§ 7.7.6 Costs associated with third party quality assurance programs.

§ 7.8 RELATED PARTY TRANSACTIONS

§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be provided in Article 15;

.2 Expenses of the Contractor's principal office and offices other than the site office;

.3 Overhead and general expenses, except as may be expressly included in Article 7;

.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;

.5 Except as provided in Section 7 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Any cost not specifically and expressly described in Article 7, or the GMP; and

.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Contractor Controlled Contingency if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Contractor Controlled Contingency, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Contractor Controlled Contingency in accordance with the provisions of Section 9.1 shall be shared between the Owner and Contractor as provided for in Article 5.2.1.1.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner. The Owner shall then determine, with the advice of the Contractor, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor or Owner has reasonable objection.

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§ 10.2 When a specific bidder (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS (The time frames included in Article 12 are subject to reasonable adjustment by the parties hereto as may be required by Owner's lender)

§ 12.1 PROGRESS PAYMENTS

§ 12.1.1 Based upon Applications for Payment submitted to the Architect and Owner by the Contractor, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Ending the Last Day of each Month

§ 12.1.3 Provided that a proper Application for Payment is received by the Owner and Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 20th day of the month. If an Application for Payment is received by the Architect and Owner after the application date fixed above, payment shall be made by the Owner not later than twenty (20) days after the Architect and Owner receive the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 12.1.4 With each Application for Payment, the Contractor shall submit petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee and General Conditions Contractor will provide partial lien releases in accordance with Florida Statute 713 through and to the extent of the prior month's disbursement from Contractor and lower tier subcontractors who filed and served a proper Notice to Owner.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

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§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Subtract retainage of ten percent (10%) until Project is at fifty percent (50%) completion. Upon fifty percent (50%) completion, Contractor shall invoice and Owner shall release fifty percent (50%) of the withheld retainage (thereby reducing withheld retention to five percent (5%)). Thereafter, retention will continue at the rate of five percent (5%) until Substantial Completion. Notwithstanding the above, no retainage shall be held on Contractor's Fee, General Condition / General Requirements, insurance costs, Bond Costs or costs on material purchased directly by Contractor from a supplier.

.3 (a) Add the Contractor's Fee, The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract retainage of «0 » percent («0 » %) from that portion of the Work that the Contractor self-performs;

.5 Subtract the aggregate of previous payments made by the Owner;

.6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.7 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007, provided, however, that no amounts shall be subtracted from General Conditions Contractor's Fee, General Requirements, insurance costs, bond Costs or costs on material purchased directly by Contractor from a supplier.

§ 12.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Architect and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 FINAL PAYMENT

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

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.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 Contractor has provided a final Contractor's affidavit and conditional final lien releases from lower tier subcontractors who filed and served a proper Notice to Owner in accordance with Florida Statute 713 .

.4 The certificate of occupancy or its equivalent (CO) has been obtained from the applicable government agency, unless the same is delayed or not available due to causes beyond Contractor's fault, in which case the CO shall not be required for Final Completion.

§ 12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Owner by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, notify the Contractor and Owner in writing of the Owner's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation by an independent third party of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall not result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 12.2.4 The Owner's final payment to the Contractor shall be made no later than 30 days after Final Completion of the Work, receipt of Final Contractor's Affidavit, Contractor's Final Conditional Release of Lien and Contractor's final Application for Payment.

« »

§ 12.2.5 If, subsequent to final payment, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 INITIAL DECISION MAKER NA

NA

§ 13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[« »] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

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[«X »] Litigation in a court of competent jurisdiction located in Broward County, Florida. This contract is governed by Florida law. DUE TO THE SPECIALIZED NATURE OF CONSTRUCTION LITIGATION, EACH PARTY IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY.

[« »] Other *(Specify)*

« »

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2007, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201–2007 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

.2 Add the Contractor's Fee and General Conditions computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner.

§ 14.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

Prime plus two percent (2%)« » % « »

§ 15.3 The Owner's representative:
(Name, address and other information)

1601 Dixie LLC
414 N Andrews Ave.
Fort Lauderdale, Fl 33301

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Attn: Jeff Burns
CC Nick Rojo and Michelle Rice
§ 15.4 The Contractor's representative:
(Name, address and other information)

« »
« Moss & Associates, LLC»
« 2101 N. Andrews Avenue»
« Fort Lauderdale, FL 33311»
«Attn: Randy Spicer Jr. »
« CC: Brett Atkinson and Bruce Moldow»

§ 15.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

§ 15.6 Other provisions:

1. The City of Lake Worth Beach ("City") is a third-party beneficiary of the contract, however, City shall have no obligation and shall not be liable for any costs, claims, fees or expenses hereunder.
2. In the event of a default by Owner which is continuing for more than fifteen (15) business days after notice from Contractor to Owner, Contractor shall deliver a copy of such written notice of default to City and to First American Title Insurance Company, as Escrow Agent, which shall identify the reason for default and all amounts demanded to be paid to Contractor. If the default is cured within ~~ten (10)~~ fifteen (15)business days thereafter, Moss shall continue to perform pursuant to this agreement.
3. Escrow Agent's notice address is First American Title Insurance Company, 2121 Ponce de Leon Blvd, Suite 710 Coral Gables, FL 33134, ATTN: Yessie A. Gonzalez, Senior Commercial Escrow Officer (lcrawford@firstam.com)
4. « » City's notice address is City of Lake Worth Beach, 7 N Dixie Highway, Lake Worth Beach, FL 33460, ATTN: Michael Bornstein, City Manager (mbornstein@lakeworthbeachfl.gov);**

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A102–2007, Standard Form of Agreement Between Owner and Contractor as modified herein.

§ 16.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction as modified.

§ 16.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 16.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)
Title of Specifications exhibit:

§ 16.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)
Title of Drawings exhibit:

See Exhibit B – Contract Documents

§ 16.1.6 The Addenda, if any:

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** with a copy to Torcivia, Donlon, Goddeau & Ansay, P.A., 701 Northpoint Parkway, Suite 209, West Palm Beach, FL 33407 ATTN: Christy I. Goddeau, Esq. (christy@torcivialaw.com)

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents: NA

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

« »

.2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

« »

ARTICLE 17 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007. Contractor shall not be obligated to provide a bond until the conditions in Article 4.1 are satisfied.
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of insurance or bond	Limit of liability or bond amount ($0.00)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remaining copy to the Owner.

DocuSigned by: Jeff Burns 4CA385167B9D4CC...	DocuSigned by: Brett Atkinson
	CONTRACTOR *(Signature)* Moss & Associates, LLC
Jeff Burns - Owner's authorized representative *(Printed name and title)*	Brett Atkinson - Executive Vice President *(Printed name and title)*

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notwithstanding the watermark draft, the agreement is being signed as is and both parties agree it is in final form.

AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)
The Mid
1601 North Dixie Highway
Lake Worth Beach, FL 33460

THE OWNER:
(Name, legal status and address)
1601 Dixie LLC
414 N Andrews Ave
Fort Lauderdale, FL 33301

THE ARCHITECT:
(Name, legal status and address)
GliddenSpina & Partners Architecture Interior Design Inc.
207 Sixth Street
West Palm Beach, FL 33401

TABLE OF ARTICLES

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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(Topics and numbers in bold are section headings.)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, General Conditions of the Contract , Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. The Agreement and the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Not Used.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Work shall consist of all items specifically included in the Contract Documents, as well as all additional items of work which are reasonably inferable from that which is specified in order to complete the Work in accordance with the Contract Documents. Any differences between the requirements of the Drawings and the Specifications or any differences noted within the Drawings themselves or within the Specifications themselves, any of which are recognized by the Contractor or which should reasonably have been recognized by the Contractor exercising the standard of care ordinarily exercised by a contractor of the Contractor's like skill and experience, shall

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be promptly referred to the Owner by the Contractor for clarification or explanation.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
§ 1.2.3.1 In general, the Drawings are intended to nominate and establish the location, quantity and relationship of work, and the Specifications are intended to define the type and quality of materials and workmanship requirements of the work shown.
§ 1.2.3.2 When a requirement is made by the Contract Documents that is not possible to meet, such as the requirements for an unavailable material, the Contractor shall submit prompt notice to the Owner and Architect for direction under Article 4.2.1 with approval by Owner as required.
§ 1.2.4 The Contractor shall provide and erect acceptable barricades, fences, signs and other traffic devices to protect the Work from traffic and the public in the manner required by the Contract Documents."

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

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§ 2.1. 3 The Owner reserves the right to observe the Work at any time within reason, as coordinated with Contractor. The presence of the Owner or its representatives at the project site does not imply concurrence or approval of the Work.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work ~~and when the Guaranteed Maximum Price is established~~, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Unless provided specifically to the contrary, the Owner shall be responsible for obtaining and paying for all permits, licenses, fees, and charges, excepting only the Contractor's license. By way of example and not limitation, the Owner shall secure and pay separately and outside the Contract Sum for all necessary approvals, assessments, permits, licenses, fees, charges, and costs related to the real property, including title, easements, and zoning; use or occupancy of permanent structures, including compliance with applicable codes; permanent changes in existing facilities; permits and authorizations for effluent, air pollution, water pollution, or other environmental impacts; removal and disposal of hazardous, toxic, contaminated, or harmful substances; impact or other fees related to the effect of completed construction on utilities; and satisfying requirements of governmental authorities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or materially fails to carry out Work in accordance with the Contract Documents, then after written notice to the Contractor and opportunity to cure, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period (unless extended by Owner) after receipt of written notice from the Owner and fails to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary solely by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the

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Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.1.1 The Contractor is responsible for determining that all of the Contractor's subcontractors are insured and duly licensed in accordance with the federal, state and local licensing laws unless otherwise agreed by Owner.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

The Contractor acknowledges and declares that it has visited and examined the site; generally examined visible conditions affecting the Work; and is generally familiar with the conditions thereon and thereunder affecting the same. In connection therewith, the Contractor specifically represents and warrants to the Owner that it has reviewed: (1) the nature, location, and character of the Project and the site, including, without limitation, the surface conditions of the site and all structures and obstructions thereof, both natural and man-made, and all surface water conditions of the site and the surrounding area; (2) the nature, location, and character of the general area in which the Project is located, including, without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, and labor necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents.

In connection with the foregoing, and having examined all Contract Documents as aforesaid and having visited the site, the Contractor acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities, or conflicts in said Contract Documents that it has not discussed with Owner and that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts, it will promptly notify the Owner of such fact.

Further, Contractor recognizes the extra degree of care required under the urban site construction circumstances with respect to safety, protection of pedestrians, cleanliness of the site, health and other laws, and protection of existing utilities, adjacent streets, and property. In arriving at the Contract Sum and the Contract Time, the Contractor has or will, as an experienced and prudent contractor, exercise(d) its best judgment and expertise to include the impact of such circumstances upon the Contract Sum and Contract Time. The parties agree that time is of the essence with respect to all time requirements in the Contract Documents."

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Nothing herein is intended to preclude the Contractor from delegating responsibility and control over construction means, methods, techniques, sequences and procedures to subcontractors performing portions of the Work.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect or the Owner issues in response to the Contractor's notices or requests for information pursuant to

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Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 If any errors, inconsistencies or omission in Contract Documents are recognized or reasonably should have been recognized by the Contractor, the Contractor shall be responsible for notifying the Owner in writing of such error, inconsistency or omission before proceeding with the Work. The Owner will take such notice under advisement and within a reasonable time commensurate with job progress render a decision. If Contractor fails to give such notice and proceeds with such Work, it shall correct any such errors, inconsistencies or omissions. Owner shall bear all resulting costs except the additional costs that resulted from Contractor's failure to comply with this provision.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall not be liable for any adverse consequences from adhering to such instructions, including but not limited to the failure of such instructions to produce desired results. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Owner or Architect when applicable. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 As provided herein the Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work under a contract with Contractor for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Owner or Architect when applicable,in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 By making requests for substitutions as provided above, the Contractor represents that the Contractor or its Subcontractor has investigated the proposed substitute product and unless otherwise agreed, determined that it is equal or superior in all respects to that specified, represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified; certified that the cost presented is complete and includes all related costs under this Agreement except the Architect's redesign costs, and waives all claims for additional costs related to the substitution that subsequently become apparent; and will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

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§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 - N/A

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted at the time this Agreement is executed by both parties ~~the Guaranteed Maximum Price is established~~, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor or its subcontractors shall secure and pay for any governmental fees, licenses and inspections other than threshold inspection necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Owner shall secure and pay for all permits and sub-permits outside of the GMP.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work that the Contractor knows or reasonably should have known to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 10 days after first observance of the conditions. The Architect and Owner will promptly investigate such conditions and, if the Architect or Owner determine that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect and Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

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§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 an allowance shall also cover all other of Contractor's costs pertaining to the subject matter and scope of the allowance, including but not limited to Contractor's costs for unloading and handling at the site, labor, installation costs, shop drawings and approvals, overhead, profit, and all other expense of whatever nature caused by or associated with the allowance; and

.3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent project staff who shall be in attendance at the Project site during performance of the Work. The Project Executive or Project Manager shall represent the Contractor, and communications given to the Project Executive or Project Manager shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the name and qualifications of a proposed job-site staff. The Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to the proposed staff or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after the Contract is fully executed, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule for the Architect and Owner's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect ten (10) days after receipt of a submittal to approve or reject the submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Owner-selected Material Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect and Owner or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Architect shall maintain all Shop Drawings, Product Data, Samples and permits which are required by the Contract Documents current at all times.

§ 3.12.6 By reviewing and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Architect shall approve all Contract Documents by stamping "approved" on all such documents.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings

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and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner and Owners agents (excluding Licensed Professionals) and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is proven to be attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge or

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reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. To the fullest extent permitted by law, Owner shall indemnify and hold Contractor, its officers and directors harmless of and from any and/or all liability, damage, loss, claim, demand, action and expense (including legal fees and disbursements) sustained or incurred by Contractor as proven to be a result of activities, acts or omissions of Owner or its agents, employees, contractors and Architect, ~~or as a result of any other matter beyond the reasonable control of Contractor or its subcontractors~~. These agreements of indemnity shall survive the termination of this Contract.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Written Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide those services as described in the Contract Documents. The Owner or Architect as applicable shall have the authority to order minor changes in the Work pursuant to Subparagraph 7.4 which do not involve an adjustment in the Contract Sum or Contract Time. The Architect shall have no authority to order changes in the Work involving adjustments in the Contract Sum or Contract Time without the written approval of the Owner.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. If the Architect directs the Contractor to cease using a particular means, method, technique, sequence or procedure because, in the Architect's reasonable opinion, the such means, method, technique, sequence or procedure may have an adverse effect on the finished work, then the ~~Architect~~ Owner may direct the Contractor to submit an alternative plan for the Architect's approval subject to Article 7.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

The Owner and Contractor shall communicate with each other directly about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications DS JB

by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect and Owner will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to advise the Owner to reject Work that does not conform to the Contract Documents and the Owner will have the authority to reject such Work. Whenever the Architect considers it necessary or advisable, the Architect will have authority to recommend to the Owner to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken within ten (10) days or less after receipt of the submission by Contractor so as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors. .. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect, Owner or Contractor will prepare Change Orders and Construction Change Directives. The Owner or Architect as applicable may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. Notwithstanding this 4.2.8 or any other provision of the Contract Documents, any Change Order shall require the prior written consent of the Owner.

§ 4.2.9 The Architect will conduct inspections to assist the Owner in determining the date or dates of Substantial Completion and the date of final completion and the Owner will have the authority to make such determination; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Drawings and Specifications on written request of either the Owner or Contractor. The Architect shall respond effectively to such requests and shall answer requests for information, make decisions, render interpretations, take action on and return the Contractor's submittals and shop drawings, and issue approvals with sufficient content, clarity, and promptness so as not to cause disruption or delay to the progress of the Work nor to increase the Contractor's cost of performance and, in any event, not later than twenty (20) days after the Architect's receipt of the information as to which the Architect's action is requested by the Contractor or required by the Contract Documents, unless a shorter response time is required so as to avoid delay or disruption or is otherwise specified by the Contract Documents (e.g. issuance of a Certificate of Payment within seven days).

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Drawings and Specifications and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

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§ 4.2.13 The Owners decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. The Architect is not, however, authorized to make verbal or written changes or modifications in the Contract Documents, to direct any additional work not required by the Contract Documents, or to waive the performance by the Contractor of any requirement of the Contract except as provided in "Changes In the Work" (Article 7).

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work including the trade subcontractors, suppliers, manufacturers and materialmen. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 The Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents and employees, adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall coordinate its Work on the Project, including deliveries, storage, installations and construction utilities. The Contractor shall be responsible for the space requirements, locations and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations and routing cannot be made as indicated, the Contractor shall meet with all other involved, before installation, to plan the most effective and efficient method of overall installation.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities

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including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors..

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension by appropriate Change Order.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly

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report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner and Contractor; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone with the prior written approval of the Owner.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Contractor, Owner or Architect and signed by the Owner and Contractor stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect or Owner and signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. Contractor shall have no obligation to proceed on any Construction Change Directive that is contrary to requirements of loan documents (as made known to Contractor) or when the total amount of outstanding and unresolved Construction Change Directives and other unexecuted Change Orders exceeds ½ of 1% of the GMP.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;

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.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 Additional costs of supervision and field office personnel and General Conditions directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net change, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Owner or Architect where applicable has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. The Contractor shall carry out such changes will be effected by written order promptly subject to the Contractor's right to initiate a Claim pursuant to Article 15.

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ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall diligently pursue the Work to completion.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, strikes, lockouts, fire, unusual delay in deliveries, unavoidable casualties, Acts of God, riots, civil commotions, sabotage, vandalism, concealed conditions, hazardous materials, requirements of law, statues, regulations, zoning and land use matters, failure of Owner to remove hazardous materials, shortage or unavailability of materials, supplies, labor, equipment and systems requiring reconstruction or repair to the Work or Project or any part thereof or other causes beyond the Contractor's control; or by delay authorized by the Owner pending negotiation; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended for each day of delay and the Contract Sum shall be adjusted by Change Order for additional costs and time.

§ 8.3.1.1 The Contractor shall give the Owner written notice of any delay, including delay caused by the Architect, as soon as possible but in any event within ~~three~~ ten days of its discovery the delay. The Contractor must take into account reasonably anticipated downtimes due to typical weather conditions for South Florida at the time that the work is performed, equipment breakdowns, labor shortages, scheduling conflicts, material delivery delays, recognized holidays, or any other incidents or conditions that can be reasonably anticipated to occur on a project of this size and magnitude. The Contractor's failure to properly staff the job, failure to manage the work, or failure to allow for normal, seasonable weather delays shall not entitle the Contractor to additional time. No extensions of Contract Time due to weather delays shall be considered by the Owner unless the weather was unusual for the period of time in which the Work is performed and that the overall Project completion time was, in fact, truly impacted by the unusual weather.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

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§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect and Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least five days before the last day of each month (or as reasonably required by the Owner's lender), Contractor will submit and review with Owner a pencil copy of its Application for payment. Thereafter, and by the last day of each month,, the Contractor shall submit to the Architect and Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work that includes any agreed-to corrections from the pencil copy. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier including retainage, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner at he time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Owner will, within ten days after receipt of the Contractor's Application for Payment, either issue to the Contractor a Certificate for Payment for such amount as is properly due, or notify the Contractor in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Owner and Architect of the Work and the data comprising the Application for Payment, that, to the best of the Owner and Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Owner and Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Owner and Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner. If the Owner and Architect are unable to certify payment in the amount of the Application, the Owner will notify the Contractor as provided in Section 9.4.1. If the Contractor and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which the Owner is able to make such representations. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owners opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

.1 defective Work not remedied after notice and opportunity to cure;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment in accordance with the Subcontract Agreement and the Owner is not in breach of its obligations to pay Contractor in accordance with the Contract Documents;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the property of the Owner or a separate contractor not otherwise covered by insurance;

.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or direct damages for the anticipated delay; or

.7 repeated failure to carry out the Work in accordance with the Contract Documents after notice and opportunity to cure.

§ 9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld within five days after notice of same to Owner.

§ 9.5.3 If the Owner withholds payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered, provided the Owner is not in breach of its obligations to pay Contractor under the Contract Documents

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 The Owner shall make payments in the manner and within the time provided in the Contract Documents.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than ten days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

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§ 9.7 FAILURE OF PAYMENT

If the Owner or Architect does not issue a Certificate for Payment, through no fault of the Contractor, within five days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Owner or Architect or awarded by binding dispute resolution, then the Contractor may, upon three additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 Notwithstanding the other provisions of Article 9, the Owner's obligation for timely payment shall be conditioned on the allowance in the Contractor's payment application procedure for ten (10) days for handling by the Owner and five (5) days by the Architect.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the date of Temporary Certificate of Occupancy (TCO) issued by the authority having jurisdiction. If the TCO is delayed for any reason beyond the control of the Contractor, then the date of Substantial Completion will be the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use .

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner and Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner and Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner and Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibility of the Owner for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and Architect will promptly make such inspection and, when the Owner and Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

In addition to the stated requirements, the Contractor shall be required to deliver to the Owner: (i) a final signed contractor's affidavit in statutory form; and (ii) evidence that no liens are outstanding arising by, through or under the Contractor except as set forth in the Final Affidavit. Provided Contractor has been paid all amounts due hereunder, if there is any claim of lien filed which arise by, through or under the Contractor, then the Contractor shall cause such lien to be paid or bonded within ten (10) days following notice from the Owner. In conjunction with all advances being requested, if requested by Owner, the Contractor shall deliver to the Owner lien waivers from all subcontractors and material suppliers.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Contractor, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents; or
- **.3** terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

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§ 9.10.6 Contractor shall not be responsible to provide a bond, effect a discharge or refund any payments to Owner arising out of a lien or claim filed due to Owner's failure to pay amounts properly due to Contractor pursuant to this Contract or Owner's agreement with Contractor not to pay a specific subcontractor or subcontractors.

§ 9.11 CONDITIONED PAYMENTS

§ 9.11.1 Nothing in the Contract or other Contract Documents is intended nor may be construed to waive, abridge, or adversely affect the Contractor's right to make the Contractor's actual receipt of payment from the Owner a condition precedent to the Contractor's payment (whether progress, final, or any other payment) to Subcontractors, suppliers, or other contractees. If the Contractor or its contractees are required to submit affidavits of payment, waivers of rights, releases of claims, or the like, such requirements will not be deemed effective as to unpaid contract balances and retainage until same are actually received by the Contractor from the Owner.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS
§ 10.3.1 Except as may be expressly set forth in the Scope of Work attached hereto, the Contractor shall not be liable for any hazardous, toxic, or contaminated substances, chemicals, pollutants, or other material of any kind or description, including but not limited to asbestos or polychlorinated biphenyl, which may cause injury, sickness, or harm to persons or property (herein "Harmful Substances"). The sole exceptions to the foregoing exemption from Contractor's liability are Harmful Substances which the Contractor or its subcontractors brings onto the Project site or which the Contractor or its subcontractors generates from operations at the Project Site, to the extent such Harmful Substances were not required by the Contract Documents or were not the necessary by-product of Contractor's performance of Work in accordance with the Contract Documents.

§ 10.3.2 The Contractor is not in the business of and shall not be considered as a handler, generator, operator, treater, storer, transporter, or disposer of Harmful Substances and, other than the exceptions stated in Subparagraph 10.3.1, the Owner shall be responsible for and shall indemnify and hold the Contractor harmless from the identification, testing, handling, removal, treatment, storage, transportation, disposal and other activities related to Harmful Substances. The Owner shall extend the Contract Time and adjust the Contract Sum for all delays and extra costs which can fairly be attributable to Harmful Substances, including but not limited to shut-down, delay, disruption, and start-up of Contractor's operations.

§ 10.3.3 Other than the exceptions stated in Subparagraph 10.3.1 above, the Owner shall be completely liable for and shall indemnify the Contractor from all injuries, claims, costs, losses or damages of any type, howsoever arising including but not limited to fines, assessments, legal fees, court costs, actual damages claimed or suffered, cost of removal, transportation, remediation or disposal, or any other amounts related in any manner to Harmful Substances which are present in any form or location over, on, in or under the Project site, or which the Owner or designers, agents, or other entities for whom the Owner is responsible have caused to be at issue because of the location and scope of Work to be performed in accordance with the Contract Documents or other act or omission of such parties. Accordingly, with the sole exceptions under Subparagraph 10.3.1, the Owner agrees to defend, indemnify and hold Contractor harmless and shall waive any rights or claims to costs related in any manner to such Harmful Substances whether or not Contractor has directly or indirectly handled, uncovered, excavated, transported, or performed activities with respect to such Harmful Substances including, but not limited to, moving Harmful Substances from one portion of the Project site to another.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor or its subcontractors, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES
In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

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ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages shall be written on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon Owner's written request. . These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon receipt of a written request therefor from Owner at renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 The Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, Builder's Risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. It is understood and agreed that Owner is bearing all risk of loss to the property for which the Owner has an insurable or financial interest during construction, and in the event of a loss during construction, Owner agrees to look solely to the proceeds of the Builders Risk Insurance which Owner has agreed to furnish, the only exception being such losses which occur as a result of Contractor's negligence or willful acts, and then, only to the

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extent not covered by the Builders Risk insurance. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project as named insured. Should a loss occur, the Contractor shall be paid by Owner for all work in place at the time of such loss regardless of whether or not such work was damaged in whole or in part by the peril.

§ 11.3.1.1 Builders Risk insurance shall be on an "all-risk" policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, hurricane, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. A copy of the Builders Risk Policy shall be delivered to the Contractor prior to the commencement of the Work.

§ 11.3.1.2 If the Owner does not intend to purchase such Builders Risk insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance as cost of the Work that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the Builders Risk insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles outside of the GMP.

§ 11.3.1.4 This Builders Risk insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, whether or not the person or entity had an insurable interest in the property damaged and without restrictions to type, cause, time or location of occurrence or loss.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Owner's or Architect's written request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner or Architect, be uncovered for the Owner's or the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

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§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and reasonable compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located

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§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to whom it is addressed or two (2) business days after delivery via overnight courier or if sent postage prepaid by United States registered or certified mail, return receipt requested. All notices shall be sent to the persons and addresses as follows:

To Owner
1601 Dixie LLC
Attn: Jeff Burns
414 N. Andrews Ave.
Fort Lauderdale, Fl 33301
Cc: Nick Rojo and Michelle Rice

To Contractor:
Moss & Associates, LLC
2101 N. Andrews Avenue Ft Lauderdale, FL 33311
ATTN: Randy Spicer Jr. with
CC to Bruce J. Moldow and Brett Atkinson

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to and paid by the Owner outside of the GMP, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Owner or Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

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§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner and Architect.

§ 13.5.5 If the Owner or Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. The Owner shall not be required to pay interest unless payment is not made within ten (10) days after Contractor's written notice that the amount is past.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 In the event the Work is damaged and/or destroyed by acts of terrorist or vandalism (except where perpetrated by employees of Contractor or its Subcontractors during work hours), then the Contractor shall not be liable for such damages and shall not be obligated to correct the Work that has been damaged by such acts and/or to complete or rebuild the Work if destroyed by such acts unless the Owner and Contractor execute a mutually acceptable Change Order that adjusts the Contract Sum and Contract Time.

§ 13.9 The signing parties to this Contract do not intend to confer any rights upon any persons not a party to this Contract; accordingly this Contract shall not be construed to create any third party beneficiaries.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 60 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner (provided the Owner does not cure within the seven (7) day period), terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead, profit on Work

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performed, reasonable cancellation and demobilization costs, and costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon three additional days' written notice to the Owner terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owne may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, but excluding Change Orders and Change Directives issued after Termination such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be is an obligation for payment shall survive termination of the Contract.

§ 14.2.5 Notwithstanding anything to the contrary herein, the Owner shall give the Contractor written notice of grounds for termination for cause and afford the Contractor an adequate opportunity to commence to cure which is reasonable under the circumstances, but not to exceed 60 days, unless a longer period is agreed to by both parties before exercising any rights or remedies under Paragraph 14.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine subject to the Contractor's rights under this Contract.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

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§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may upon 10 days written notice, terminate the Contract for the Owner's convenience and without cause provided however that Owner shall not exercise its rights to Terminate for Convenience for the purpose of reducing its costs.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- **.1** cease operations as directed by the Owner in the notice;
- **.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- **.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit thereon.

§ 14.5 The Owner shall not be responsible for Contractor's loss of anticipated profits on Work not performed on account of any termination.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated within 21days after the occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party..

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents..

§ 15.1.4 Not used .

§ 15.1.5 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

15.1.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 15.1

§ 15.1.7 CLAIMS FOR ADDITIONAL TIME

§ 15.1.7.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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§ 15.1.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

15.1.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

15.1.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 15.1.10 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work completed.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the express terms of the Contract Documents.

§ 15.2 INITIAL DECISION

NOT USED

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to filing litigation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. Such mediation shall occur within thirty (30) days of notice.

§ 15.4 ARBITRATION

NOT USED

§ 15.4.4 CONSOLIDATION OR JOINDER

NOT USED

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EXHIBIT A - Qualifications & Assumptions

The intent of these Qualifications and Assumptions is to provide a supplemental scope and cost control guide. They are also included to further the Owner's understanding of what is included in the scope of this project based on Moss & Associates interpretation of the Contract Documents.

DIVISION 1- GENERAL REQUIREMENTS:

1. This Contract Sum is based upon the Owner and Moss & Associates (hereafter referred to as Moss) entering into an agreement that is mutually acceptable to both parties.
2. The Contract Sum is based on the Attached List of Documents . Included is the work as shown on the drawings, described in the specifications, and clarified herein. Reasonable efforts have been made to identify any conflicts or omissions in the documents.
3. It is assumed that the documents have been coordinated by the designers. The Contract Sum does not include a contingency to complete design.
4. The Owner shall direct the Architect, Engineers, and Specialty Consultants to incorporate all revisions, sketches, changes, answers to Requests for Information, and all pertinent as-built information, etc. into a final construction set of documents that will be submitted to the authorities as a final permit revision prior to substantial completion.
5. This GMP includes a Contractor Controlled Construction Contingency (the "CCCC") of $534,507.00. The contingency is for scope buyout and is to be used solely by the contractor as defined by the owner contract. Both the Owner and Contractor shall benefit from unspent CCCC or Project Cost Savings. As such, Contractor shall supply Owner with a monthly report with supporting documentation identifying the status of; a) the budget (budget vs actual), b) subcontractor buyout, c) list of allowances (budget vs actual), d) list of CCCC spent, e) pending PCIs, f) approved PCIs, and g) reconciliation of Project Cost Savings. Owner shall benefit from 75% of unspent CCCC or Project Cost Savings, and Contractor shall benefit from 25% of unspent CCCC or Project Cost Savings during the duration of the Project as outlined below (the "Cost Savings During Construction"). Upon substantial completion, any remaining unspent CCCC or Project Cost Savings shall be split 50/50 amongst the parties (the "Cost Savings at Completion").
    a. Shared Cost Savings Formula: $250,000 of Cost Savings During Construction shall be distributed during the duration of the project as outlined below, provided that at no time prior to 85% complete shall funds be returned and distributed to either party should the balance of the CCCC fall below $250,000.
        i. $50,000 ($37,500 to Owner, $12,500 to Contractor) upon purchasing 95% of all subcontracts
        ii. $50,000 ($37,500 to Owner, $12,500 to Contractor) upon completion of all building structures
        iii. $50,000 ($37,500 to Owner, $12,500 to Contractor) upon reaching 50% complete as per monthly payment requisitions
        iv. $50,000 ($37,500 to Owner, $12,500 to Contractor) upon reaching 85% complete as per monthly payment requisitions

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EXHIBIT A - Qualifications & Assumptions

v. $50,000 ($37,500 to Owner, $12,500 to Contractor) upon start of Owner punch list

6. Moss will not be responsible or liable for testing, handling, transporting, or disposing of existing hazardous materials (including but not limited to asbestos, P.C.B'S, lead, molds, lead glass, fuel, oils, contaminated soils, and any other hazardous materials or substances) for the work of this proposal. We assume that if the work is required, the contracts will be held directly by the Owner, the Owner shall indemnify and hold Moss harmless from any such related claim should the discovery and removal of such materials result in a delay of the work. Moss shall be granted an adjustment in contract time and sum for all cost, including escalation resulting from such delays. The Owner has provided Moss with a Phase 1 and Phase 2 environmental survey. Any costs associated with delays resultant from the discovery and removal of hazardous and special waste materials shall be borne by the Owner, unless otherwise stated in either report.
7. The Master Building Permit is by Owner at no cost to Contractor. Per meeting with the city building officials, this contract only assumes all sub permit fees to be $79.00 each and has included this for all applicable sub permits as dictated by the city building officials. Per our understanding of the Owner/City Agreement, offsite utility fees are not included in this contract. If the city imposes additional sub permit fees outside of the $79.00, these are excluded and therefore will be paid by owner. Any permit expediting services required for contract documents, shop drawings, and etc. will be provided by the Owner.
8. The Cost of Work is based on use of all Open Shop trade labor. No labor agreements or restrictions are included. No prevailing wage rates have been included.
9. No staff, costs, or schedule durations for tenant work or unit customizations are included in this agreement. Any tenant finishes as defined within this GMP shall be completed prior to TCO.
10. If a named storm is projected to approach the vicinity of the project, Contractor shall be reimbursed via change order to perform the necessary preparation and remobilization work and time.
11. The Contract Sum INCLUDES items designated as allowances (indicated on *Exhibit B – Allowances*). It is agreed and understood that the final costs for these line items of work may be higher or lower than the allowances included and will be approved by ownership via change order prior to purchase/installation.
12. The costs of the following items are to be paid for by the Owner. These costs are not included in our Contract Sum Proposal:
    a. Removal and disposal of any underground obstructions (tanks, structures, and unforeseen site conditions).
    b. Environmental studies and removal of all unsuitable materials including, but not limited to, asbestos, lead paint, and hazardous materials.
    c. Testing laboratory/technical agency fees (i.e. on-site inspections, threshold inspections, soils/materials testing, threshold inspections, special inspectors, third party commissioning agent fees, etc.) and any overtime for inspection services by authorities having jurisdiction (i.e. fire marshal, building officials, etc.)
    d. All architectural, structural, and other consultant fees and services.
    e. Electrical services are defined as such;
        a. This subcontract includes financing, furnishing, and installing for all infrastructure and services associated with temp power by the contractor

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EXHIBIT A - Qualifications & Assumptions

b. The subcontract includes installing the conduit and wire between transformers and will turn up into the transformer pads. All final connections are by utility company.
c. The conduit and wire material need to be delivered to site by utility company and any expenses associated with the furnishing of this material is by owner.
d. The Utility company is responsible to furnish and install all service from the utility poles to the transformers. If there are any costs for this work, it will be paid by owner.
e. The utility company must supply and deliver the transformer and the transformer pads. This contract assumes that Moss will install the provided transformer pads. If there are any costs for this work, it will be paid by owner.
f. All final connections

f. Utility company/ Hotwire utility impact and connection fees including transformers and/or sources permanent power or services (i.e. transformers, new/power poles) are excluded and considered to be paid for by owner.
g. The cost of all meters, utility replacement/relocation unless shown on the drawings.
h. Cost of power, water, sewer, and natural gas consumption after substantial completion.
i. Monitoring wells and testing required by HRS/DERM/BCEPD.
j. Air quality monitoring and testing program.
k. Police Fees and Site Security Personnel/Watchman services and security will be paid for by Owner and managed by MOSS.
l. Survey/monitoring of offsite existing buildings/structures for settlement.
m. All costs associated with obtaining easements, FEMA requirements, or surveys as required by the building officials.
n. Dixie Highway Road closure, site impact fees, and right-of-way permits. MOT and partial lane closures on 16th and 17th are the responsibilities of the GC. This does not include any potential closure of sidewalks adjacent to Dixie Highway.
o. The costs associated with the Owner's office trailer and associated improvements.
p. Builder's Risk Insurance premiums and deductibles.
q. Grounds maintenance after substantial completion.
r. Furniture fixtures and equipment (FF&E) that are not affixed to a permanent structure or otherwise qualified on the plans unless it is otherwise called out as excluded within the qualifications.
s. Owner's contingency.
t. Relocation of Utility services inclusive of poles, overhead services, guidewires, etc.
u. Davis Bacon or other prevailing wages

13. The FDEP (Florida Department of Environmental Protection) Army Corps. Of Engineers, and the FWMD (Florida Water Management District) permits (dewatering, ERP, wells, etc.) are to be secured by others. The cost of any fees is excluded from this Contract Sum.
14. Where an NPDES (National Pollutant Discharge Elimination System) permit (EPA and/or FDEP) is required it shall be secured by others. The cost of any fees is excluded from this Contract Sum.
15. The SWPPP (Storm Water Pollution Prevention Plan) associated with the NPDES permits shall be developed by others. The cost of any fees is excluded from this Contract Sum.
16. The cost of inspections performed under an NPDES permit is excluded from this Contract Sum.
17. DOT permits are excluded and shall be furnished by Owner.

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EXHIBIT A - Qualifications & Assumptions

18. DERM Permit fees are excluded and shall be furnished by Owner.
19. Any costs assessed by FEC and/or associated with work in the FEC right of way is by owner.
20. The cost for a Performance & Payment Bond premium is excluded. In the event the Owner's lender does require this bond, a change order will be issued to add the associated costs.
21. Owner and GC shall establish guidelines to allow billing of offsite stored materials and pay for deposits (i.e. tile and countertops, elevators, etc.) that may be required by specified vendors (i.e. cabinetry, tile, plumbing fixtures, light fixtures, elevators, glazing and appliances). Such guidelines shall also be acceptable to the Owner's construction lender.
22. This Contract Sum does not include any escalation contingency. GC will attempt to procure subcontracts with no escalation provision and buyout 90% of the subcontracts within the first three months of construction.
23. Owner understands the potential impacts resulting from the current administration as it relates to material prices. As you probably know, the market for certain construction materials is currently somewhat volatile due to the new tariffs and other causes and may be subject to sudden price increases and shortages. These effects include, but are not limited to; price increases, shortage of material, additional time required to procure materials, vendors not holding their original proposals, payment terms, and restrictions on order modifications, etc. GC will put forth best faith efforts and attempt to mitigate material price fluctuations.

    Construction material price escalations, shortages or schedule impacts resulting therefrom are not included in the GMP or Contract Time. In the event of price increases, material shortages or delays in material deliveries occurring during the performance of the Contract due to causes beyond the fault of the Contractor, the GMP, Contract Time, and any other applicable/impacted contract requirements shall be equitably adjusted by change order.
    Contractor shall complete 90% of buyout of the subcontracts within (90) days following Contract Date in order to mitigate the above referenced risk.

24. This contract assumes work is able to be performed Monday- Saturday 7AM-7PM. As discussed in meeting with city officials, it was agreed verbally that this was acceptable, but we need a formal variance to confirm. During the course of construction, if an unforeseen issue arises that restricts work hours, the Owner and the Contractor will be work together with the city to reinstate these working hours. If these attempts are not successful, the Owner and the Contractor will mutually agree on a schedule moving forward.
25. The artist's and architect's renderings have not been considered.
26. Schedule: Owner understands the potential conflict that may arise and the potential for delays due to the existing offsite overhead utility lines that are slated to relocated. At this time the City of Lake Worth Beach has been notified of the drop dead dates for removal of overhead lines, and Contractor shall be responsible for promptly notifying the City of Lake Worth Beach of any change to the course of construction or these dates.
27. Excluded are any costs directly related to the Utility Company and their work associated with the relocation of the overhead lines. In the event, the city demands ancillary work such as pole removal and disposal, such costs are excluded and shall be paid for by Owner.
28. Upon notification of completion/turnover of a Unit(s)/Public Space/Other, Owner understands that they have a time obligation to provide contractor final owner punch list within 3 weeks from the date of notification. This understands that units will be turned over no more than 30 units per week.

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EXHIBIT A - Qualifications & Assumptions

Contractor will communicate with Owner and provide as much notice as possible to expected timeframes associated with Unit(s)/Public Space/ Other delivery.

29. Please see below for clarifications to GI.0.1

    a. Note 7 – Excluded – It is assumed that these plans are coordinated by the AOR. In good faith, contractor will make reasonable attempts to mitigate all unforeseen coordination issues. If additional costs arise, this will be funded by owner. It is understood that the Contractor shall immediately notify the Architect and Owner at the time the Contractor becomes aware of an issue involving plan coordination that affects cost. Such failure to promptly notify Owner shall require the Contractor to be responsible for any cost increase involving plan coordination.
    b. Note 10 – Strike through – It is assumed that the AOR/EOR will review shop drawings for approval.
    c. Note 11 – It is understood that the current set will be kept electronically on site

30. The contractor has utilized basic, entry level, BIM coordination. CAD files do not constitute contract documents. Although this has assisted in potentially identifying some discrepancies and addition coordination needed, this does not represent a complete design and additional coordination may be needed in the future. Costs associated with this additional coordination are not included in this contract.
31. This contract assumes adjacent property is to be utilized for construction parking for the entire duration of the project. Contractor shall be responsible for finalizing a lease with the adjacent property owner and the Owner shall have no responsibility for failure to do so.
32. All items marked in these qualifications as excluded and/or not included, are understood to imply that all additional costs associated with this work are by owner.
33. Owner understands that costs associated with vandalism and theft will be carried and reimbursed under the Owners insurance policy.
34. This contract does not include any cost effects associated with any outstanding RFI's. The estimated rough order of magnitudes for these RFI's will be provided to owner.

DIVISION 2 – SITE WORK

Earthwork and Sitework:

1. This contract assumes that any vertical spacing, horizontal clearance, separation of utilities required by DERM, County Health Department, HRS or any other government agency has been incorporated into the design drawings by the Civil Engineer. We have not included any consideration for the resolution of potential conflicts evident or otherwise that are not clearly shown on the drawings.
2. Per the Geotech report, it is assumed that there is no need to remove any inorganic/peat material on this site.
3. Any rerouting of utilities due to existing utility conflicts, except as shown on the contract documents is excluded from this contract.
4. Extraction and/or removal of existing subgrade foundations/structures is not included inclusive of any existing foundations unforeseen and discovered after the date of this agreement.

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EXHIBIT A - Qualifications & Assumptions

5. Any references to tree protection, removal and relocation is excluded.
6. The cost of work and fees associated with the water taps are excluded within the GMP and therefore paid by Owner.
7. This contract disregards with note 23 on Sheet D-01 that refers to FFE to be at 20.00 NAVD. It is understood to be 17.50 NAVD
8. The contract includes the mill and resurface of 17th Ave north. It includes patching on 16th Ave north and Dixie Highway in any locations that are affected by utility connections
9. Please see comments on general notes as listed on C-02
    a. General Note 6 – It is assumed that these plans include all necessary information taken from the geotechnical report and this if there is a conflict in information the civil drawings will take precedence
    b. General Note 9 – Strike through entire sentence "No extra compensation ...{through}...authorization of such additional work.
        i. It is understood that if conditions in the field are different than that of which is on the drawings that we will notify the EOR, however if there are additional expenses incurred this will be by owner.
    c. General Note 19 – Strike through – All insurance requirements are established through the Owner contract and OCIP manual.
    d. General Note 23 – Strike through – These qualifications will take precedence.
    e. General Note 27 – Per these qualifications it is understood that the responsibility, both time and compensation, with obtaining any utility easement is the responsibility of the owner.
    f. The Paving is based on the "Paving Specifications" table and Cross Sections as shown on sheet D-03, not the paving general notes shown on sheet C-02. The details and cross sections call for 1.5" Type SP-9.5 Asphalt. This contract includes a standard mix witch contains some recycled asphalt (not virgin asphalt as called out in general notes).

10. U-01 shows (6) water services to be brought across 17th Ave. This contract only includes a meter box for the (1) 2" service. Meter boxes for 1" service to be financed and procured by utility company or owner. Tapping and meter fees are excluded. This contract scope ends at the meter entry point, all work on the other side of the meter that is not depicted on the plans is not included in this contract.
11. Provide 8 Ft high precast screen wall in lieu of the 8 Ft high boundary sound wall as reference. This contract assumes a painted wall without stucco.

Landscaping and Irrigation:

1. Landscape drawings shall supersede Architectural drawings relative to architectural elements such as finishes, material selections, gates, railings, fences, etc.
2. The Planting Material /Specification Table on L-3 and L-4 superseded the diagrammatic image on the trees as it pertains to the final planting count (all notes on all other pages are superseded by these counts).
3. Provide synthetic turf in lieu of sod at fenced in Dog Park.
    a. An additive alternate will be sent to owner to provide synthetic turf in lieu of sod at the game lawn and to replace the provided turf at the dog lawn with sod and irrigation.

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EXHIBIT A - Qualifications & Assumptions

4. The following substitutions are assumed in this contract to be approved Value Engineering to reduce the landscaping & irrigation budget:
    a. 18' CT Cabbage Palm ILO 18' CT King Palm
    b. 14'-16' Gumbo Limbo ILO 22' OA Gumbo Limbo
    c. 9' CT straight trunk Malayan Coconuts ILO 14' CT straight trunk Malayan Coconuts
    d. 12' CT Triple Montgomery Palms ILO 12' CT Date Palms
    e. 3 gal 28" Green Buttonwood ILO 3G 36"ht Ficus Nitida
    f. 1 G Dwarf Faxahatchee Grass ILO 1 G Fernwood
    g. 4" Jasmine Minima ILO 1 G Jasmine Minima
5. All references to landscaping/green walls are excluded and standard light texture stucco and paint are included.
    a. An additive alternate will be submitted to owner
6. "MOSS" wall in clubroom is excluded and standard paint will be used to create "V" effects.
    a. An additive alternate will be submitted to owner to provide a faux "live wall" covering.
7. This contract excludes the synthetic turf joints depicted at the pool deck on sheet L-8 and will be preplaced with the standard pavers qualified below.
    a. An additive alternate will be submitted to owner

8. All offsite work performed, will return affected area back to original site grade. Any restoration or additional off-site landscaping is excluded from this contract.

Vehicular and Pedestrian Pavers:

1. Pavers are to be standard 2 3/8" gray cement based concrete pavers over a 1" sand setting bed. The paver included in this contract is assumed to be $1.75/SF material allowance. These pavers will be at the cross walks leading to the club house (as depicted on L7) and around the pool deck in lieu of of the Kool deck coating and the artistic pavers (as shown on L8)

Site Amenities & Furnishings:

1. Excludes any cabanas, trellis, furniture, summer kitchens, waste receptacles, grills, bike racks, etc.
    a. An additive alternate will be submitted to owner to provide above excluded site amenities and furnishings.

Signage:

1. Allowance of $15,000 included for code min. building signage.
    a. This does not include Unit Signage or Building Labeling/Numbering Signage.
2. Retail tenant signage (on elevations it is depicted as "SIGNAGE") is excluded.
3. Building frontage signage (on elevations it is depicted as "THE MID" sheet A5.0.2) on building is excluded.

4. (6) Entry monument signs are included as block with stucco and paint. Signage by owner.

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5. Electrical services to any signage is per the electrical contract documents only.
6. This contract does not include photoluminescent paint or signage. Architect has verified that this is not required.

DIVISION 3 – Concrete / Structure

1. This proposal is based upon the understanding that coordination of all Architectural elements has occurred between the Architect and the Engineer and is included on the Structural Drawings. Notwithstanding anything else contained herein, Contractor shall consider the entire set of plans
2. This contract includes the structural steel columns to be bare. This contract does not include, intumescent paint, galvanized surfaces, fireproofing spray, etc. applications applied to the structural columns.
3. Precast cross detail as depicted on the structural drawings will not be used. And means and methods of tunnel connections will be addressed with a 6" concrete curb.
4. Detail 1 /ST-0.0 – Will be modified for means and methods.
5. This contract does not include any special stair noising.
6. Fire ratings, as per the depicted Architectural plans, will be achieved. However, the details illustrated in the drawings such as 6/A8.1.1, may differ from the field applications.
7. Owner understands the nature of leaving the hollow core planks unfinished. Some level of concrete from the topping slab above the hollow plank will migrate through the joints creating an unfinished look at the ceiling level.
8. Exposed roof eyebrows on all buildings have been excluded from this contract.
9. Structure will be exposed in areas without ceilings and concrete lines will be visible. There is no additional prep work outside industry standard to the underside of the deck included in this contract.
    a. An additive alternate will provided to owner to provide a knockdown finish at unit exposed ceilings.

DIVISION 5 – Metals

Misc Metals:

1. Finish on the balcony aluminum railings to be AAMA 2603 standard powder coat finish with standard color options, excludes metallics.
2. Balcony and Breezeway handrails as depicted on the plans are included to be Std. Mid Rail Picket Guard Rail.
3. (2)Motorized Automotive entrance gates are included
4. (4) Roof Access door and ladders are included at buildings 1,3,4, and clubhouse
5. Fire Truck gate is included as a chain link swing gate without electric.
6. Hardware associated with pool gates, is included to be code min where not indicated on security or architectural drawings, unless otherwise provided for in the drawings.
7. Door hoods as shown on 5/A7.0.2 are excluded from this contract. Standard door rain diverter is included.

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EXHIBIT A - Qualifications & Assumptions

8. Awnings/overhangs of all types shown on renderings and/or drawings are excluded from this contract.

DIVISION 6 – WOOD and PLASTICS

Millwork:

1. An allowance of $5,000 is included for the custom hanging frame with mural located inside the Clubhouse (Ref. A1.1.6, Note 03). Mural by Owner.
2. Kitchen and bathroom cabinets in melamine with thermo-fused slab doors.
3. Unit kitchen and bathroom cabinetry from Empire Stone and Cabinets Corp. European Style (frameless) cabinets manufactured with 5/8" melamine with adjustable shelves, self-closing hinges, metabox drawer system, adjustable plastic legs and toe kicks. Soft close doors and drawers are included.
4. Wall cabinets in kitchen 42"H max. and standard door and drawer style to be slab.
5. Cabinet handles to be 8" European bar pulls.
6. Kitchen mobile islands (230 ea.) with 2cm quartz, Level 1 are included.
7. Kitchen and bathroom countertops to receive 2cm quartz, Level 1.
8. 4" quartz backsplash in the bathrooms and no quartz backsplash (included as subway tile) in the kitchens.
9. Cabinet colors in kitchens and bathrooms: TBD; however, pricing is based on samples provided to the owner (white ash, cassis riviera oak and smoky brown pear, fawn cypress).
10. LED under cabinet strip lighting is excluded.
11. Units and corridors to receive 3 ½" high x ¾" thick square wood baseboard.
12. Trash bins are excluded.
13. This GMP excludes crown moldings in all units.

DIVISION 7 – THERMAL & MOISTURE PROTECTION

Waterproofing:

1. Waterproofing is only included in this contract if it is explicitly documented in these qualifications.
2. Tremco Vulkem 350/351 pedestrian traffic coating at residential balconies on levels 2 and 3.
3. Tremco Vulkem 350/351 pedestrian traffic coating at 2nd and 3rd level breezeway between buildings is included. Sealer is included at all above grade breezeways.
4. There is no roll-on waterproofing provided on grade.
5. No waterproofing or sealer is included at any stairwell or landing.
6. Exposed concrete roof eyebrows, inclusive of stucco/waterproofing/paint on all buildings have been excluded through value engineering.
7. Fluid applied perimeter waterproofing is excluded around all exterior openings ie; windows, sliders, doors, storefront, louvers/xvents, etc. Industry standard caulking is included at the exterior of these perimeter conditions.

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a. An additive alternate will be provided to the owner.

8. Perimeter urethane sealant at hollow metal door frames at stucco, concrete or exposed cmu openings and at exterior mechanical louver frames.
9. Concrete sealer at back-of-house areas included.
10. No horizontal expansion joint caulking or expansion joint covers is shown or included in this GMP.
11. Xypex admixtures within concrete foundations and slabs is excluded.

Roofing:

1. LWIC over a concrete deck. The system consists of a 2" min LWIC over a base layer of 4" EPS Board with additional stair stepped EPS board to attain a Min R-19 and a ¼" per foot min slope. A fully adhered Carlisle .060 White TPO single-ply membrane will be applied above LWIC system.
2. Note 4 on Arch elevations (ex; A3.07) will be accomplished via 5/8" Densdeck with a TPO membrane in between edge drip metal detail in a white .032 TPO coated aluminum.
3. Pop-up roof areas above non-conditioned space will not have LWIC only and no insulation.
4. An allowance of 300LF per building type A and B and 200LF per clubhouse has been included for walking pads.
5. Uplift calcs are excluded for the coping cap or nailers.

DIVISION 8 – DOORS and WINDOWS (RS)

Doors, Frames, and Hardware:

1. Schlage control smart interconnected locks are excluded.
2. No electrified hardware is being provided for any doors unless specifically called out for on the low voltage shop drawings.
3. Door sizes, materials, frames, and ratings are to be provided per the door and frame schedule.
4. Standard hardware to be provided by Better Home Products or Similar. Hardware will meet code min. req.
5. All Exterior to be installed to meet NOA requirements
6. Baseboards are included as 3 ½" wood within the units and corridors and 5 ½" in clubhouse

Glass and Glazing:

1. The GMP includes the following glass & glazing specifications:
    a. Aluminum painted finish in color white
    b. All reference to PGT should read "PGT or equal"
    c. Sizes of unit glass systems will be modified within 5" to achieve standard glazing sizes while still maintaining code minimums.
    d. All insect/bird screens are excluded
    e. Standard hardware is included for sliding glass and storefront doors.
    f. Insulated glass is excluded.
    g. U-value of 0.86 / SHGC of 0.50 are used for the residential area and U-value of 0.86 / SHGC of 0.52 are the basis of design

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h. Onsite water infiltration testing by the Owner Provided 3rd party testing company.
i. Automatic door operators and concealed closers are excluded.
j. Card readers within glass doors are part of the Low Voltage package.

DIVISION 09 – FINISHES

Drywall

1. Non-rated drywall walls are assumed to be ½" drywall.
2. Eliminate skim coat & knock down texture at unit ceilings.
3. All drywall is assumed to be level 4 finish.
4. 25 gauge framing at 24" O.C. is used at all locations other than bathroom tile walls.
5. Retail area to be turned over as a white box Drywall and framing is included for the bathroom and AC closet and along demising walls. Exposed concrete ceiling will be provided.
6. Sealant is only included at rated walls.
7. For means and methods, at furring locations this contract assumes either 1 5/8" metal furring 2x2 P.T. wood furring at all block and CIP walls.
8. Wall insulation is included as follows;
    a. Exterior CMU to have R-7.1 VR Plus Shield Hi-Perm
    b. Exterior walls with 3 5/8" frame over block to have R-11 bats
    c. Exterior walls with 6" frame over block to have R-10 batt
    d. Corridor metal frame walls to have R-19 batt
9. No metal framing or drywall is included in the electrical, bike storage, storage, dumpster or domestic pump rooms.

Stucco & Cement Coating

1. Stucco shall be average 5/8" thick and a light textured finish on vertical surfaces ilo smooth stucco. The underside of balconies (only at levels 1 and 2) to receive skimcoat. Accessories shall be white PVC.
2. Detail 8 on architectural elevations (Ex A3.0.7) has been included as a ½" tall by ¼" depth hand scored line
3. Stair ceilings and underside of stairs is to be left as exposed concrete.
4. Exterior framing detail for the building high roof pop-ups has been included per the structural drawings as CIP concrete with stucco.

Painting

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1. All references to a specific paint manufacture, ie Sherwin Williams or Benjamin Moore, are interchangeable.
2. Sheet A11.0.1 refers to a finish type of "washable flat". This contract excludes washable paint and has included Promar 200 Flat Paint Finish
3. Exterior Stucco is to receive one coat Loxon primer and 2 coats of acrylic latex flat finish (Sherwin Williams A-100 flat or equal)
4. Photo luminescent paint is excluded.
5. Retail areas to receive primer and 1 coat white paint.
6. Common area GWB with prime and two coats Promar 200 Flat unless marked with semi-gloss paint color.
7. Sheets A9.5.4 and A9.5.5 depict the paint scheme for the corridors. This contract modifies the paint scheme to not include painting the door and trim. This qualification comes from a maintenance concern.
8. Unit Numbers depicted on sheets A9.5.4 and A9.5.5 are presumed to be stencils.
9. All back of house storage, utility, dumpster, etc. rooms are excluded.

Finish flooring, Tile and Stone:

1. All references to Luxury Vinyl Tile inside the residential units is omitted from this project and specifications, other than the LVT inside of the Yoga Room inside of the Clubhouse.
2. No tile finishes at balconies. Ref. waterproofing Q/A/s
3. Bathrooms to receive 4" quartz backsplash and 3" x 6" ceramic subway tile full-height backsplash in kitchens.
4. The following tile material unit pricing is included. Owner/architect or Owner's consultant and tile supplier have made proper tile selections relative to ASTM specifications, 2019 Tile Council of North America and selections have been made to carefully consider the physical final locations (wet areas, high traffic, etc) of these tile along with slip coefficients, wear/durability. Etc. (actual tiles to be selected by Owner at a later date):
    a) Unit floor tile (excluding bedrooms and A/C closets) - Include a $1.35/sf material allowance (12" x 24" porcelain). Tile flooring will be installed underneath cabinets. A/C closet floors will be left unfinished concrete.
    b) Unit flooring tile includes a 15%-20% waste factor (Based on size and location).
    c) Bathroom floors - include a $1.35/sf material allowance (12" x 24" porcelain tile)
    d) Shower floors – includes a $1.35/sf material allowance (6" x 12" porcelain tile)
    e) Tile base in unit bathrooms – includes a $1.35/sf material allowance (4" field cut)
    f) Unit shower walls - Includes a $1.20/sf material allowance (4" x 8" ceramic subway tile)
    g) Precast shower curbs are included (5" W x 4" H)
    h) Threshold transitions (bathrooms to bedrooms are included)
    i) Schluter strips (tile to carpet, threshold at A/C closets, and vertical transitions at shower tiled walls). Trim metal both sides of shower curbs is included.

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j) Kitchen backsplashes - includes a $1.20/sf material allowance (3"x 6" ceramic subway tile)
k) Clubhouse tile finishes (CT-1, 2, 3, 3A, 4 and 4A) inside Public Restrooms as per Sheet A9.5.1 and tile specifications on Sheet A11.0.1.
l) Carpets CPT-7, 8, 9 and 10 inside of the Clubhouse are included.

5. Bathrooms to receive 4" quartz backsplash and 3" x 6" ceramic subway tile full-height backsplash in kitchens.
6. Pliteq 5mm Geniemat FF05NP sound underlayment under tiled areas at residential floors 2 and 3.
7. Residential bedrooms – includes material specification from Carpet Style Secret Weapon (plush) for carpet stretch IN over padding in all residential bedrooms.
8. Corridor carpet includes material specification "Color Your World" 22 oz level loop commercial carpet tiles 24" x 24".
9. Any and all references to shower niches and/or shower benches are excluded. No niches or shower benches will be furnished or installed in any bathroom.
10. Conc 1 and Conc 2 as referenced on Sheet A1.1.9 inside the Clubhouse is considered to be polished concrete. Concrete 2 calls for textured concrete. This contract includes sealed broom finish concrete flooring for Conc 2.
    a. An additive alternate will be provided to owner.
11. Tile configurations and layout are considered industry standard. Tile pricing does not include diagonal patterns/layouts.
12. All references to epoxy grout are excluded. This contract includes standard cementitious grout.

DIVISION 10 – SPECIALTIES

1. Each residential unit bathroom to receive the following toilet accessories by Delta:
    a. Robe hook
    b. 24" towel bar
    c. Toilet paper holder
    d. Towel Ring
    e. Grab bars are excluded
2. Each common Area bathroom to receive the following standard toilet accessories by DELTA, KOALA or BOBRICK:
    a. 42" and 36" grab bars
    b. Baby changing station
    c. Mirror 24" x 36"
    d. Soap dispenser
    e. Sanitary napkin disposal
    f. Toilet tissue holder
    g. Paper Towel receptacle
3. USPS Approved postal specialties
    a. (230) tenant boxes

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   b. (23) parcel types
4. ¼" Thick, 42" High Clear Frameless Glass Vanity Mirrors are included in the Units.
5. (322) 3/8" frameless shower swing door (32") shower enclosure
6. Unit closet shelving
   a. (3000 ft) - 12" Vinyl Coated Wire Shelf w/ standard rod - closets
   b. (3400 ft) - 12" Vinyl Coated Wire Shelf – Linen
7. Package concierge is excluded but the package room has been included per the plans
8. Fire Extinguishers and cabinets are included to meet Florida Building Code requirements.

DIVISION 11 – EQUIPMENT

Residential Equipment:

1. Residential kitchens appliances by GE Appliances.
   a. 11.55 Cu. Ft. Top Freezer refrigerator with ice maker (model # GGIE18GSHSS).
      i. An additive alternate will be provided to owner.
   b. 30" Free-standing electric range (model # GJBS60RKSS).
   c. 1.6 Cu. Ft. Over-the-range microwave (model # JGJNM3163RJSS)
   d. Frontload Built-In dishwasher (model # GGSD3361KSS)
   e. GE GGUV27ESSMWW "Spacemaker" Electric Washer/Dryer combo. Washer capacity 3.8 Cu. Ft. and Dryer capacity 5.9 Cu. Ft.
   f. 1/3 HP Badger garbage disposals
2. Clubhouse Appliances
   a. (2) each - Bosch BB26FT50SNS "800 Series" French Door Refrigerator (this refrigerator has been value engineered from $6,400 to $2,500 each).
   b. (1) each - Sharp (model# KB6524PSY) 24 in. W 1.2 cu. ft. Built-in Microwave Drawer in stainless steel
   c. (1) each - GE Profile Series 1.9 cu. Ft, 450 watts warming drawer in stainless steel (model # GPW9000SFSS)
   d. (1) each - 18" Wide undercounter Built-In Wine Cellar by Summit Appliance
   e. (1) each – 15" built-in ice maker by Summit Appliance
3. Window washing system and anchors are excluded.

Window Treatment

1. Window Treatment is excluded from this GMP and therefore will be purchased and installed by the Owner.

DIVISION 13 – SPECIAL CONSTRUCTION

Swimming Pool and Fountains:

1. This contract assumes a complete standard design of the pool. If the AOR/EOR adds additional engineering comments to this design that increase costs, this will be paid by owner.

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2. This contract assumes the following design standards;
    a. 1050 SqFt / Rolling Gutter / 4ft Avg Depth / 31,416 Gal
    b. Monolithic Bond Beam / 6" min floor thickness / 6" min wall thickness
    c. 3,500 PSI Concrete Structure @ 28 days
    d. Steel bar reinforcement #3 Grade 40
    e. Hydraulically balanced plumbing to meet local DOH requirements.
3. Pool finishes have been included as such
    a. Std. Florida stucco pebble interior finish
    b. Waterline tile 6" x 6" ($5 per sq ft F.I. allowance)
    c. Gutter cap bullnose tile 2" x 6" ($4 per linear ft F.I. allowance)
    d. Steel cap bullnose tile 2" x 6" ($7 per linear ft F.I. allowance)
    e. Standard depth and no diving tiles
    f. Standard precast coping 12" x 24" x 1.5"
    g. Stainless steel handrail and ladder
    h. (2) pool lights
4. Any and all waterproofing not specifically included within the Q/A/s and on the Contract Documents are excluded, including, but not limited to concrete additives, control joints or any other liquid applied applications.
5. ADA lift and pool heater are excluded.

DIVISION 14 – VERTICAL TRANSPORTATION

Elevators:

1. Any and all references to elevators and all vertical conveyance systems in non-applicable and therefore excluded.

Trash Chutes and Trash Collection systems:

1. Any and all references to trash chutes is non-applicable and therefore excluded.
2. Waste recycling systems, odor control, trash and recycling containers of any kind are excluded.

DIVISION 15 – MECHANICAL

Fire Protection:

1. A code compliant fully designed system is included with CPVC piping in residential areas.
2. Fire protection coverage throughout residential unit balconies is excluded.
3. Concealed sprinkler heads are excluded.
4. Fire protection of bathrooms less than 55 sf and closets less than 12 sf have been specifically excluded as fire protection in these areas is not required as per the code.

HVAC:

1. No dryer booster fans are included. Moss assumes that all dryers specified are included with a

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long throw type exhaust venting.

2. Start up and commissioning is included.
3. All Testing & Balance and Blower Door Testing is excluded.
4. Condensers on rooftop stands rather than detail in plans. Configurations of stands will be field coordinated based on local code
5. Bath fans are included as Broan with flexible aluminum duct.
6. Xvent boxes utilized for all apartment dryer, bath and O/A penetrations. 4" flexible aluminum to be used for the bath venting and 4" insulated flexible aluminum for O/A duct.
7. The submittal package for the products that will be utilized on this project have been sent to and reviewed/accepted by the design team
8. To get to the GMP value, the air conditioning in the corridors has been value engineered to use (2) ceiling cassette mini-split air handling units (Mitsubishi M Series) in the ceiling of the corridors that would be connected to (1) condenser on the roof. This is in lieu of of the existing air handling units and condensers shown the current contract documents.
9. Please see below for modifications to M0.0.1
    a. Note 2 – It is assumed that the AOR has coordinated the routings of all trades. If excessive re-routing is necessary, this will be at an additional charge
    b. Note 3 – It is assumed that we are further than 3,000 Ft and all reference to non-ferrous materials or corrosion inhibitors are not applicable to this project
    c. Note 13 – Lavatory exhaust will utilize flex alum and all outside air and exhaust will be insulated per code min.
    d. Note 17 – Strike through last 2 lines
    e. Note 19 - First Sentence will only be applicable in Clubhouse
    f. Note 20 – Thermostats will be included per specs provided.
    g. Note 22 – Strike through ACR hard drawn
    h. Note 24 – Strike through Site Glass
    i. Note 24 – We will provide (2) Filters – Construction and Final
    j. Note 28 – All condensate drain piping will be CVPC - Not copper -
    k. Note 30 - Per the AC per specs provided.
    l. Note on M5.0.2 - Duct board will be provided in retail areas, not metal

Plumbing:

1. Water meter(s) & associated meter fees is not included in the GMP and will be provided by Owner.
2. Multiple supplier plumbing fixture package qualified as per the following:
    a. Peerless PTT14219 Shower Faucet
    b. Mansfield Alto 135 – 3173 1.28 GPF Elongated Toilet
    c. Pelican PL-1813 Porcelain Undermount Sink
    d. Peerless P1519LF Single Post Lavatory Faucet
    e. Pelican PL – VS3018 - Single Bowl Undermount kitchen sink
    f. Peerless P199152LF Single handle faucet w/ side spray
    g. 40 gal Water heater
    h. Retail spaces – Tankless water heater

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3. Water riser piping to be CPVC inside the building. Sanitary Piping will be PVC. AC condensate piping will be PVC DWV Sch. 40 with CPVC in the plenums.
4. This contract does not include sound insulation for drainage lines, hot water insulation, vertical condensate drain insulation.
5. Standard free-standing pool shower and hose bib and water bubbler per sheet A1.1.3
6. All Condensate lines will be PVC or CPVC. Insulation on condensate piping will only be used on vertical runs and where required for code minimum.
7. Contrary to note 18 P 0.0.1 , water hammer arrestors will only be used on fixtures required by code.

8. Piping and dog fountain fixture are excluded. Reference note 1 on P1.3.1 – SN10
9. Note 30 on P 0.0.1 refers only to insulation that will be required in the clubhouse building.
10. Note 15 on P 0.0.1 is considered to say "All PVC shall be cellular core no solid core.
11. In working towards the gmp goal, the linear drains depicted around the pool was eliminated and this contract includes the use of (10) areas drains connected to the storm water system.
12. Design team will accept this Q&A as acceptance for our proposed VE per Note 9 on P 0.0.1

DIVISION 16 - ELECTRICAL

Electrical:

1. Radio booster DAS (Distributed Antenna System) and Bi-Directional Amplifying (BDA) systems and equipment are excluded from this GMP, inclusive of design fees. (Note 1 on ALS.1.1 and all other's referencing radio signal boosters are too be negated.
2. Lightning Protection is not included.
3. All reference to two-way communication is not included.
4. Access control system, parking control system, CCTV security system and audio-visual system with equipment are excluded and included by Owner. Electrical Contractor to provide conduit raceways with pull strings as per the provided contract documents.
5. Infrastructure of conduit and pull strings associated with access control is included per the low voltage drawings. The GMP sheets state security by other and this contract assumes these low voltage drawings are the "security" drawings.
6. Lights shown on A1.1.4 on the underside of the balconies overhanging the retail areas are excluded since they are not shown on the electrical plans.
7. This Contract Sum includes an Allowance of $450,000 for residential unit electrical fixtures and trim, ceiling fans, club house, site lighting, and corridors. This is an allowance and assumes ownership and design team will aid lighting dynamics in value engineering the lighting package.
8. MC or Romex cable shall be used where allowed by code.
9. No power, low voltage, or piping provisions are included for water sub-meters.
10. This contract assumes all conduit material, wire material, concrete pads, and transformers are provided by others. This contract includes the installation of the conduit, as depicted on the contract documents, as well as the concrete pad for the proposed transformers. This contract also includes the pulling of the wire from the pole shown to the transformers shown. All final terminations are excluded. All service costs, fees, material cost, and inspections, are excluded

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from this contract.

11. Electrical service to owner upgraded (if selected) insta-hots in lieu of water heaters is excluded.
12. CATV & telephone service raceways (conduit & pull strings) are included.
13. Smart panels to be provided by Hotwire
14. Our Electrical contractor will be taking over as the EOR for the Fire Alarm design. This contract includes a code compliant system regardless of what is shown on the contract documents.
15. Please see below for modifications to E0.0.1
    a. Note 9 – Excluded
    b. Note 13 – Excluded
    c. Note 14 – Not Applicable
    d. Note 24 – It is assumed this has been coordinated by the design team.
    e. Note 25 – Strike through "after hours" and add that this will only be X-ray if required by the structural engineer.
    f. Note 26 – Strike through Sentence "Existing electrical devices...made accessible"
    g. Note 27 – Plenums will only include code compliant material but not the specific material as listed.
    h. Note 38 – Strike through "Where fixtures are not available with integrally mounted test buttons, the test buttons shall be located in a discrete location as determined by the architect up to 50' away from the fixture."
    i. Note 39 – Strike through "New lights and lamps shall match...(through)...The correct mounting height type shall be provided." And Light fixtures installed in areas having exposed food or food preparation areas or kitchens shall be properly licensed and have shatter proof lamps."
    j. Note 44 – Excluded
    k. Note 55 – Excluded – Dimmers not included
    l. Note 59 – Excluded
    m. Note 64 – Excluded

16. Please see below for modifications to E0.0.2
    a. Note A.3 – Excluded
    b. Note A.5, A-6, and A-7 - Will be superseded by the contract
    c. Note A-11 – Exclude
    d. Note A-16 – Will be superseded by the contract warranty period
    e. Note B-5 – Exclude
    f. Note B-6 – Strike through note – All Wire will be pulled per code.
    g. Note B-7 – Excluded
    h. Note B-8 – Excluded
    i. Note B-18 - Strike through note – All conduit will meet the need of the project plans and be per code
    j. Note C-2 – This is not correct. There would be no point of the shop drawing process if this is the case.
    k. Note C-6 – Change to 8 weeks
    l. Note E-3 – Excluded
    m. Note E-8 – Strike through note – Insulation provided per code min.

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THE MID
Lake Worth, FL

EXHIBIT B – Contract Documents

Moss shall provide the following

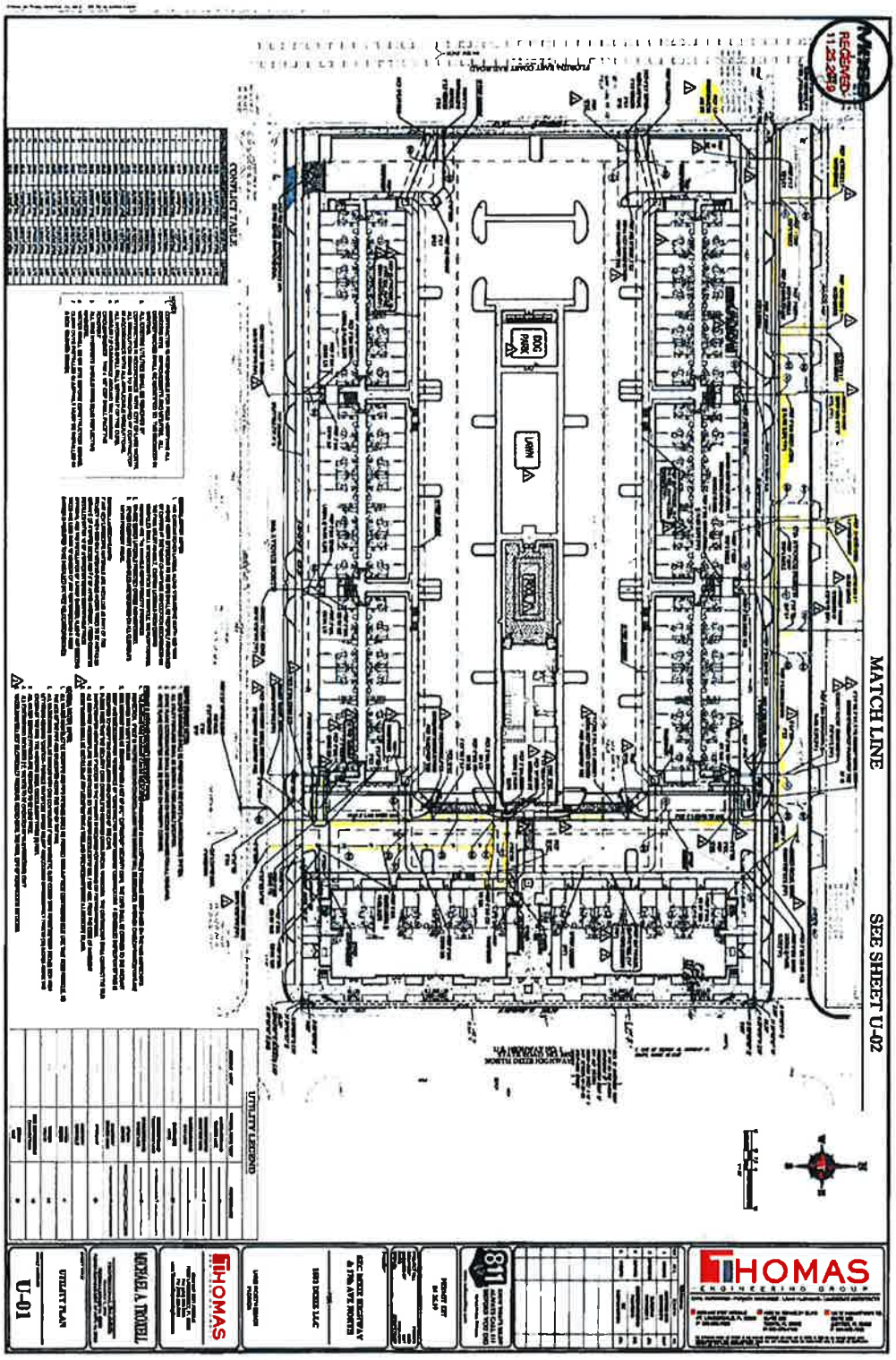
- Portion of electrical infrastructure required to provide electricity to serve the Project's proposed 230 multifamily units with clubhouse, and first floor live/work space.
- 17th Avenue North shall be milled and resurfaces from Dixie Highway west to the rail right-of-way as set forth in Exhibit B. In addition, F curb and gutter shall be added to aid with stormwater conveyance, also as set forth in Exhibit B.
- Portion of water infrastructure required to provide potable water and fire protection distribution mains to serve the Project's proposed 230 multifamily units with clubhouse, and first floor live/work space.
- Portion of stormwater infrastructure required to provide a stormwater collection and management system to serve the Project's proposed multifamily with commercial use space of approximately 5.46 acres.
- Portion of sanitary sewer infrastructure required to provide sanitary sewer collection system to serve the Project's proposed 230 multifamily units with clubhouse, and first floor live/work space.

DS DS JB

MOSS

THE MID
Lake Worth, FL

EXHIBIT B – Contract Documents



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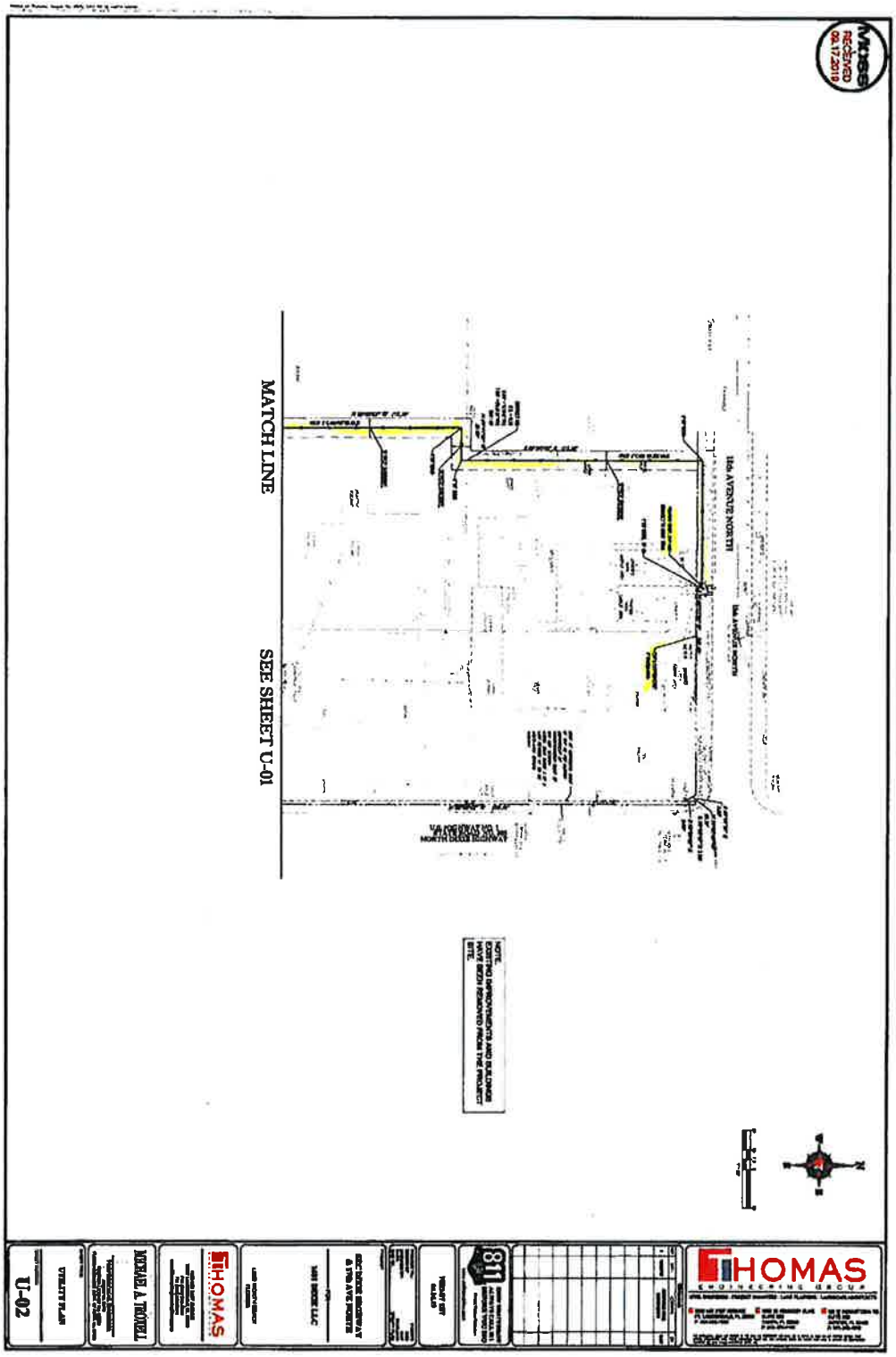
THE MID
Lake Worth, FL

EXHIBIT B – Contract Documents



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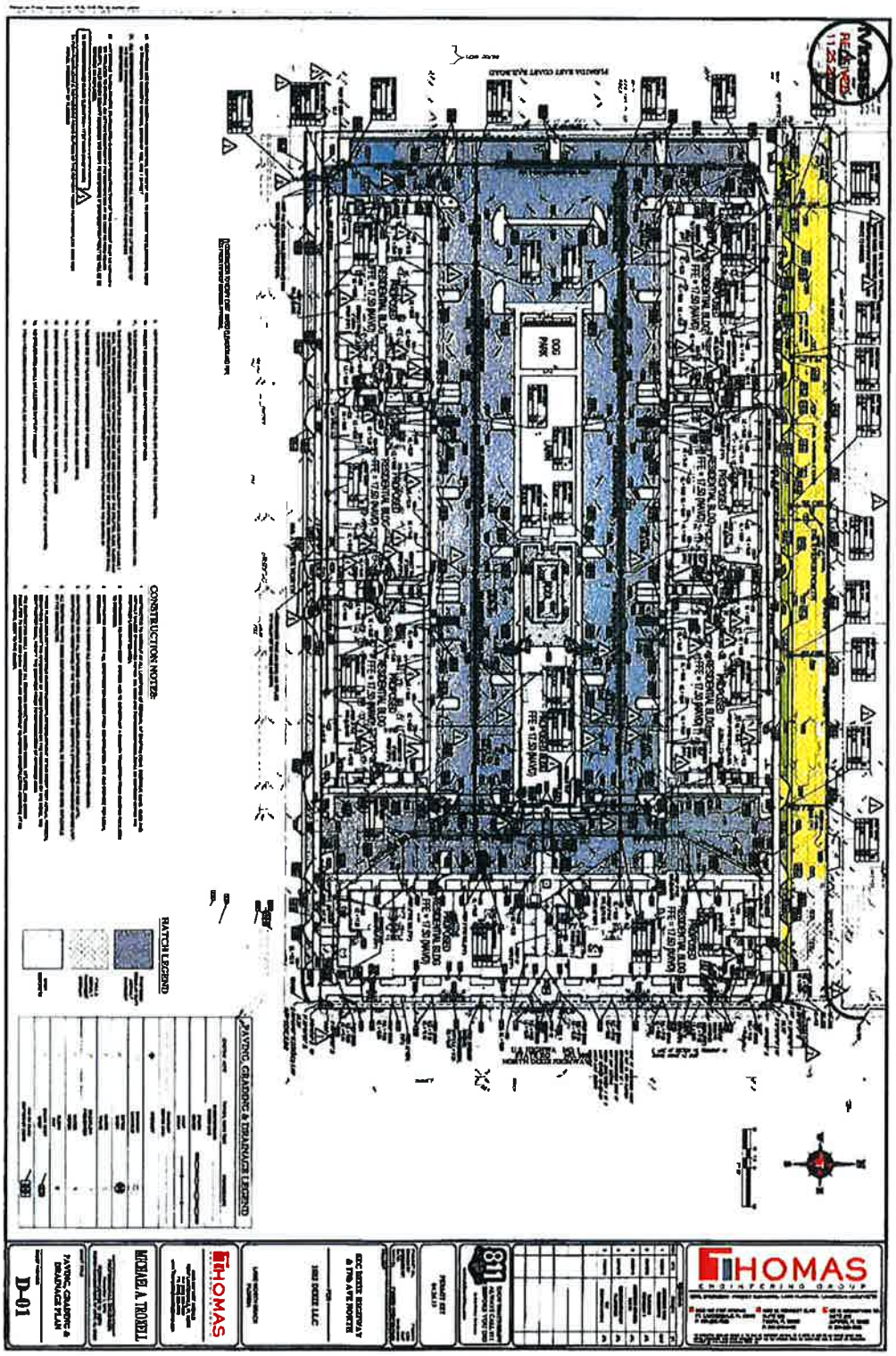
THE MID
Lake Worth, FL

EXHIBIT B – Contract Documents



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THE MID
Lake Worth, FL

EXHIBIT B – Contract Documents

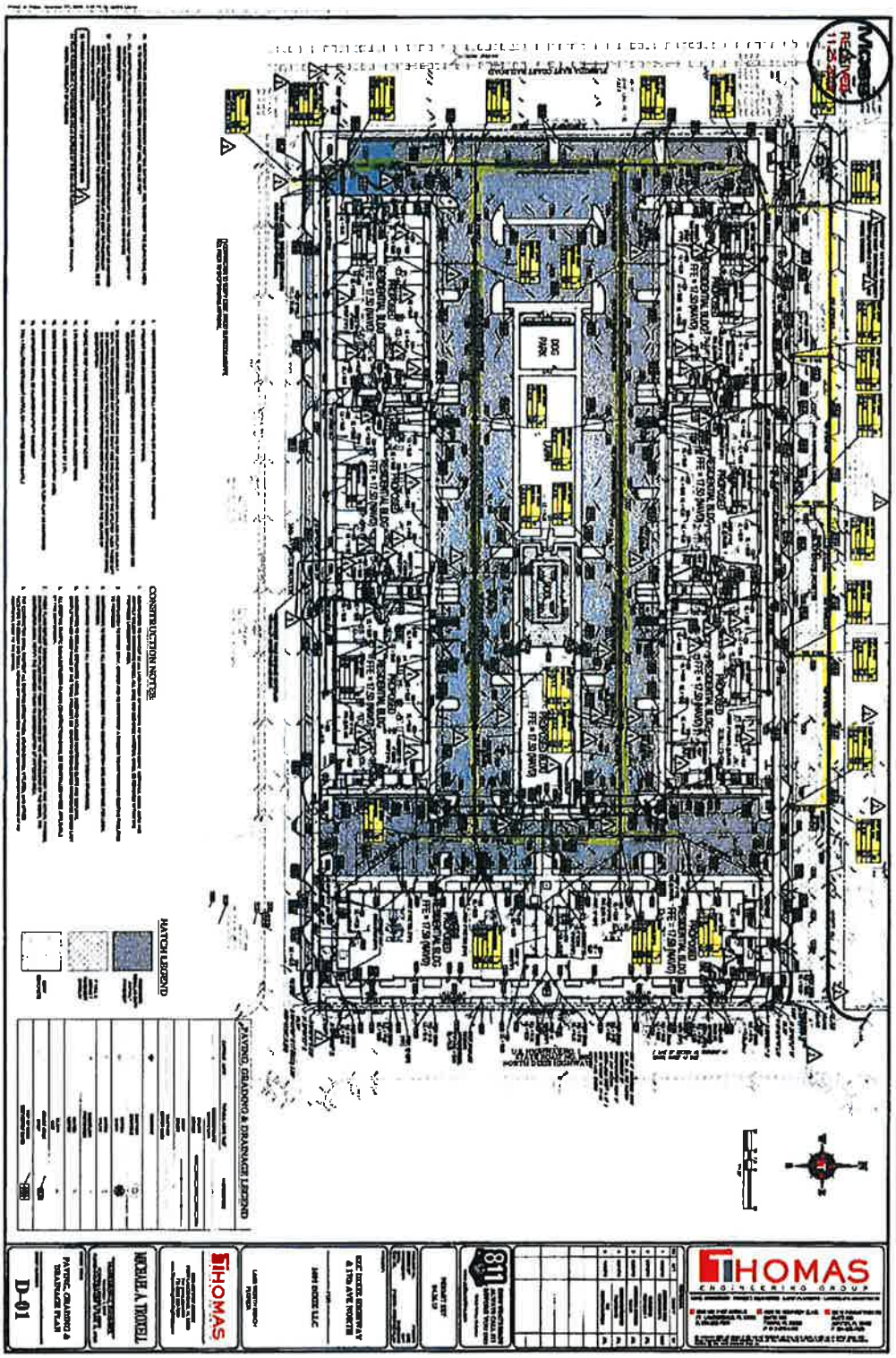

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EXHIBIT "A-2"

Public Construction Bond with Dual Obligee Rider

(attached hereto)

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PAYMENT AND PERFORMANCE BOND
(Florida Public Works)

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
Hartford, Connecticut 06183

Bond No.: 106856754

Bond MUST be recorded in public records of County where improvement is located

Principal (Contractor) : Moss & Associates, LLC
Address: 2101 N. Andrews Avenue, Fort Lauderdale, FL 33311
Telephone: (954) 524-5678

Surety: Travelers Casualty and Surety Company of America
Address: One Tower Square, Hartford, CT 06183
Telephone: (407) 388-7814

Owner: 1601 Dixie LLC
Address: 414 N Andrews Avenue, Fort Lauderdale, FL 33301
Telephone: (954) 451-5252

Project Description: The Mid, 1601 North Dixie Highway, Lake Worth Beach , FL 33460

NOTE: Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

BY THIS BOND, We, Moss & Associates, LLC, called the Principal, and Travelers Casualty and Surety Company of America, a Connecticut corporation, called the Surety, are bound to 1601 Dixie LLC, herein called Owner, in the sum of One Million Thirty Five Thousand 00/100 Dollars ($1,035,000.00) for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated January 30, 2020, between Principal and Owner for construction of The Mid, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and

2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and

3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and

4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

Signed and dated this 4th day of February, 2020.

Moss & Associates, LLC
(Principal)

By: _____
David Glasser, Vice President

Travelers Casualty and Surety Company of America

By: _____
William Scott Trethewey, Attorney-in-Fact

TRAVELERS

Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **William Scott Trethewey** of **FT LAUDERDALE** , **Florida** , their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **17th** day of **January**, **2019.**

State of Connecticut

City of Hartford ss.

By: _____
Robert L. Raney, Senior Vice President

On this the **17th** day of **January**, **2019**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, **2021**

_____
Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **4th** day of **February** , **2020** .

_____
Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which this Power of Attorney is attached.

DUAL OBLIGEE RIDER
(Concurrent Execution)

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
Hartford, Connecticut 06183

This Rider is executed concurrently with and shall be attached to and form a part of performance bond No. 106856754.

WHEREAS, on or about the 30th day of January, 2020, Moss & Associates, LLC (hereinafter called the "Principal"), entered into a written agreement with 1601 Dixie LLC (hereinafter called the "Primary Obligee") for the construction of the The Mid (hereinafter called the "Contract"); and

WHEREAS, Principal is required by the Contract to provide a performance bond and Primary Obligee has requested that City of Lake Worth Beach, Florida, ATTN: City Manager, 7 N Dixie Highway, Lake Worth, FL 33460, be named as an additional obligee under the performance bond; and

WHEREAS, Principal and Travelers Casualty and Surety Company of America (hereinafter referred to as "Surety") have agreed to execute and deliver this Rider in conjunction Performance Bond No. 106856754 (hereinafter referred to as "Performance Bond")

NOW, THEREFORE, the undersigned hereby agree and stipulate that City of Lake Worth Beach, Florida, ATTN: City Manager, 7 N Dixie Highway, Lake Worth, FL 33460 shall be added to said bond as a named obligee (hereinafter referred to as "Additional Obligee"), subject to the conditions set forth below:

1. The Surety shall not be liable under the Bond to the Primary Obligee, the Additional Obligee, or any of them, unless the Primary Obligee, the Additional Obligee, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) strictly in accordance with the terms of said Contract as to payments and shall perform all other obligations to be performed under said Contract at the time and in the manner therein set forth.

2. The aggregate liability of the Surety under the Bond, to any or all of the obligees (Primary and Additional Obligees), as their interests may appear, is limited to the penal sum of the Bond; the Additional Obligee's rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, and the total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract. At the Surety's election, any payment due under the performance bond may be made by joint check payable to one or more of the obligees.

3. The Surety may, at its option, make any payments under said Performance Bond by check issued jointly to all of the obligees.

Except as herein modified, the Bond shall be and remains in full force and effect.

Signed this 4th day of February, 2020.

Moss & Associates, LLC
(Principal)

By: _____
David Glasser, Vice President,

Travelers Casualty and Surety Company of America

By: _____
William Scott Trethewey, Attorney-in-Fact

TRAVELERS

Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **William Scott Trethewey** of **FT LAUDERDALE**, **Florida**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **17th** day of **January, 2019.**

State of Connecticut

City of Hartford ss.

By: _____
Robert L. Raney, Senior Vice President

On this the **17th** day of **January, 2019**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June, 2021**

_____
Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **4th** day of **February**, **2020**.

_____
Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which this Power of Attorney is attached.

EXHIBIT "A-3"

Escrow Agreement

(attached hereto)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") entered into this 24th day of February, 2020, by and between First American Title Insurance Company ("Escrow Agent"), City of Lake Worth Beach, a Florida municipal corporation ("City") and 1601 Dixie, LLC, a Florida limited liability company ("Owner").

W I T NE S S E T H:

WHEREAS, City and Owner entered into that certain Economic Development Incentive Agreement with Effective Date of May 1, 2018 as modified by that Amendment dated December 13, 2019 and by that Second Amendment dated February ___, 2020 (the "Incentive Agreement"); and

WHEREAS, Owner has entered into a separate contract with Moss & Associates, LLC ("Contractor") for the construction of the Infrastructure Improvements as identified in the Incentive Agreement (the "Infrastructure Contract"); and

WHEREAS, City and Owner have agreed to enter into this Escrow Agreement in order to address potential issues that may arise during the construction of the Infrastructure Improvements under the Infrastructure Contract; and

WHEREAS, except as specifically modified by written instruction executed by all parties and accepted by Escrow Agent, the following General Conditions of Escrow shall apply to this escrow, and the Escrow Funds received hereunder.

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

1. Recitals. The above recitals are true and correct and are hereby incorporated into and made a part hereof.

2. Deposit of Escrow Funds. As provided in the Incentive Agreement and upon the Owner's satisfaction of certain conditions precendent, the City will deposit $517,500 with the Escrow Agent (the "Escrow Funds"). The Escrow Funds (and any Additional Escrow Funds, as described below) while in escrow shall be subject to all terms and conditions of this Escrow Agreement and the Incentive Agreement, which is attached hereo to as **Exhibit "1"**. Escrow Agent is directed to deposit the Escrow Funds (and any Additional Escrow Funds, as described below) in an interest-bearing account, which account shall be maintained in the name of First American Title Insurance Company as Escrow Agent for the parties to this Escrow Agreement. Interest earned on the Escrow Funds (and any Additional Escrow Funds, as described below) deposited shall accrue to the benefit of Owner, who has provided a completed and executed W-9 form to Escrow Agent. **THE ESCROW FUNDS WILL NOT BE PLACED INTO AN INTEREST-BEARING ACCOUNT UNTIL AND UNLESS ESCROW AGENT HAS RECEIVED THE COMPLETED W-9 FROM THE OWNER.** Accrued interest shall accumulate and constitute a part of the escrow. Escrow Agent shall not be responsible for (a) any fluctuation in the rate on

interest accruing on deposited escrow funds; (b) any failure on the part of the Bank; (c) the unavailability of FDIC insurance on all or any portion of the deposited escrow funds or (d) any other matters beyond the direct and exclusive control of Escrow Agent.

3. Owner's Default. As provided in the Incentive Agreement, in the event of a default by Owner under the Infrastructure Contract, Contractor shall deliver a copy of such written notice of default to Owner, City and to Escrow Agent, which shall identify the reason for default and all amounts demanded to be paid to Contractor under the Infrastructure Contract (a "Default Notice"). In the event that City receives a Default Notice from Contractor then, within ten (10) business days, City shall in its sole discretion have the right, but not the obligation and in addition to any other remedy City may have, to direct Escrow Agent in writing to release the portion of the Escrow Funds as is demanded in the Default Notice to Contractor pursuant to the terms of the Infrastructure Contract. If Escrow Agent receives such written direction from City, Escrow Agent shall promptly (within five (5) business days of receipt of City's written direction) release the identified Escrow Funds amount to Contractor.

If Escrow Agent has released all of Escrow Funds to Contractor pursuant to City's written direction and City receives an additional Default Notice(s) from Contractor, City shall in its sole discretion have the right, but not the obligation, to deposit additional Escrow Funds in the amount demanded in the additional Default Notice(s) with the Escrow Agent within ten (10) business days of receipt of the Default Notice(s) (the "Additional Escrow Funds"). City may then direct Escrow Agent to pay the Additional Escrow Funds as demanded in the additonal Default Notice(s) to Contractor pursuant to the terms of the Infrastructure Contract. If Escrow Agent receives such Additional Escrow Funds and written direction from City then Escrow Agent shall promptly (within five (5) business days) release such funds to Contractor.

Upon receipt by Escrow Agent of a written notarized statement by Contractor to the City, Owner and Escrow Agent of the Contractor's receipt of an amount equal to the Escrow Funds for work under the Infrastructure Contract, which shall include a statement that there is no pending default under the Infrastructure Contract and that the Public Construction Bond for the construction work remains in full force and effect ("Receipt Notice"), the Escrow Funds (or the remaining portion of the Escrow Funds) shall be released by the Escrow Agent to Owner (or, at Owner's election to an account controlled by Owner's lender).
All parties to this Escrow Agreement shall have the right to audit all payments made by the Escrow Agent including, but not limited to, all documentation submitted to the Escrow Agent for disbursement of funds to the Contractor.

All costs, fees and expenses of this Escrow Agreement shall be charged to the Escrow Funds or the Owner if the Escrow Funds are insufficient to pay all costs, fees and expenses of this Escrow Agreement.

4. Limitations of Liability: Without limitation, Escrow Agent shall not be liable for any loss or damage resulting from the following:

a. The financial status or insolvency of any other party or any misrepresentation made by any other party.

b. Any legal effect, validity, insufficiency, or undesirability of any instruction and notice deposited with or delivered by or to Escrow Agent or exchanged by the parties hereunder, whether or not Escrow Agent prepared such instrument.
c. The default, error, action or omission of any other party to the escrow.
d. Any loss or impairment of Escrow Funds that have been deposited in escrow while those funds are in the course of collection or while those funds are on deposit in a financial institution if such loss or impairment results from failure, insolvency or suspension of a financial institution, or any loss or impairment of funds due to a invalidity of any draft, check, document or other negotiable instrument delivered to the Escrow Agent.
e. The expiration of any time limit or other consequence of delay, unless a properly executed settlement instruction, accepted by Escrow Agent has instructed the Escrow Agent to comply with said time limit.
f. Escrow Agent's compliance with any legal process, subpoena, writ, order, judgment or decree of any court, whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.
g. Any mistakes of fact or errors in judgment, or any acts or omissions of any kind, unless caused by its willful misconduct or gross negligence.

4. Completion of Escrow: Upon completion of the disbursement of the Escrow Funds and any Additional Escrow Funds and delivery of instruments, if any, and after receiving written approval from both parties, Escrow Agent shall be automatically released and discharged of its escrow obligations hereunder.

5. Benefit: These conditions of escrow shall apply to and be for the benefit of agents of the Escrow Agent employed by it for services in connection with this escrow, as well as for the benefit of Escrow Agent. There are no third party beneficiaries to this Escrow Agreement.

6. Attorney's Fees: In the event that litigation is initiated relating to this escrow, the parties hereto agree that Escrow Agent shall be held harmless from any attorney's fees, court costs and expenses relating to that litigation to the extent that litigation does not arise as a result of the Escrow Agent's fault. To the extent that Escrow Agent holds Escrow Funds under the terms of this escrow (excluding any Additional Escrow Funds), the parties hereto, other than Escrow Agent agree that the Escrow Agent may charge those Escrow Funds with any such attorney's fees, court costs and expenses as they are incurred by Escrow Agent. In the event that conflicting demands are made on Escrow Agent, or Escrow Agent, in good faith, believes that any demands with regard to the Escrow Funds or Additional Escrow Funds are in conflict or unclear or ambiguous, Escrow Agent may bring an interpleader action in an appropriate court in Palm Beach County, Florida. Such action shall not be deemed to be the "fault" of Escrow Agent, and Escrow Agent may lay claim to or against the Escrow Funds for its reasonable costs and attorneys fees in connection with same, through final appellate review.

7. Duties of Escrow Agent: Agent is authorized and agrees by acceptance of the Escrow Agreement to hold and deliver the same or the proceeds thereof in accordance with the terms hereof. Escrow Agent is acting as a stakeholder only with respect to the Escrow Funds and any Additional Escrow Funds and Escrow Agent's duties are purely ministerial in nature. In the event of doubt as to its liabilities or duties, Escrow Agent may, in its sole discretion (i) continue

to hold the Escrow Funds and Additional Escrow Funds until the parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction in Palm Beach County, Florida, shall determine the rights of the parties thereof, or (ii) deliver the Escrow Funds and any Additional Escrow Funds and the proceeds thereof to the Clerk of the Circuit Court for Palm Beach County or other court of competent jurisdiction in Palm Beach County, Florida, and upon notifying all parties concerned of such action, any liability on the part of the Escrow Agent shall fully terminate except to the extent of accounting for monies or documents previously delivered out of escrow. In the event of any suit wherein Escrow Agent is made a party by virtue of acting as agent, or in the event of any suit initiated by or against Escrow Agent, Escrow Agent may interplead any money held by Escrow Agent. Escrow Agent shall be entitled to recover reasonable attorneys' fees and costs incurred in negotiation, at trial and upon appeal, said fees and costs to be charged and assessed as court costs in favor of Escrow Agent and immediately paid by the non-prevailing party. The parties agree that Escrow Agent shall not be liable to anyone for misdelivery of monies unless such misdelivery shall be due to willful breach of this Escrow Agreement or gross negligence on the part of Escrow Agent. Escrow Agent shall not be liable for any loss resulting from any default, error, action or omission, loss or impairment of funds in the course of collection or while on deposit resulting from failure or suspension of the depository institution or Escrow Agent's compliance with any legal process, order or judgment of any court, whether or not subsequently vacated or modified.

8. Dispute: In the event of a dispute or controversy between the parties to the with regard to the Escrow Funds or Additional Escrow Funds, the Escrow Agent reserves the right to resign as Escrow Agent, upon thirty days written notice by Escrow Agent to all parties to this Escrow Agreement.. Escrow Agent shall transfer Escrow Funds and Additional Escrow Funds to a successor Escrow Agent upon joint written instruction from all parties to this Escrow Agreement within said thirty-day period. Failure of any notice of replacement Escrow Agent shall cause Escrow Agent to interplead the Escrow Funds and Additioanl Escrow Funds as provided herein.

9. Escrow Fee: Escrow Agent will be entitled to a fee in the amount of $400.00 for performing its duties hereunder. The parties hereto agreed that the fee will be subtracted from the Escrow Funds at time of disbursement to either Owner or Owner's lender (as applicable).

10. Release of Escrow Funds and Additional Escrow Funds: Escrow Agent shall release or disburse Escrow Funds and any Additional Escrow Funds only pursuant to a written notice as provided in this Escrow Agreement.

11. Notices: All notices, requests, disbursements (except wire transfers, which shall be deemed to have been duly given after confirmation of receipt given by the recipient bank as directed in the wiring instructions) or other communications shall be in writing, shall be provided to all parties (as identified below) and shall be deemed to have been duly given on the date sent if: a) by electronic or email transmissions to the email addresses provided below, said email notice shall be deemed effective upon completion of the email, so long as the email notice has the proper and necessary notice attached by a PDF attachment with the required signature(s) and the sender retains written proof of time date and successful transmission; b) sent Federal Express or by similar private overnight courier service, or c) sent certified mail, return receipt requested, with all post

charges prepaid, and addressed to the following addresses for each party or to such further addresses as any such party may designate by written notice given pursuant to this paragraph:

Escrow Agent:

First American Title Insurance Company
2121 Ponce de Leon Blvd., Suite 710
Coral Gables, FL 33134
Attention: Yessie A Gonzalez, Senior Commercial Escrow Officer
Phone no.: (305)908-6253
Fax no.: (866) 908-6012
E-mail: YeGonzalez@firstam.com

Owner:

1601 Dixie, LLC
414 N. Andrews Ave
Fort Lauderdale, FL 33301
ATTN: Jeffrey Burns and Nick Rojo, Jr.
E-mail: jburns@affiliateddevelopment.com; nrojo@affiliateddevelopment.com

with copies to:

Greenspoon Marder LLP
200 E. Broward Blvd., Suite 1800
Fort Lauderdale, FL 33301
ATTN: Mark J. Lynn, Esq.
E-mail: mark.lynn@gmlaw.com

City:

City of Lake Worth Beach
7 N. Dixie Highway
Lake Worth Beach, FL 33460
ATTN: Michael Bornstein, City Manager
E-mail: mbornstein@lakeworthbeachfl.gov

with copies to:

Torcivia, Donlon, Goddeau & Ansay, P.A.
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407
ATTN: Christy L Goddeau, Esq.
christy@torcivialaw.com

13. Entire Agreement. This Escrow Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be modified or amended except pursuant to a written instrument executed by all parties.

14. Governing Law. The laws of the State of Florida shall govern the validity, construction, enforcement and interpretation of this Escrow Agreement. Any legal action instituted in connection herewith involving Escrow Agent shall be maintained only in Palm Beach County, Florida.

15. Parties Bound. This Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns.

16. Time of Essence. Time is of the essence in this Escrow Agreement.

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

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SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the day and year first above written.

Signed, sealed and delivered in the presence of:

Owner:

1601 Dixie, LLC

_____
(Name:type/print) Kenia Santos

BY: _____
Name (type/print) Jeff Burns
its President

_____
(Name:type/print) Sal Adams

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE OF CITY AND ESCROW AGENT FOLLOW

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Deborah M. Andrea, City Clerk

By: _____
Michael Bornstein, City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____ FOR
Glen J. Torcivia, City Attorney

APPROVED FOR FINANCIAL SUFFICIENCY

By: _____
Bruce T. Miller, Financial Services Director

Escrow Agent:

FIRST AMERICAN TITLE INSURANCE COMPANY

BY: _____
Name (type/print) ~~Yessie A. Gonzalez~~
its ~~Senior Commercial Escrow Officer~~, Paralegal

_____
(Name: type/print) Francis Mauricio

_____
(Name:type/print) Maykel Rodriguez

EXECUTIVE BRIEF
REGULAR MEETING

AGENDA DATE: March 5, 2020 **DEPARTMENT:** Community Development

TITLE:

Ordinance No. 2020-02 - amending Chapter 23 Entitled “Land Development Regulations” of the Code of Ordinances by amending article I “General provisions” relating to “Definitions” and Article 3 “Zoning Districts” by creating a Cultural Arts District Overlay zone

SUMMARY:

Ordinance No. 2020-02 amends Chapter 23, Article 1, “General Provisions, Definitions” and Article 3, Division 9, Section 23.3-29 “Reserved” of the City’s Code of Ordinances to replace this section with the proposed section entitled “Cultural Arts district overlay”.

BACKGROUND AND JUSTIFICATION:

Background:
Ordinance No. 2020-02 proposes to add a Cultural Arts district overlay zone to Chapter 23 of the City’s Code of Ordinances.

On November 29, 2017, staff facilitated a joint workshop with both the Planning and Zoning Board and City Historic Resource Preservation Board to review potential amendments to Chapter 23 of the City Code. A copy of the notes from that meeting are attached as Attachment B.

On March 7 and March 14th, the City Planning and Zoning Board and City Historic Resource Preservation Board, respectively, both sitting as the duly constituted Local Planning Agency for the City, held public hearings for Ordinance 2018-07 that included among other amendments, the creation of this overlay zone. Both boards recommended approval of the proposed ordinance.

On April 24, 2018, the City Commission held a workshop to review the proposed LDR amendments. Minutes from this workshop are attached as Attachment C.

At the May 15, 2018 City Commission meeting, the Commission heard on first reading the proposed Ordinance 2018-07. The Commission did not approve the ordinance but made suggested changes to enable staff to bring the ordinance back based on their comments. Based on comments at the meeting, the Cultural Arts portion of the ordinance was removed at that time to be brought back to the commission as a separate ordinance.

On December 5 and December 12, 2018, the City Planning and Zoning Board and City Historic Preservation Board, respectively, held public hearings for the Comprehensive Plan Amendments that included the Cultural Arts Master Plan and forwarded a recommendation to the City Commission, which subsequently voted to approve the Comprehensive Plan

amendments in April of 2019. The proposed LDR amendment in this ordinance provides for the alignment of the LDRs with the Adopted Comprehensive Plan, by proposing new language related to the Cultural Arts Overlay District.

Ordinance 2020-02 includes all proposed changes in strikethrough and underline format.

At its meeting of February 18, 2020, the commission voted 5-0 to approve the ordinance on first reading and to schedule the second reading and public hearing for March 3, 2020.

Justification
The purpose of this ordinance is to create an optional Cultural Arts overlay district that will allow for certain arts-related businesses to be located within single family or two-family units, allowing for a live/work environment for the owner within a defined area of the city more fully described in the ordinance and as shown in Exhibit .

MOTION:

Move to approve/disapprove Ordinance No. 2020-02 – amending Chapter 23, Article 1, Definitions and Article 3, Division 9, Section 23.3-29 of the City of Lake Worth Beach Code of Ordinances.

ATTACHMENT(S):
Revised Ordinance 2020-02

ORDINANCE NO. 2020-02 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 ENTITLED "LAND DEVELOPMENT REGULATIONS" OF THE CODE OF ORDINANCES BY AMENDING ARTICLE I "GENERAL PROVISIONS" RELATING TO DEFINITIONS; ARTICLE 3 "ZONING DISTRICTS" BY CREATING A CULTURAL ARTS DISTRICT OVERLAY; AND FOR OTHER PURPOSES; PROVIDING FOR SEVERABILITY, CONFLICTS, AND CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lake Worth Beach, Florida (the "City") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the City adopted a new Chapter 23 "Land Development Regulations" of the Code of Ordinances on August 6, 2013 ("2013 Regulations"); and

WHEREAS, the 2016 Evaluation and Appraisal Review (EAR) resulted in major amendments to the City's Comprehensive Plan including the creation of the "Cultural Arts Overlay (Policies 1.1.1.1 and 1.1.1.14); and

WHEREAS, The Cultural Arts Overlay land use category is intended to provide for the establishment and enlargement of cultural arts related uses within a variety of broader land use categories near the urban core of the city and along the FEC railway corridor within close proximity of the historic downtown with the implementing zoning districts to include DT, MU-E, MU-DH, SF-R, SF-TF 14, TOD-E, and AI.; and

WHEREAS, on October 10, 2018, the City adopted the Cultural Master Plan, as prepared by Lord Cultural Resources and Jon Stover Associates, under the direction of the Cultural Council of Palm Beach County; and

WHEREAS, on April 16, 2019, the City Commission adopted an amendment to the Comprehensive Plan to include by reference the adopted Cultural Arts Master Plan; and

WHEREAS, the Planning and Zoning Board, in its capacity as the local planning agency, considered the proposed amendments at a duly advertised public hearing; and

WHEREAS, the Historic Resources Preservation Board, in its capacity as the local planning agency for historic districts, considered the proposed amendments at a duly advertised public hearing; and

WHEREAS, the City Commission has reviewed the recommended amendments, and has determined that the amendments are in the best interest of the public health, safety, and welfare of the City and its residents and serve a valid public purpose.

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

Section 1. The foregoing recitals are hereby affirmed and incorporated herein.

Section 2. Chapter 23, Article 1, Division 2, Section 23.1-12, Definitions, is hereby amended by adding the words shown in underlined type and deleting the words struck through as follows:

Arts related personal improvement services: Establishments primarily engaged in providing instruction in (i) the visual arts, including, but not limited to, painting, sculpting, photography and folk arts, or (ii) the performing arts including, but not limited to, music, dance, and theatre. This does not include any instruction related to tattooing or body piercing.

Artist studio, single artist (or "Single-artist studio"): A building, or portion thereof, used as a place of work by a single artist engaged in (i) the visual arts, including, but not limited to, painting, sculpting, photography and folk arts, or (ii) the performing arts, including, but not limited to, music, dance, and theatre. A single-artist studio includes the creation of work and the accessory sale of work produced only by the artist in his or her own studio. Works from other artists may not be offered for sale. This does not include a studio for tattooing or body piercing.

Artist studio, multiple-artists (or "Multiple-artists studio"): A building, or portion thereof, used as a place of work by multiple artists engaged in (i) the visual arts, including, but not limited to, painting, sculpting, photography and folk arts, or (ii) the performing arts, including, but not limited to, music, dance, and theatre. A multiple-artists studio includes the creation of work and the accessory sale of work produced by multiple artists using or sharing the studio(s). Works from other artists may not be offered for sale. This does not include a studio for tattooing or body piercing.

Gallery: A building or portion thereof, used as a place to exhibit and offer for sale the works of visual artists, including, but not limited to, painting, sculpting, photography and folk arts.

Section 3. Chapter 23, Article 3, Division 9, Section 23.3-29, Reserved, is hereby amended by creating the Cultural Arts District Overlay by adding the words shown in underlined type and deleting the words struck through as follows:

Sec. 23.3-29~~. – Reserved.~~ Cultural Arts district overlay

a) *Intent.* The purpose of the Lake Worth Beach Cultural Arts Overlay District, also referred to as the “Arts Overlay District” or the “Arts District” is to provide an optional

set of land development regulations for single family and two family dwellings in a targeted sub-area of the City's Downtown, Mixed Use - East, Mixed Use – Dixie Highway, TOD-E, Artisanal Industrial and residential areas in close proximity to these zoning districts. The establishment of an Arts District provides for regulations that are more responsive to the needs of artists in the community, encourages more owner-occupied dwellings in this geographic area and expands the economic opportunities for home owners, property owners, and artists.

b) *Applicability*. The following area of the City is hereby established as the Cultural Arts Overlay District:

The area bounded on the east by Dixie Highway, on the south by 6th Avenue South, on the west by the alley west of "F" street, and on the north by 3rd Avenue North.

c) *Use restrictions*. Refer to the permitted use table at section 23.3-6 for a complete list of uses, which includes those uses allowed by the underlying zoning district.

1. *Principal uses permitted by Administrative Use.*
   - *A. Artisan Studio*
   - *B. Arts and Crafts Studio*
   - *C. Art Gallery*
   - *D. Bakery*
   - *E. Ceramics Studio with Kiln*
   - *F. Ceramics Studio without Kiln*
   - *G. Commissary Kitchen*
   - *H. Craft Gallery*
   - *I. Custom Jewelry Fabrication/Studio*
   - *J. Photography Studio*
   - *K. Photography gallery (including picture framing)*
   - *L. Pottery Shop/Studio*
   - *M. Recording Studio*
   - *N. Sculpture Studio with Kiln*
   - *O. Sculpture Studio w/o Kiln*
   - *P. Stained Glass Studio*
2. *General.*
   - A. The provisions of the Arts Overlay District shall be available through the Administrative Use process (See Section 23.2-128 (b)) for parcels containing a single-family detached dwelling unit, with or without an accessory dwelling unit, or a two-family dwelling unit.
     - i. Parcels with a two-family dwelling unit shall be owned by the same person or entity.
     - ii. Parcels with multi-family units may be converted to a single-family or two-family unit in order to comply with this section.

B. Existing nonconforming dwellings within this overlay may be used for this purpose so long as the building footprint or building area is not expanded or additional residential structures added to the lot.
C. Using the provisions of the Arts District can benefit a property owner by allowing greater intensity and variety of uses than would otherwise be allowed in the base Zoning District.
D. The use of the Arts Overlay District is optional. However, if the owner or artist opts to use the Arts Overlay District, the provisions and requirements of the Arts District must be used in their entirety. An owner or artist may not select only specific elements from the Arts Overlay District regulations.
E. Not all types of arts uses will be appropriate for the residential areas eligible for the optional Arts District. The addition of arts uses can be very compatible and add to the character of a neighborhood, but some more intensive uses with negative impacts such as noise, fumes, dust or hours of operation will not be suitable for location in the Arts District.
F. Section 23.2.28, "Home Occupations", does not apply to arts related businesses regulated in this overlay district.
G. In addition to the standards provided in this section, all applicable standards and reviews must be met for properties located within a Historic District.
H. To the extent that the Arts District does not address a specific development requirement, the regulations contained in the base zoning district and in the entirety of these LDRs shall apply.

d) *Development regulations*.

1. *Design and performance standards*

A. Dwelling units in the Arts Overlay District must be owner occupied.
B. For a single-artist studio in a single family dwelling unit, the artist must be a resident in the dwelling unit. For a single-artist studio in a two-family dwelling, the artist must be a resident in one (1) of the dwelling units.
C. For a multiple-artists studio as a permitted use, the maximum number of artists allowed shall be two (2) and both artists must be full time residents in the dwelling unit.
D. No additional dwelling units shall be created and no accessory structures shall be used for living purposes, unless said accessory structure is an approved dwelling unit.
E. No more than one (1) non-resident employee is permitted per artist.
F. Notwithstanding Section 23-4.6 "Home Occupations", up to fifty percent (50%) of the dwelling unit may be used for the arts related business.

2. *Outdoor storage*. Outdoor storage shall comply with Section 23.4-19. All materials and work products related to the arts related business must be stored in an enclosed building.

3. *Outdoor impacts*.

A. Any creation of art that generates excessive noise or is not compliant with Section 15-24 of the Code or otherwise not in keeping with noise levels appropriate to a residential zoning district, is prohibited. Noise generating activities must be located in a completely enclosed building that attenuates the noise.

B. Excessive lights, dust, fumes, odors, and vibrations are prohibited unless the impacts are mitigated and the activity is located in a completely enclosed building that attenuates the lights, dust, fumes, odors and vibrations. Excessive lights, dust, fumes, odors and vibrations are those that due to intensity, frequency, or duration disrupt the ability of the neighbors to enjoy and use their property.

4. *Solid waste disposal*. All solid waste shall be disposed of in individual residential pick-up containers. Dumpsters are not permitted.

5. *Parking*.

A. No additional parking is required for a single-artist studio.

B. For all other arts related businesses, one (1) additional parking space shall be provided for every 500 square feet or portion thereof of the arts related business.

C. Additional required parking may be located either on-site or immediately adjacent to the lot on the public street.

D. If additional on-site parking is added, it shall be located behind the front building line unless approved through a conditional use permit.

6. *Signage*.

A. One (1) permanent sign to identify the arts use shall be allowed. The sign may be a wall sign, a projecting sign, or a freestanding sign, and shall not exceed four (4) square feet in area.

B. One (1) directional sign is allowed, not to exceed four (4) feet in height and three (3) square feet in area.

C. A wall sign may be attached as follows:

i. Attached to the façade of the main building.

ii. Attached to a structure containing an arts studio.

iii. Attached to a fence on the property, provided it does not impede pedestrians or impact sight distances.

D. The projecting sign may be hung from a porch or other portion of the main structure or studio. No portion of any sign is allowed above the first floor.

E. A freestanding sign shall be a maximum of five (5) feet in height. Such freestanding sign may be placed within five (5) feet of the property line provided that the sign does not impede pedestrians or impact sight distances. A freestanding sign may be a pole sign, but may not be a monument sign.

F. Signs may be double-sided.
G. Changeable copy is not allowed.
H. Sign Illumination
   i. The sign may only be illuminated externally.
   ii. No internal illumination, either of a sign box or individual channel letters, shall be allowed.
   iii. Illumination is allowed when the arts use is open for business.
   iv. No light source shall create an unduly distracting or hazardous condition to a motorist, pedestrian or the general public.
   v. Lighted signs shall be placed, shielded or deflected so as not to shine into residential dwelling units or structures, or impair the road vision of the driver of any vehicle.
   vi. Light sources for a sign shall be directed and shielded to limit direct illumination of any object other than the sign.
   vii. Neon signage is not allowed.
   viii. Strip lighting is not allowed.
I. Alterations to the sign regulations contained in the Arts Overlay District may be requested as part of a conditional use permit. This can include a greater number or size of signs, location of signs or the use of artistic sign embellishments.

7. *Hours of operation*. The hours of operation related to activities associated with an arts related business that is open to the public are as follows: Sunday through Thursday between 9:00 am and 7:00 pm and Friday and Saturday between 9:00 am and 9:00 pm, except as may be allowed during a special event or otherwise approved by the City.

8. *Outdoor cultural events and performances*. Outdoor events or performances that are open to the public and that feature visual art, music, dance, theater, performance art, science, design or cultural heritage are permitted, subject to the following:

A. The outdoor event or performance must be presented by an existing business on the property and must comply with all applicable codes and ordinances.
B. The business' regularly stocked items may be displayed outdoors and be available for purchase during the event or performance but payment for all items shall occur indoors. No other items may be displayed for sale outdoors during the event or performance.
C. Outdoor events or performances are limited to Fridays, Saturdays and Sundays only.
D. Friday and Saturday outdoor events or performances shall be limited to the hours between 10:00 a.m. and 10:00 p.m. No amplified music or loudspeakers may be used outside after 10:00 p.m.

E. Sunday outdoor events or performances shall be limited to the hours between 10:00 a.m. and 10:00 p.m. No amplified music or loudspeakers may be used outside after 8:00 p.m.

F. Hours and days of outdoor events or performances may be extended subject to obtaining a use permit in accordance with the standards and procedures of the Development Review Official Section of the Zoning Ordinance.

G. Outdoor events or performances shall be a minimum of 100 feet from a single-family residential zoning district.

H. Not more than twelve (12) art-related, Arts District wide special events may be held in any one (1) calendar year.

Section 4. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 5. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. Codification. The sections of the ordinance may be made a part of the City Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "division", or any other appropriate word.

Section 7. Effective Date. This ordinance shall become effective ten (10) days after passage.

The passage of this ordinance on first reading was moved by Commissioner Hardy, seconded by Commissioner Maxwell, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo	AYE
Vice Mayor Andy Amoroso	AYE
Commissioner Scott Maxwell	AYE
Commissioner Omari Hardy	AYE
Commissioner Herman Robinson	AYE

The Mayor thereupon declared this ordinance duly passed on first reading on the 18th day of February, 2020.

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

Mayor Pam Triolo
Vice Mayor Andy Amoroso
Commissioner Scott Maxwell
Commissioner Omari Hardy
Commissioner Herman Robinson

The Mayor thereupon declared this ordinance duly passed on the ___ day of _____, 2020.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Pam Triolo, Mayor

ATTEST:

_____
Deborah M. Andrea, CMC, City Clerk

EXECUTIVE BRIEF
REGULAR MEETING

AGENDA DATE: March 3, 2020 **DEPARTMENT:** City Attorney

TITLE:

Ordinance 2020-03 - adopting the official City seal and setting the second reading and public hearing for April 7, 2020

SUMMARY:

Ordinance 2020-03 adopts the official City seal based on the City's name change to the City of Lake Worth Beach, which the official City seal will now reflect.

BACKGROUND AND JUSTIFICATION:

On March 12, 2019, a city-wide referendum approved changing the City's name from the "City of Lake Worth" to the "City of Lake Worth Beach". The City's new name needs to be reflected on the City's official seal. Pursuant to Section 165.043, Florida Statutes, the City must designate its seal by ordinance. Once designated, unauthorized use of the seal is prohibited and unauthorized use may be prosecuted as a second degree misdemeanor. If Ordinance 2020-03 is approved, the City seal will also be registered with the State.

MOTION:

Move to approve/disapprove Ordinance 2020-03 adopting the City seal and setting the second reading and public hearing for April 7, 2020.

ATTACHMENT(S):

Fiscal Impact Analysis- N/A
Ordinance 2020-03

ORDINANCE NO. 2020-03 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, ADOPTING SECTION 1-9 "CITY SEAL" OF CHAPTER 1 "GENERAL PROVISIONS", TO ADOPT THE CITY OF LAKE WORTH BEACH CITY SEAL; AND PROVIDING FOR SEVERABILITY, REPEAL OF LAWS IN CONFLICT, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Lake Worth Beach, Florida (the "City") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the City Commission wishes to protect and control the use of the City's seal and section 165.043, Florida Statutes, authorizes the City to adopt an ordinance to designate a municipal seal; and

WHEREAS, once the City has designated its official seal, section 165.043 makes the unauthorized use of the official seal a second degree misdemeanor; and

WHEREAS, the City finds that it is also necessary to adopt the City's seal to reflect the new name of the City, i.e., City of Lake Worth Beach; and

WHEREAS, the City Commission finds that designating and protecting the City's official seal is in the best interest of the public health, safety and general welfare of the City, its residents and visitors.

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

Section 1. The foregoing "WHEREAS" clauses are true and correct and are hereby ratified and confirmed by the City Commission.

Section 2. The City Commission adopts Chapter 1, "General Provisions", Section 1-9, "City Seal", as follows (additional language underlined and deleted language ~~stricken through~~):

Sec. 1-9. – City seal.

(a) *Designation*. The following seal is designated as the official seal of the City of Lake Worth Beach:

(b) *Uses*.

(1) The manufacture, use, display, or other employment of any facsimile or reproduction of the official seal is prohibited, except by:

a. City officials and employees in the performance of their official duties; and

b. Such persons who, or entities that, obtain the prior written approval of the city commission.

(2) The city commission may adopt, by resolution, a written policy to address the use of the official seal. The policy shall not conflict with this section.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 4. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

Section 5. Codification. The sections of the ordinance shall be made a part of the City code of ordinances and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "division", or any other appropriate word.

Section 6. Effective Date. This ordinance shall take effect ten days after its adoption.

The passage of this ordinance on first reading was moved by _____, seconded by _____, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo
Vice Mayor Andy Amoroso
Commissioner Scott Maxwell
Commissioner Omari Hardy
Commissioner Herman Robinson

The Mayor thereupon declared this ordinance duly passed on first reading on the _____ day of _____, 2020.

The passage of this ordinance on second reading was moved by _____, seconded by _____, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo
Vice Mayor Andy Amoroso
Commissioner Scott Maxwell
Commissioner Omari Hardy
Commissioner Herman Robinson

The Mayor thereupon declared this ordinance duly passed on the _____ day of _____, 2020.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Pam Triolo, Mayor

ATTEST:

_____
Deborah M. Andrea, CMC, City Clerk

EXECUTIVE BRIEF
REGULAR MEETING

AGENDA DATE: February 25, 2020 **DEPARTMENT:** Electric Utility

TITLE:

FMPA Solar Project Power Sales Contract Amendment

SUMMARY:

Amendment to the City's contract with Florida Municipal Power Agency ("FMPA") to reflect a revised commercial operation date and discounted pricing for the project referred to as FMPA Solar I.

BACKGROUND AND JUSTIFICATION:

On May 16, 2018, the City entered into a power sales contract ("PSC") with FMPA pursuant to City Commission approval received March 6, 2018. In turn FMPA entered into a power purchase agreement ("PPA") with Poinsett Solar, LLL ("Seller"), a unit of NextEra Florida Renewables, LLC as the developer/owner of the supporting photovoltaic solar energy project with a nameplate capacity of 74.5MW, and to be constructed at the Poinsett site in Osceola County, Florida. City's entitlement share in the FMPA project is 10 Megawatts or 13.4% of the total project output, with the balance of the entitlement shares committed to other FMPA members.

Attachment A to the City's PSC with FMPA comprises the PPA between FMPA and Seller. The PSC is proposed to be amended to reflect a new PPA due to a change in date of commercial operation of the project from 2020 to 2023. The change in commercial operation date is necessitated due to delays in Seller's ability to obtain a needed interconnection agreement for the project with Duke, the local transmission service provider. Duke is experiencing greater than anticipated delays in evaluating and processing interconnection agreements. The original PPA between FMPA and Seller spelled out monetary damages due from Seller upon Seller's delays in achieving milestones, and have been triggered.

FMPA has negotiated a revised PPA with Seller which results in discounts from the original pricing representing $12.1 million (net present value) in discounts to the project participants. City's share of the discount is $1.6 million (net present value), commensurate with its entitlement share of 13.4% of the project. Actual pricing is confidential information to Seller, however the City has previously disclosed publicly that the PSC contains a non-escalating energy price of less than $40/MWh for a period of twenty (20) years.

MOTION:

Move to approve/disapprove the amendment to the City's power sales contract with FMPA to reflect the new Attachment A (PPA between FMPA and Poinsett Solar, LLC).

ATTACHMENT(S):
Fiscal Impact Analysis – N/A
March 6, 2018 Commission minutes
Revised contract amendment

MINUTES
CITY OF LAKE WORTH
REGULAR MEETING OF THE CITY COMMISSION
TUESDAY, MARCH 6, 2018 -- 6:00 PM

The meeting was called to order by Mayor Triolo on the above date at 6:00 PM in the City Commission Chamber located at City Hall, 7 North Dixie Highway, Lake Worth, Florida.

1. **ROLL CALL:** Present were Mayor Pam Triolo; Vice Mayor Scott Maxwell; and Commissioners Omari Hardy, Andy Amoroso and Herman Robinson. Also present were City Manager Michael Bornstein, City Attorney Glen Torcivia and City Clerk Deborah Andrea.

2. **INVOCATION OR MOMENT OF SILENCE:** by Pastor Carlos Betancourt from Church of God on behalf of Vice Mayor Scott Maxwell.

3. **PLEDGE OF ALLEGIANCE:** led by Commissioner Herman Robinson.

4. **AGENDA - Additions/Deletions/Reordering:**

Item N was deleted from the Consent agenda and moved to New Business Item B. Item 4 of the Lake Worth Electric Utility (LWEU) Consent Agenda was moved to Item 2 New Business.

Action: Motion made by Vice Mayor Maxwell and seconded by Commissioner Amoroso to approve the agenda as amended.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Maxwell and Commissioners Hardy, Amoroso and Robinson. NAYS: None.

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

   A. Proclamation regarding National Surveyors Week
   Mayor Triolo read the proclamation and presented it to Jim Sullivan, Florida Surveying and Mapping Society District 6 Director

6. **COMMISSION LIAISON REPORTS AND COMMENTS:**

Commissioner Robinson: thanked the staff who made the City look great for the Street Painting and Finnish Festivals. He spoke about the upcoming meeting regarding the beach complex and requested that residents would present their ideas. He urged the Commission to ask the State representatives to change the gun laws.

Commissioner Amoroso: attended the Palm Beach County League of Cities and BDB meetings at the new campus in the Glades to the Tullis Site where recycled products were made from sugar cane. He announced the St. Patrick's Day Parade and Easter egg hunt which would need volunteers He said that the gay pride flag had been raised tonight and there would be a huge event next week at Bryant Park.

but some island operations (this is when the City is isolated from FPL) would have to be delayed. He reported that the 138kV switch did not open which would result in the power having to be shut off tonight in order to have it operational. He said that there would be benchmarking of electric utility performance and the street lights restoration was progressing well.

B. CONSENT AGENDA:

Action: Motion made by Commissioner Hardy and seconded by Commissioner Amoroso to approve the Consent Agenda.

1) Agreement with TEAMWORKnet, Inc. for electrical engineering design and protective relay modeling services

2) Agreement with E.C. Fennell, P.A. for electrical engineering design and electric system modeling services

3) Approval of Agreement with Utility Financial Solutions, LLC for additional rate consulting services

4) (Moved to New Business 2) Ratification of Emergency Purchase from Service Electric Company (SEC)

5) Approval of current fiscal year purchases exceeding $25,000 to A.R.E. Utility Construction, Inc.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Maxwell and Commissioners Hardy, Amoroso and Robinson. NAYS: None.

C. PUBLIC HEARING:

There were no Lake Worth Electric Utility Public Hearing items on the agenda.

D. NEW BUSINESS:

1) Participation in the Florida Municipal Power Agency (FMPA) Solar Energy Project

Action: Motion made by Commissioner Hardy and seconded by Commissioner Amoroso to approve participation in the Florida Municipal Power Agency Solar Energy Project.

Ed Liberty, Electric Utility Director, reported that the FMPA began this project as a public effort to get contractors to developers and would provide administrative service to the project. He said that the seller would be NextEra and there will be multiple buyers; the City would own a unit of renewable energy credit with a contract price for the 20-year term beginning in June 2020 of approximately four cents a kilowatt hour.

Comments/requests summary:

1. Commissioner Amoroso asked about the cost for the life of the project.

   Mr. Liberty replied that the price would remain the same.

2. Commissioner Hardy asked about the cost savings per kilowatt hour and what would keep the City from purchasing more. He also asked how likely it would be to have this in the future.

   Mr. Liberty replied that as the technology would advance, the City might be able to purchase more in the future and that the cost was about $1.70 a megawatt hour which was well below the residential rate and the savings would range from half to one and a half million dollars per year based on the current energy costs.

3. Mayor Triolo asked about the OUC contract.

   Mr. Liberty responded that some of the City's power would be supplied by solar power which would provide five to six percent of our renewable energy. He presented particulars of the project such as the participants and the requested entitlements. He also spoke about the tax credits involved.

   Jacob Williams, FMPA General Manager and CEO, explained that the tax credit would sunset if construction had not begun by 2020 so time was short by which to do an additional project.

Mayor Triolo announced that this was the time for public comment.

Peggy Fisher said that the Electric Utility Advisory Board (EUAB) had discussed the issue and had received the most recent documents. She read Lisa Maxwell's comments which read that the EUAB had not read nor reviewed this document.

Mr. Liberty commented that the EUAB reviewed previous documents; the documents had only minor changes and updates would be given to the EUAB.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Maxwell and Commissioners Hardy, Amoroso and Robinson. NAYS: None.

2) (moved from Item 4 on the LWEU Consent Agenda) Ratification of Emergency Purchase from Service Electric Company (SEC)

Action: NO MOTION NOR SECOND was made to approve the Ratification of Emergency Purchase from Service Electric Company (SEC).

Comments/requests summary:

1. Commissioner Amoroso requested that Mr. Liberty would speak about any items involving more than a million dollars and asked what the emergency had been.

Mr. Liberty replied that the GT 2 failed and required an emergency repair. He said an emergency crew required to work on hot lines avoiding island ops; the result was that the number of island ops was reduced and the City saved fuel dollars. He reported that the contractors were nationally known experts and the City was not able to complete the work.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Maxwell and Commissioners Hardy, Amoroso and Robinson. NAYS: None.

13. CITY ATTORNEY'S REPORT:

City Attorney Torcivia did not provide a report.

14. CITY MANAGER'S REPORT:

City Manager Bornstein did not provide a report.

15. ADJOURNMENT:

Action: Motion made by Commissioner Hardy and seconded by Commissioner Amoroso to adjourn the meeting at 8:59 PM.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Maxwell and Commissioners Hardy, Amoroso and Robinson. NAYS: None.

Pam Triolo, Mayor

ATTEST:

Deborah M. Andrea, City Clerk

CITY OF LAKE WORTH INCORPORATED 1913 PALM BEACH COUNTY FLORIDA

Minutes Approved: April 3, 2018

A digital audio recording of this meeting will be available in the Office of the City Clerk.

Solar Project

Power Sales Contract

Between

Florida Municipal Power Agency, Solar Power Project

and

The City of Lake Worth, Florida

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SOLAR PROJECT

POWER SALES CONTRACT

This POWER SALES CONTRACT is made and entered into as of May 16, 2018, 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, Florida, a public agency of the State of Florida and member of FMPA who has executed this Power Sales Contract (the "Project Participant").

WITNESSETH:

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

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

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

WHEREAS, FMPA will enter into a Power Purchase Agreement between Seller and FMPA ("Solar Project PPA"), a copy of which is attached to this Power 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 Project PPA, and will sell the Solar Product from the Solar Facility pursuant to this Power Sales Contract and pursuant to contracts substantially similar to this contract with such other Project Participants; and

WHEREAS, the execution of the Solar Project PPA for the supply of Solar Product produced by or attributable to the Solar Facility to the Project Participant and the other Project Participants contracting with FMPA therefor has been authorized by the Interlocal Agreement Creating the Florida Municipal Power Agency, as amended to date and as such Interlocal Agreement has been supplemented by a resolution adopted by the Board of FMPA at a meeting duly called and duly held on March 21, 2018, which Interlocal Agreement, as so amended and supplemented, constitutes "an agreement to implement a project" and a "joint power agreement" for the Solar Project, as such terms are used in Chapter 361, Part II, Florida Statutes, as amended; and

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

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

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

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

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

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

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

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

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

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

Electric Energy shall mean kilowatt hours (kWh).

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

Energy Share shall mean FMPA's 17.544% share under the Solar Project PPA in the Solar Product produced by or associated with the Solar Facility.

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

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

Month shall mean a calendar month.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. Term & Termination.

(a) Effective Date. This Power Sales Contract shall become effective upon the last date of execution and delivery of all Power Sales Contracts by all Project Participants originally listed in the Schedule of Project Participants and by FMPA (the "Effective Date") and shall, unless this Power Sales Contract is terminated early pursuant hereto, continue until the expiration or earlier termination of the Solar Project PPA. 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 Project PPA, and FMPA agrees to and does sell, and the Project Participant agrees to and does hereby purchase, the Project Participant's Solar Entitlement Share. The Project Participant shall, in accordance with and subject to the provisions of SECTION 5 hereof, pay FMPA (i) for its Solar Entitlement Share, an amount determined by multiplying Monthly Energy Costs by the Project Participant's Solar Entitlement Share, and (ii) for its share of monthly Project Related Costs, an amount determined by multiplying the Project Related Costs for such Month by Project Participant's Solar Entitlement Share. 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 Project Committee shall develop and approve a budget for the Solar Project and submit the same to the FMPA Board of Directors for approval. As part of the budget process, the Solar Project Committee will review Project Related Costs, including the Allocable A&G and the Working Capital Allowance, to ensure the appropriate amount of resources are allocated the Solar Project.

(b) On or before August 1, 2019, and on or before August 1 prior to the beginning of each Contract Year thereafter, the Board of FMPA shall review the proposed Solar Project budget submitted by the Solar Project Committee, and shall adopt and submit to the Project Participant an Annual Budget for the following Contract Year which shall provide an estimate of the Project Participant's monthly payments hereunder and serve as a basis for Project Participants' payments hereunder for Monthly Energy Costs and Project Related Costs for such Contract Year.

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

the remainder of such Contract Year and serve as the basis for the Project Participant's monthly payments for Monthly Energy Costs and Project Related Costs hereunder for the remainder of such Contract Year.

SECTION 5. Billing, Payment, Disputed Amounts.

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

(b) Monthly payments required to be paid to FMPA pursuant to this SECTION 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 Project PPA or the performance by FMPA under this or any other agreement or instrument or the validity or enforceability of any other Power Sales Contract or any other agreement between FMPA and any other Project Participant; provided, however, that the Monthly Energy Costs payable by Project Participant shall reflect the quantity of Solar Product made available by the Seller at the Point of Delivery, and payable by FMPA under the Solar Project PPA, during that month. The obligation of the Project Participant to make payments under this SECTION 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 Project PPA. FMPA, or its agent, shall maintain communication with the Project Participant regarding Solar Facility forecasts and real-time output in order to enable Project Participant to modify its transmission schedules with its transmission service provider to align with the Solar Facility's actual output.

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

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

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

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

Discretionary Term Decision. In such event, the non-exercising Project Participant(s)' Solar Project Power Sales Contract shall be terminated, and the Power Sales Contract of the assuming Project Participant(s)' shall be amended to reflect the revised Solar Entitlement Shares. In the event that the Project Participant(s) that wish to exercise the Discretionary Term Decision cannot agree to assume 100% of the terminating Project Participant(s)' Solar Entitlement Share, then the Discretionary Term Decision shall not be exercised.

(b) All other, non-Discretionary Term Decisions made by the Solar Project Committee shall be by a simple majority, with each Project Participant having one equally-weighted vote on Solar Project matters. After formation of the Solar Project, each Project Participant shall designate a representative to serve on the Solar Project Committee. The Solar Project Committee shall develop a Solar Project Committee Charter for review and approval of the Board of Directors.

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

SECTION 8. Availability of Entitlement Shares.

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

SECTION 9. Accounting.

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

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

SECTION 10. Information to be Made Available.

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

(1) status of the Solar Project annual budget,

(2) status of construction of the Solar Facility during construction, as received from Seller, and

(3) operating statistics relating to Solar Project, as received from Seller

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

(c) FMPA shall promptly provide Project Participant copies of any notices made or received by FMPA pursuant to the Solar Project 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 Project PPA. As the Solar Project is obligated to demonstrate creditworthiness as a requirement of the Solar Project PPA and report to Seller any Downgrade Event, Project Participants will cooperate with FMPA and will promptly notify FMPA of any event experienced by Project Participant that may cause or contribute to a Downgrade Event.

SECTION 11. Covenants.

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

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

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

SECTION 12. Event of Default – Project Participant.

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

(b) Continuing Obligation, Right to Discontinue Service. In the event of any default referred to in this SECTION 12 hereof, the Project Participant shall not be relieved of its liability for payment of the amounts in default, 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 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 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 Project invoice, in order to prevent FMPA from defaulting under the Solar PPA, the non-defaulting Project Participants' monthly Solar Project invoices shall be increased on a pro rata basis, based on such Project Participants Solar Entitlement Shares, unless and until FMPA shall recover from the defaulting Project Participants amounts owed, upon which FMPA shall reimburse the non-defaulting Project Participants.

(d) Other Default by Project Participant. In the event of any default by the Project Participant under any other covenant, agreement or obligation of this Power Sales Contract 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.

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

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

SECTION 17. Measurement of Electric Energy.

FMPA will or will cause Seller to install, maintain, and operate the metering equipment, required to measure the quantities of Electric Energy produced and delivered from the Solar Facility in accordance

with the Solar Project PPA. Each meter used pursuant to this SECTION 17 shall be tested and calibrated in accordance with the Solar Project PPA.

SECTION 18. Liability of Parties.

Any liability which is incurred by FMPA pursuant to the Solar Project PPA and not covered, or not covered sufficiently, by insurance shall be paid solely from the revenues of FMPA derived from the Solar Project, and any payments made by FMPA, or which FMPA is obligated to make, to satisfy such liability shall become part of Monthly Energy Costs, as required in order to satisfy the obligation of FMPA to make such payments as provided in the Solar Project PPA.

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

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

SECTION 21. Termination or Amendment of Contract.

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

(b) This Power Sales Contract may be terminated by 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: frank.gaffney@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 Project Responsibility

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

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

(SEAL)

FLORIDA MUNICIPAL POWER AGENCY

By: _____
Jacob G. Williams
General Manager & CEO

Attest:

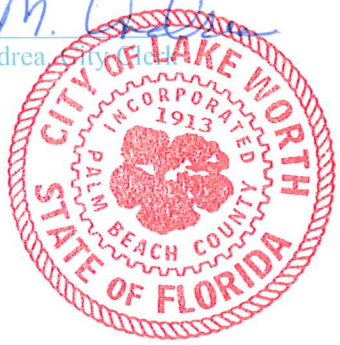
_____
Sue Utley
Secretary or Assistant Secretary

CITY OF LAKE WORTH, FLORIDA

By: _____
Michael Bornstein, City Manager

ATTEST:

_____
Deborah M. Andrea, City Clerk



Approved as to form and
legal sufficiency:

_____ FOR
Glen J. Torcivia, City Attorney

Electric Utility approval:

_____
Edward Liberty, Electric Utility Director

ATTACHMENT A

AMENDED AND RESTATED

POWER PURCHASE AGREEMENT

(Approved by FMPA Board of

Directors February 13, 2020)

AMENDED AND RESTATED RENEWABLE ENERGY POWER PURCHASE AGREEMENT

between

FLORIDA MUNICIPAL POWER AGENCY

as Buyer

and

POINSETT SOLAR, LLC

as Seller

dated as of

~~May 16~~_____, 202~~018~~

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[1] Seller NTD: The Table of Contents may need to be renumbered once the A&R REPPA is finalized.

AMENDED AND RESTATED RENEWABLE ENERGY POWER PURCHASE AGREEMENT

This AMENDED AND RESTATED RENEWABLE ENERGY POWER PURCHASE AGREEMENT (this "Agreement") is made this ~~16th~~ __day of ____~~May~~, 2020~~18~~ (the "Effective Date"), by and between **FLORIDA MUNICIPAL POWER AGENCY,** a governmental joint action agency organized and existing under Florida law ("**Buyer**") and **POINSETT SOLAR, LLC**, a Delaware limited liability company ("**Seller**"). Buyer and Seller are each individually referred to herein as a "Party" and collectively as the "Parties".

W I T N E S S E T H:

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

WHEREAS, Seller, or an Affiliate of Seller, also intends to develop two additional photovoltaic solar energy generation facilities, each of approximately 74.5 MWAC aggregate nameplate capacity, one on a site located in Orange County, Florida, and another on a site located in Osceola County, Florida (such projects, together with the Project, the "**Solar Project Portfolio**"); ~~and~~

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

WHEREAS, Buyer and Seller entered into that certain Renewable Energy Power Purchase Agreement, as of May 16, 2018 (as to such date, the "Original Effective Date", and as to such agreement, the "Original Agreement"); and

WHEREAS, Buyer and Seller have each determined that the Original Agreement ought to be amended and restated as set forth in this Agreement.~~,~~

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby amend and restate the Original Agreement to read in its entirety as follows~~the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows~~:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 ***Definitions.***

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

"Abandon" means after having commenced construction of the Project, Seller stops construction of the Project for more than ninety (90) consecutive days excluding cessation of construction work caused by the occurrence of a Force Majeure Event, Permitting Delay, or Transmission Delay.

"AC" has the meaning set forth in the Recitals.

"Adjustment Period" has the meaning set forth in Section 5.2(b).

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

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

"Agreement" has the meaning set forth in the first paragraph hereof.

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

"Bankrupt" means, with respect to a Party, such Party (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) is generally unable to pay its debts as they fall due, (e) has been adjudicated bankrupt or has filed a petition or an answer seeking an arrangement with creditors, (f) has taken advantage of any insolvency law or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceedings, (g) becomes subject to an order, judgment or decree for relief, entered in an involuntary case, by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator, for a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of one hundred eighty (180) consecutive Days, (h) fails to remove an involuntary petition in bankruptcy filed against it within one hundred eighty (180) Days of the filing thereof, or (i) becomes subject to an order for relief under the provisions of the United States Bankruptcy Act, 11 U.S.C. § 301.

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

"Buyer" has the meaning set forth in the first paragraph of this Agreement.

"Buyer Excuses" has the meaning set forth in Section 3.5(b).

"Buyer Purchase Damages" means:

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

(b) Buyer shall calculate the Buyer Purchase Damages in a Commercially Reasonable manner by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants, if available. The average of the quotes that were obtained shall be deemed to be the market price. The quotes obtained shall be: (i) for a like amount, (ii) of products comparable to Buyer's Product, (iii) at the same or reasonably similar Delivery Point, (iv) for the remaining Term, and (v) determined in any other Commercially Reasonable manner. In no event shall Buyer Purchase Damages include any penalties or ratcheted demand or similar charges, nor shall Buyer be required

to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall not be required to actually have purchased any replacement of Buyer's Product to calculate Buyer Purchase Damages as set forth herein. If Buyer Purchase Damages are owed as a result of an Event of Default and the Buyer Purchase Damages are a negative number then the Buyer Purchase Damages shall be deemed to equal Zero Dollars ($0.00).

"Buyer's Delivered Energy" means Buyer's Share of the Delivered Energy.

"Buyer's Facility Attributes" means Buyer's Share of the Facility Attributes.

"Buyer's Performance Assurance" means the Performance Assurance provided by Buyer in the event of a Buyer Downgrade Event, in the amount of Buyer's Share of [redacted] as security for Buyer's obligation to pay for Buyer's Product pursuant to this Agreement.

"Buyer's Product" means Buyer's Share of the Product.

"Buyer's Renewable Attributes" means Buyer's Share of the Renewable Attributes.

"Buyer's Share" means, with respect to the Product (including the Energy, Renewable Attributes and Facility Attributes) and certain other rights and obligations set forth in this Agreement, Buyer's undivided pro rata entitlement share, expressed as the percentage set forth in Part I of Exhibit O, as such Exhibit may be amended pursuant to Section 3.1(b). For the avoidance of doubt, the sum of Buyer's Share and each Other Buyer's Share(s) (if any) shall equal one hundred percent (100%) of the Product.

"Change of Law" means any change in or addition to any Applicable Law on or after the Original Effective Date.

"Claims" has the meaning set forth in Section 12.2.

"Collateral Agent" has the meaning set forth in in Exhibit N-1.

"Commercially Reasonable" or ***"Commercially Reasonable Efforts"*** means, with respect to any purchase, sale, decision, or other action made, attempted or taken by a Party, such efforts as a reasonably prudent business would undertake consistent with its required performance under this Agreement while protecting its own interest under the conditions affecting such purchase, sale, decision or other action, consistent with Prudent Operating Practices, including electric system reliability and stability, state or other regulatory mandates relating to renewable energy portfolio requirements, the cost of such action (including whether such cost is reasonable), the amount of notice of the need to take a particular action, the duration and type of purchase or sale or other action, and the commercial environment in which such purchase, sale, decision or other action occurs. "Commercially Reasonable" or "Commercially Reasonable Efforts" shall be reviewed and determined based upon the facts and circumstances known, or which could have been

known with the exercise of reasonable efforts, at the time that a sale, purchase, decision or other action is taken and shall not be based upon a retroactive review of what would have been optimal at such time.

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

"Commercial Operation Date" means the date following the Initial Energy Delivery Date, on which (a) Commercial Operation has occurred with respect to the full Project Capacity; (b) Seller has delivered to Buyer the Seller's Delivery Term Security required under Section 10.4(a)(ii); (c) Seller has delivered to Buyer a report with the results of start-up and operational and performance testing conducted by Seller to demonstrate the attainment of Commercial Operation of the Project; (d) Seller has received all local, state and federal Governmental Approvals and other approvals, consents and authorizations as may be required by Applicable Law for the construction, operation and maintenance of the Project and generation, delivery and sale of Product hereunder ,and (e) Seller has executed and delivered to Buyer a certificate certifying to Buyer the fulfillment of all conditions precedent to Commercial Operation of the Project substantially in the form of Exhibit L.

"Confidential Information" has the meaning set forth in Section 14.1.

"Contract Price" means (i) from and including the Initial Energy Delivery Date until the Commercial Operation Date, seventy-five percent (75%) of the Dollar-per-MWh Rate, and (ii) from the Commercial Operation Date through the remainder of the Term the Dollar-per-MWh Rate.

"Contract Quantity" has the meaning set forth in Section 3.19(a).

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

"Credit Rating" means, (a) with respect to Seller or any other Person, the rating then assigned to Seller's or such Person's unsecured, senior long-term debt obligations (not supported by third-party credit enhancements); and (b) with respect to Buyer, the rating then assigned to Buyer's long-term bonds secured by revenues of the FMPA Solar Project or, if Buyer does not have a rating for its long-term bonds or no such bonds are issued and outstanding, then the rating then assigned to the electric or integrated utility system of any one (1) FMPA Solar Project Participant.

"Cure Payment Period" has the meaning set forth in Section 3.19(c).

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

"Daily Delay Damages" means Buyer's Share of [redacted] per day.

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

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

"Defaulting Party" has the meaning set forth in Section 7.1.

"Delivered Energy" means the Energy delivered to the Delivery Point net of all electrical losses associated with the transmission or transformation (from direct current to AC) of the Energy to the Delivery Point, including, if applicable, any losses between the Metering System and the Delivery Point.

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

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

"Disclosing Party" has the meaning set forth in Section 14.1.

"Dispute" has the meaning set forth in Section 18.1.

"Dollar"* or *"$" means dollars of the United States of America.

"**Dollar-per-MWh Rate**" means [redacted] per MWh of Delivered Energy.

"Downgrade Event" means any point in time during the Term when: (a) with respect to Seller, two of three of Seller's Guarantor's Credit Ratings fall below Investment Grade; and (b) with respect to Buyer, (i) any Credit Rating of Buyer's long-term bonds secured by the revenues of the FMPA Solar Project falls below Investment Grade, or, if Buyer does not have a Credit Rating for its long-term bonds or no such bonds are issued and outstanding, then the Credit Ratings then assigned to the electric or integrated utility systems of all of the FMPA Solar Project Participants falls below Investment Grade, or (ii) if the FMPA Solar Project Participant Covenants in any FMPA Solar Project Power Sales Contract are amended, modified or altered in a manner which materially adversely impacts the ability of the FMPA Solar 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 Preamble to the Agreement.

"Electric Interconnection Upgrade" means to complete or to cause to be completed all work, services, installations, equipment and facilities, and to obtain or to cause to be obtained all required Governmental Approvals necessary to interconnect the Project with the Transmission Provider's Transmission System.

"Energy" means net electric energy generated by the Project and available for delivery to the Delivery Point, which shall be in the form of three (3)-phase, sixty (60) Hertz, alternating current (AC).

"Energy Not Received" means, in any hour where Energy is not delivered to the Delivery Point, (a) the positive difference between (i) the most recently available forecast of Energy deliveries as defined in Section 3.16, and (ii) the actual amount of Delivered Energy delivered during such hour, if any; or, if such forecast is unavailable, (b) the positive difference between (i) the estimate of Energy production for such hour derived from a P50 (probability of exceedance is fifty percent (50%)) simulation using actual meteorological data for such hour and PVSyst solar forecasting tool, or its successor, or other peer industry standard solar energy forecasting tool, reflective of the same degradation rate as was assumed in the preparation of Exhibit D per year relative to the Project Capacity (prorated over a partial year as applicable) and (ii) the actual amount of Delivered Energy during such hour, if any.

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

"Event of Default" has the meaning set forth in Section 7.1.

"Excess Energy Credit" has the meaning set forth in Section 3.19(d).

"Excess Energy Delivery" has the meaning set forth in Section 3.19(d).

"Excess Energy Rate" means [redacted] of the Dollar-per-MWh Rate.

"Executives" has the meaning set forth in Section 18.2(a).

"Facility Attributes" means all ancillary products, services, capabilities or attributes which are or can be produced by or associated with the Project at any time during the Term.

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

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

"FMPA All-Requirements Power Supply Project" means the joint-action power supply project created by the FMPA Board of Directors pursuant to FMPA Resolution 1985-B2, dated March 22, 1985.

"FMPA Solar Project" means the joint-action solar project created by the FMPA Board of Directors pursuant to FMPA Resolution 2018-B5, dated March 21, 2018.

"*FMPA Solar Project Participant*" means a municipality or municipal electric utility that is a member of Buyer and a member of the FMPA Solar Project, all of which are listed on Exhibit P.

"*FMPA Solar Project Power Sales Contract*" means a Power Sales Contract between a FMPA Solar Project Participant and Buyer for the sale of the applicable portion of Buyer's Product by Buyer to such FMPA Solar Project Participant.

"*FMPA Solar Project Participant Covenants*" means the covenants by each FMPA Solar Project Participant in the applicable FMPA Solar Project Power Sales Contract: (a) that the payments which the FMPA Solar Project Participant is required to make under the applicable FMPA Solar Project Power Sales Contract constitute an obligation payable as an operating expense of the FMPA Solar Project Participant's electric utility system solely from the revenues and other available funds of the electric utility system, (b) that upon the failure of another FMPA Solar Project Participant to make payments owed to FMPA under the applicable FMPA Solar Project Power Sales Contract, to pay to Buyer

such non-defaulting FMPA Solar Project Participant's pro rata share of the amounts owed by the defaulting FMPA Solar Project Participant, and (c) to establish, levy and collect rents, rates and other charges for the products and services provided by its electric utility system, which rents, rates, and other charges shall be at least sufficient to meet the operation and maintenance expenses of such electric utility system.

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

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

(a) Subject to the foregoing, events that could qualify as a Force Majeure Event include the following:

(i) acts of God, flooding, landslide, earthquake, fire, explosion, epidemic, quarantine, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation which directly impact operations;

(iii) except as set forth in subpart (b)(vi) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable);

(iv) environmental and other contamination at or affecting the Project prior to the Original Effective Date which was not reasonably discoverable during Site due diligence using Prudent Operating Practices;

(v) accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to or adjuncts of shipping or navigation, or quarantine, air crash, shipwreck, train wrecks or other failures or delays of transportation;

(vi) vandalism beyond that which could not be reasonably prevented by Seller using Prudent Operating Practices;

(vii) the discovery of Native American burial grounds not evidenced in Seller's Phase I environmental assessment of the Site and not reasonably discoverable during Site due diligence using Prudent Operating Practices;

(viii) the discovery of endangered species at the Site, as defined by Applicable Law, not reasonably discoverable during Site due diligence using Prudent Operating Practices;

(ix) damage to or destruction of the Project generator step-up transformer that requires installation of a replacement unit; and

(x) damage to or destruction of the Transmission Provider's Transmission System which prevents Buyer from accepting delivery of Energy to the Delivery Point.

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

(i) Buyer's inability to economically use or resell Buyer's Product purchased hereunder;

(ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller's inability to obtain Governmental Approvals or other consents, approvals or authorizations of any type for the ownership, construction, operation, or maintenance of the Project or the production, transmission, delivery and sale of Product;

(iv) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to install, equip, build, operate, maintain or repair the Project, except to the extent Seller's inability to obtain sufficient labor, equipment, materials, or other resources is caused by a Force Majeure Event of the specific type described in any of subsections (a)(i) through (a)(vi) above;

(v) Seller's failure to obtain Performance Assurance, financing or other funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement; or

(vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller or Seller's Affiliates.

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

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

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

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

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

"Governmental Charges" has the meaning set forth in Section 13.2.

"*Guaranteed Commercial Operation Date*" means June 30, 2023~~0~~, as such date may be extended in accordance with Section 4.3(c).

"Guaranteed Energy Production" or ***"GEP"*** has the meaning set forth in Section 3.19(b).

"Guarantor" means an entity providing payment security on behalf of a Party. The Guarantor must be incorporated or organized in a jurisdiction of the United States and be in good standing in such jurisdiction.

"Guaranty" means a guaranty substantially in the form of Exhibit F issued by a Guarantor with an Investment Grade Credit Rating.

"Initial Energy Delivery Date" means the first date that Seller delivers Buyer's Delivered Energy to Buyer at the Delivery Point and that Buyer is able to receive and transmit such Buyer's Delivered Energy from the Delivery Point.

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

~~***"Initial Term"*** has the meaning set forth in Section 2.1.~~

"Interest Payment Date" means the last Business Day of each calendar month.

"Interest Rate" means the lower of (a) annual rate equal to the U.S. 10-year Treasury Note then in effect plus four percent (4%) and (b) the maximum interest permitted by Applicable Law.

"Interim Milestones" has the meaning set forth in Section 4.1(i).

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

"Investment Grade" means a Credit Rating of at least: (a) BBB- when the Credit Rating is issued by S&P, (b) Baa3 when the Credit Rating is issued by Moody's, or (c) BBB- when the Credit Rating is issued by Fitch; *provided*, that if the applicable Person is rated by each of Moody's, S&P and Fitch, the two (2) highest ratings will be the applicable standard in determining such Person's Credit Rating.

"Large Generator Interconnection Agreement" means the mutually agreed interconnection agreement between the Transmission Provider and Seller pursuant to which Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities will be constructed and operated and maintained, in accordance with the Transmission Provider's Open Access Transmission Tariff.

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

"Lien" means any lien, charge, claim, mortgage, security agreement or other encumbrance.

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

"Manager" has the meaning set forth in Section 18.2(a).

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

"Metering System" means all meters, metering devices and related instruments used to measure and record Energy and to determine the amount of Delivered Energy.

"Milestone Daily Delay Damages" means Buyer's Share of [redacted] for each day of delay in achieving the milestones set out in the first two rows of Exhibit K.

"Milestone Daily Delay Damages Cap" has the meaning set forth in Section 4.1(j).

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

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

"MWh" means a megawatt hour.

"NERC" means the North American Electric Reliability Corporation.

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

"Network Upgrade Cost" means the costs to make any Network Upgrades required by the Transmission Provider for the Project.

"Newly Available Product" means any Product available to Seller following a default or termination by (a) any Other Buyer under a power purchase agreement with Seller relating to the Project, or (b) any Other Solar Project Buyer under a power purchase agreement with Seller relating to a project in the Solar Project Portfolio other than the Project.

"Non-Defaulting Party" has the meaning set forth in Section 7.2.

"Notice" has the meaning set forth in Section 19.1.

"Notice Date" has the meaning set forth in Section 9.1.

"Operating Procedures" has the meaning set forth in Section 3.11.

"Option Price" has the meaning set forth in Section 9.1.

"Original Agreement" has the meaning set forth in the Preamble to the Agreement.

"Original Effective Date" has the meaning set forth in the Preamble to the Agreement.

"Other Buyer" means each Person (if any) other than Buyer identified in Part I of Exhibit O that will purchase Product from the Project.

"Other Buyer's Share" means, with respect to the Product (including the Energy, Renewable Attributes and Facility Attributes) and certain other rights and obligations set

forth in this Agreement, an Other Buyer's undivided pro rata entitlement share, expressed as the percentage set forth in Part I of Exhibit O, as such Exhibit may be amended pursuant to Section 3.1(b). For the avoidance of doubt, the sum of Buyer's Share and all Other Buyer's Shares) shall equal one hundred percent (100%).

"Other Solar Project Buyers" means each of the "Other Solar Project Buyers" identified in Part I of Exhibit O with respect to the Taylor Creek project and the Holopaw project.

"OUC" means the Orlando Utilities Commission.

"Parties" has the meaning set forth in the first paragraph of this Agreement.

"Party" has the meaning set forth in the first paragraph of this Agreement.

"*Performance Assurance*" means security in the form of cash, Letters of Credit, or Guaranty (unless specified otherwise in this Agreement) in the form and substance set out in this Agreement provided by a Party to the other Party to secure a Party's obligations hereunder.

"Performance Measurement Period" has the meaning set forth in Section 3.19(a).

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

"Permitting Delay" has the meaning set forth in Section 4.3(c)(ii).

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

"Plan" means a plan delivered by one Party to the other Party or by Collateral Agent or Tax Equity Investor(s) to Buyer, as applicable, in connection with an outage or an Event of Default (as applicable) pursuant to Section 7.1(a)(iii) (Events of Default), Section 16.1 (Force Majeure), section 3(c) of a consent to assignment delivered pursuant to Section 15.2(d), or section 6(c) of an estoppel certificate delivered pursuant to Section 15.2(d), as such plan may be updated by written Notice (including by e-mail) from the Person delivering such plan to the applicable Party.

"Planned Outage" means the scheduled removal of all or a portion of the Project from service availability. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage period, and in Seller's sole discretion must be of the type that is necessary to reliably maintain the Project consistent with recommendations of equipment manufacturers and Prudent Operating Practice, (b) cannot be reasonably conducted during the Project's operations, and (c) is reasonably expected

to cause the amount of Energy delivered to the Delivery Point to be reduced by at least five percent (5%) of the Project Capacity.

"Point of Interconnection" has the meaning set forth in Exhibit C.

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

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

"Project Capacity" has the meaning set forth in Section 3.4.

"Project Cure Period" has the meaning set forth in Section 4.4(a).

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

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

"Project Quantity" means the total estimated Energy production of the Project for a Contract Year as set forth in Exhibit D, as such Exhibit may be amended in accordance with Section 3.19(g).

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

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

"Qualified Institution" means a U.S. commercial bank or a licensed U.S. branch of a foreign bank, or other Person having an unsecured bond rating equivalent to A- or better (by S&P and/or Fitch) or A3 or better (by Moody's) as determined by at least two (2) Ratings Agencies, one of which must be either Standard & Poor's or Moody's, and net tangible assets of at least Thirty Billion Dollars ($30,000,000,000).

"Ratings Agency" means either of Fitch, S&P or Moody's.

"Receiving Party" has the meaning set forth in Section 14.1.

"Referral Date" has the meaning set forth in Section 18.2(a).

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

~~***"Renewal Term***" has the meaning set forth in Section 2.1.~~

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

"Scheduling Coordinator" means the Persons designated by Buyer and Other Buyers by Notice to Seller as the Persons who are authorized and responsible for (a) scheduling the amount of Energy expected to be delivered to the Delivery Point by the Project, consistent with the Operating Procedures, during any hour during the Delivery Term and (b) acting as the designated account manager for the Green-E Tracking System, or other body for the registration, certification, or transfer of Renewable Attributes, for the purposes of allocating and distributing Renewable Attributes among the Buyer and the Other Buyers (if any), based on Buyer's Share and each Other Buyer's Share, as applicable.

"SEC" means the U.S. Securities and Exchange Commission.

"Seller" has the meaning set forth in the first paragraph of this Agreement.

"Seller Excuses" has the meaning set forth in Section 3.5(a).

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

"Seller Sales Damages" means:

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

(b) Seller shall calculate the Seller Sales Damages in a Commercially Reasonable manner by using the average of market bids or quotations provided by three (3) or more bona fide unaffiliated market participants, if available. The average of the bids/quotes that were obtained shall be deemed to be the market price. The quotes obtained shall be: (i) for a like amount, (ii) of Product from the Project equivalent to Buyer's Product, (iii) at the same or reasonably similar Delivery Point, (iv) for the remainder of the Term, and (v) determined in any other Commercially Reasonable manner. In no event shall Seller Sales Damages include any penalties, or ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Buyer's liability. For the purposes of this definition, Seller shall not be required to actually resell the Buyer's Product to calculate the Seller Sales Damages as set forth herein. If Seller Sales Damages are owed as a result of an Event of Default and the Seller Sales Damages, as calculated pursuant to this definition, are a negative number then the Seller Sales Damages shall be deemed to equal Zero Dollars ($0.00).

"***Seller's Delivery Term Security***" has the meaning set forth in Section 10.4(a)(ii).

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

"Seller's Ultimate Parent Company" means the ultimate parent of Seller, which as of the Original Effective Date is NextEra Energy, Inc.

"Settlement Amount" means (a) with respect to a Termination Payment owed to Buyer, the Buyer Purchase Damages; or (b) with respect to a Termination Payment owed to Seller, the Seller Sales Damages, as applicable.

"Site" has the meaning set forth in the Recitals as further described in Exhibit I.

"Solar Project Portfolio" has the meaning set forth in the Recitals.

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

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

"Tax Attributes" means (a) investment tax credits (including any grants or payments in lieu thereof) and any other tax deductions or tax benefits under federal, state or other Applicable Law available as a result of the ownership and operation of the Project or the output generated by the Project (including tax credits, payments in lieu thereof and accelerated and/or bonus depreciation); and (b) present or future (whether known or unknown) cash payments, grants under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 or outright grants of money relating in any way to the Project.

"Tax Equity Investor" means one or more Project Investor(s) seeking a return that is enhanced by tax credits and/or tax depreciation and generally (a) described in Revenue Procedures 2001-28 (sale-leaseback (with or without "leverage")), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a solar project transaction (as opposed to a wind farm or rehabilitated real estate) or (b) contemplated by Section 50(d)(5) of the Code, as amended (a pass-through lease).

"Term" has the meaning set forth in Section 2.1.

"Termination Payment" has the meaning set forth in Section 7.3(a).

"Transmission Delay" has the meaning set forth in Section 4.3(c)(i).

"Transmission Provider" means Duke Energy Florida or any successor to the Transmission Provider's Transmission System.

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

"Transmission Provider's Transmission System" means the facilities for the transmission of Buyer's Delivered Energy from the Delivery Point to Buyer's electric delivery system.

1.2 ***Interpretation.***

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

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

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

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

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

(e) references to Applicable Laws refer to such Applicable Laws as they may be amended from time to time, and references to particular provisions of an Applicable Law include any corresponding provisions of any succeeding Applicable Law and any rules and regulations promulgated thereunder;

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

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

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

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

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

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

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

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

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

ARTICLE 2
TERM

2.1 ***Term.***

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

ARTICLE 3
OBLIGATIONS AND DELIVERIES

3.1 ***Product.***

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

(b) In the event of availability of Newly Available Product in connection with the Project, Seller shall proceed to dispose of such Other Buyer's Share of the Product as follows:

(i) Seller shall first offer to transfer to Buyer and to each non-defaulting Other Buyer(s) a pro rata portion of the Newly Available Product, in accordance with each such Person's share of the Project as set forth in Part I of Exhibit O. Any part of such Newly Available Product that is declined by Buyer or any Other Buyer(s), shall be reoffered pro rata to Buyer and/or such Other Buyer(s) which have accepted in full the first such offer; such reoffering shall be repeated until such Newly Available Product has been reallocated in full or until Buyer and/or all such Other Buyers have declined to take any portion or additional portion of such Newly Available Product.

(ii) If less than all of the Newly Available Product shall be accepted by Buyer and/or such Other Buyers, Seller shall offer the remaining Newly Available Product to Other Solar Project Buyers on a pro rata basis in accordance with such Other Solar Project Buyers' share of the Solar Project Portfolio as set forth in Part II of Exhibit O.

(c) If less than all of the Newly Available Product shall be accepted by Buyer and/or such Other Buyers and/or such Other Solar Project Buyers pursuant to Section 3.1(b), Seller may sell to a third party the remaining portion of Newly Available Product for the remainder of the Term. Upon the conclusion of such reoffering, Seller shall provide Buyer with an amended Exhibit O reflecting the revised percentages constituting Buyer's Share and each Other Buyer's Share, as well as the share of each such Person in the Solar Project Portfolio. Such amended Exhibit O will be deemed to replace the exhibit attached to this Agreement as Exhibit O prior to such amendment.

3.2 ***Purchase and Sale.***

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

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

3.3 ***Contract Price.***

Buyer shall pay Seller the Contract Price for each MWh of Buyer's Delivered Energy. Buyer and Seller acknowledge and agree that the consideration for the transfer of Buyer's Renewable Attributes and Buyer's Facility Attributes is contained within Contract Price paid for the Buyer's Product. In the event that during any Contract Year Seller produces and makes an Excess Energy Delivery to the Delivery Point, within thirty (30) days after the end of such Contract Year, Seller shall credit Buyer by an amount such that in respect of all such Excess Energy Delivery, Buyer effectively paid the Excess Energy Rate for such Excess Energy Delivery pursuant to the settlement process described in Section 3.19.

3.4 ***Project Capacity.***

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

3.5 ***Performance Excuses.***

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

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

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

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

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

(b) Seller shall include in a monthly invoice delivered to Buyer pursuant to Section 8.1 the amounts, if any, owed by Buyer pursuant to Section 3.6(a) and a description, in reasonable detail, of the calculation of Buyer's Share of Energy Not Received.

3.7 ***Replacement Energy.***

(a) Subject to clauses (b) and (c) of this Section 3.7, in the event of a Planned Outage, Maintenance Outage, Forced Outage, or an outage in connection with a Force Majeure Event or any other Seller Excuse, during the period of such outage, Buyer (i) has the right to purchase replacement energy as necessary and (ii) shall be relieved from the obligation to receive and purchase, or cause to be received and purchased, Buyer's Share of the Energy at the Delivery Point; *provided*, that Seller shall have no obligation to reimburse Buyer for any such replacement energy.

(b) In connection with any outage for which Seller delivers written Notice (including by e-mail) to Buyer stating that Seller anticipates such outage will continue for forty-eight (48) hours or more, and Seller has delivered a Plan to Buyer:

(i) Buyer may, upon written Notice to Seller, Collateral Agent or Tax Equity Investor(s) (as applicable), purchase replacement energy for a period of time equal to the lesser of (A) the remaining period of time outlined in such Plan, or (B) seven (7) days; *provided*, for the avoidance of doubt, that if the Plan provides a timeline greater than seven (7) days to resume the delivery of Energy to the Delivery Point, Buyer may continue to purchase replacement energy upon written Notice to Seller, Collateral Agent or Tax Equity Investor (as applicable) on a rolling basis until the date on which delivery of Energy to the Delivery Point is anticipated to resume, as specified in the Plan;

(ii) Buyer shall not be obligated to purchase or receive Delivered Energy during such period; and

(iii) Seller, Collateral Agent or Tax Equity Investor(s) (as applicable) shall provide regular Plan updates to Buyer.

(c) In connection with any outage that is not a Planned Outage or a Maintenance Outage and for which Seller fails to deliver written Notice (including by e-mail) to Buyer within twenty-four (24) hours after the occurrence of such outage.

(i) Buyer may, upon written Notice to Seller, Collateral Agent or Tax Equity Investor(s) (as applicable), purchase replacement energy for a period of time equal to seven (7) days, and Buyer may continue to purchase replacement energy upon written Notice to Seller or Collateral Agent (as applicable) on a rolling basis until the date on which delivery of Energy to the Delivery Point is anticipated to resume, as specified in a Plan;

(ii) Buyer shall not be obligated to purchase or receive Delivered Energy during such period; and

(iii) Seller, Collateral Agent or Tax Equity Investor(s) (as applicable) shall provide regular Plan updates to Buyer.

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

(a) Buyer shall be entitled to Buyer's Renewable Attributes and Buyer's Facility Attributes. Buyer shall not be entitled to any Renewable Attributes or Facility Attributes resulting from Delivered Energy which Buyer does not purchase under this Agreement.

(b) Seller shall transfer and assign to Buyer all Buyer's Renewable Attributes. On or before the tenth (10th) day following the end of each Month, Seller shall complete and provide to Buyer the bill of sale for Buyer's Renewable Attributes in the form attached hereto as Exhibit M, together with Seller's monthly invoice to Buyer for Buyer's Product issued in accordance with Section 8.1.

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

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

3.9 ***Transmission.***

(a) Seller shall be responsible for presenting to and receiving Transmission Provider approval of the Project interconnection requirements and transmission facilities so that Seller can perform its Product deliveries hereunder in accordance with applicable Transmission Provider requirements. Seller shall be responsible for all costs to design, equip, construct and maintain the interconnection facilities necessary to deliver Energy from the Project to the Point of Interconnection. Seller shall be responsible for receiving Network Resource Interconnection Service from the Transmission Provider in accordance with the Transmission Provider's Large Generator Interconnection Procedures. Subject to Section 4.2, Buyer shall be responsible for arranging for all transmission services required to effectuate Buyer's purchase of Buyer's Product, including obtaining firm transmission service or delivery to the wholesale and retail power customers of Buyer, in an amount of capacity equal to the Buyer's Share of the Project Capacity, and shall be responsible for the payment of any charges related to such transmission services hereunder, including charges for transmission or wheeling

services, ancillary services, control area services, congestion charges, transaction charges and line losses. The Parties acknowledge that the Contract Price does not include charges for such transmission services, all of which shall be paid by Buyer.

(b) In the event that the Transmission Provider or any other properly authorized Person exercising control over the Transmission Provider's Interconnection Facilities or the Transmission Provider's Transmission System takes any action or orders Seller or Buyer to take any action that affects Buyer's ability to take delivery of Energy hereunder not caused by or resulting from Seller's act or omission, a Curtailment Period or a Force Majeure Event, Buyer shall use its Commercially Reasonable Efforts to attempt to mitigate the adverse effects of such action(s) on Buyer's ability to take delivery of Energy hereunder; including redispatching its generation resources other than the Project.

3.10 ***Scheduling.***

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

3.11 ***Operating Procedures.***

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

3.12 ***Regulatory Approvals.***

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

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

3.13 ***Standards of Care.***

(a) Seller shall comply with all requirements of Applicable Law, Governmental Approvals and NERC relating to the Project (including those related to construction, ownership, interconnection and/or operation of the Project and production and delivery of Buyer's Product).

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

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

3.14 ***Outage Notification.***

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

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

Notice by any reasonable means requested by Buyer, including by telephone or electronic mail.

(c) If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall Notify Buyer of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins (or such shorter period to which Buyer may reasonably consent), in order to optimize the Delivered Energy from the Project. Upon such Notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of Buyer; *provided*, *however*, that Seller shall take all reasonable measures consistent with Prudent Operating Practices to not schedule any Maintenance Outage during the weekday day light hours during the period of April 1st through October 31st of the Delivery Term. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of generation capacity of the Project that will not be available, and the expected completion date and time of the outage. Seller shall give Buyer Notice of the Maintenance Outage as soon as practicable after Seller determines that the Maintenance Outage is necessary. Buyer shall promptly respond to such Notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage, *provided* that such change has no substantial impact on Seller. Seller shall Notify Buyer of any subsequent changes in generation capacity available to Buyer as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in Notices. Seller shall take all reasonable measures consistent with Prudent Operating Practices to minimize the frequency and duration of Maintenance Outages. Seller may schedule a Maintenance Outage at any time and without the requirement to Notify Buyer in advance during conditions of low solar insolation, but Seller shall Notify Buyer of the commencement of the Maintenance Outage if such Maintenance Outage is expected to exist for more than four (4) hours.

(d) The Parties acknowledge and agree that the estimated Project Quantities set forth on Exhibit D (as such Exhibit may be amended in accordance with Section 3.19(g)) does not take into account Planned Outages, Maintenance Outages, and Forced Outages.

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

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

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

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

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

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

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

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

3.17 ***Weather Station.***

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

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

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

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

(iii) any unusual conditions found during inspections;

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

(v) one (1) minute and hourly time-averaged measurements from data samples at ten (10) seconds or greater frequency for the following parameters at the Project: total global horizontal irradiance, total global radiation within the plane of the array, air temperature, relative humidity, wind direction and speed, precipitation, barometric pressure, back of module surface temperature, and other pertinent meteorological conditions.

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

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

(e) Subject to procedures agreed upon in the Operating Procedures, Buyer shall have the right to install equipment and associated communication infrastructure to

enable Buyer to monitor, measure and communicate pertinent operation and weather data.

3.18 ***Change of Law.***

Buyer shall be responsible for Changes of Law which impact Buyer, and Seller shall be responsible for Changes of Law which impact Seller.

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

(a) The quantity of Buyer's Delivered Energy that Seller expects to be able to deliver to Buyer during any Contract Year (without consideration for Planned Outages, Maintenance Outages, Curtailment Periods or other Seller Excuses) is the Contract Quantity, where "**Contract Quantity**" means Buyer's Share of the Project Quantity in Exhibit D, as such Exhibit may be amended in accordance with this Section 3.19(g). Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than Guaranteed Energy Production (as defined below) in the two (2) prior consecutive Contract Years during the Delivery Term ("**Performance Measurement Period**") in accordance with the following formula, expressed as a percentage:

Measurement Period Performance Percentage = (Buyer's Delivered Energy during Performance Measurement Period / (Contract Quantity during Performance Measurement Period x (Hours in Performance Measurement Period – Seller Excuse Hours in Performance Measurement Period) / Hours in Performance Measurement Period,

A sample calculation of Measurement Period Performance Percentage is set forth in Exhibit A.

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

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

GEP Damages = Dollar-per-MWh Rate x ([redacted] x (Contract Quantity during Performance Measurement Period x (Hours in Performance Measurement Period – Seller Excuse Hours in Performance Measurement Period) / Hours in Performance Measurement Period)) – Buyer's Delivered Energy during Performance Measurement Period.

A sample calculation of the GEP Damages is set forth in Exhibit A.

(d) If Seller has a Measurement Period Performance Percentage greater than [redacted] ("**Excess Energy Delivery**"), then within forty-five (45) days after the last day of the Performance Measurement Period, Seller shall Notify Buyer of such Excess Energy Delivery. The Seller shall credit the Buyer within ten (10) Business Days after such Notice an Excess Energy Credit as described by the following formula:

Excess Energy Credit = [redacted] x Dollar-per-MWh Rate x Buyer's Delivered Energy during Performance Measurement Period – ([redacted] x Contract Quantity during Performance Measurement Period x (Hours in Performance Measurement Period – Seller Excuse Hours in Performance Measurement Period)) / Hours in Performance Measurement Period

A sample calculation of the Excess Energy Credit is set forth in Exhibit A.

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

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

(g) Within thirty (30) days after the Commercial Operation Date, Seller shall provide Buyer with an amended Exhibit D reflecting the revised Product Quantities reflecting the as-built Site layout. Such revised Product Quantities shall not exceed +/- 5% of the Product Quantities set forth in Exhibit D as of the Effective Date of this Agreement unless by mutual agreement of the Parties. Such amended Exhibit D will be deemed to replace the exhibit attached to this Agreement as Exhibit D prior to such amendment. If the Parties are unable to agree on the revised Exhibit D, then either Party may submit the disagreement for dispute resolution as provided in this Agreement.

3.20 ***Signage.***

Seller shall install, at its own expense but subject to Buyer's approval, signage at the Site that informs the public of Buyer's involvement with the Project as a purchaser of Product. The Parties shall work in good faith to determine the appropriate location and specifications of such signage, but in no event shall such signage be less visible or informative than that which Seller provides for itself at the Site. The Parties shall also work in good faith to jointly plan and

execute all public communications and events related to the Project including any press release, groundbreaking or other ceremony, and ongoing media or other public announcements during the Term. All Persons attending events at the Site shall sign Seller's waiver of liability or shall not be allowed access to the Site and the Project. Buyer may provide or install, at its own expense and in a manner that does not interfere with the normal operation of the Project, displays or other materials that support public education regarding the Project. Seller shall use Commercially Reasonable Efforts to cooperate with Buyer to ensure the timely installation and display and maintenance of such materials.

ARTICLE 4
PROJECT DESIGN AND CONSTRUCTION

4.1 ***Project Development.***

Seller, at no cost to Buyer, shall:

(a) Design and construct, permit, finance, commission, start-up and test the Project, including directly assigned interconnection facility cost but excluding Network Upgrades except as provided in Section 4.2.

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

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

(d) Perform or cause to be performed all studies and pay all fees, obtain all necessary approvals and execute all necessary agreements with the Transmission Provider.

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

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

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

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

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

(j) In addition to the Daily Delay Damages referred to in Sections 4.4 and 6.1, Seller shall: (i) pay to Buyer the Milestone Daily Delay Damages for each day or portion of a day that Seller does not achieve a milestone set forth in the first two (2) rows of Exhibit K by the date corresponding to such milestone in Exhibit K; *provided*, that Seller's liability to Buyer in connection with delays in achieving each such milestone shall in no event exceed Buyer's Share of [redacted] ("**Milestone Daily Delay Damages Cap**"), and (ii) develop a remedial plan to complete development and construction of the Project by the Guaranteed Commercial Operation Date.

(k) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to Seller's delay in achieving a milestone set forth in the first two (2) rows of Exhibit K would be difficult or impossible to predict with certainty and (ii) the Milestone Daily Delay Damages are an appropriate approximation of such damages for the Project.

4.2 ***Network Upgrades.***

(a) Seller shall be responsible for submitting the necessary generator interconnection requests and causing the necessary transmission studies to be performed to determine whether Network Upgrades are required to interconnect the Project with the Transmission Provider's Transmission System in accordance with the Large Generator Interconnection Agreement and Transmission Provider's Large Generator Interconnection Procedures. To the extent Network Upgrades are necessary, Seller shall coordinate with Transmission Provider to cause the Network Upgrades to be constructed. Buyer may incur or reimburse Seller for costs incurred by Seller for the Network Upgrade Costs pursuant to Section 4.2(b), and if Buyer elects to reimburse Seller, Seller shall invoice Buyer for Buyer's Share of all incurred Network Upgrade Costs. If Buyer elects to incur directly the Network Upgrade Costs or to cause a third party to incur such Network Upgrade Costs, then Seller shall assign and transfer to Buyer any rights or interests of Seller in and to a refund of such Network Upgrade Costs which Seller may have under the Large Generator Interconnection Agreement, and Buyer may thereafter reassign such rights and interests in and to a refund to any person, in Buyer's sole discretion.

(b) After Seller receives the facilities studies and estimate of Network Upgrade Costs from the Transmission Provider and from owners of any affected systems, and prior to initiating Network Upgrade construction, Seller shall provide to Buyer the studies, the estimated Network Upgrades Costs, and a copy of the Large Generator

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

4.3 ***Guaranteed Commercial Operation.***

(a) Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, as such date may be extended in accordance with Section 4.3(c).

(b) If Seller believes that the requirements for Commercial Operation have been satisfied and fulfilled, Seller shall present to Buyer, an independent engineer's report, the form of which is attached as Exhibit L, verifying that each of the conditions set forth therein has been satisfied or waived in writing by both Parties. The date identified in such report as the day Commercial Operation was achieved shall be the Commercial Operation Date in the absence of manifest error.

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

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

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

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

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

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

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

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

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

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

ARTICLE 5
METERING AND MEASUREMENT

5.1 *Metering System.*

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

5.2 *Inspection and Adjustment.*

(a) Seller shall inspect and test all meters at such times as will conform to Prudent Operating Practices, but not less often than every two (2) Contract Years. Seller shall be responsible for all costs and expenses incurred by Seller for such inspection and testing. Upon reasonable written request to Seller, Buyer may request, at its own expense, inspection or testing of any such meters more frequently than once every two (2) Contract Years.

(b) If any seal securing the meters is found broken, if the Metering System fails to register, or if the measurement made by a metering device is found upon testing to vary by more than one percent (1.0%) from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements of Delivered Energy made by the Metering System during: (i) the actual period when inaccurate measurements were made by the Metering System, if that period can be determined to the mutual satisfaction of the Parties; or (ii) if such actual period cannot be determined to the mutual satisfaction of the Parties, the last three (3) months of the second half of the period from the date of the last test of the Metering System to the date such failure is discovered or such test is made ("**Adjustment Period**"). If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined: (A) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or

(B) if not so ascertainable, by estimating on the basis of deliveries made under similar conditions during the period since the last test. Within thirty (30) Days after the determination of the amount of any adjustment, Buyer shall pay Seller any additional amounts then due for Buyer's Delivered Energy during the Adjustment Period or Buyer shall be entitled to a credit against any subsequent payments for Buyer's Delivered Energy, as the case may be.

(c) Buyer and its representatives shall be entitled to be present at any test, inspection, maintenance, adjustments and replacement of any part of the Metering System relating to obligations under this Agreement.

ARTICLE 6
EARLY TERMINATION

6.1 ***Early Termination.***

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

(i) By Seller if a Large Generator Interconnection Agreement in form and substance satisfactory to Seller, in its sole discretion, is not executed on or before January 2, 202~~0~~3, *provided* that in each case Seller shall give Buyer Notice of such termination within fifteen (15) Days after such date;

(ii) By Seller if Buyer has not, on or before May 1, 202~~0~~3, and at its sole cost and expense, secured adequate transmission access and firm transmission service in accordance with the requirements of this Agreement and as required for Buyer to accept all Buyer's Delivered Energy in accordance with this Agreement on terms and conditions satisfactory to Buyer in its sole discretion, *provided* that in each case Seller shall give Buyer Notice of such termination within fifteen (15) Days after such date;

(iii)By Seller in the event that Seller has not obtained the necessary fee, leasehold or other title to or interest in the Site on or before November 20, 2020~~18~~, *provided* that Seller shall give Buyer Notice of such termination within fifteen (15) Days after such date;

(iv)By Seller in the event that Seller has not obtained all Governmental Approvals necessary to construct and operate the Project in the manner contemplated by this Agreement, on or before October 20, 2020~~19~~, *provided* that Seller shall give Buyer Notice of such termination within fifteen (15) Days after such date;

(v) By Seller if all approvals of its management and board of directors (or equivalent governing body) required for the execution, delivery and performance of this Agreement have not been granted by May 30, 20~~18~~21; *provided* that Seller shall give Buyer Notice of such termination within fifteen (15) Days after such date;

(vi) By Buyer, if after giving effect to Permitted Extensions and the payment of Daily Delay Damages payments up to the Daily Delay Damages Cap, the Guaranteed Commercial Operation Date has not been obtained on or before August 234trdh, 20214; *provided* that Buyer shall give Seller Notice of such termination within fifteen (15) Days after such date;

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

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

ARTICLE 7
EVENTS OF DEFAULT

7.1 ***Events of Default.***

An "**Event of Default**" shall mean,

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

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

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

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

outlines the actions that will be taken to cure the default and the proposed cure timeline.

(iv) such Party becomes Bankrupt;

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

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

(b) with respect to Seller as the Party causing an Event of Default (the "**Defaulting Party**"), the occurrence of any of the following:

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

(ii) if at any time, Seller delivers or attempts to deliver to Buyer hereunder any energy, renewable attributes, or facility attributes that were not generated by or are not associated with the Project;

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

(iv) Seller Abandons the Project.

(v) Buyer is unable to acquire the Project and occupy, possess and use the Site and the Project free and clear of all Liens through exercise of Buyer's Purchase Option.

(vi) the failure by Seller to pay GEP Damages due to Buyer pursuant to Section 3.19 within the Cure Payment Period set forth in Section 3.19(f), if GEP Damages are applicable.

(vii) the failure by Seller to achieve the Guaranteed Energy Production requirement as set forth in Section 3.19(f), in any Contract Year.

(viii) if Seller sells or delivers or attempts to sell or deliver Buyer's Delivered Energy and/or Buyer's Renewable Attributes and Buyer's Facility

Attributes to any Person other than Buyer except as expressly, specifically permitted under this Agreement.

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

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall, as it sole and exclusive remedy, have the right to one or more of the following:

(a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") on which the following shall apply:

(i) if Seller is the Non-Defaulting Party, (A) collect damages if any Event of Default arose at any time prior to the commencement of the Delivery Term, or (B) collect the Termination Payment if any Event of Default arose during the Delivery Term; and

(ii) if Buyer is the Non-Defaulting Party, (A) exercise its right pursuant to Section 10.4 to draw upon and retain Performance Assurance and any Milestone Daily Delay Damages, if applicable, prior to commencement of the Delivery Term, or (B) collect GEP Damages and the Termination Payment if any Event of Default arose during the Delivery Term.

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

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

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

(iii) suspend performance; and

(iv) without duplication of Section 7.2(a)(ii)(A), exercise its rights pursuant to Section 10.4 to draw upon and retain Performance Assurance (if any) that is in place at that time.

7.3 ***Termination Payment.***

(a) The "**Termination Payment**" shall be the Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party as of the Early Termination Date netted into a single amount. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages (excluding replacement costs); *provided*, *however*, that any lost Renewable Attributes, Buyer's Facility Attributes or Buyer's Renewable Attributes (as applicable) shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting

Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with the termination of this Agreement would be difficult or impossible to predict with certainty, (ii) Termination Payment described in this Section 7.3 is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment is the exclusive remedy of the Non-Defaulting Party in connection with a termination of this Agreement occurring during the Delivery Term but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies in respect of obligations and liabilities that are incurred prior to the Early Termination Date and such obligations and liabilities are not included in the calculation of the Termination Payment.

(b) With respect to the calculation of the Buyer Purchase Damages for purposes of determining the Termination Payment owed to Buyer:

(i) Buyer shall provide Seller Notice containing the Buyer Purchase Damages calculations, including the supporting data such as associated charges and other relevant assumptions used to calculate the Buyer Purchase Damages, to the degree Buyer deems pertinent within sixty (60) days after the Early Termination Date.

(ii) Upon receipt of Buyer's calculation of the Buyer Purchase Damages, if Seller disputes such calculation, in whole or in part, Seller shall, within fifteen (15) Business Days following its receipt of such Notice, provide to Buyer a detailed written explanation of the basis for such dispute; *provided*, *however*, Seller can only dispute the calculation based on a failure as to the material assumptions used in preparation of the Buyer Purchase Damages. Buyer shall nevertheless be entitled during the pendency of any dispute to draw the entire amount due from the Seller's Performance Assurance.

(iii)Any dispute with regard to Buyer Purchase Damage calculation shall be pursued through the dispute resolution process of ARTICLE 18. Upon resolution of the dispute (A) any amount owed by Seller to Buyer in addition to the amount drawn on Seller's Performance Security shall be paid by Seller to Buyer within thirty (30) Business Days following such resolution with interest accrued at the Interest Rate, or (B) any amount required to be returned to Seller by Buyer shall be paid within thirty (30) Business Days following such resolution along with interest accrued at the Interest Rate.

(c) With respect to the calculation of the Seller Sales Damages for purposes of determining the Termination Payment owed to Seller:

(i) Seller shall provide Buyer Notice containing the Seller Sales Damages calculations, including the supporting data such as associated charges and other relevant assumptions used to calculate the Seller Sales Damages to the degree Seller deems pertinent within sixty (60) days after the Early Termination Date.

(ii) Upon receipt of Seller's calculation of the Seller Sales Damages, if Buyer disputes such calculation, in whole or in part, Buyer shall, within fifteen (15) Business Days following its receipt of such Notice, provide to Seller a detailed written explanation of the basis for such dispute; *provided*, *however*, Buyer can only dispute the calculation based on a failure as to the material assumptions and the sufficiency of the data used in preparation of the Seller Sales Damages.

(iii)Any dispute with regard to the Seller Sales Damages calculation shall be pursued through the dispute resolution process set forth in ARTICLE 18. Upon resolution of the dispute, any payment required from one Party to the other shall be made by the owing Party within thirty (30) Business Days following such resolution.

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

Subject to Sections 7.3(b) and 7.3(c), as soon as practicable after a designation of the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with ARTICLE 18.

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

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

7.7 ***Mitigation.***

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

ARTICLE 8
PAYMENT

8.1 ***Billing and Payment.***

(a) On or about the tenth (10^{th}) day of each month beginning with the month following the Initial Energy Delivery Date and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer an invoice covering the Buyer's Product provided in the preceding month determined in accordance with ARTICLE 5 (which may include preceding months), with all component charges and unit prices identified and all calculations used to arrive at invoiced amounts described in reasonable detail. Buyer shall pay the undisputed amount of such invoices on or before thirty (30) days after date of the invoice to the account designated by Seller. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by electronic mail.

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

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

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

ARTICLE 9
PURCHASE OPTION

9.1 ***Buyer Purchase Option.***

So long as an Event of Default by Buyer has not occurred and is continuing at the end of the ~~Initial Term or the first Renewal~~ Term, Seller grants to Buyer an option to purchase the Project in accordance with this Section 9.1 (the "**Purchase Option,**" subject to the last paragraph of this Section 9.1) for a purchase price equal to the greater of (a) the Fair Market Value of the Project or (b) the applicable "Minimum Purchase Price" set forth in Exhibit E (such greater amount, the "**Option Price**"), as follows:

(a) To exercise the Purchase Option, Buyer shall, not less than one hundred eighty (180) days prior to the end of the ~~then current~~ Term of the Agreement, provide written Notice to Seller of Buyer's intent to exercise the Purchase Option (the date on which Seller receives such Notice, the "**Notice Date**").

(b) Within thirty (30) days after the Notice Date, Seller shall specify the Option Price by written Notice to Buyer, and Buyer shall then have a period of thirty (30) days after receipt of such Notice either (i) to confirm or retract its decision to exercise the Purchase Option, or (ii) if the Option Price specified by Seller is equal to the Fair Market Value of the Project, to disagree with Seller's determination of such Fair Market Value, in each case, by written Notice to Seller.

(c) If Buyer disagrees with Seller's determination of such Fair Market Value (to the extent in excess of the applicable "Minimum Purchase Price" set forth in Exhibit E), it shall so Notify Seller in writing, and the Parties shall determine the Fair Market Value of the Project in accordance with Section 9.2.

(d) Upon final determination of the Option Price (including any determination of the Fair Market Value pursuant to Section 9.2), and before the applicable "Purchase Date" set forth in Exhibit E (or such other date as the Parties may mutually agree in writing): (i) the Parties shall promptly execute all definitive agreements necessary to cause title to the Project to pass to Buyer, free and clear of any Liens, subject only to the Liens of Project Investors which Buyer elects to assume; and (ii) Buyer shall pay the Option Price to Seller in immediately available funds and in accordance with any previous written instructions delivered to Buyer by Seller or any Project Investors, as applicable, for payments under this Agreement. Buyer shall also execute such documents reasonably necessary for Buyer to accept, assume and perform all then-existing agreements relating to the Project.

(e) Each Party shall bear its respective fees, costs and expenses incurred in connection with such Purchase Option transaction. In the event that the Purchase Option transaction closes prior to the applicable "Purchase Date" set forth in Exhibit E, this Agreement shall terminate automatically. In the event Buyer retracts its intent to exercise the Purchase Option, or does not timely confirm the Purchase Option in

accordance with this ARTICLE 9, in each case, prior to the end of the Term, the provisions of the Agreement shall continue in full force and effect as if Buyer had not Notified Seller of its intent to exercise the Purchase Option.

Irrespective of Buyer's Share, Buyer's Purchase Option is limited to an option to purchase 100% of the Project, which option may be exercised solely by Buyer or in conjunction with Other Buyers or any other Person(s).

9.2 *Determination of Fair Market Value.*

If the Option Price indicated by Seller in accordance with Section 9.1 is equal to the Fair Market Value of the Project and Buyer disagrees with such stated Fair Market Value in accordance with Section 9.1, then the Parties shall mutually select an independent appraiser with relevant experience and expertise; *provided*, that if the Parties cannot agree on the selection of such independent appraiser within thirty (30) days of Seller's receipt of Buyer's written Notice that Buyer disagrees with Seller's determination of the Fair Market Value, then each Party shall select an appraiser, and the two (2) appraisers so selected shall appoint a third appraiser, which appraiser shall perform the appraisal described in this Section 9.2. The Parties shall cooperate to cause the appraiser to act reasonably and in good faith to determine the Fair Market Value and to support such determination in a written opinion delivered to the Parties within thirty (30) days of the initial request for appraisal. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. Upon Buyer's receipt of such written opinion, Buyer shall then have a period of thirty (30) days to confirm or retract its decision to exercise the Purchase Option. The costs of the appraisal shall be borne equally by the Parties.

ARTICLE 10
INSURANCE, CREDIT AND COLLATERAL REQUIREMENTS

10.1 *Insurance.*

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

10.2 *Grant of Security Interest.*

To secure its obligations under this Agreement and to the extent Seller delivers Performance Assurance hereunder, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of setoff against), and assignment of, such Performance Assurance and all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Buyer's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence and during the continuation of an Event of Default by Seller or an Early Termination Date as a result thereof, in addition to its other rights and remedies hereunder, Buyer may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Performance

Assurance, including any such rights and remedies under law then in effect; (b) exercise its rights of setoff against such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all or any portion of any Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller or other Person, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full, if applicable.

10.3 ***Seller Financial Statements.***

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

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

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

(i) Performance Assurance in the amount of Buyer's Share of [redacted] ("**Project Development Security**") without replenishment within five (5) Business Days following the Original Effective Date of this Agreement until Seller posts Seller's Delivery Term Security; *provided*, *however*, that (A) Seller's maximum aggregate obligation to Buyer with respect to the Project Development Security under this Agreement shall in no event exceed Buyer's Share of [redacted], and (B) Seller's maximum aggregate obligation to Buyer with respect to the Project Development Security under this Agreement and to the Other Buyer(s) with respect to the "Project Development Security" under and as defined in the applicable power purchase agreements between Seller and the Other Buyers in connection with this Project shall in no event exceed [redacted];

(ii) Performance Assurance in the amount of Buyer's Share of [redacted] ("**Seller's Delivery Term Security**") from the Commercial Operation Date until the end of the Term; *provided*, that Seller may elect to apply the Project Development Security toward

Seller's Delivery Term Security. Seller's Delivery Term Security shall be subject to replenishment; *provided*, *however*, that (A) Seller's maximum aggregate obligation to Buyer under this Agreement with respect to the Performance Assurance shall in no event exceed Buyer's Share of [redacted], and (B) Seller's maximum aggregate obligation to Buyer with respect to the Performance Assurance under this Agreement and to the Other Buyer(s) with respect to the "the Performance Assurance" under and as defined in the applicable power purchase agreements between Seller and the Other Buyers in connection with this Project shall in no event exceed [redacted].

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

(c) Any amounts owed by Seller to Buyer under this Agreement (other than disputed amounts) and not satisfied within thirty (30) Days of becoming due and owing may be satisfied by Buyer on a draw on Seller's Performance Assurance. In addition, upon termination, Buyer shall have the right to draw upon Seller's Performance Assurance for any undisputed amounts owed to Buyer under this Agreement if not paid when due pursuant to Section 8.1. Subject to the maximum aggregate obligation set forth in Section 10.4(a)(ii), Seller's Delivery Term Security shall be subject to replenishment within five (5) days after any draw thereon by Buyer.

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

(e) If, during the Term, there shall occur a Downgrade Event in respect of Seller's Guarantor, then Seller shall deliver to Buyer replacement Performance Assurance in the form of a Letter of Credit, cash or a replacement Guaranty from a different Guarantor (meeting the requirements set forth in the definition thereof and acceptable to Buyer, such acceptance not to be unreasonably withheld) in lieu thereof in an amount equal to the then applicable amount of Performance Assurance; *provided*, *however*, that Seller shall only be required to maintain such replacement Performance

Assurance for so long as (1) the Credit Rating of Seller's original Guarantor remains below Investment Grade, or (2) no Ratings Agency rates Seller's original Guarantor.

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

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

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

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

(a) If, during the Term, there shall occur a Buyer Downgrade Event in respect of Buyer, then Buyer shall deliver to Seller Performance Assurance in the form of a Letter of Credit or cash in an amount equal to the then applicable amount of Buyer's Performance Assurance; *provided*, *however*, that Buyer shall only be required to maintain its Performance Assurance in the form of a Letter of Credit or cash for so long as Buyer's Credit Ratings remain below the lower of (i) Investment Grade, or (ii) that of the Seller or, if applicable the Seller's Guarantor. Buyer's Performance Assurance shall be subject to replenishment within five (5) days after any draw thereon by Seller after the failure of Buyer to pay the undisputed amount of any amount invoiced by Seller to Buyer.

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

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

ARTICLE 11
REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 ***Representations and Warranties.***

(a) On the Original Effective Date, each Party represents and warrants to the other Party that:

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

(ii) it has or will obtain in accordance herewith (i) all Governmental Approvals necessary for it to perform its obligations under this Agreement, and (ii) all Governmental Approvals and rights, title and interest in and to the Site and as otherwise necessary to construct, operate and maintain the Project and related interconnection facilities in the case of Seller;

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

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

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

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

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

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

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

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

11.2 ***General Covenants.***

Each Party covenants that throughout the Term:

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

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

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

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

11.3 ***Seller Covenants.***

(a) Seller covenants as follows:

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

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

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

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

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

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

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

Buyer covenants or affirms as follows:

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

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

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

(d) Buyer covenants that from the date hereof through the expiration or termination of this Agreement, Buyer shall (i) establish and maintain FMPA Solar Project Participant payment obligations pursuant to the FMPA Solar Project Power Sales Contracts at amounts sufficient to meet FMPA's costs and liabilities lawfully owed under this Agreement; (ii) deliver written Notice to Seller of (A) any defaults occurring under any FMPA Solar Project Power Sales Contract that are not cured by the applicable cure period and (B) any changes to the list of FMPA Solar Project Participants set forth in Exhibit P; and (iii) not agree to any amendment, modification or alteration of any FMPA Solar Project Power Sales Contract that would materially adversely affect the FMPA Solar Project Participant Covenants without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 12
TITLE, RISK OF LOSS, INDEMNITIES

12.1 *Title and Risk of Loss.*

Title to and risk of loss related to Buyer's Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer Buyer's Product free and clear of all Liens therein or thereto by any Person arising prior to or at the Delivery Point.

12.2 *Indemnities by Seller.*

Seller shall release, indemnify, defend, and hold harmless, on an After-Tax Basis, Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all actions, suits, losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest, including reasonable costs and attorneys' fees ("**Claims**") resulting from, or arising out of or in any way connected with (a) any event, circumstance, act, or incident relating to the Buyer's Product delivered under this Agreement up to and at the Delivery Point, (b) Seller's development, permitting, construction, ownership, operation and/or maintenance of the Project, (c) the failure by Seller or the failure of the Project to comply with Applicable Laws, (d) any Governmental Charges for which Seller is responsible hereunder, or (e) any Liens against the Buyer's Product delivered hereunder made by, under, or through Seller, in all cases including any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or third parties, caused by the negligence of Seller excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

12.3 *Indemnities by Buyer.*

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

ARTICLE 13
GOVERNMENTAL CHARGES

13.1 *Cooperation.*

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

13.2 *Governmental Charges.*

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

ARTICLE 14
CONFIDENTIAL INFORMATION

14.1 *Confidential Information.*

(a) The Parties acknowledge that Seller asserts that this Agreement contains trade secret information. The Parties have and will develop certain information,

processes, know-how, techniques and procedures concerning the Project that they consider confidential and proprietary (together with the terms and conditions of this Agreement, the "**Confidential Information**"). Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the "**Disclosing Party**") may make such Confidential Information available to the other (each, a "**Receiving Party**") subject to the provisions of this Section 14.1.

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

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

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

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

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

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

(i) Release of this Agreement to any Governmental Authority required for obtaining any approval or making any filing pursuant to Sections 3.12 or 4.2, *provided* that each Party agrees to cooperate in good faith with the other to maintain the confidentiality of the provisions of this Agreement by redacting and/or requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law;

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

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

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

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

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

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

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

ARTICLE 15
ASSIGNMENT

15.1 ***Successors and Assigns; Assignment.***

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

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

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

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

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

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

(v) Any assignment or transfer of this Agreement by Buyer to any Other Buyer or to any Other Solar Project Buyer.

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

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

(e) If the rights and interests of Seller in this Agreement shall be assumed, sold or transferred as herein provided, and the assuming party shall agree in writing to be bound by and to assume, the terms and conditions hereof and any and all obligations to

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

15.2 ***Collateral Assignment.***

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

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

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

(d) If Seller intends to encumber its interest under this Agreement as permitted by this Section 15.2, the Parties shall use Commercially Reasonable Efforts to enter into a mutually acceptable consent agreement substantially in the form of Exhibit N-1. Buyer shall, upon a commercially reasonable request by Seller or a Project Investor and at Seller's sole expense, cooperate reasonably to execute, or arrange for the delivery of, those normal, reasonable and customary certificates, opinions and other documents (including estoppel certificates related to a tax equity financing substantially in the form of Exhibit N-2) and to provide such other normal and customary representations and warranties, as may be necessary in connection with a financing of the Project that Buyer reasonably determines do not affect any of Buyer's rights, benefits, risks, burdens, liabilities or obligations under this Agreement.

ARTICLE 16
FORCE MAJEURE

16.1 ***Force Majeure Events.***

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

ARTICLE 17
LIMITATIONS ON LIABILITY

17.1 ***Disclaimer of Warranties.***

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

17.2 ***Limitations on Liability.***

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

ARTICLE 18
DISPUTE RESOLUTION

18.1 ***Intent of the Parties***

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

18.2 ***Management Negotiations***

(a) The Parties will attempt in good faith to resolve any Dispute by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each a "**Manager**"). Either Manager may, by Notice to the other Party, request a meeting to initiate settlement negotiations to be held within ten

(10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (15) Business Days of their first meeting ("**Initial Negotiation End Date**"), the Managers shall refer the matter to the designated senior officers of their respective companies that have authority to settle the Dispute ("**Executives**"). Within five (5) Business Days of the Initial Negotiation End Date ("**Referral Date**"), each Party shall provide one another Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

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

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

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

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

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

ARTICLE 19
NOTICES

19.1 ***Notices.***

Whenever this Agreement requires or permits delivery of a "**Notice**" (or requires a Party to "**Notify**"), the Party with such right or obligation shall provide a written communication in the manner specified in herein and to the addresses set forth below; *provided*, *however*, that Notices of outages or other scheduling or dispatch information or requests, shall be provided in accordance with the terms set forth in the relevant section of this Agreement or procedure developed by the Parties. Invoices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a schedule or dispatch order for the delivery or acceptance of Buyer's Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice. The Parties acknowledge and agree that in the event that Buyer receives conflicting Notices from the Collateral Agent and the Tax Equity Investor(s)'s representative named under Section 15.2 (if and as applicable), the Notice from the Collateral Agent shall supersede that from the Tax Equity Investor(s)' representative.

If to Seller: **POINSETT SOLAR, LLC**
c/o NextEra Florida Renewables, LLC
700 Universe Boulevard
Juno Beach, FL 33408
Attn: Director, Business Management (South Region)
Telephone: 561-304-5912
Email: Charles.Lande@nee.com

With a copy to: NextEra Florida Renewables, LLC
700 Universe Boulevard
Juno Beach, FL 33408
Attn: Mitchell Ross, Vice President & General Counsel
Telephone: 561-691-7126
Email: Mitch.ross@nee.com

If to Buyer: Florida Municipal Power Agency
Chief Operating Officer
8553 Commodity Circle
Orlando, FL 32819
Telephone: 407-355-7767
Email: ~~frank~~ken.ruttergaffney~~@fmpa.com

With a copy to: Florida Municipal Power Agency
Office of General Counsel

P.O. Box 3209,
Tallahassee, FL 32315-3209
2061 Delta Way, Ste 2,
Tallahassee, Florida 32303-4240
Telephone: 850-297-2011
Facsimile: 850-297-2014
Email: jody.finklea@fmpa.com
Dan.ohagan@fmpa.com

ARTICLE 20
MISCELLANEOUS

20.1 *Effectiveness of Agreement; Survival.*

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

20.2 *Audits.*

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

20.3 ***Amendments.***

Except as provided in Sections 3.1(b) and 3.19(g), this Agreement shall not be modified nor amended unless such modification or amendment shall be in writing and signed by authorized representatives of both Parties.

20.4 ***Waivers.***

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

20.5 ***Severability.***

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

20.6 ***Standard of Review.***

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

20.7 ***Governing Law.***

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

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

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT

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

20.9 ***Attorneys' Fees.***

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

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

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

20.11 ***Project Members.***

This Agreement is an obligation of Buyer only, and all costs and liabilities of Buyer hereunder are payable solely from the revenues and funds of the FMPA Solar Project. No liability or obligation under this Agreement shall inure to or bind any of the funds, accounts, monies, property, instruments, or rights of Buyer generally, of any individual member of Buyer, or of any other "project" of Buyer as contemplated in the Interlocal Agreement. Buyer shall enforce the provisions of the FMPA Solar Project Power Sales Contracts and duly perform its covenants and agreements thereunder; *provided*, *however*, that notwithstanding any provision of this Agreement to the contrary, in the event of the failure of an FMPA Solar Project Participant to observe the FMPA Solar Project Participant Covenants, such failure shall be considered a Downgrade Event (without limiting ARTICLE 7) 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.

20.12 ***No Agency.***

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

20.13 ***Cooperation.***

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

20.14 ***Further Assurances.***

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

20.15 ***Captions; Construction.***

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

20.16 ***Entire Agreement.***

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

20.17 ***Forward Contract.***

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

20.18 ***Counterparts.***

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

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

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

POINSETT SOLAR, LLC	**FLORIDA MUNICIPAL POWER AGENCY**
By:_____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____

EXHIBIT A

SAMPLE CALCULATIONS

I. Summary of Terms and Sample Values:

(Note: The results of the formulas contained in this Exhibit A are derived from precise values without regard to rounding which is used to show interim results for ease of presentation.)

Project Quantity (E_{1y}) means the total estimated Energy production of the Project for a Contract Year.

For this example E_{1y} is [redacted] MWh for each Contract Year

Delivered Energy (DE) means the Energy delivered to the Delivery Point net of all electrical losses associated with the transmission or transformation (from direct current to AC) of the Energy to the Delivery Point, including, if applicable, any losses between the Metering System and the Delivery Point.

For this example DE is [redacted] MWh for each Contract Year in a shortfall scenario
For this example DE is [redacted] MWh for each Contract Year in an excess energy scenario

Buyer's Share; *for this example [redacted]%*

Contract Quantity ($CE_{b,1y}$) means Buyer's Share of the Project Quantity.

For this example $E_{b,1y}$ is [redacted]% x [redacted] = [redacted] MWh in each Contract Year

Buyer's Delivered Energy (DE_b) means Buyer's Share of the Delivered Energy.

For this example DE_b is [redacted]% x [redacted] = [redacted] MWh in each Contract Year in a shortfall scenario
For this example DE_b is [redacted]% x [redacted] = [redacted] MWh in each Contract Year in an excess energy scenario

Performance Measurement Period (2y) means the two prior consecutive Contract Years during the Delivery Term.

Contract Quantity during Performance Measurement Period ($CE_{b,2y}$)

For this example $CE_{b,2y}$ is 2 x [redacted] MWh = [redacted] MWh

Buyer's Delivered Energy during Performance Measurement Period ($DE_{b,2y}$)

For this example $DE_{b,2y}$ is 2 x [redacted] MWh = [redacted] MWh in a shortfall scenario

For this example $DE_{b,2y}$ is 2 x [redacted] MWh = [redacted] MWh in an excess energy scenario

Dollar-per-MWh Rate (R) means $[redacted] per MWh of Delivered Energy.

Hours in Performance Measurement Period (h)

For this example h is 2 x 8,760 = 17,520

Seller Excuse Hours in Performance Measurement Period (h_e) means the hours Seller is unable to generate or deliver Energy due to Seller Excuses.

For this example h_e is [redacted]

II. Sample Calculation of Measurement Period Performance Percentage:

Measurement Period Performance Percentage = Buyer's Delivered Energy during Performance Measurement Period / (Contract Quantity during Performance Measurement Period x (Hours in Performance Measurement Period – Seller Excuse Hours in Performance Measurement Period) / Hours in Performance Measurement Period), expressed as a percentage.

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

$$\frac{[redacted]}{[redacted]0\ MWh \times \frac{([redacted] - [redacted])}{[redacted]}}$$

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

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

[redacted]

Expressed as a percentage

[redacted]%

III. Sample Calculation of GEP Damages:

GEP Damages = Dollar-per-MWh Rate x (0.8 x (Contract Quantity during Performance Measurement Period x (Hours in Performance Measurement Period – Seller Excuse Hours in Performance Measurement Period) / Hours in Performance Measurement Period) – Buyer's Delivered Energy during Performance Measurement Period)

$$R \times \left([redacted] \times CE_{b,2y} \times \frac{(h - h_e)}{h} - \quad E_{b,2y} \right)$$

$$\$[redacted]/MWh \times \left([redacted] \times [redacted]\ MWh \times \frac{([redacted] - [redacted])}{[redacted]} - [redacted]\ MWh \right)$$

$$\$[redacted]/MWh \times ([redacted] \times [redacted]\ MWh \times [redacted] - [redacted]\ MWh)$$

$$\$[redacted]/MWh \times ([redacted]\ MWh - [redacted]\ MWh)$$

$$\$[redacted]/MWh \times ([redacted]\ MWh)$$

$[redacted]

IV. Sample Calculation of Excess Energy Credit:

Excess Energy Credit = [redacted] x Dollar-per-MWh Rate x (Buyer's Delivered Energy during Performance Measurement Period – [redacted] x Contract Quantity during Performance Measurement Period x (Hours in Performance Measurement Period – Seller Excuse Hours in Performance Measurement Period) / Hours in Performance Measurement Period)

$$[redacted] \times R \times \left(E_{b,2y} - [redacted] \times CE_{b,2y} \times \frac{(h - h_e)}{h} \right)$$

$$[redacted] \times \$[redacted]/MWh \times \left([redacted]\ MWh - [redacted] \times [redacted] \times \frac{([redacted] - [redacted])}{[redacted]} \right)$$

$$\$[redacted]/MWh \times ([redacted]\ MWh - [redacted] \times [redacted] \times [redacted])$$

$$\$[redacted]/MWh \times ([redacted]\ MWh - [redacted] \times [redacted] \times [redacted])$$

$$\$[redacted]/MWh \times ([redacted]\ MWh - [redacted]\ MWh)$$

$$\$[redacted]/MWh \times [redacted]\ MWh$$

$$\$[redacted]$$

EXHIBIT B

DESCRIPTION OF PROJECT

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

As presently planned, the Project will consist of:

- Photovoltaic solar modules and power inverters
- Electrical transformation equipment located at the Project
- An underground and/or aboveground electric cable collection system to carry electricity to the substation
- An underground and/or aboveground fiber-optic data collection system
- Permanent meteorological ("MET") tower(s)
- A temporary construction lay down area
- Maintenance/field office(s)

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

EXHIBIT C

DESCRIPTION OF DELIVERY POINT AND ONE-LINE DIAGRAM

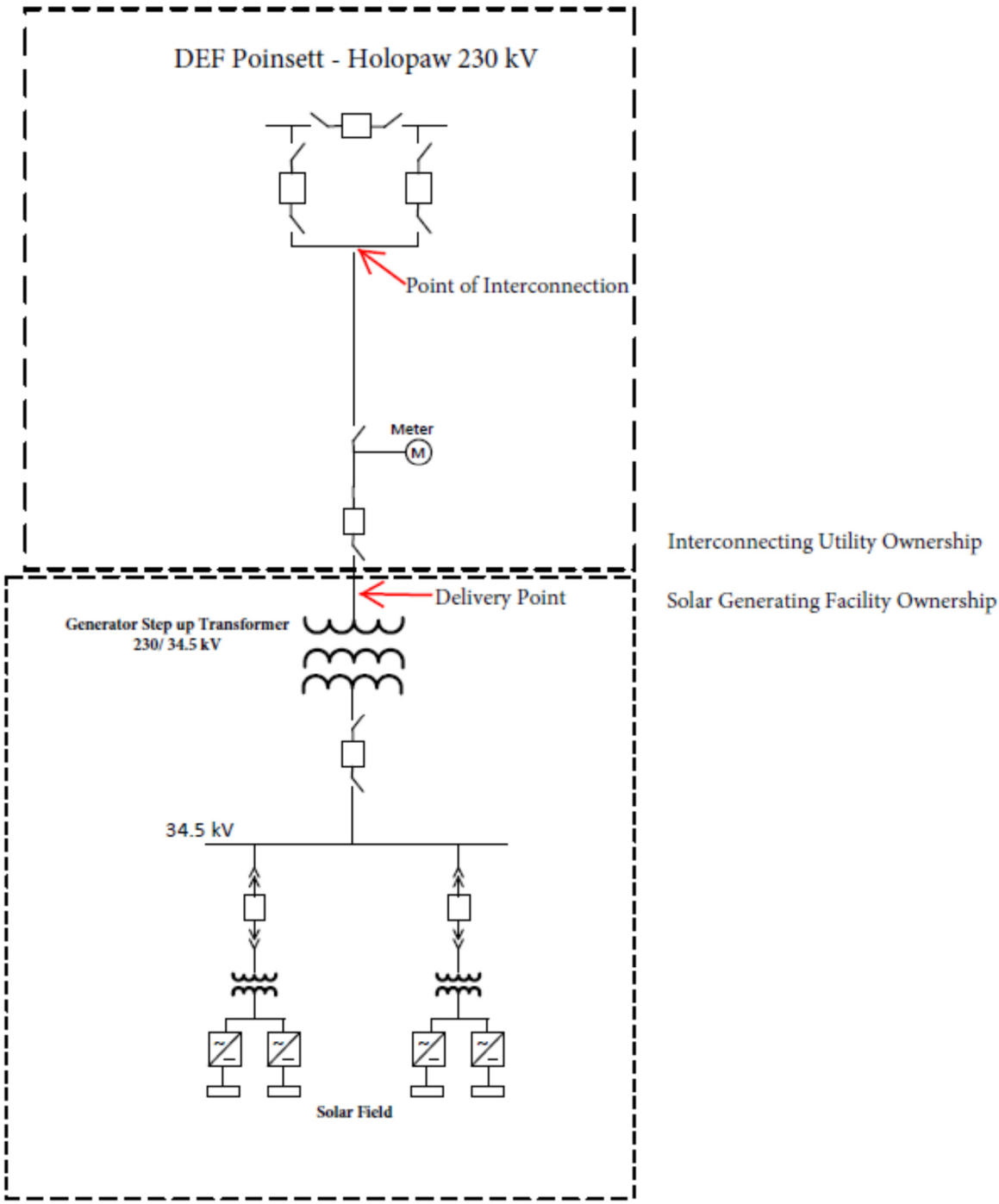

EXHIBIT D

PROJECT QUANTITY

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

EXHIBIT E

PURCHASE OPTION

Purchase Date	Minimum Purchase Price
Last day of the ~~Initial~~ Term	$[redacted]
~~Last day of first Renewal Term~~	~~$~~[redacted]

.

EXHIBIT F
FORM OF GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of _____, ____ (the "**Effective Date**"), is made by [NEXTERA ENERGY CAPITAL HOLDINGS, INC.] ("**Guarantor**"), in favor of [_____] ("**Counterparty**").

RECITALS:

A. WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary [INSERT NEXTERA ENERGY PROJECT COMPANY] ("**Obligor**"), have entered into, or concurrently herewith are entering into, that certain Renewable Energy Power Purchase Agreement dated as of _____ __, 2018 (together, the "**Agreement**"); and

B. WHEREAS, Guarantor will directly or indirectly benefit from the transaction to be entered into between Obligor and Counterparty pursuant to the Agreement.

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

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

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed [spell out the dollar amount] U.S. Dollars (U.S. $ _____) (the "**Maximum Recovery Amount**").

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement, as well as costs of collection and enforcement of this Guaranty (including attorney's fees) to the extent reasonably and actually incurred by the Counterparty (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above).

2. **DEMANDS AND PAYMENT**.

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

(b) Guarantor's obligation hereunder to pay any particular Overdue Obligation(s) to Counterparty is conditioned upon Guarantor's receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Overdue Obligation(s) covered by such demand, the specific date(s) upon which such Overdue Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Overdue Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

(c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (i.e., Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of Florida or the State of New York.

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

(a) it is a corporation duly organized and validly existing under the laws of the State of Florida and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. **RESERVATION OF CERTAIN DEFENSES**. Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement.

5. **AMENDMENT OF GUARANTY**. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor

and Counterparty; *provided*, *however*, that an amendment to this Guaranty increasing the Maximum Recovery Amount and/or extending the termination date of this Guaranty may be executed solely by Guarantor.

6. WAIVERS AND CONSENTS. Subject to and in accordance with the terms and provisions of this Guaranty:

(a) Except as required in Section 2 above, Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof.

(b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Obligor may have under the Agreement.

(c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. REINSTATEMENT. Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

8. TERMINATION. This Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement and (ii) [need fixed termination date – term of Agreement plus six months]; *provided*, *however*, that no such termination shall affect Guarantor's liability with respect to any Obligations arising under any Transactions entered into prior to the time the termination is effective, which Obligations shall remain subject to this Guaranty.

9. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice

provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

TO GUARANTOR: *	TO COUNTERPARTY:
NextEra Energy Capital Holdings, Inc. 700 Universe Blvd. Juno Beach, Florida 33408 Attn: Treasurer	_____ _____ _____ Attn: _____
[Tel: (561) 694-6204 -- for use in connection with courier deliveries]	[Tel: (___) ___-___ -- for use in connection with courier deliveries]

* *(NOTE: Copies of any Notices to Guarantor under this Guaranty shall also be sent via facsimile to ATTN: Contracts Group, Legal, Fax No. (561) 625-7504 and ATTN: Credit Department, Fax No. (561) 625-7642. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)*

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of Florida, without regard to principles of conflicts of laws thereunder.

(b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns and shall be binding regardless of whether Counterparty and Obligor enter into amendments to the Agreement. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor.

(c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.

(d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company,

trust, unincorporated association, or government (or any agency or political subdivision thereof).

(e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the Middle District of Florida, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of the Circuit Court in and for Orange County, Florida (without prejudice to the right of any party to remove to the United States District Court for the Middle District of Florida) for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date

NEXTERA ENERGY CAPITAL HOLDINGS, INC.

By:_____
Name:_____
Title:_____

EXHIBIT G
FORM OF LETTER OF CREDIT

[*ISSUING BANK]* IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUANCE:
[Date of issuance]

[*BENEFICIARY*] ("**Beneficiary**")
[*Address]*
Attention: [*Contact Person*]

Re: [ISSUING BANK] Irrevocable Standby Letter of Credit No._____

Messrs/Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as "**you**") this Irrevocable Standby Letter of Credit No. _____ (the "**Letter of Credit**") for the account of [*Entity]* [--- Address ---] and [*Entity*] [--- Address ---] ("**Account Parties**"), effective immediately and expiring on the date determined as specified in numbered paragraphs 5 and 6 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain [*describe the underlying agreement which requires this LC*].

1. Stated Amount. The maximum amount available for drawing by you under this Letter of Credit shall be [*written dollar amount]* United States Dollars (US$[*dollar amount*]) (such maximum amount referred to as the "**Stated Amount**").

2. Drawings. A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to *[ISSUING BANK]*, at any time during its business hours on such Business Day, at *[bank address]* (or at such other address as may be designated by written notice delivered to you as contemplated by numbered *paragraph 9* hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of *Attachment A* hereto (the "**Draw Certificate**"), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of *Attachment B* hereto (the "**Draft**"), appropriately completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile or original documents sent by overnight delivery or courier to *[ISSUING BANK]* at our address set forth above, *Attention*: _____ (or at such other address as may be designated by written notice delivered to you as contemplated by numbered *paragraph 9* below). In the event of a presentation by facsimile transmission, the original of such documents need not be sent to us.

3. Time and Method for Payment. We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, [_____] time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to us after 12:00 noon, [_____] time on any Business Day, payment will be made on the fourth succeeding

Business Day. In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.

4. Non-Conforming Demands. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand.

5. Expiration. This Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of *Attachment C* hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any).

6. Initial Period and Automatic Rollover. The initial period of this Letter of Credit shall terminate on [*one year from the issuance date*] (the "**Initial Expiration Date**"). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered *paragraph 9*) that we elect not to consider this Letter of Credit extended for any such additional one year period.

7. Business Day. As used herein, "**Business Day**" shall mean any day on which commercial banks are not authorized or required to close in the State of New York, and inter-bank payments can be effected on the Fedwire system.

8. Governing Law. THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AND, EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, TO THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE "ISP98"), AND IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF FLORIDA WILL CONTROL, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

9. Notices. All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

10. Irrevocability. This Letter of Credit is irrevocable.

11. Complete Agreement. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the ISP98 and *Attachment A*, *Attachment B* and *Attachment C* hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

* * *

SINCERELY,
[ISSUING BANK]

_____

By: _____

Title: _____

Address:

EXHIBIT H
SELLER INSURANCE REQUIREMENTS

Before the Commercial Operation Date, Seller shall procure and maintain the following minimum insurance, with insurers rated "A-" VII or higher by A.M. Best's Key Rating Guide, that are licensed to do business in Florida:

(a) Workers' Compensation Insurance for statutory obligations imposed by applicable laws, including, where applicable, the Alternate Employer Endorsement, the United States Longshoremen's and Harbor Workers' Act, the Maritime Coverage and the Jones Act;

(b) Employers' Liability Insurance, including Occupational Disease, shall be provided with a limit of (i) One Million Dollars ($1,000,000) for bodily injury per accident, (ii) One Million Dollars ($1,000,000) for bodily injury by disease per policy, and (iii) One Million Dollars ($1,000,000) for bodily injury by disease per employee;

(c) Business Automobile Liability Insurance which shall apply to all owned, non-owned, leased, and hired automobiles with a limit of One Million Dollars ($1,000,000) combined single limit per accident for bodily injury and property damage;

(d) Commercial General Liability Insurance which shall apply to liability arising out of premises, operations, bodily injury, property damage, products and completed operations and liability insured under and insured contract (contractual liability), with a limit of One Million Dollars ($1,000,000) per occurrence, Two Million Dollars ($2,000,000) aggregate. The products and completed operations coverage insurance shall be provided for the duration of any applicable warranty period;

(e) Excess Liability Insurance which shall apply to Employers Liability, Commercial General Liability and Business Automobile Liability Insurance, required in (b), (c), and (d) above, with a limit of Five Million Dollars ($5,000,000) per occurrence and Five Million Dollars ($5,000,000) aggregate;

(f) Upon commencement of construction of the Project, Builder's Risk Insurance with limits of insurance written on a probable maximum loss basis, including sublimits for wind, earthquakes and flood exposure;

(g) Following the Commercial Operation Date, All-Risk Property Insurance with limits of insurance written on a probable maximum loss basis, including sublimits for wind, earthquake, and flood exposures.

Except for Workers' Compensation Insurance, Buyer shall be endorsed as an additional insured on Seller's insurance policies required to be maintained under the Agreement and such policies shall provide for a waiver of subrogation in favor of Buyer. All policies of insurance required to be maintained by Seller hereunder shall provide for a severability of interests clause and include a provision that Sellers's insurance policies are to be primary and non-contributory to any insurance that may be maintained by or on behalf of Buyer.

In the event that any policy furnished by Seller provides for coverage on a "claims made" basis, the retroactive date of the policy shall be the same as the effective date of the Agreement, or such other date, as to protect the interest of Buyer. Furthermore, for all policies furnished on a "claims made" basis, Seller's providing of such coverage shall survive the termination of the Agreement and the expiration of any applicable warranty period, until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort. If coverage is on "occurrence" basis, Seller shall maintain such insurance during the entire term of the Agreement.

Following execution of this Agreement and annually thereafter, Seller shall promptly provide evidence of the minimum insurance coverage required under the Agreement in the form of an ACORD certificate or other certificate of insurance. If any of the required insurance is cancelled or non-renewed, Seller shall within thirty (30) days provide written notice to Buyer and file a new certificate of insurance with Buyer, demonstrating that the required insurance coverage to be maintained hereunder has been extended or replaced. Neither Seller's failure to provide evidence of minimum coverage of insurance following Buyer's request, nor Buyer's decision to not make such request, shall release Seller from its obligation to maintain the minimum coverage provided for in this Schedule 11.

Seller shall be responsible for covering all deductibles associated with the foregoing insurance coverage.

EXHIBIT I
SITE DES~~CR~~CRIPTION; MAP

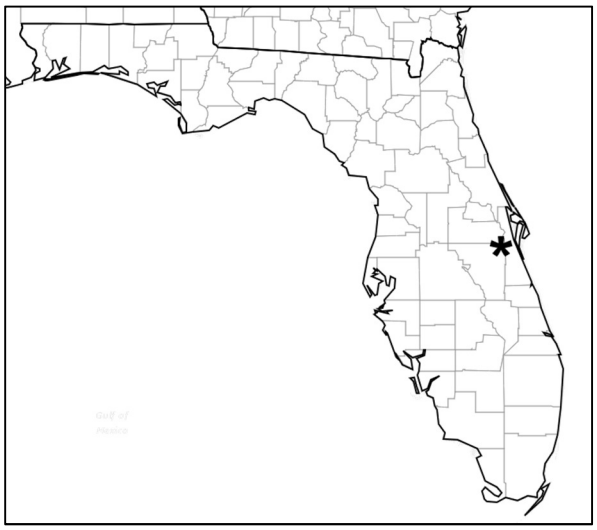

EXHIBIT J
INTERIM MILESTONE SCHEDULE

Anticipated Date (as of the Effective Date and subject to extensions as permitted in the Agreement)	**Milestone**	**Section**
May 30, 20~~1~~1218~~8~~	Seller Management Approval	6.1(a)(v)
November 20, 201~~8~~820	Site Control	6.1(a)(iii)
October 20, 20~~1~~1290	Receipt of all Governmental Approvals	6.1(a)(iv)
January 2, 20230~~0~~	Large Generator Interconnection Agreement execution	6.1(a)(i)
February 15, 20203	Initial Energy Delivery Date	3.3
May 30, 20203 (but in any event not later than thirty (30) days prior to the Guaranteed Commercial Operation Date)	Electric Interconnection Upgrades Complete	4.3(c)(i)
June 30, 20203~~,~~	Guaranteed Commercial Operation Date	4.3, 6.1(a)(vi)
December 27, 20203	Guaranteed Commercial Operation Date with 180 days Permitted Extensions	4.3, 4.4, 6.1(a)(vi)
August 2~~4~~3, 20~~1~~4	Outside guaranteed commercial operation date (which accounts for 180 days Permitted Extensions, *plus* the 240-day Project Cure Period	4.3, 4.4, 6.1(a)(vi)

EXHIBIT K

MILESTONES WITH DELAY DAMAGES

Date	Milestone	Section
May 30, 2022~~19~~	Florida Department of Environmental Protection - Environmental Resource Permit Received	4.1(j)
January 1, 202~~0~~3	Start of Construction	4.1(j)
June 30, 202~~0~~3, as such date may be extended in accordance with Section 4.3(c).	Guaranteed Commercial Operation Date	4.3, 4.4, 6.1(a)(vi)

EXHIBIT L
CERTIFICATE – COMMERCIAL OPERATIONS

This certification ("Certification") is delivered by _____ ("Seller") to _____ ("Buyer") in accordance with the terms of that certain Amended and Restated Renewable Energy Power Purchase Agreement dated _____ ("Agreement"), as amended from time to time, by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following:

a) The Project and all equipment and systems comprising the Project have been fully commissioned.

b) The Plant has demonstrated that it can safely and continuously produce and deliver the "***Project Capacity***" of 74.5MW_{ac} to the Delivery Point. [Refer to **Attachment A]**

c) Seller has delivered to Buyer the Delivery Term Security required under Section 10.4(a)(ii). [Refer to **Attachment B]**

d) Seller has installed all equipment needed to enable telemetering of the Energy from the Project to the Delivery Point, as may be necessary pursuant to the Large Generator Interconnection Agreement, and such equipment, if needed, is fully operational.

e) Seller has delivered to Buyer a report with the results of start-up and performance testing conducted by Seller to demonstrate the attainment of commercial operation status of the Project. [Refer to **Attachment A]**

f) Seller has received all local, state and federal Governmental Approvals and other approvals, consents and authorizations as may be required by Applicable Law for the construction, interconnection, operation and maintenance of the Project and generation, delivery and sale of Buyer's Product hereunder. [Refer to **Attachment C]**

g) Seller has obtained and submitted to Buyer Certificates of insurance evidencing the coverage required by **Exhibit H.** [Refer to **Attachment D]**

IN WITNESS WHEREOF, the undersigned has executed this Officer's Certificate on behalf of the Company as of the ___ day of _____, 20~~1~~__.

_____ PROJECT, LLC

_____

_____, Vice President

EXHIBIT M
REC BILL OF SALE

BUYER'S RENEWABLE ATTRIBUTES ATTESTATION AND BILL OF SALE

In accordance with the terms and conditions of that certain Amended and Restated Renewable Energy Power Purchase Agreement (the "Agreement") made the _____ day of _____, 20~~18~~, by and between FLORIDA MUNICIPAL POWER AGENCY, a governmental joint action agency organized and existing under Florida law ("Buyer") and POINSETT SOLAR, LLC, a Delaware limited liability company ("Seller"), Seller hereby sells, transfers and delivers to Buyer all Buyer's Renewable Attributes produced by or associated with the Buyer's Delivered Energy, including but not limited to all renewable energy credits, green tags, environmental attributes and reporting rights, in the amount of one _____ for each megawatt hour of Buyer's Delivered Energy during the Operation Period set forth below. Capitalized terms used in this Buyer's Renewable Attributes Attestation and Bill of Sale and not otherwise defined shall have the meaning set forth in the Agreement.

Project name and location: _____

Fuel Type: Photovoltaic - Solar

Capacity (MW_{AC}): _____

Operational Date: _____

Energy Admin. ID no.: _____

Operation Period:

Dates: From __ to ____ _____

MWh: _____

Buyer's Share of Project Quantity (%): _____

Renewable Attributes Sold to Buyer: _____

Seller further attests, warrants and represents as follows:

i) to the best of its knowledge, the information provided herein is true and correct;

ii) the sale, transfer and delivery by Seller to Buyer of Buyer's Renewable Attributes which are the subject hereof is the one and only sale, transfer and delivery of Buyer's Renewable Attributes referenced herein;

iii) the Buyer's Delivered Energy during the period indicated above was in the amount indicated above;

iv) Seller has at all times complied with the requirements of Applicable Law with respect to the operation of the Project and the generation of Buyer's Renewable Attributes; and

v) to the best of Seller's knowledge, the Buyer's Renewable Attributes have been generated by the Project and sold by Seller.

IN WITNESS WHEREOF this Buyer's Renewable Attributes Attestation and Bill of Sale confirms, in accordance with the Agreement, the transfer from Seller to Buyer of Buyer's Renewable Attributes as set forth above, and has been executed on the date set forth below.

Seller's Contact Person: [_____]

SELLER

By _____

Name _____

Its _____

Date: _____

EXHIBIT N-1
CONSENT TO ASSIGNMENT

FORM OF CONSENT AND AGREEMENT
([NAME OF CONTRACTING PARTY])
([NAME OF ASSIGNED AGREEMENT])

This CONSENT AND AGREEMENT (this "Consent"), dated as of _____, 20[ ], is executed by and among [NAME OF CONTRACTING PARTY], a [legal form of Contracting Party] organized under the laws of the State of [_____] (the "Contracting Party"), [_____], a [_____] (the "Project Owner"), and [_____], as collateral agent (in such capacity, together with its successors and permitted assigns, the "Collateral Agent") for various financial institutions named from time to time as Lenders under the Credit Agreement (as defined below) and any other parties (or any of their agents) who hold any other secured indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all such parties collectively, the "Secured Parties"). Capitalized terms used in this Consent and not otherwise defined shall have the meaning set forth in the Assigned Agreement.

A. The Project Owner owns, operates and maintains [_____] (the "Project").

B. The Contracting Party and the Project Owner have entered into the agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Assigned Agreement").

C. [_____] (the "Borrower"), the Project Owner, the other affiliates of the Borrower as Guarantors, various financial institutions named therein from time to time as Lenders,[_____] , as the Administrative Agent and Collateral Agent, have entered into a Credit Agreement, dated as of [_____](as amended, modified or supplemented from time to time, the "Credit Agreement"), providing for the extension of the credit facilities described therein.

D. As security for the payment and performance by the Project Owner of its obligations under the Credit Agreement and the other Financing Documents (as defined below) and for other obligations owing to the Secured Parties, the Project Owner has assigned as collateral all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of [_____] between the Project Owner and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Security Agreement", and, together with the Credit Agreement and any other financing documents relating to the issuance of promissory notes under the Credit Agreement (the "Notes"), the "Financing Documents").

E. It is a requirement under the Credit Agreement that the Project Owner cause the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. Consent to Assignment. The Contracting Party hereby acknowledges and consents to the pledge and collateral assignment of all right, title and interest of the Project Owner in, to and under (but not its obligations, liabilities or duties with respect to) the Assigned Agreement by the Project Owner to the Collateral Agent pursuant to the Security Agreement.

2. Representations and Warranties. The Contracting Party represents and warrants as follows as of the date of this Consent:

(a) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(b) No Previous Assignments. The Contracting Party affirms that it has received no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and collateral assignment to the Collateral Agent referred to in Section 1 above.

(c) No Termination Event; No Disputes. After giving effect to the pledge and collateral assignment referred to in Section 1, and after giving effect to the consent to such pledge and collateral assignment by the Contracting Party herein, there exists no event or condition (a "**Termination Event**") that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] there are no unresolved disputes between the parties under the Assigned Agreement. All amounts due under the Assigned Agreement as of the date hereof have been paid in full [, except as set forth on Schedule III hereto].

3. Right to Cure.

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an "event of default" or "default" (or any other similar event however defined) by the Project Owner under the Assigned Agreement, in the manner and within the times prescribed therein, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; provided, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(b) The Contracting Party agrees that it will not (i) terminate the Assigned Agreement [(other than pursuant to Section __ of the Assigned Agreement)][2] or (ii) suspend the performance of any of its obligations under the Assigned Agreement which can be performed notwithstanding the event of default or default without copying the Collateral Agent on any notice to the Project Owner required under the Assigned Agreement for Contracting Party to terminate the Assigned Agreement or suspend performance thereunder [(other than a termination

[2] Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

pursuant to Section __ of the Assigned Agreement)] [3] and providing the Collateral Agent the opportunity to cure as provided below. The Contracting Party further agrees that it will not assign the Assigned Agreement without copying the Collateral Agent as set forth in in Section [ ] of the Assigned Agreement.

(c) If a Termination Event shall occur [(other than a termination pursuant to Section __ of the Assigned Agreement)][4] , and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. If the Collateral Agent elects to exercise its right to cure as herein provided, it shall (i) give written notice to the Contracting Party that Collateral Agent intends to cure the Termination Event and (ii) have a period of thirty (30) days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a "Non-monetary Event") the Collateral Agent shall have one hundred twenty (120) days to cure such Termination Event so long as the Collateral Agent has commenced and is diligently pursuing appropriate action to cure such Termination Event and Collateral Agent has provided a Plan to the Contracting Party which outlines the actions that will be taken to cure the Non-monetary Event and includes the proposed timeline to cure the Non-monetary Event; provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition. The Contracting Party shall be entitled to rely, and shall be fully protected in relying, upon any notice by Collateral Agent of its intent to cure a Termination Event in good faith believed by Contracting Party to be genuine and correct and to have been signed.

(d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement or a relinquishment by Contract Party of any right or remedy in respect of the Assigned Agreement.

(e) In connection with any outage for which (i) the Collateral Agent delivers written Notice (which such Notice may consist of an e-mail) to Buyer stating that the Collateral

---

[3] Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

[4] Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

Agent anticipates such outage will continue for forty-eight (48) hours or more, and (ii) the Collateral Agent has delivered a Plan to Buyer:

(i) Buyer may, upon written Notice to Collateral Agent, purchase replacement energy for a period of time equal to the lesser of (A) the remaining period of time outlined in such Plan, or (B) seven (7) days; *provided*, for the avoidance of doubt, that if the Plan provides a timeline greater than seven (7) days to resume the delivery of Energy to the Delivery Point, Buyer may continue to purchase replacement energy upon written Notice to Collateral Agent on a rolling basis until the date on which delivery of Energy to the Delivery Point will resume, as specified in the Plan;

(ii) Buyer shall not be obligated to purchase or receive Delivered Energy during such period; and

(iii) the Collateral Agent shall provide regular Plan updates to Buyer.

(f) In connection with any outage that is not a Planned Outage or a Maintenance Outage and for which Seller fails to deliver written Notice (including by e-mail) to Buyer within twenty-four (24) hours after the occurrence of such outage

(i) Buyer may, upon written Notice to Seller or Collateral Agent (as applicable), purchase replacement energy for a period of time equal to seven (7) days, and Buyer may continue to purchase replacement energy upon written Notice to Seller or Collateral Agent (as applicable) on a rolling basis until the date on which delivery of Energy to the Delivery Point is anticipated to resume, as specified in a Plan;

(ii) Buyer shall not be obligated to purchase or receive Energy during such period; and

(iii) Seller or Collateral Agent (as applicable) shall provide regular Plan updates to Buyer.

4. Replacement Agreements. Notwithstanding any provision in the Assigned Agreement to the contrary, in the event the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy, insolvency, reorganization or similar proceedings affecting the Project Owner, at the Collateral Agent's request, the Contracting Party will, within sixty (60) days after presentation by Collateral Agent of the proposed designee and agreement, enter into a new agreement with the Collateral Agent or the Collateral Agent's qualified designee for the remainder of the originally scheduled term of the Assigned Agreement, effective as of the date of such rejection, with the same Project Owner Performance Assurance, covenants, agreements, terms, provisions and limitations as are contained in the Assigned Agreement.

5. Substitute Owner. The Contracting Party acknowledges that in connection with the exercise of remedies following a default under the Financing Documents, the Collateral Agent may (but shall not be obligated to) assume, or cause any qualified purchaser at any foreclosure sale or any qualified assignee or transferee under any instrument of assignment or transfer in lieu of foreclosure to assume, all of the interests, rights, duties and obligations of the Project Owner thereafter arising under the Assigned Agreement. If the interest of the Project Owner in the Assigned Agreement shall be assumed, sold or transferred as provided above, the

assuming party shall agree in writing with Contracting Party and Collateral Agent to be bound by and to assume the terms and conditions of the Assigned Agreement and any and all obligations to the Contracting Party arising or accruing thereunder from and after the date of such assumption, shall provide Performance Assurance consistent with the terms of the Assigned Agreement, and the Contracting Party shall continue to perform its obligations under the Assigned Agreement in favor of the assuming party as if such party had thereafter been named as the "Seller" under the Assigned Agreement; provided that if the Collateral Agent or its designee (or any entity acting on behalf of the Collateral Agent, the Collateral Agent's designee or any of the other Secured Parties) assumes the Assigned Agreement as provided above, it shall not be personally liable for the performance of the obligations thereunder except to the extent of all of its right, title and interest in and to the Project and the amount of Performance Assurance. For purposes of this ARTICLE 5, a "qualified" purchaser or assignee or transferee shall be one which Contracting Party and Collateral Agent agree has the technical skill and financial wherewithal to operate and maintain the Project in the same manner as the Project Owner.

6. Payments. The Contracting Party shall make all payments due to the Project Owner under the Assigned Agreement directly into the account specified on Schedule II hereto, or to such other person or account as shall be specified from time to time by the Collateral Agent to the Contracting Party in writing. All parties hereto agree that each payment by the Contracting Party as specified in the preceding sentence of amounts due to the Project Owner from the Contracting Party under the Assigned Agreement shall satisfy the Contracting Party's corresponding payment obligation under the Assigned Agreement.

7. No Amendments. The Contracting Party acknowledges that the Project Owner and Collateral Agent have informed Contracting Party that the Financing Documents restrict the right of the Project Owner to amend or modify the Assigned Agreement, or to waive or provide consents with respect to certain provisions of the Assigned Agreement, unless certain conditions specified in the Financing Documents are met. The Contracting Party shall not without the prior written consent of the Collateral Agent, materially amend or modify the Assigned Agreement, or accept any waiver or consent with respect to certain provisions of the Assigned Agreement, unless the Contracting Party has received from the Project Owner a copy of a certificate delivered by the Project Owner to the Collateral Agent to the effect that such amendment, modification, waiver or consent has been made in accordance with the terms and conditions of the Financing Documents, which may in certain circumstances require the prior written consent of the Collateral Agent thereto.

8. Additional Provisions. [To be specified if necessary to clarify the Assigned Agreement.]

9. Notices. Notice to any party hereto shall be in writing and shall be deemed to be delivered on the earlier of: (a) the date of personal delivery, (b) postage prepaid, registered or certified mail, return receipt requested, or sent by express courier, in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, or (c) if transmitted by facsimile, the date when sent and facsimile confirmation is received; provided that any facsimile communication shall be followed promptly by a hard copy original thereof by express courier:

The Collateral Agent: [_____]
[ ]
Attn: [ ]
Telephone No.: [ ]
Facsimile No.: [ ]

The Project Owner: _____
_____
_____
_____

The Contracting Party: _____
_____
_____

10. Successors and Assigns. This Consent shall be binding upon and shall inure to the benefit of the successors and assigns of the Contracting Party, and shall inure to the benefit of the Collateral Agent, the other Secured Parties, the Project Owner and their respective successors, transferees and assigns. No assignment of this Consent by a party hereto shall be effective without the prior consent of the other parties hereto, which consent shall not be unreasonably withheld.

11. Counterparts. This Consent may be executed in one or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

12. Governing Law. This Consent shall be governed by and construed in accordance with the laws of the State of Florida, without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]
By:
Name:
Title:
[_____]
as Collateral Agent
By:
Name:
Title:

Acknowledged and Agreed:
[NAME OF PROJECT OWNER]

By:
Name:
Title:

Schedule I

Assigned Agreement

Schedule II

Payment Instructions
(Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

[Schedule III]

[Amounts Due and Unpaid under the Assigned Agreement
(Section 2(c))]

EXHIBIT N-2
ESTOPPEL CERTIFICATE

FLORIDA MUNICIPAL POWER AGENCY
(Effective Date: _____ [20__])

POINSETT SOLAR, LLC, a Delaware limited liability company ("Seller"), and FLORIDA MUNICIPAL POWER AGENCY, a governmental joint action agency organized and existing under Florida law ("Buyer"), are parties to that certain Amended and Restated Renewable Energy Power Purchase Agreement, dated as of _____ as it may have been amended and modified (the "Agreement"). Capitalized terms used but not otherwise defined herein have the same meaning given such terms in the Agreement. Buyer acknowledges that [name of tax equity Investor(s)] (the "Investor(s)") has requested an estoppel certificate in connection with the close of the purchase by the Investor(s) of [one hundred] percent ([100]%) of the non-managing Class B equity interest in the Seller effective the date hereof.

The undersigned, a duly authorized representative of Buyer, does hereby certify and with respect to Section 5 hereof, covenant to Investor(s) as of the date of this Estoppel Certificate set forth above the following with respect to the Agreement:

1. No Event of Default with respect to Buyer, nor, to the knowledge of Buyer, Seller has occurred and is continuing under the Agreement, and there are no defaults or unsatisfied conditions presently existing (or which would exist after the passage of time and/or giving of notice) that would allow the Seller or, to the knowledge of Buyer, Buyer to terminate the Agreement.

2. There exists no event or condition that would, either immediately or with the passage of time and/or giving of notice, allow the Seller or, to the knowledge of Buyer, Buyer to suspend the performance of its obligations under the Agreement.

3. Each representation or warranty made or given by Buyer in Section 11.1 of the Agreement is complete, true and correct.

4. As of the date hereof, (i) with respect to Buyer, the Agreement is in full force and effect and has not been assigned, amended, supplemented or modified by Buyer, (ii) with respect to Seller, to the knowledge of Buyer, the Agreement is in full force and effect and has not been assigned, amended, supplemented or modified by Seller, (iii) there are no pending or to the knowledge of Buyer, threatened disputes or legal proceedings between Buyer and the Seller, (iv) there is no pending or, to the knowledge of Buyer, threatened action or proceeding involving or relating to Buyer before any court, tribunal, governmental authority or arbitrator the adverse outcome of which would materially affect the legality, validity or enforceability of

the Agreement, (v) Buyer does not have knowledge of any event, act, circumstance or condition constituting a Force Majeure Event under the Agreement that would relieve Buyer from the performance of its obligations under the Agreement, and (vi) all undisputed amounts due from Seller under the Agreement as of the date hereof have been paid in full and to the knowledge of Buyer the Seller owes no indemnity payments or other amounts to Buyer under the Agreement.

5. The execution, delivery and performance by Buyer of this Estoppel Certificate have been duly authorized by all necessary action on the part of Buyer and do not require any approval or consent of any other person or entity and do not violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on Buyer.

(a) Buyer agrees to send copies of all Notices of all Events of Default of Seller sent to Seller (and copies of any notices sent by Buyer to Seller related to Buyer's exercise of its termination rights) to the Investor designated by the Investors to receive notice at the address set forth on Exhibit A hereto by overnight carrier, mail, fax or email.

(b) Buyer agrees that it will not terminate the Agreement without first sending the Investor notice and opportunity to cure as provided in this Section 5.

(c) If an Investor elects to exercise its right to cure an Event of Default by Seller under the Agreement as provided in this Section 5, it shall (i) give written notice to the Buyer and Other Buyers that Investor intends to cure the Event of Default and (ii) have a period beginning on the date the cure period for such Event of Default for the Seller expires and ending on the later of (A) thirty (30) days if such Event of Default consists of a payment default or (B) if such Event of Default is an event other than a failure to pay amounts due and owing by the Seller (a "Non-monetary Event"), one hundred twenty (120) days so long as the Investor has commenced and is diligently pursuing appropriate action to cure such Event of Default and Investor has provided a Plan to the Buyer which outlines the actions that will be taken to cure the Non-monetary Event and includes the proposed timeline to cure the Non-monetary Event; provided, however, that (x) if possession of the Project is necessary to cure such Non-monetary Event and the Investor has commenced foreclosure proceedings, the Investor will be allowed a reasonable time to complete such proceedings, and (y) if the Investor is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Seller, then the time periods specified herein for curing an Event of Default shall be extended for the period of such prohibition.

The Buyer shall be entitled to rely, and shall be fully protected in relying, upon any notice by Investor, including with respect to its intent to cure an Event of Default in good faith believed by Buyer to be genuine and correct.

(d) In connection with any outage of the Project for which (i) the Investor(s) delivers written Notice (which such Notice may consist of an e-mail provided that it is confirmed by overnight delivery of a copy of such Notice to Buyer) to Buyer stating that the Investor(s) anticipates such outage will continue for forty-eight (48) hours or more, and (ii) the Investor(s) has delivered a Plan to Buyer:

A. Buyer may, upon written Notice to Investor(s), purchase replacement energy for a period of time equal to the lesser of (A) the remaining period of time outlined in such Plan, or (B) seven (7) days; provided, for the avoidance of doubt, that if the Plan provides a timeline greater than seven (7) days to resume the delivery of Energy to the Delivery Point, Buyer may continue to purchase replacement energy upon written Notice to Investor(s) on a rolling basis until the date on which delivery of Energy to the Delivery Point will resume, as specified in the Plan.

B. Buyer shall not be obligated to purchase or receive Delivered Energy during such period; and

C. the Investor(s) shall provide regular Plan updates to Buyer.

(e) In connection with any outage that is not a Planned Outage or a Maintenance Outage and for which Seller or Investor fails to deliver written Notice to Buyer within twenty-four (24) hours after the occurrence of such outage:

(iv) Buyer may, upon written Notice to Seller or Investor (as applicable), purchase replacement energy for a period of time equal to seven (7) days, and Buyer may continue to purchase replacement energy upon written Notice to Seller or Investor (as applicable) on a rolling basis until the date on which delivery of Energy to the Delivery Point is anticipated to resume, as specified in a Plan;

(v) Buyer shall not be obligated to purchase or receive Delivered Energy during such period; and

(vi) Investor shall provide regular Plan updates to Buyer.

(f) Any curing of or attempt to cure any Event of Default shall not be construed as an assumption by any Investor of any covenants, agreements or obligations of the Seller under or in respect of the Agreement.

6. Buyer confirms that the Commercial Operation Date has occurred.

7. Buyer acknowledges that as of the date hereof, Buyer has not provided a Notice to Seller of Buyer's intent to exercise the Purchase Option to Seller that is pending.

8. As of the date hereof, the Performance Assurance provided by Seller has not been drawn upon by Buyer.

9. Buyer acknowledges and agrees that solely on the basis of the truth, accuracy and completeness of written certification provided by Seller and delivered to Buyer, each of the Investor(s) (i) is a "Project Investor" as defined in the Agreement, (ii) has all rights of a "Project Investor" as defined in the Agreement and (iii) Buyer's consent is not required for a direct or indirect transfer of the non-managing Class B equity interest in the Seller to the Investor(s).

[Signature page follows]

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

FLORIDA MUNICIPAL POWER AGENCY

By: _____
Name:
Title:

Exhibit A

INVESTOR ADDRESS FOR NOTICES

Buyer shall send notices under this Estoppel Certificate to the address of the single Investor identified below.

[Investor Name]
[Address]
[Attention: _____, Position]
[Email Address]

With a copy to the other Investor identified below:

[Investor Name]

[Address]

[Attention: _____, Position]

[Email Address]

EXHIBIT O
OTHER BUYERS; OTHER SOLAR PROJECT BUYERS

Part I. Buyer's Share; Other Buyers; Other Buyer's Share

Buyer and **Other Buyers** (as applicable)	**Buyer's Share** and **Other Buyer's Share** (as applicable)
FMPA All-Requirements Power Supply Project	23.49%
FMPA Solar Project	76.51%

Part II. Other Solar Project Buyers; Each Other Solar Project Buyer's Share

Project	**Buyer** or **Other Solar Project Buyer** (as applicable)	**Buyer** or **Other Solar Project Buyer** (as applicable) **Share of Project**	**Buyer or Other Solar Project Buyer** (as applicable) **Share** of the **Solar Project Portfolio**
"Poinsett" Project in Osceola County	FMPA Solar Project	76.51%	25.51%
	FMPA All-Requirements Power Supply Project	23.49%	7.83%
"Holopaw Project" in Osceola County	OUC	45.64%	15.21%
	FMPA All-Requirements Power Supply Project	54.36%	18.12%
"Taylor Creek" Project in Orange County	OUC	100.00%	33.33%

EXHIBIT P
FMPA SOLAR PROJECT PARTICIPANTS

- The City of Alachua, Florida
- The City of Bartow, Florida
- Homestead Public Services
- The City of Lake Worth Utilities
- The City of Wauchula
- Winter Park Electric Utility

ATTACHMENT B

FMPA PROCESS FOR DETERMINING ALLOCABLE A&G COSTS

FMPA uses a process to determine the Administrative and General Costs (A&G Costs) that will be incurred to effectively manage its non-ARP power supply projects. FMPA's Board approves the process and the allocations to power supply project participants when the Board approves each annual power supply project budget. The process is subject to annual review and approval by the Board, and thus, may change from time to time.

The following describes the power supply project A&G cost determination process for the FY2018 Budget and provides an example of how A&G costs will be allocated to Solar Project and ARP Solar Participants, starting with the FY2020 budget:

1) Staff determines the FMPA positions that are essential to effective management of the Projects;
2) Staff determines the percent time each position spends serving the needs of each the Projects and the ARP;
3) The allocable cost of each position to each of the Projects is the percent time this position spends serving the needs of each the Projects determined in 2) multiplied by the current mid-point of the salary range of the position as maintained by FMPA's Human Resources Department and approved by the Board, and multiplied by FMPA's overhead adder percentage;
4) The total A&G allocated to each Project is the sum of the allocable costs of each position essential to effective management of the Project;
5) The total A&G allocated to the Solar Project will not exceed 100% of the cost associated with the single highest cost non-executive level FMPA position essential to the effective management of the Projects, and annual increases in total A&G allocated shall be commensurate with annual salary increases of such highest costs non-executive level FMPA position;
6) Once the annual A&G costs to be allocated to the Solar Project and ARP Solar Participants is determined, the amount is divided by 12 to arrive at the monthly allocable A&G costs.
7) For Solar Project and ARP Solar Participants, the monthly allocable A&G costs will be divided by the total amount of the solar energy received by the Solar Project and the ARP Solar Participants for the billing month to determine a monthly allocable A&G rate ($/MWh). Each Solar Project and ARP Solar Participant pays this rate times the amount of solar energy each Participant received during the billing month.
8) The table below is an example of the calculation of annual and monthly allocable A&G costs to each power supply project and the Solar Project and the ARP Solar Participants for the FY2020 Budget using cost data and the process approved for the FY2018 Budget. This allocation process is subject to Board approval each year.

		Example A&G Allocation for FY2020 Budget					
Position	**FYE2018 Mid Point Salary**	**ARP**	**STN**	**Tri-City**	**STN 2**	**St Lucie**	**Solar**
General Manager	$200,000	20%	20%	20%	20%	20%	2%
Admin Asst.	$56,456	20%	20%	20%	20%	20%	2%
Director of Engineering	$191,969	20%	20%	20%	20%	20%	2%
Engineer	$117,722	19%	19%	19%	19%	19%	5%
Engineering Assistant	$56,456	20%	20%	20%	20%	20%	2%
Director of Finance	$191,969	18%	18%	18%	18%	18%	10%
Mgr. Contracts Compliance	$132,777	18%	18%	18%	18%	18%	10%
Accountant III	$92,539	18%	18%	18%	18%	18%	10%
Accounting Clerk	$43,833	18%	18%	18%	18%	18%	10%
Payroll Clerk PT	$28,228	20%	20%	20%	20%	20%	2%
Total	$1,111,949	$209,858	$209,858	$209,858	$209,858	$209,858	$62,660
Overhead Adder	95.10%	95.10%	95.10%	95.10%	95.10%	95.10%	95.10%
Annual Allocable A&G	$2,169,412	$409,433	$409,433	$409,433	$409,433	$409,433	$122,250
Monthly Allocable A&G	$180,784	$34,119	$34,119	$34,119	$34,119	$34,119	$10,187

ATTACHMENT C

WORKING CAPITAL ALLOWANCE

In order to provide for working capital for the Solar Project, and to provide for the Solar Project's ability to pay Seller in the event that of non-payment by one or more Project Participants, the Solar Project shall maintain a line of credit in the principal amount of $250,000, or other financial instrument or cash on hand as determined by the Solar Project Committee ("Line of Credit"). The Line of Credit will be obtained at the time solar energy starts to be provided under the Solar PPA and will remain in place for the remaining term of this Power Sales Contract. Working capital expenses, including payment of interest on any amounts drawn on the Line of Credit, shall constitute Project Related Costs.

Attachment D

Project Development Fund Costs

As of the Effective Date of this Agreement, FMPA has incurred $134,347 in Project Development Fund costs. No additional Project Development Fund costs shall be incurred after the Effective Date.

The amount of Project Development Fund costs allocable to Project Participants shall be calculated by dividing the total balance of Development Fund Costs incurred for solar development by the total expected energy production allocated to the Solar Project and ARP solar participants over the first 20 years of the Solar Project PPA and the power purchase agreement entered into between the ARP solar participants and Seller. The resulting dollar per MWh cost shall be allocated as a Project Related Cost.

Project Development Fund Cost	Units	Value
Total Development Fund Expenditure	$	134,347
Participant Capacity	MW-AC	115
Est. Annual Capacity Factor	%	28%
Est. Annual Project Energy	MWh	282,072
20 Year Buy down Per Year	$	6,717
20 Year Buy down Per MWh	$/MWh	0.0238

SCHEDULE 1

SCHEDULE OF PROJECT PARTICIPANTS

Name of Project Participant	Solar Entitlement Share (MW)	Solar Entitlement Share (%)
City of Alachua	9	15.789%
City of Bartow	13	22.807%
Homestead Public Services	10	17.544%
City of Lake Worth Utilities	10	17.544%
City of Wauchula	5	8.772%
Winter Park Electric Utility	10	17.544%
Total	**57**	**100%**

Notice Information of Project Participants

City of Alachua City of Alachua, City Manager P.O. Box 9 Alachua, FL 32616 Tel: (386) 418-6100	**City of Bartow** City of Bartow, City Manager 450 N. Wilson Ave. Bartow, Florida 33831 Tel: (863) 534-3883 Fax: (863) 519-3883
Homestead Public Services George Gretas, City Manager The City of Homestead 100 Civic Court Homestead, FL 33033	**City of Lake Worth Utilities** City of Lake Worth Electric Utilities Director 1900 2nd Avenue North Lake Worth, FL 33461 Tel: (561) 586-1670

	With a copy to: City of Lake Worth Attn: City Attorney 7 N. Dixie Highway Lake Worth, FL 33460
City of Wauchula Terry Atchley, City Manager 126 S 7th Ave. Wauchula, FL 33873 Tel: (863) 773-3535 Fax: (863) 773-0773	**Winter Park Electric Utility** City of Winter Park Randy Knight, City Manager 401 South Park Avenue Winter Park, FL 32789-4386

EXECUTIVE BRIEF
REGULAR MEETING

AGENDA DATE: March 3, 2020 **DEPARTMENT:** Electric Utility

TITLE:

First Addendum Cost Increase and Second Addendum to the Master Services Agreement with Level One LLC

SUMMARY:

The Master Services Agreement First Addendum and Second Addendum provide authorization to Level One LLC to continue the provision of processing, printing and mailing of paper bills from April 1, 2019 to April 1, 2021.

BACKGROUND AND JUSTIFICATION:

On April 1, 2014 after conducting a competitive solicitation process, the City entered into a 5-year Master Services Agreement with Level One LLC for processing, printing and mailing of paper bills. The Agreement provided two (2) additional one (1) year renewal options after the initial 5-year term. On April 1, 2019, the City Manager approved the first year renewal via the First Addendum on an emergency basis due to the last minute realization that the Agreement was going to expire. The First Addendum have been brought forward to the City Commission for ratification and was approved by the City Commission on April 30, 2019. While reviewing the second year renewal option, the City realized that additional funds would be required for printing, mailing and postage for FY20 and is requesting approval for the additional $110,000 for this fiscal year.

The Second Addendum is to exercise the second and final renewal option under the Agreement.

The total remaining anticipated cost for the First Addendum and the Second Addendum (for Fiscal Years 2020-2021) is not to exceed $210,000.

MOTION:

Move to approve / disapprove the First Addendum cost increase and Second Addendum to the Master Services Agreement with Level One LLC in an amount not to exceed $210,000 for Fiscal Years 2020-2021.

ATTACHMENT(S):

Fiscal Impact Analysis
First Addendum
Second Addendum
Level One LLC Master Services Agreement

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	**2020**	**2021**	**2022**	**2023**	**2024**
Capital Expenditures	0	0	0	0	0
Operating Expenditures	$110,000	$100,000	0	0	0
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
Net Fiscal Impact	$110,000	$100,000	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

B. Recommended Sources of Funds/Summary of Fiscal Impact:

The FY 2020 budgeted amount is $150,000: hence the request for additional funds in the amount of $50,000: by a budget amendment.

Account Number	Account Description	Project Number	FY20 Budget	Budget Amendment	Agenda Expenditure	Balance
401-1240-513.34-50	Other Contract servs		$150,000	$50,000	-$110,000	$

C. Department Fiscal Review: Edward Liberty, Electric Utility Director

Addendum to Master Services Agreement Dated April 2, 2014

This Addendum to the Utility Billing Processing, Printing and Mailing Services Agreement is made and entered into as of the last date signed below, by and between the City of Lake Worth, FL ("the CITY") and Level One LLC ("PROVIDER")

WHEREAS, the CITY and PROVIDER are parties to that certain Services Agreement dated April 2, 2014 for the provision of processing, printing and mailing of paper communication services by PROVIDER to the CITY; and

WHEREAS, the CITY and PROVIDER desire to amend the Services Agreement and update certain terms and pricing included the Services Agreement. Modifications to service descriptions and/or updates to Contract Pricing are being made to the following items:

1.) Print and Mail services will be invoiced at a flat rate of $2,995.00 per month regardless of volume.
2.) The term of this amended Services Agreement will be extended for an additional year through April 1, 2020, eliminating the City's right to exercise termination for convenience. Section 13.3, regarding the City's ability to terminate for convenience upon 180 days' notice is hereby deleted.

WHEREAS, the CITY and PROVIDER desire that all other terms, conditions and pricing contained in the Services Agreement remain in full force and affect.

NOW THEREFORE, in consideration of the foregoing, the CITY and PROVIDER agree to the following modifications:

1	**Print and Mail Services Flat Fee (No minimum volume commitment is required)**	**$ 2,795.00 /Mo.**
2	**Additional One (1) Year Term with no option for termination for convenience.**	**Expires 4/1/2020**

All other Terms and Conditions and associated pricing contained in the existing Services Agreement shall remain in full force and effect.

Acknowledged and Agreed to:

LEVEL ONE LLC

By: _____
Signature

John Parker Boland
Printed Name

President
Title

4/2/2019
Date

CITY OF LAKE WORTH, FL

By: _____
Signature

Richard Bornstein
Printed Name

City Manager
Title

4/2/19
Date

Attest: _____
City Clerk

CITY OF LAKE WORTH INCORPORATED 1913 PALM BEACH COUNTY STATE OF FLORIDA

Revd for legal sufficiency.
CSA 4/1/2019 for
Glen J. Torcivia, City Attorney

SECOND ADDENDUM TO UTILITY BILLING PROCESSING, PRINTING, AND MAILING SERVICES AGREEMENT

THIS SECOND ADDENDUM TO THE AGREEMENT ("Second Addendum") is entered into as of the ____ day of _____, 2020, by and between the City of Lake Worth Beach, a Florida municipal corporation ("City") and Level One, LLC, a corporation authorized to do business in the State of Florida ("Provider").

RECITALS

WHEREAS, on or about April 2, 2014, the City and Provider entered an agreement for the Provider to provide processing, printing and mailing of paper communication services for the City (the "Agreement"); and,

WHEREAS, the Agreement had an initial five (5) year term with two (2) one year renewal options consistent with the Request for Proposal (RFP No. 12-13-206) for the needed services; and

WHEREAS, the City and Provider renewed the Agreement on April 2, 2019, and extended the termination date to April 1, 2020 by amendment to the Agreement (the "First Addendum"); and

WHEREAS, the City and Provider wish to amend the Agreement to renew the Agreement for one additional year with all other terms, conditions and pricing remaining the same.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged by each party hereto, the City and the Provider agree to amend the Agreement, as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.

2. **Term of Agreement.** The parties agree that the term of the Agreement is hereby extended to April 1, 2021.

3. **Amount Not To Exceed.** The maximum amount not to exceed for this Amendment is $200,000.00 (Two Hundred Thousand Dollars).

4. **Scrutinized Companies.**

4.1. Provider 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 the Agreement at its sole option if the Provider or any of its subcontractors are found to have submitted a false certification; or if the Provider 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 the Agreement.

4.2. If the Agreement is for one million dollars or more, the Provider 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 the Agreement at its sole option if the Provider, or any of its subcontractors are found to have submitted a false certification; or if the Provider 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 the Agreement.

4.3. The Provider agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under the Agreement.

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

4.5. The Provider agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the Provider shall immediately notify the City of the same.

4.6. 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.

5. **Entire Contract.** The City and the Provider agree that the Agreement, the First Addendum and this Second Addendum set 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 the Agreement, the First Addendum and this Second Addendum may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. All other terms and conditions of the Agreement, as amended, remain in full force and effect.

6. **Counterparts.** This Second Addendum may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Either or both parties may sign this Second Addendum via facsimile or email and such signature is as valid as the original signature of such party.

REST OF PAGE LEFT BLANK INTENTIONALLY
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the parties hereto have made and executed this Second Addendum to the Utility Billing Processing, Printing, and Mailing Services Agreement on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Deborah M. Andrea, City Clerk

By: _____
Pam Triolo, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____ FOR
Glen J. Torcivia, City Attorney

APPROVED FOR FINANCIAL SUFFICIENCY

By: _____
Bruce T. Miller, Financial Services Director

PROVIDER: **LEVEL ONE, LLC.**

By: _____

[Corporate Seal]

Print Name: John P. Boland

Title: President

STATE OF PENNSYLVANIA)
COUNTY OF CHESTER)

The foregoing instrument was acknowledged before me this 10th day of February 2020, by John P. Boland, who was physically present, as President (title), of **Level One, LLC**, which is authorized to do business in the State of Florida, and who is personally known to me or who has produced the following _____ as identification.

Notary Public

Maryellen Less

Print Name: Maryellen Less

My commission expires: Dec. 16, 2023

Commonwealth of Pennsylvania - Notary Seal
MARYELLEN LESS - Notary Public
Chester County
My Commission Expires Dec 16, 2023
Commission Number 1295281

OFFICE OF THE CITY CLERK
7 North Dixie Highway · Lake Worth, Florida 33460 · Phone: 561-586-1662· Fax: 561-586-1750

April 2, 2014

John Parker Boland
Level One, LLC
3 Great Valley Parkway, Suite 100
Malvern, PA 19355-1478

RE: Executed Agreement

Dear Mr. Boland:

On April 1, 2014, the City Commission approved an agreement with Level One, LLC for utility billing processing, printing and mailing services. Enclosed please find an executed agreement for your records.

If you have any questions, please feel free to contact me at 586-1662.

Sincerely,

Pamela J. Lopez, MMC
City Clerk

enclosure

Agreement only scanned 4/8/14.

UTILITY BILLING PROCESSING, PRINTING, AND MAILING SERVICES AGREEMENT

THIS UTILITY BILLING PROCESSING, PRINTING, AND MAILING SERVICES AGREEMENT ("Agreement" hereinafter) is made this 2 day of April, 2013 between the **City of Lake Worth**, Florida, a municipal corporation ("CITY" hereinafter), with its principle office located at 7 North Dixie Highway, Lake Worth, Florida 33460, and, **Level One, LLC,** a foreign limited liability company authorized to do business in the State of Florida, with its corporate headquarters located at 3 Great Valley Parkway, Ste 100, Malvern, PA 19355-1478("PROVIDER" hereinafter).

RECITALS

WHEREAS, the CITY issued Request for Proposals #12-13-206 in order to obtain a service provider for the processing, printing, and mailing of the City's utility billings ("RFP" hereinafter);

WHEREAS, the PROVIDER submitted a proposal in response to the RFP;

WHEREAS, the CITY desires to accept PROVIDER's proposal for the provision of the processing, printing, and mailing services consistent with the terms and conditions set forth in this Agreement;

WHEREAS, the PROVIDER warrants that it is experienced and capable of performing the services hereunder in a professional and competent manner;

WHEREAS, the CITY finds accepting the PROVIDER's proposal as described herein serves a valid public purpose and is in accordance with the CITY's Procurement Code.

NOW THEREFORE, the CITY hereby engages the PROVIDER for the provision of utility billing processing, printing, and mailing services, and in consideration of the mutual promises herein contained, the sufficient of which is hereby acknowledged by both parties, the parties agree as follows:

1. Recitals: The above RECITALS are incorporated into this Agreement as true and correct statements.

2. Term: The term of this Agreement shall be for five (5) years commencing on the Effective Date. The Effective Date of this Agreement is the date the CITY approves and executes this Agreement. This Agreement may be further extended for two additional one year renewal options. The renewal options shall be exercised by the CITY by written notice to the PROVIDER prior to the expiration of the then current term. Notwithstanding the foregoing, this Agreement may be terminated under the terms and conditions of this Agreement.

3. Scope of Services:

3.1 The scope of services for the provision of the PROVIDER's services to the CITY is as described in **Exhibit "A"** and incorporated herein by reference.

3.2 The PROVIDER represents to the CITY that the services to be performed under this Agreement shall be in accordance with accepted and established industry practices and procedures recognized in the PROVIDER's area in general and that the PROVIDER's services shall conform to the highest standards and in accordance with this Agreement.

3.3 The PROVIDER represents that it is licensed to do business in the State of Florida and holds and will maintain all applicable licenses required for the services to be completed under this Agreement. The PROVIDER further warrants its capability and experience to perform the services provided for herein in a professional and competent manner and consistent with all applicable laws.

4. USE OF AGENTS OR ASSISTANTS: To the extent reasonably necessary to enable the PROVIDER to perform its services hereunder, the PROVIDER shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance its duties. All costs of the services of, or expenses incurred by, such agents or assistance shall be paid by the PROVIDER.

5. PROJECT MANAGEMENT: Both parties shall appoint a Project Manager who shall meet to coordinate, review and insure performance by the PROVIDER under this Agreement. The Project Manager appointed by the CITY will oversee the daily administration of the services to be performed by the PROVIDER under this Agreement but is not authorized to modify this Agreement.

6. EQUIPMENT: The PROVIDER shall provide all equipment necessary to complete the services to be performed hereunder. In the event PROVIDER requires equipment from the CITY, the PROVIDER shall meet and confer with the CITY before services commences. In the event the CITY's equipment is to be utilized, any costs chargeable to the PROVIDER shall be agreed upon in advance of the commencement of work.

7. FEE: The fee to be paid by the CITY to the PROVIDER is set forth in Exhibit "B", attached hereto. If the PROVIDER is to be used for additional services, the fee to be paid for such additional services shall be agreed to in writing by the CITY's Manager or CITY Commission (depending on the CITY's existing procurement code requirements) and the PROVIDER before such additional services commence (whether in lump sum or by an hourly rate).

8. INVOICE: The PROVIDER shall submit an itemized invoice to the Project Manager for approval prior to receiving compensation. The invoice shall include an itemized summary of total costs billed and shall be made at such intervals as agreed to with the

Project Manager, but no more frequently than once per month. All invoices shall include a description of the status of the services, a brief itemization of costs associated which each task or project phase and the total task or project costs to date. The PROVIDER shall be paid within thirty (30) days receipt of an approved invoice for work.

9. MAINTENANCE OF RECORDS AND AUDIT BY CITY: The PROVIDER shall maintain records and accounts, together with supporting documents, evidencing all business matters with respect to this Agreement. All such records and accounts shall be preserved by the PROVIDER for at least three (3) years from the date of the transaction to which they relate. The PROVIDER agrees that the records and documents referred to herein shall be available for audit, inspection and copy by the CITY and/or its auditors and agents, upon reasonable prior notice during the PROVIDER's regular business hours.

10. COPIES OF DATA/DOCUMENTS: Copies of original documents prepared by the PROVIDER in relation to services associated with this Agreement shall be provided to the CITY. Data collected, stored, and/or provided shall be in a form acceptable to the CITY and agreed upon by the CITY.

11. OWNERSHIP: The PROVIDER shall retain all rights, ownership, title and interest (including any applicable copyright and other intellectual property rights, or informational rights) in its data as may be provided, compiled, processed or generated in association with this Agreement. The CITY shall retain all rights, ownership, title and interest in the data/information provided to the PROVIDER under this Agreement. The PROVIDER or any party working with the PROVIDER or on its behalf shall not sell, provide, convey, or lease any data/confidential information generated, compiled, or provided by the CITY hereunder to any third party or entity unless authorized or required by law.

12. WRITTEN AUTHORIZATION REQUIRED: As provided for herein, the PROVIDER shall not make changes in the scope of services or perform any additional services or provide any additional material under this Agreement without first obtaining written authorization from the CITY for such additional services or materials. Additional services or materials provided without written authorization shall be done at the PROVIDER's sole risk and without payment from the CITY.

13. DEFAULTS, TERMINATION OF AGREEMENT

13.1 If the PROVIDER determines that the CITY has breached any of the provisions of this Agreement, it shall notify the CITY of the specific breach in writing, and the CITY shall have thirty (30) days to rectify the breach, except in the case of nonpayment, for which the CITY shall have five (5) business days (excluding holidays) after receiving written notice to rectify the breach. If the CITY does not or cannot rectify the breach, the PROVIDER may, at the end of such 30-day period (5 business days for nonpayment), without waiver of any of its other rights and remedies, terminate this Agreement effective upon giving of written notice to the CITY.

13.2 In addition to other provisions provided herein regarding termination for specific breaches, if the CITY determines that the PROVIDER has breached any of the provisions of this Agreement, it shall notify the PROVIDER of the specific breach in writing, and the PROVIDER shall have thirty (30) days to rectify the breach after receipt of the written notice from the CITY. If the PROVIDER cannot or does not rectify the breach, then the CITY may, at the end of such 30-day period, without waiver of any of its other rights and remedies, terminate this Agreement upon giving of written notice to the PROVIDER.

13.3 Notwithstanding anything to the contrary in this Agreement, the CITY reserves the right and may elect to terminate this Agreement at any time after the third anniversary year of this Agreement upon 180 days notice to the PROVIDER. At such time, the PROVIDER would be compensated only for those services which have been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement, wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph 13.3.

13.4 Notwithstanding the foregoing, the parties acknowledge and agree that the CITY is a Florida 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 the PROVIDER of such occurrence and either the CITY or the PROVIDER may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than ten (10) days 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.

13.5 Immediately upon termination of this Agreement, each party shall promptly destroy or return to the other all data, programs, materials, and other properties of the other held by it in connection with the performance of this Agreement. Each party will assist the other party in effecting an orderly termination of this Agreement.

14. INSURANCE

14.1 The PROVIDER shall, at its own expense, procure and maintain throughout the term of this Agreement, with insurers acceptable to the CITY, the types and amounts of insurance set forth below. The PROVIDER shall not commence services until the required insurance is in force and evidence of insurance acceptable to the CITY has been provided to, and approved by, the CITY. An appropriate Certification of Insurance shall be satisfactory evidence of insurance. Until such insurance is no longer required by this Agreement, the PROVIDER shall provide the CITY with renewal or replacement

evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.

The PROVIDER shall maintain during the life of this Agreement standard Professional Liability Insurance in the minimum amount of $1,000,000.00 per occurrence.

The PROVIDER shall maintain, during the life of the Agreement, commercial general liability, including public and contractual liability insurance in the amount of $1,000,000.00 per occurrence ($2,000,000.00 aggregate) to protect the PROVIDER from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under the contract, whether such operations be by the PROVIDER or by anyone directly or indirectly employed by or contracting with the PROVIDER.

The PROVIDER shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.

14.2 The insurance provided by the PROVIDER shall apply on a primary basis. Any insurance, or self-insurance, maintained by the City Commission shall be excess of, and shall not contribute with, the insurance provided by the PROVIDER. Except as otherwise specified, no deductible or self-insured retention is permitted.

14.3 Compliance with these insurance requirements shall not limit the liability of the PROVIDER. Any remedy provided to the CITY by the insurance provided by the CITY shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of the PROVIDER) available to the CITY under this Agreement or otherwise.

14.4 Neither approval nor failure to disapprove insurance furnished by the PROVIDER shall relieve the PROVIDER from responsibility to provide insurance as required by this Agreement.

14.5 The PROVIDER's failure to obtain, pay for, or maintain any required insurance shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement. In the event of any termination or suspension, the CITY may use the services of another PROVIDER or contractor without the CITY incurring any liability to the PROVIDER.

15. WAIVER OF BREACH: The waiver of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

16. INDEMNITY:

16.1 The PROVIDER shall protect, defend, indemnify and hold the CITY and its employees and agents harmless from and against any claim, lawsuit, loss, liability, fine, penalty, interest, damage, settlement or judgment, including without limitation, attorneys' fees and other expenses, incurred in the defense of a claim arising out of or alleging that such claimant's loss or injury was caused, in whole or in part, by the negligent acts or negligent omissions of the PROVIDER, its employees, contractors or agents. In addition to and without limiting the foregoing in any way, the PROVIDER covenants and represents that it has acquired any and all applicable licenses, consents, releases and/or approvals in connection with the services hereunder. The PROVIDER shall protect, defend, indemnify and hold the CITY and its employees and agents harmless with respect to acquiring any such licenses, approvals, consents, releases and making their respective fees and payments and any claims relating to intellectual property infringement in connection with the services provided hereunder.

16.2 The parties hereto acknowledge the limited waiver of sovereign immunity for liability in tort contained in Section 768.28, Florida Statutes, and acknowledge that such statute permits actions at law to recover damages in a tort action for monetary damages up to the limits set forth in such statute for death, personal injury or property damage caused by the negligent or wrongful acts or omissions of a CITY employee acting within the scope of the employee's office or employment. The CITY agrees to be responsible for all such claims and damages, to the extent and limits provided in section 768.28, Florida Statutes, arising from the actions of City employees which arise out of or are related to this Agreement.

16.3 Each of the parties expressly acknowledge that the foregoing provisions in this section 16 shall not constitute: (a) an agreement by any party to indemnify the other party for the other party's negligence, intentional torts or wrongful acts; (b) a waiver of sovereign immunity by the City; (c) a waiver of any right or defense that each party may have; nor, (d) consent by either the party to be sued by third parties.

17. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

17.1 This Agreement consists of the terms and conditions provided herein including Exhibit "A" and "B"; the RFP; and, the PROVIDER's proposal. To the extent that there exists a conflict between the terms and conditions of this Agreement including Exhibit "A" and "B" and the other documents, the terms and conditions of this Agreement shall prevail with the RFP 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.

17.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. Except as specifically provided

for herein, any modification to this Agreement requires the approval of the CITY's Commission.

18. ASSIGNMENT

18.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the CITY and the PROVIDER. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the CITY and the PROVIDER and not for the benefit or any other party. The PROVIDER shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

18.2 In the event the CITY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

19. SUCCESSORS AND ASSIGNS: Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

20. WAIVER OF TRAIL BY JURY: 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.

21. GOVERNING LAW AND REMEDIES:

21.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be in Palm Beach County, Florida.

21.2 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.

22. TIME IS OF THE ESSENCE; SERVICE LEVEL COMMITMENTS; LIQUIDATED DAMAGES; AND DELAY:

22.1 Time is of the essence in the completion of all and services as specified herein.

22.2 *Service Level Commitments*:

The CITY will typically transmit its data on a daily basis to the PROVIDER between 10:00 a.m. – 4:00 p.m. If data is received prior to 10:00 a.m., Level One will use commercially reasonable efforts to process the data, print and deliver the mailings to the designated United States Postal Service (USPS) location on the same day. If PROVIDER successfully receives the data transmitted by the CITY after 10:00 a.m. prior to 4:00 p.m. each business day, Level One will use commercially reasonable best efforts to process, print and deliver mail to the designated United States Postal Service (USPS) location adhering to the service level commitments as outlined in the following schedule:

Service Level Commitments

Receipt of Data	**Service Level**	
Prior to 10:00 a.m.	Target SLA	Same Day
Prior to 10:00 a.m.	Guaranteed SLC	Next Business Day
Prior to 10:00 a.m.	Late - Breach *	2 Business Days
Between 10:00 a.m. – 4:00 p.m.	Late - Breach *	3 Business Days

* The PROVIDER will be afforded a maximum of six (6) late cycles during each anniversary year of this Agreement without causing a breach of this Agreement and without the PROVIDER being assessed any liquidated damages. As used herein, a "**late cycle**" occurs when the PROVIDER does not process the data, print and deliver the mailings to the designated USPS location until the second business day for data received from the CITY after 10:00 a.m. but before 4:00 p.m. Upon and after the seventh late cycle in any anniversary year of this Agreement, the City may, without waiving any rights or other remedies, immediately terminate this Agreement for breach and/or assess liquidated damages as set forth below.

If at any time during the life of this Agreement, the PROVIDER breaches the Guaranteed SLC, the City may, without waiving any rights or other remedies, immediately terminate this Agreement for breach of the Guaranteed SLC and assess liquidated damages as set forth below. The PROVIDER "**breaches the Guaranteed SLC**" when the PROVIDER receives the data from the CITY prior to 10:00 a.m. but does not process the data, print and deliver the mailings to the designated USPS location until the second business day (or sometime thereafter) or when the PROVIDER receives the data from the CITY after 10:00 a.m. but before 4:00 p.m. but does not process the data, print and deliver the mailings to the designated USPS location until the third business day (or sometime thereafter).

All times set forth above are Eastern Standard Time.

The CITY's decision to assess liquidated damages as set forth herein is in its sole and absolute discretion.

22.3 *Liquidated Damages*: The CITY and PROVIDER recognize that the turnaround time for processing and mailing the utility bills is critical and time sensitive under this Agreement. The CITY will suffer financial loss if the PROVIDER fails to achieve the Guaranteed SLC as specified above in section 22.2 on a consistent basis. In such event, the total amount of the CITY's damages, will be difficult, if not impossible, to definitely ascertain and quantify. Accordingly, upon and after the seventh late cycle during any anniversary year of this Agreement and/or upon the PROVIDER's breach of the Guaranteed SLC, the CITY shall be entitled to assess, as liquidated damages, but not as a penalty, $1000 (One Thousand Dollars) for each calendar day after the Guaranteed SLC until the CITY's data is processed, printed, and delivered to the designated USPS location by the PROVIDER. The PROVIDER expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the CITY's actual damages at the time of contracting if the PROVIDER fails to perform the services within the required timeframes.

22.4 *Delays:* Neither party shall be in breach of this Agreement due to delay in its performance if such delay results directly from any cause not within its reasonable control, including, but not limited to fire, explosion, strike, freight embargo, act of God, act of the public enemy, war, civil disturbance, de jure or de facto, material or labor shortage, transportation contingencies, unusually severe weather, quarantine, epidemic, or catastrophe. Further, the PROVIDER shall not be assessed liquidated damages for delays in its performance if such delay is due directly to any cause not within its reasonable control, including but not limited to, fire, explosion, strike, freight embargo, act of God, act of the public enemy, war, civil disturbance, de jure or de facto, material or labor shortage, transportation contingencies, unusually severe weather, quarantine, epidemic, or catastrophe. Once the cause for delay has ended or is reasonably resolved, each party shall promptly resume its performance under this Agreement.

23. NOTICES: All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3^{rd}) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the CITY or the PROVIDER have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the PROVIDER to the CITY shall be given to the CITY address as follows:

City of Lake Worth Utilities
414 Lake Ave
Lake Worth, FL 33460

With copy to:

City of Lake Worth
Attn: City Manager
7 North Dixie Hwy
Lake Worth, Florida 33460

All notices, demands or requests from the CITY to the PROVIDER shall be given to the PROVIDER address as follows:

Level One, LLC
Attn: John Parker Boland, President
3 Great Valley Parkway, Ste 100
Malvern, PA 19355-1478

24. SEVERABILITY: Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

25. DELAYS AND FORCES OF NATURE: Neither party shall be considered in default in the performance of its obligations hereunder or any of them, if such obligations were prevented or delayed by any cause, existing or future beyond the reasonable control of such party which include but are not limited to acts of God, labor disputes or civil unrest.

26. COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. Each of the parties shall sign a sufficient number of counterparts, so that each party will receive a fully executed original of this Agreement.

27. LIMITATIONS OF LIABILITY: Under no circumstances shall either party be liable to the other for any consequential, incidental, special, punitive, or any other form of indirect or non-compensatory damages.

28. PUBLIC ENTITY CRIMES: PROVIDER 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 PROVIDER, supplier or sub-PROVIDER/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 Statues, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. PROVIDER will advise the CITY immediately if it becomes aware of any violation of this statute.

29. PREPARATION: This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

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

31. ENFORCEMENT COSTS: All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement.

32. AVAILABILITY OF FUNDS: This Agreement is expressly conditioned upon the availability of funds lawfully appropriated and available for the purposes set out herein as determined in the sole discretion of the CITY. If funding for this Agreement is in multiple fiscal years, funds must be appropriated each year prior to costs being incurred. Nothing in this paragraph shall prevent the making of contracts with a term of more than one year, but any contract so made shall be executory only for the value of the services to be rendered or paid for in succeeding fiscal years. In the event funds to finance this Agreement become unavailable, the CITY may terminate this Agreement upon no less than twenty-four (24) hours notice to PROVIDER. The CITY shall be the sole and final authority as to the availability of funds.

33. **PUBLIC RECORDS:** The PROVIDER shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and specifically agrees to:

(a) Keep and maintain all public records that ordinarily and necessarily would be required by the CITY to keep and maintain in order to perform the services under this Agreement.

(b) Provide the public with access to said public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining said public records and transfer, at no cost, to the CITY all said public records in possession of the PROVIDER upon termination of this Agreement and destroy any duplicate public records that are

exempt or confidential and exempt from Chapter 119, Florida Statutes, disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

34. SURVIVABILITY: Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term or any renewal of this Agreement shall survive the expiration or termination of this Agreement.

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SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the parties hereto have made and executed this Professional Services Agreement on the day and year first above written.

CITY OF LAKE WORTH, FLORIDA

By: _____
Pam Triolo, Mayor

ATTEST

_____
Pamela J. Lopez, City Clerk

Approved as to form and legal sufficiency:

_____ For
Glen J. Torcivia, City Attorney

PROVIDER: **LEVEL ONE, LLC.**

By: _____

Print Name: John P. Boland

Title: President

[Corporate Seal]

STATE OF PA)
COUNTY OF Chester)

The foregoing instrument was acknowledged before me this 16th day of January, ~~2013~~ 2014 by J. Boland, as President of Level One, LLC, a limited liability company authorized to do business in the State of Florida, and who is personally known to me or who has produced the following Drivers License (PA) as identification.

Notary Public

_____
Print Name: Christine Scanlon
My commission expires: 1.5.15

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Christine Scanlon, Notary Public
MARPLE TWP., DELAWARE COUNTY
MY COMMISSION EXPIRES JAN. 05, 2015

EXHIBIT "A"

SCOPE OF SERVICES

The services to be provided by the PROVIDER under this Agreement is essentially the assumption of the CITY's utility bill printing and mailing services including, but not limited to, statements, and letters to residential, commercial, and industrial utility customers with address correction and encoding capabilities. In addition to assuming these services, the PROVIDER shall provide the CITY with indexed PDFs of the bills produced by the PROVIDER for linkage to the SunGard Public Sector online bill management capabilities utilized by the CITY.

The CITY also encourages the PROVIDER to move towards electronic bill notification and use recycled paper in the bill production process. Part of the CITY's environmental stewardship objectives is to encourage more customers to move to electronic bill notification and to use recycled paper in the bill production process. As the electronic bill notification initiative moves forward successfully, the number of utility bills printed per month may be reduced.

The CITY reserves the right to delete or amend any of the services as listed and described herein. If services are added, the parties will meet to negotiate any increase in the PROVIDER's compensation due to the added services. If services are deleted, the parties will meet to negotiate any decrease in the PROVIDER's compensation due to the deleted services.

TECHINCAL REQUIREMENTS TO BE MET:

A. The PROVIDER will receive and format billing data to print, insert, sort and mail utility bills. The City will transmit, via a PROVIDER provided secure FTP site, extract files, data and documents to the PROVIDER each billing cycle by a time agreed upon by the PROVIDER and City. The City will receive a file of corrected mailing address information from the PROVIDER at a time to be agreed upon. The volume of extract files will vary: The PROVIDER shall process the extracted files provided by the City for the generation of customer bills and letters.

B. The PROVIDER shall create bills from approved file layouts, distinguishing unique bill types and including, but not limited to:

   1) Bank drafts
   2) Corrected bills
   3) Final bills
   4) Group billing
   5) Unique Classes of Service (i.e. Government)
   6) E-bills (to exclude from printing)

C. The PROVIDER shall insert monthly statement(s) into a double window envelope with a return envelope. The ability to suppress insertion of a return envelope and to produce an electronic version of the bill only will be required based on the customer's selection and selections in the bill format. This capability will include processing, laser printing in highlight color on form, folding, inserting, along with a remittance envelope, sorting and delivery of bills to the United States Postal Service (USPS) each month based on the release of bill cycles. Production and mailing must be delivered within 24 hours of

release of a bill cycle. The bills will be two pages however some customer locations have multiple meters which will result in a bill that is multiple pages.

D. The City will have inserts to be included in the bills produced and mailed. The City may seek the PROVIDER's ability to print inserts as a supplemental service. If the City prints its inserts separately from the PROVIDER, the inserts will be drop shipped to the printing facility within 5 business days of when the inserts are required for production. The inserting process may involve select billing cycles identified by the City or a complete month of bill production. The City will work with the PROVIDER to design inserts to conform to the specifications required for successful insertion by the equipment provided by the PROVIDER. Additional inserts may be provided in a Microsoft Word .DOCX, Adobe .PDF, Microsoft EXCEL .XLSX, Comma Separated Variable .CVS or Text .txt formats.

E. The PROVIDER will use best practices to propose bill designs for acceptance by City staff that uses a two-color (black with a second variable laser highlight color of blue) one-sided bill form. The bills are to be printed on blank 8.5" x11", 20 lb paper with a perforation integrated into the final bill design so that the customer may tear off the payment stub). Printing will be of laser quality with a resolution of at least 600 X 600 DPI. The paper used should have a brightness factor to allow a contrast ratio of paper to print to ensure reliable OCR scanning. Printing on the reverse side of the bill will include general instructions to the customer. The bill design shall include an appropriate bar code scan line and an OCR line for remittance processing, a message area (variable data text messages that may exploit the highlight color ink), different size fonts to enhance readability, a bar chart to reflect consumption over a 12-month period, and the City's logo. Special consideration must be given in aligning the final design of the detachable payment coupon for error-free processing payment system. Envelopes should be double window #10 that will allow for the outgoing address on the bottom with the return address and City logo in the top window. Payment stubs shall be designed with the City's payment address revealed when inserted into the PROVIDER provided return window envelopes. The appropriate size return envelopes must be security tinted on the inside. Once the final design is defined the PROVIDER shall notify the City in writing, and receive approval of any required changes to forms or envelopes prior to implementation.

F. The PROVIDER must be able to "Combine Bills" of the same name and address into one envelope. In addition, the PROVIDER must offer "Selective Inserting" so that the City's customers using bank draft or credit balance bills will not receive a return envelope.

G. Each bill will be generated from multiple data files (minimum of **13 files)** produced by Sungard's Public Sector software which will be transmitted electronically to the PROVIDER via FTP. After electronic receipt, the bills are to be printed in bill runs averaging between **700** and **3,000** bills per run corresponding to the City's billing cycles. Each date/print file will be treated as a separate billing. In addition, overdue/cut off notices are generated and mailed daily. The PROVIDER should be aware these billing cycles are driven by meter reading, are not fixed and occur on different days each month. The City must have flexibility in when we can have bills printed. It is required the PROVIDER send notification back to the City indicating the file(s) has been received.

The PROVIDER will assist the City during the initial and follow on operations with the FTP link.

H. The PROVIDER will use Coding Accuracy Support System (CASS) procedures and technology to certify the customer addresses during each bill printing cycle so that the postage costs are minimized.

I. As part of the bill printing and mailing process, the City requires the PROVIDER to generate PDF documents of the bills that include indexing. The PDFs will contain the same information as the printed bill itself. The indexed PDFs will be delivered electronically to the City as quickly as possible for integration and linking to the customer's online account using SunGard's Click2gov application.

J. Once the insertion process is completed, the PROVIDER will mail the bills through the U.S. Postal Service to the customer addresses provided. The bills must be mailed within 24 hours of the electronic data being successfully received by the PROVIDER.

K. The City's mailings must start at the USPS 5-Digit Rate (or lowest) as qualifies to obtain the largest postage discounts. The PROVIDER must have postal software in-house to process and sort to attain the lowest postage rate. Investment in future upgrades to support the evolution of USPS mail requirements and to continue assurance of the lowest postage rates will be the responsibility of the PROVIDER. Bar coding, arranging and sorting of the City's bills shall be used by the PROVIDER to attain the lowest postage charges consistent with USPS standards. The PROVIDER will have an on-site USPS MERLIN system for verifying mail quality prior to entry into the USPS distribution system. The PROVIDER must be OP certified by the USPS to allow for one (1) and two (2) ounce mail pieces to go through the same mail stream to maximize postal discounts. The PROVIDER will make periodic recommendations for improving mail delivery, postage savings and reducing mailing costs.

L. The PROVIDER must have job tracking capability which allows the City to monitor the progress of all billing cycles via a web-based electronic interface. The PROVIDER will be required to send an e-mail notification or provide some form of web-based status to the City indicating the bills have been delivered to the Postal Service.

M. The PROVIDER will retain the City's billing data/print files until the PROVIDER receives the next date/print files. Daily backup rotation and storage of data will be declared by the PROVIDER.

N. The PROVIDER will provide the City a document or other method, indicating the number of bills received electronically for printing, as well as the postage breakdown as USPS Automation Qualified starting at First Class 5-Digit Rate of the billing cycle prior to the mailing of bills.

O. The PROVIDER will provide a monthly invoice broken down by data/print file or cycle sent by the City. The invoice will detail the number of bills processed and the amount of postage paid for each date/print file along with any other itemized charges.

P. Postage will be billed to the City at cost as part of the monthly bill. The City will allow the PROVIDER to establish an escrow account for postage. The PROVIDER will provide detail on the total bills printed, mailed and the monies billed to the City for postage services.

Q. The PROVIDER is to supply all paper, envelopes, return envelopes and postage. The PROVIDER will purchase and maintain a sufficient supply of billing forms and envelopes to ensure uninterrupted supply for printing requirements. It is expected that the exact postage costs will be passed through directly to the City.

R. The PROVIDER must provide the ability for the City to add or change messages which will print on the bill.

S. The PROVIDER will be responsible for assigning a specific point of contact to work with City personnel during the initial setup phase as well as during routine bill printing cycles.

T. The PROVIDER must have the ability to perform these services from more than one location (redundant capability) so that the service is not interrupted in the event of a disaster at one location. The PROVIDER shall provide back-up facilities in the event that the primary operational site experiences a service interruption or disaster to insure that services are provided in accordance with the contractual requirements. In the event of a service interruption or disaster, the PROVIDER shall immediately notify the City's Customer Service Supervisor or designee of the event and procedures implemented to meet the contractual requirements including the location to be used for processing the City's Bill Print and Mail Services. Should the PROVIDER anticipate a delay in meeting the City's service requirements, the PROVIDER shall provide mitigation information.

U. The PROVIDER must maintain internal control of the City's customer data and will not compromise, sell or share this data. Customer information will be treated as confidential and will not be released to any outside party without approval of the City. The PROVIDER's proprietary information or business practices considered trade secrets will be protected by the City.

V. Postage for the mailing of all customer bills will be charged to the City's USPS postage permit. The City shall provide PROVIDER with the required postage permit information, and it shall be the City's responsibility to ensure sufficient payments are made to the USPS to enable mailings to be made against the postage permit. PROVIDER shall be responsible for sorting, grouping, packaging, and in all other ways preparing the

customer bills and inserts for mailing so that the lowest possible postage fee is charged for the mailings.

EXHIBIT "B"

UTILITY BILL PRINTING AND MAIL SERVICES

PRICE SHEET

Base Price

$ 0.0875 /ea.	Unit price per statement, bill processed (including processing, sorting, printing of statement in highlight color laser, form, folding, inserting, mailing envelope, return envelope and delivery to USPS)
$ 0.010 / ea.	Charge for additional bill inserts ***(Provided by The City)***
$ 0.005 / ea.	***Charge for additional bill inserts (Provided by Level One)***
$ Included	Charge for Combined Bills ***(Included in Base Price above)***
$ 0.360 / ea.	Average postage per piece, consider postal sort starting at 5-Digit Rate as qualifies (realizing that cost will be estimated, provide best estimate per statement) ***Listed Price is the 5-Digit rate as of bid submission, actual Postage may be slightly higher as not all mail pieces will qualify at 5-digit.***
$ Waived	Programming fee per hour for set-up along with the estimated hours it takes for a typical customer set up. N/A Hours ***Set Up charges waived in consideration of (5) year agreement. Includes the redesign of (1) Bill Template.***
$ 90.00 / hr.	Programming fee per hour for changes after initial set-up.
$ 65.00 / hr.	***Graphic Design fee per hour (would apply to Welcome Kit design, insert design, additional bill/notice/letter template design, etc.)***
$ N/A	Charge for additional bill inserts
$ 0.005 / ea.	Charge for indexed PDFs of bills
$ 0.4475	**TOTAL (Unit Price plus Postage for a Single Page Bill, including the Bill Form, #10 OE and an enclosed #9 RE)**

Additional Products & Services

Item #	Description	Price
Add'l.	**PreVIEW® On-Line Pre-Production Quality Review** **Set-Up** **Monthly Flat Fee** Includes (3) query criteria.	 **$150.00 (1-Time)** **$100.00 / month**
Add'l.	**SureVIEW® On-Line Bill/Letter Image Archive** **Set-Up:** **Monthly Flat Fee:** Includes (3) query criteria.	 **$200.00 (1-Time)** **$100.00 / month**
Add'l.	**VIA Print / Additional Pages (simplex color laser, imaged onto Bill Stock – includes cost of material)**	**$0.065 / page**
Add'l.	**eVIEW EBPP Services**	**TBD**