

MEMORANDUM

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Agenda Item No. 3(E)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: November 14, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving Master Services Agreement (“MSA”) – Master Agreement for Energy Products and Services with FPL Services, LLC for a resilient infrastructure, electrical hardening, sustainability, and electric vehicle services feasibility study and implementation services thereunder for electrical infrastructure projects over a 20-year term and automatic renewal periods of 12 months in an amount not to exceed \$912,000,000.00; authorizing the County Mayor to execute MSA and exercise all provisions therein including termination and renewal terms as long as exercise of renewal is consistent with expenditure authority authorized herein; authorizing the County Mayor to negotiate, execute, implement, authorize, and administer any Florida Power & Light Company (“FPL”) tariff agreements, contracts, work orders, statements of work and other authorizations made pursuant to the MSA and exercise all provisions of FPL tariff agreements, contracts, work orders, statements of work and other authorizations made pursuant to the MSA including any renewal, cancellation, termination, or extension provisions contained therein provided that such are consistent with MSA and expenditure authority approved herein; and provide for competitive bidding of the underlying construction work and incorporate all small business goals and measures, wage requirements, and all other programs applicable to County construction pursuant to the Code or state law; waiving competitive bidding by a two-thirds vote of the Board members present to authorize purchase of a Feasibility Study under MSA in an amount not to exceed \$497,947.00; waiving competitive bidding by a two-thirds vote of the Board members present to authorize payments under the MSA to implement electrical infrastructure projects for the County; and directing the County Mayor to provide annual reports to the Board

The accompanying resolution was prepared by the Regulatory and Economic Resources Department and placed on the agenda at the request of Prime Sponsor Commissioner Raquel A. Regalado.


Geri Bonzon-Keenan
County Attorney

GBK/ks


MDC001

Memorandum



Date: December 12, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Recommendation for Approval of Bid Waivers for Resilient Infrastructure, Electrical Hardening, Sustainability, and Electric Vehicle Services and a Master Services Agreement between Miami-Dade County and FPL

Executive Summary

This item seeks to: (1) approve the Master Services Agreement – Master Agreement for Energy Related Products and Services (“MSA”) between Miami-Dade County (“County”) and FPL Services, LLC (“Company”), a wholly owned subsidiary of Florida Power & Light Company (“FPL”), for a term of 20 years; (2) authorize bid waivers under the MSA by a two-thirds vote of the Board members present; and (3) delegate authority to the Mayor to execute necessary agreements under the MSA to implement critical electrical infrastructure projects for the County. This MSA (attached as Exhibit A) is the result of a comprehensive, year-long collaboration with the Company and would serve to memorialize the Company’s commitment to assisting the County in advanced energy management and continued improvement of energy security through increasing sustainability and resiliency of electrical infrastructure, while reducing carbon emissions. It is anticipated that this strategic partnership will modernize the County’s aging infrastructure, realize significant financial savings, advance the County’s sustainability and resilience goals, and put forward the County as a national leader in electrical infrastructure, countywide electric vehicle (“EV”) charging stations, and reliable resilience strategies in local government facilities.

The MSA will address the following County needs:

- 1. Reinforcement of Aging Infrastructure While Maintaining Operations:** As described throughout this item, there exists a need to reinforce the County’s aging infrastructure. The proposed MSA contemplates the installation of backup power generation, battery storage, and electrical hardening at 12 Internal Services Department (“ISD”) facilities and at 52 locations at Miami International Airport (“MIA”). The approach delineated in this item ensures that the County facilities within the ISD and Miami-Dade Aviation Department (“MDAD”) portfolios can remain operational even when faced with challenges like equipment failure or impacts of maintenance. Furthermore, the MSA is expected to yield benefits including zero-emissions equipment and installation of net zero backup power generation for increased reliability. The terms delineated in the MSA are designed to address this, ensuring the County’s infrastructure stands robust, resilient, and ready for future challenges.
- 2. Enhanced Resilience:** The implementation of the MSA will ensure that the subject components of the County’s most critical infrastructures are built to withstand extreme weather-related adversities. The implementation of the MSA will give the County the

ability to keep key facilities operational in the event of storms and hurricanes, and extreme weather events, including Blue Sky Events.

3. **Advancing Sustainable Progress:** The County's buildings presently account for 41% of its total climate pollution emissions. By implementing the MSA and the resulting Master Plan, the County will be poised to make significant strides to reduce this percentage. It is expected that this approach will substantially diminish the County's carbon footprint. The County's net-zero goals are part of the Miami-Dade Climate Action Strategy ("CAS"), which outlines a comprehensive plan to reduce greenhouse gas ("GHG") emissions and adapt to the impacts of climate change. The CAS delineates the County's aims to reduce emissions by 50% by 2030 from 2019 levels and achieve net-zero emissions by 2050. The CAS includes several initiatives such as: (1) Retrofitting existing buildings to improve energy efficiency; (2) Expanding renewable energy sources, including solar and wind power; and (3) Encouraging the use of electric vehicles and other low-emission transportation options. To achieve these goals, the County has established partnerships with various stakeholders, including businesses, community organizations, and academic institutions. The County is also engaging with residents to raise awareness about the impacts of climate change and encourage individual actions that can help reduce emissions. Overall, the County's net-zero goals demonstrate its commitment to mitigating the impacts of climate change and creating a sustainable future for its residents. It is anticipated that the proposed MSA will help fulfill this commitment.
4. **Electrifying the County's Fleet:** As part of this initiative, the agreement with FPL Services also entails the comprehensive establishment of EV charging stations across the County. Miami-Dade County's fleet electrification plan aims to replace 50% of the County's vehicle fleet with electric vehicles by 2030. In addition to light-duty vehicles, the plan also includes the electrification of heavy-duty vehicles such as buses and garbage trucks. The proposed MSA provides installation of EV charging stations at 68 ISD facilities and at numerous MDAD sites, airport wide.

Many of these improvements will result in substantial cost savings for the County through streamlined operations and the implementation of energy-efficient systems, thereby decreasing operational expenses over time. Resulting savings could be utilized to offset the cost of the investments over the useful life of the services implemented under the MSA. The MSA is projected to deliver Solar PV Offset and Load Control Savings of \$268,000,000.00 from FPL over the term of the MSA. In addition, the MSA will generate Operational Savings and Capital Improvement Plan Avoidance Savings. The Company has a strong record of success. Through its partnership with the Company, the County has saved over \$110 million to date, comprising sixteen different projects at various County facilities, including MIA, correctional and court facilities, and office buildings. This amounts to nearly 1-billion KWh saved, which equates to the consumption of over 150-thousand cars driven for one year.

More specifically, this MSA would be entered into for services including, but not limited to: (1) the completion of an initial Resilient Infrastructure, Electrical Hardening, Sustainability &

Electric Vehicle Services (“RIEHSEVS”) Feasibility Study (“Feasibility Study”) resulting in a master plan (“Master Plan”) that contains each proposed project initiative (scope), a prioritization schedule, and costs; (2) the preparation of Feasibility Study Proposals and additional feasibility studies as needed; and (3) if elected by the County, implementation of RIEHSEVS projects. Additional agreements may be entered into with either FPL or the Company to facilitate implementation of the MSA. The primary benefit of RIEHSEVS is that the County will have the ability to keep facilities operational in the event of storms/hurricanes, electrical equipment failure, or maintenance.

The RIEHSEVS Feasibility Study will evaluate the existing electrical distribution infrastructure, identify and prioritize infrastructure improvements, and develop an initial Master Plan for energy resiliency and sustainability. As stipulated in the MSA, upon completion of the Feasibility Study, the Company and FPL will be procuring contractors via competitive bidding pursuant to the Florida statutory requirements applicable to the County to implement construction and infrastructure projects under the MSA. This will allow the County to implement EV charging, electrical hardening, solar installations, and backup power across more than 100 County sites. The work will be competitively bid by FPL, thereby expediting the implementation of these projects. The MSA requires application of the County’s small business goals and measures, responsible wages, and local workforce requirements for each agreed upon implementation service prior to issuance of any authorization to perform implementation services.

As the County continues to install EV charging stations to serve both County fleet vehicles and the public, the County will become increasingly reliant on electric utility providers such as FPL and its subsidiaries, like the Company, to add new electric services to County facilities to keep up with growing needs. Similarly, as the frequency of extreme weather events continues to accelerate, the availability of reliable backup power generation has become critical for County operations and the continuity of government operations. As the County’s electric provider, FPL and its subsidiaries, like the Company, are uniquely positioned to conduct a Feasibility Study that would lead to the opportunity to leverage FPL’s available tariff programs to address the County’s electrical infrastructure needs in a swift, efficient manner. Due to this fact, this item recommends that it is in the best interests of the County to approve bid waivers by a two-thirds vote of the Board members present to allow for the Company’s preparation of a Feasibility Study under the MSA and to allow the Company and FPL to oversee and implement authorized projects under the MSA.

As a utility regulated by the Florida Public Service Commission (“PSC”), FPL can only perform the work outlined in the MSA through PSC-approved tariffs and tariff agreements. The Feasibility Study, including the preparation of a Master Plan, will assist the County to determine whether to proceed with Implementation Services for the installation and construction of particular RIEHSEVS. The work of implementing RIEHSEVS would be done through three distinct PSC-approved tariffs, along with the connected tariff agreements.

The PSC-approved tariffs and connected tariff agreements that the Mayor would have delegated authority to enter into through this legislation include two tariff agreements with 10 year terms, including the tariffs for (1) Commercial Electrical Vehicle Charging Services and (2) Solar Power Facilities Power Riders, as well as one tariff agreement that would be entered into for a twenty year term, which is (3) the Supplemental Power Services Rider Pilot.

Approximately 55% of the services that would be procured through the MSA are MDAD projects, including back-up power generation and electrical hardening work at MIA. This will support needed life cycle replacement of MDAD equipment, with the ability to implement the projects on a more expedited timeline than would otherwise be feasible if the County were bidding out the work itself. The expedited replacement, hardening, and maintenance of MDAD's aged electrical infrastructure is critical to secure the airport operations against unforeseen power outages and to increase resilience. The proposed MSA contemplates the installation of backup power generation, battery storage, and electrical hardening at 52 MDAD sites, as well as 12 ISD facilities.

The County has been replacing its fleet of vehicles with EVs. This has created an emerging urgent need among many departments to develop available fleet EV charging infrastructure. The work that would be conducted under the Commercial Electrical Vehicle Charging Services tariff would provide an EV fleet charging solution to meet these needs across approximately 68 ISD sites and numerous MDAD sites, airport wide.

The Administration will provide annual reports to the Board throughout the duration of this MSA of all work projects authorized under the MSA. The annual reports will identify implemented projects, monies spent, and implementation of small business participation goals on projects authorized under the MSA.

Recommendation

It is recommended that the Board: (1) approve the terms of the MSA and authorize the County Mayor or County Mayor's designee to execute the MSA and exercise all provisions of the MSA including termination terms and renewal terms consistent with expenditure authority the Board has authorized hereunder; (2) authorize the County Mayor or County Mayor's designee to negotiate, execute, implement, authorize, and administer any FPL tariff agreements contracts, work orders, statement of works and other authorizations made pursuant to the MSA with the Company or FPL, and exercise all provisions of FPL tariff agreements, contracts, work orders, statement of works, and other authorizations made pursuant to the MSA, including any renewal, cancellation, termination, or extension provisions contained therein provided that such are consistent with the purpose and terms of the MSA; (3) waive competitive bidding requirements in the best interests of the County by a two-thirds vote of the Board members present pursuant to Section 2-8.1(b)(1) of the Code of Miami-Dade County ("Code") for Company's preparation and purchase of an initial Feasibility Study for the County in an amount not to exceed \$497,947.00; and (4) waive competitive bidding requirements in the best interests of the County over the term of the MSA by a two-thirds vote of the Board

members present pursuant to Section 2-8.1(b)(1) of the Code to authorize payments under the MSA to implement electrical infrastructure projects for the County. Total spending under the MSA, inclusive of the initial study and any FPL tariff agreements, contracts, work orders, statement of works and other authorizations, shall not exceed \$912,000,000.00 over the 20-year term of the MSA.

The MSA will be effective upon signature by all parties, and the initial term will expire 20 years from that date, unless terminated. The MSA shall automatically renew for additional twelve (12) month periods (each a “Renewal Term” and collectively with the Initial Term, the “Term”) unless either party gives written notice of its intent not to renew the Term at least thirty (30) days prior to the expiration of the then current Term. The County and the Company have agreed to waive their right to a jury trial over any disputes arising under the MSA.

Scope

Countywide

Delegation of Authority

The County Mayor or County Mayor’s designee is authorized to execute the MSA with the Company and exercise all provisions of the MSA including termination terms and renewal terms consistent with expenditure authority the Board has authorized. The Mayor or County Mayor’s designee is further authorized to pay the assessment of the Feasibility Study in an amount not to exceed \$497,947.00 and negotiate, execute, implement, authorize, and administer any FPL tariff agreements, contracts, work orders, statement of works and other authorizations made pursuant to the MSA and exercise all provisions of FPL tariff agreements, contracts, work orders, statement of works, and other authorizations made pursuant to the MSA, including any renewal, cancellation, termination, or extension provisions contained therein; the County Mayor shall not have the authority to enter into such agreements unless the agreements provide for competitive bidding of the underlying construction work and incorporate all small business goals and measures, wage requirements, and all other programs applicable to County construction pursuant to the Miami-Dade County Code or state law. The authorizations provided for shall not provide for spending in excess of \$912,000,000.00 over the 20-year term of the MSA and automatic 12-month renewal periods. The contracts to be negotiated are enumerated in the following paragraph and attached hereto.

The County Mayor or the County Mayor’s designee is authorized to execute, implement, and administer agreements and exercise all provisions of the contracts, including any renewal, cancellation, termination, or extension provisions contained therein, pursuant to section 2-8.1 of the County Code, as provided herein related to the implementation of the MSA including but not limited to the following agreements attached herein: (1) Feasibility Study Authorization Form; (2) Implementation Services Authorization Form; (3) Notice of Substantial Completion (4) Form of Change Order; (5) Form of Final Acceptance Certificate; (6) Form of Final Acceptance Certificate; (7) Solar Power Utilities Service Agreement and Solar Power Facilities Master Rider Pilot (attached as Exhibit B); (8) Commercial Electric Vehicle Charging Services

Agreement and Commercial Electric Vehicle Charging Services Rider Pilot (attached as Exhibit C); (9) Supplemental Power Services Agreement, Supplemental Power Services Rider Pilot, and Statements of Work (attached as Exhibit D); (10) Solar Power Utilities and Commercial Electronic Vehicle Charging Statements of Work (in development); and (11) any agreements, contracts, work orders, statement of works, and other authorizations made pursuant to and consistent with the terms of the approved MSA.

Fiscal Impact/Funding Source

The MSA and Feasibility Study Authorization Form provide for FPL Services to conduct a Feasibility Study on behalf of the County. After the County has the results of the Feasibility Study in hand, the County will negotiate different statements of work with FPL, which is the Company's parent company and the County's electric utility provider, for the actual infrastructure improvements that will be governed by PSC-approved tariff agreements. The initial Feasibility Study assessment fee will be paid in an amount not to exceed \$497,947.00. The Feasibility Study fee will be distributed between ISD and MDAD. ISD's portion, which remains to be determined, will be funded through the Capital Infrastructure Investment Program ("CIIP"). MDAD's share of the Feasibility Study fee will be funded by operational reserves. If the County elects to proceed with 30% or more of the recommended RIEHSEVS the cost of the Feasibility study can be deferred and rolled over into the Implementation Services payments.

The County is under no obligation to proceed with any of the services identified in report resulting from the Feasibility Study ("Feasibility Report"). However, if the County elects to proceed with less than thirty percent (30%) of the recommended RIEHSEVSs (as determined on an estimated implementation price basis) identified in Feasibility Report, the Company can refuse to proceed with any or all of the services identified in Feasibility Report.

The negotiations of the statements of work to complete the identified improvements resulting from the Feasibility Study assessment will be entered into with FPL, with payments under the tariffs in an amount not to exceed \$912,000,000.00 over the 20-year term of the MSA, and automatic 12-month renewal periods.

A more precise cost estimate is not available at this time because, as stipulated in the MSA, upon completion of the Feasibility Study, FPL will be hiring contractors through competitive bidding process compliant with sections 255.20 and 287.055 of the Florida Statutes.

Over the life of the payment obligation, the expected percentage estimates for each category of work approximately amount to:

1. 40% for Capital Cost (Material, Equipment, Installation, Permitting, Replacement Costs, and other related costs);

2. 40% for Carrying Cost (Interest, Cost Overruns, Unplanned Expenses, Overhead, and ROE); and,
3. 20% for Expenses (Projected non-fuel operations and maintenance expenses associated with the installed equipment, administrative and general expenses, depreciation expense, and any applicable taxes).

The "Carrying Cost" pays for the capital FPL uses to buy the equipment. About 40% is based on the current FPL cost of their debt and is effectively a passthrough. About 60% is a return on equity capital they deploy to buy the equipment, and the return on that is based on the most recent rate case decided by the PSC.

These improvements will be funded through operational funds and will be paid as service payments on a monthly basis ("Monthly Service Payments"). FPL will add tariff charges to each location's regular utility bills to recoup the costs associated with these improvement projects. As the projects will be billed as a service on departmental electric bills, the structure of the agreement allows for implementation of these needed capital projects without consuming the borrowing power of MDAD or the County in general.

Under each of the tariffs, the Company will design, procure, install, own, operate and provide maintenance to all equipment included in the determination of the Monthly Service Payment. The Monthly Service Payments are calculated based on the following PSC pre-approved formula: $\text{Monthly Service Payment} = \text{Capital Cost} + \text{Expenses}$ with a ROE. The current ROE is set at 10.8%. Projected costs include material, equipment, installation, permitting, replacement cost, interest, cost overruns, unplanned expenses, overhead, profit, projected non-fuel operations and maintenance expenses associated with the installed equipment, administrative and general expenses, depreciation expense, income taxes, and property taxes.

Projected costs shall be levelized over the term of the Service. Any replacement cost(s) expected to be incurred during the term of Service will also be included. Any equipment installed by the Company that is not necessary to support Service to the County shall not be included in the Monthly Service Payment.

The Monthly Service Payment(s) may be adjusted, by written agreement of both the County and the Company, to reflect the County's request for modifications to the Service and equipment specified in the Agreement.

The MSA is projected to deliver non-guaranteed Solar PV Offset and Load Control Savings of \$268,000,000.00 over the term of the MSA. In addition, it will generate Operational Savings and Capital Improvement Plan Avoidance Savings.

Track Record/Monitor

To ensure compliance with the terms and conditions of this MSA, James F. Murley, Miami-Dade Chief Resilience Officer of the Office of Resilience, will track and monitor all requirements.

Background

Within Miami-Dade County, electricity and fuel use in buildings results in 41% of total emissions. Strategies to tackle emissions from buildings center around reducing the energy used by buildings through energy efficiency and ensuring that the energy needed comes from renewable sources. This includes electrifying systems that currently use fossil fuels and the use of on-site or off-site sources of renewable energy, such as solar panels, with the objective of making buildings as efficient as possible.

The Office of Resilience (“OOR”), ISD, and MDAD, as primary stakeholders, have been working on behalf of the County to assess the opportunity to leverage an existing Joint Partnership Agreement (“JPA”) between Miami-Dade County and FPL (attached as Exhibit E) to ultimately enter into this MSA for infrastructure improvements at various County facilities. The terms of the MSA include the completion of a 32-week Feasibility Study across more than 100 County sites and facilities. The assessment's goal is to assist the County in advanced energy management and continued improvement of its energy security through electrical infrastructure including increasing sustainability, resiliency, and reducing carbon emissions.

This proposed work, to perform a Resilient Infrastructure, Electrical Hardening, Sustainability & Electric Vehicle Services (“RIEHSEVS”) Feasibility Study, will evaluate the existing electrical distribution infrastructure, identify/prioritize infrastructure improvements, and develop a Master Plan for energy resiliency and sustainability. The Master Plan will feature energy efficient solutions such as solar full back-up power generation, solar photovoltaic (“PV”), battery backup systems, and electric vehicle charging stations at County facilities. It is anticipated that the solutions proposed will lead to a net reduction in consumption over time, which will provide savings to the County. The RIEHSEVS Feasibility Study will determine the technical and economic viability of implementing each proposed solution at the identified sites.

Like many County departments, ISD and MDAD manage aging facilities that are in critical need of electrical hardening. Proliferation of aging facilities often coincides with the following issues:

1. **Rising Maintenance Costs:** Aging infrastructure often translates into increased maintenance costs. Systems and components that have outlived their designed lifespan tend to break down more frequently, resulting in higher repair bills and operational disruptions;
2. **Reduced Efficiency:** Older systems were not designed with modern demands in mind. They often consume more energy and offer less output than newer, more efficient alternatives. This inefficiency leads to higher costs in terms of utility bills;

3. **Safety Concerns:** Aging electrical systems can be a safety hazard. As components deteriorate, the risk of electrical fires, system failures, and other safety concerns grows exponentially; and
4. **Environmental Impact:** Older systems, especially those designed decades ago, weren't constructed with today's environmental concerns in mind. They might consume more power, have a larger carbon footprint, and be less compatible with renewable energy sources than newer systems.

The implementation of the attached MSA will assist the County in the modernization of aging systems and help to make these systems more economical, resilient, and energy efficient. The implementation of the MSA also will present the opportunity for the County to leverage the latest technology and best practices.

At many facilities, improvements such as the addition of electrical vehicle charging stations, solar photovoltaic technology, and full backup power generation will be dependent upon upgraded switchgear equipment and other electrical hardening improvements. As the County continues to install electric vehicle charging stations to serve both County fleet vehicles and the public, it will become increasingly reliant on electric utility providers like FPL to add new electric services to County facilities to keep up with growing needs. Similarly, as the frequency of extreme weather events continues to accelerate, the availability of reliable backup power generation has become critical for County operations and the continuity of government operations.

The electrical infrastructure system limits at MDAD to be covered under the study include each FPL vault all the way up to main distribution panel and include normal and emergency power. At a minimum, MDAD equipment to be evaluated should include electrical feeders, transformers, bushings, switches, disconnects, panels, switchgear, and breakers, and should take into account the existing condition, age, and technology enhancements, remote monitoring systems, etc. to upgrade.

The primary benefit of RIEHSEVS is that the County will have the ability to keep facilities operational in the event of storms/hurricanes, electrical equipment failure, or maintenance. The hardening of the electrical infrastructure can also yield multiple benefits, such as: the addition of zero-emissions equipment and installation of net zero backup power generation for increased reliability; elimination of single points of failure; easing of maintenance problems; streamlining troubleshooting; easier tracking and maintenance of equipment; reduction of inventory of replacement parts; simplification of logistics; and allowing for quality predictability. Additionally, hardening the electrical infrastructure in a professional-plan method of execution will address known issues first without sacrificing long-term resilience or wasteful spending. The Company's services will include all aspects of operating and maintaining the electrical infrastructure system at the sites identified between the FPL vaults and main distribution panel ("MDP") for normal and emergency power, as well as EV charging stations. Additionally it will provide much needed EV fleet charging infrastructure.

Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners
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A handwritten signature in blue ink, appearing to read 'JM', is positioned above a horizontal line.

Jimmy Morales
Chief Operations Officer



MEMORANDUM
(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: December 12, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present , 2/3 membership , 3/5's , unanimous , CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) , CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) , or CDMP 9 vote requirement per 2-116.1(4)(c)(2)) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____
Veto _____
Override _____

Mayor

Agenda Item No.

RESOLUTION NO. _____

RESOLUTION APPROVING MASTER SERVICES AGREEMENT (“MSA”) – MASTER AGREEMENT FOR ENERGY PRODUCTS AND SERVICES WITH FPL SERVICES, LLC FOR A RESILIENT INFRASTRUCTURE, ELECTRICAL HARDENING, SUSTAINABILITY, AND ELECTRIC VEHICLE SERVICES FEASIBILITY STUDY AND IMPLEMENTATION SERVICES THEREUNDER FOR ELECTRICAL INFRASTRUCTURE PROJECTS OVER A 20-YEAR TERM AND AUTOMATIC RENEWAL PERIODS OF 12 MONTHS IN AN AMOUNT NOT TO EXCEED \$912,000,000.00; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO EXECUTE MSA AND EXERCISE ALL PROVISIONS THEREIN INCLUDING TERMINATION AND RENEWAL TERMS AS LONG AS EXERCISE OF RENEWAL IS CONSISTENT WITH EXPENDITURE AUTHORITY AUTHORIZED HEREIN; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO NEGOTIATE, EXECUTE, IMPLEMENT, AUTHORIZE, AND ADMINISTER ANY FLORIDA POWER & LIGHT COMPANY (“FPL”) TARIFF AGREEMENTS, CONTRACTS, WORK ORDERS, STATEMENTS OF WORK AND OTHER AUTHORIZATIONS MADE PURSUANT TO THE MSA AND EXERCISE ALL PROVISIONS OF FPL TARIFF AGREEMENTS, CONTRACTS, WORK ORDERS, STATEMENTS OF WORK AND OTHER AUTHORIZATIONS MADE PURSUANT TO THE MSA INCLUDING ANY RENEWAL, CANCELLATION, TERMINATION, OR EXTENSION PROVISIONS CONTAINED THEREIN PROVIDED THAT SUCH ARE CONSISTENT WITH MSA AND EXPENDITURE AUTHORITY APPROVED HEREIN AND PROVIDE FOR COMPETITIVE BIDDING OF THE UNDERLYING CONSTRUCTION WORK AND INCORPORATE ALL SMALL BUSINESS GOALS AND MEASURES, WAGE REQUIREMENTS, AND ALL OTHER PROGRAMS APPLICABLE TO COUNTY CONSTRUCTION PURSUANT TO THE MIAMI-DADE COUNTY CODE OR STATE LAW; WAIVING COMPETITIVE BIDDING BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT TO AUTHORIZE PURCHASE OF A FEASIBILITY STUDY UNDER MSA IN AN AMOUNT NOT TO EXCEED \$497,947.00; WAIVING COMPETITIVE BIDDING BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT TO AUTHORIZE PAYMENTS UNDER THE MSA TO IMPLEMENT ELECTRICAL INFRASTRUCTURE PROJECTS FOR THE COUNTY; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO PROVIDE ANNUAL REPORTS TO THE BOARD

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying agreement, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Approves a Master Services Agreement – Master Agreement for Energy Related Products and Services (“MSA”) between Miami-Dade County (“County”) and FPL Services, LLC (“Company”), a wholly owned subsidiary of Florida Power & Light Company (“FPL”), in substantially the form attached hereto and made a part hereof, for a term of 20 years with automatic renewals for additional 12 month periods in an amount not to exceed \$912,000,000.00.

Section 2. Authorizes the County Mayor or County Mayor’s designee to execute the MSA and exercise all provisions contained therein including termination and renewal terms as long as exercise of renewal terms is consistent with expenditure authority authorized herein.

Section 3. Authorizes the County Mayor or County Mayor’s designee to negotiate, execute, implement, authorize, and administer any FPL tariff agreements, contracts, work orders, statement of works, and other authorizations made pursuant to the MSA and exercise all provisions of FPL tariff agreements, contracts, work orders, statement of works, and other authorizations made pursuant to the MSA, including any renewal, cancellation, termination, or extension provisions contained therein provided that such are consistent with the purpose and terms of the MSA and expenditure authority approved herein, but only to the extent same provide for competitive bidding of the underlying construction work and incorporate all small business goals and measures, wage requirements, and all other programs applicable to County construction pursuant to the Miami-Dade County Code or state law. Specifically, the County Mayor or County Mayor’s designee is authorized to negotiate, execute, implement, authorize, and administer: (1)

Solar Power Utilities Service Agreement and Solar Power Facilities Master Rider Pilot; (2) Commercial Electric Vehicle Charging Services Agreement and Commercial Electric Vehicle Charging Services Rider Pilot; (3) Optional Supplemental Power Services Agreement, Supplemental Power Services Rider Pilot, and Statements of Work; (4) Feasibility Study Authorization Form; (5) Implementation Services Authorization Form; (6) Notice of Substantial Completion; (7) Form of Change Order; (8) Form of Final Acceptance Certificate; (9) Form of Final Acceptance Certificate; (10) Solar Power Facilities and Commercial Vehicle Charging Services Statements of Work; and (11) any agreements, contracts, work orders, statement of works, and other authorizations made pursuant to and consistent with the terms of the approved MSA. The County Mayor or County Mayor's designee is not authorized to enter into any FPL tariff agreements, contracts, work orders, statement of works, and other authorizations made pursuant to the MSA and exercise all provisions of FPL tariff agreements, contracts, work orders, statement of works, and other authorizations which do not provide for competitive procurement of the underlying construction work or which do not incorporate all small business goals and measures, wage requirements, and all other programs applicable to County construction pursuant to the Miami-Dade County Code or state law.

Section 4. Waives competitive bidding requirements in the best interests of the County by a two-thirds vote of the Board members present pursuant to section 2-8.1(b)(1) of the Code of Miami-Dade County ("Code") for the Company's preparation of an initial Feasibility Study for the County in an amount not to exceed \$497,947.00.

Section 5. Waives competitive bidding requirements in the best interests of the County by a two-thirds vote of the Board members present pursuant to section 2-8.1(b)(1) of the Code to authorize payments under the MSA to implement electrical infrastructure projects for the County over the initial 20-year term of the MSA and automatic 12-month renewal periods.

Section 6. Directs the County Mayor or County Mayor's designee to provide annual written reports to the Board throughout the term of the MSA of all work projects authorized under the MSA which reports shall identify implemented projects, monies spent on such projects, and the utilization of small business participation goals on projects authorized under the MSA and place the completed annual reports on agendas of the full Board without committee review pursuant to rule 5.06(j) of the Board's Rules of Procedure

The foregoing resolution was offered by Commissioner _____,
who moved its adoption. The motion was seconded by Commissioner _____
and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	
Anthony Rodríguez, Vice Chairman	
Marleine Bastien	Juan Carlos Bermudez
Kevin Marino Cabrera	Sen. René García
Roberto J. Gonzalez	Keon Hardemon
Danielle Cohen Higgins	Eileen Higgins
Kionne L. McGhee	Raquel A. Regalado
Micky Steinberg	

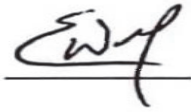
The Chairperson thereupon declared this resolution duly passed and adopted this 12th day of December, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

JUAN FERNANDEZ-BARQUIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Eduardo W. Gonzalez
David M. Murray

**MASTER AGREEMENT
FOR
ENERGY RELATED PRODUCTS AND SERVICES**

THIS MASTER AGREEMENT is made and entered into on the date last signed below (“Effective Date of Master Agreement”), by and between **FPL Services, LLC** (the “**Company**”), a Florida limited liability company, license No. CGC1505762, and **Miami-Dade County** (the “**Customer**”), a governmental entity, with reference to the following:

RECITALS

A. The Company is in the business of providing energy related products and related Services (as defined below);

B. The Customer is considering the furnishing and upgrading of its facilities with energy related equipment and systems in order to improve energy related security or resiliency; and

C. Pursuant to this Master Agreement, the Parties wish to set forth their understanding concerning certain Services which may be provided by the Company to the Customer.

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

ARTICLE 1 – DEFINITIONS

1.1 Authorization Form means a form prepared by the Company for the purpose of identifying the Customer’s options for proceeding with the evaluation, design or installation of specific ERPs identified at one or more Service Locations. An Authorization Form shall accompany each of the following types of documents prepared by the Company under this Master Agreement: Feasibility Study Proposals and Feasibility Reports.

1.2 Change means a request by the Customer that changes the Services, which may consist of modifications or additions to, or deletions from, any Services to be performed or materials to be provided by the Company, arising under this Master Agreement.

1.3 Company means FPL Services, LLC, a Florida limited liability company, including its successors and assigns.

1.4 Confidential Information shall mean all information marked as “confidential” or “proprietary” by an appropriate stamp, label, legend or other written notice thereon if transmitted electronically or other written form, and if disclosed orally by the Company, then the Company shall confirm the oral or visual disclosure that shall be considered Confidential Information in a written memorandum or e-mail transmittal to the Customer within thirty (30) days after such visual or oral disclosure and whether prepared by the Company or otherwise which is disclosed to the Customer or the Customer’s agents in connection with this Master Agreement and including all reports, analyses, notes or other information that are based on, contain or reflect any such Confidential Information; however, Confidential Information shall not include the following: (a) information which is or becomes publicly available other than as a result of a violation of this Master Agreement; (b) information which is or becomes available on a non-confidential basis from a source which is not known to the Customer (after due inquiry) to be prohibited from disclosing such information pursuant to a legal, contractual or fiduciary obligation to the Company; or (c) information which the Customer can demonstrate was legally in its possession prior to disclosure by the Company.

1.5 Customer means the person designated in the first paragraph of this Master Agreement as the recipient of Services in accordance with the terms of this Master Agreement.

1.6 Delayed Payment Rate means a rate of interest equal to one-and-one-half percent (1½%) per month, which applies to unpaid Feasibility Study Price, Implementation Price and other amounts which the Customer may become obligated to pay to the Company under the terms of this Master Agreement.

1.7 Dispute means any dispute or disagreement that may arise between the Parties with respect to the interpretation of any provision of this Master Agreement, the performance of either Party under this Master Agreement, or any other matter that is in dispute between the Parties related to this Master Agreement.

1.8 ERP or Energy Related Product means the designs, improvements, products and/or services to reduce greenhouse gas emissions and/or improve energy related security and/or resiliency, including electric vehicle supply equipment and installations.

1.9 Feasibility Study means the Services performed by the Company, including the preparation of a Feasibility Report, for the purpose of assisting the Customer in determining whether to proceed with Implementation Services for the installation and construction of particular ERPs at specified Service Locations.

1.10 Feasibility Study Price means the compensation to be paid by the Customer to the Company for conducting a Feasibility Study and issuing a Feasibility Report.

1.11 Feasibility Study Proposal means a written proposal within a Feasibility Study Authorization Form as described in Article 3, prepared by the Company in consultation with the Customer specifying the particular Services to be performed by the Company in conducting a Feasibility Study and preparing a Feasibility Report with respect to ERPs identified at specified Service Locations.

1.12 Feasibility Report means the written report which is issued by the Company to the Customer to summarize the Company's findings based upon a Feasibility Study of particular ERPs at specified Service Locations.

1.13 Final Acceptance Date shall have the meaning set forth in Section 4.2.4.

1.14 Final Completion means, with respect to a particular ERP, that Substantial Completion has been achieved and that Company has corrected any Minor Deficiencies identified in the Punch List, all as further defined in Section 4.2.4, and, if applicable, the work has been issued a final certificate of use or final certificate of occupancy by the Authority Having Jurisdiction.

1.15 Force Majeure Event means an event which is beyond the reasonable control of, and not a result of the fault or negligence of, the affected Party, including but not limited to, acts of God, fire, flood, windstorm, war, terrorism, epidemics, quarantine regulation, sabotage, revolution, acts of any government or governmental agency, strikes or other labor difficulty, insurrection, riot, telecommunications failures, unusually severe weather conditions by comparison with the ten-year Miami-Dade County, Florida, average, to the extent that performance of any obligation is prevented or delayed by any such cause, existing or future.

1.16 Implementation Price means the cost to the Customer for particular ERPs at specified Service Locations. The Implementation Price shall include the cost for Implementation Services, financing costs, and on-going operation and maintenance costs (regardless of who performs the maintenance).

1.17 Implementation Services means the Services provided or proposed to be provided by the Company to construct, install or otherwise implement one or more ERPs at specified Service Locations in accordance with the terms of a Feasibility Report, which Services shall include, but not be limited to, (a) causing the procurement, permitting, construction and installation of all materials, equipment and systems required to implement each ERP at a particular Service Location, (b) providing and paying for all labor and support services necessary to perform such work, (c) supplying to the Customer copies of any operation and maintenance manuals available from the manufacturers, vendors and suppliers of equipment or systems comprising a part of any installed ERP, (d) providing on-site training for a reasonable number of the Customer's designated operating personnel, if such training is

reasonably required or necessary for the proper operation and maintenance of any complex equipment or system comprising a part of any installed ERP, and (e) arranging for the commissioning, final inspection and close/check-out of each installed ERP.

1.18 Master Agreement means this Master Agreement for Energy Related Products and Services, including any and all schedules and exhibits attached thereto, as may be amended from time to time. The terms, conditions, representations, warranties and other provisions of this Master Agreement shall apply by reference to each and every Feasibility Study Proposal, Feasibility Report, and any other written proposal, document, notice or Authorization Form issued under the terms of this Master Agreement, as if such provisions were set forth expressly therein.

1.19 Minor Deficiencies means, with respect to a particular ERP which has been determined by the Company to be Substantially Complete, any construction, installation or other Implementation Services identified in a Punch List which do not materially affect the ability of the ERP to properly operate and function in accordance with its intended purpose pursuant to this Master Agreement and the terms and specifications contained in a Customer-executed Implementation Services Authorization Form or other mutually agreed upon agreement.

1.20 Material Defect means, with respect to a particular ERP, a defect or deficiency that prevents the ERP (i) from being operational, regardless of whether the ERP has one or more Minor Deficiencies, or (ii) if applicable, from being issued a temporary certificate of use or temporary certificate of occupancy by the Authority Having Jurisdiction.

1.21 Notice of Substantial Completion means a written notice issued by the Company to notify the Customer of the Substantial Completion of the installation of an ERP.

1.22 Party or Parties means the Company and Customer identified in the opening paragraph of this Master Agreement.

1.23 Person means any individual or entity of any type, including, but not limited to, corporations, partnerships, business trusts, associations, governmental agencies, political subdivisions, state, district, college, university, board or other organization.

1.24 Punch List means, with respect to a particular ERP, a list of Minor Deficiencies provided by the Customer to the Company prior to or along with the Customer's execution of a Notice of Substantial Completion.

1.25 Service Location means a facility legally owned or operated by the Customer at which the Customer desires the Company to perform Services.

1.26 Services mean the energy efficiency and related services provided by the Company to the Customer pursuant to the terms of this Master Agreement, including, but not limited to, the preparation of Feasibility Study Proposals, Feasibility Studies and Implementation Services. The "Services" provided to and purchased by the Customer from the Company shall not include "Professional Services" as defined by section 287.055 of the Florida Statutes, which means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the State of Florida, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

1.27 Subcontractor means a third-party subcontractor who is retained by the Company to perform installation or construction work at the Customer's Service Location(s) pursuant to a Customer-authorized Implementation Services Authorization Form or other mutually agreed upon agreement (as set forth in Section 4.1).

1.28 Substantial Completion or Substantially Complete means, with respect to a particular ERP, that level of construction and implementation which renders the ERP operational, regardless of whether the ERP has one or more Minor Deficiencies, and, if applicable, the work has been issued a temporary certificate of use or temporary certificate of occupancy by the Authority Having Jurisdiction.

1.29 Substantial Completion Date has the meaning set forth in Section 4.2.1.

1.30 Vendor means any vendor, manufacturer, or other representative of an ERP vendor, manufacturer, or distributor utilized by the Company in providing Services in accordance with this Master Agreement.

ARTICLE 2 - SCOPE OF MASTER AGREEMENT AND TERM

2.1 Scope. Subject to the terms and conditions of this Master Agreement, the Company agrees to furnish to the Customer, and the Customer agrees to purchase and receive from the Company, certain Services at the Customer's specified Service Locations. The Parties shall agree upon the Services that the Company will furnish to the Customer with respect to each Service Location and with respect to ERPs identified at a particular Service Location prior to the Company commencing work at any designated Service Location as set forth in an Authorization Form which accompanies one or more Feasibility Study Proposals and Feasibility Reports, as set forth in Articles 3 and 4 of this Master Agreement. Each of the various proposals, documents and forms referenced in this Master Agreement shall adopt and incorporate the terms and conditions of this Master Agreement as if such terms and conditions were expressly set forth within such proposals, documents and forms. Unless expressly stated in a Change Order in accordance with Article 14 below, where the terms and conditions of any schedules or exhibits thereto are inconsistent with the terms and conditions of this Master Agreement, the terms of this Master Agreement shall govern the terms and conditions of the Service. In the event the terms and conditions of Change Orders conflict, the most recently executed Change Order shall govern the terms and conditions of the Service. The specific ERPs shall be distinguished and agreed to on a per Service Location basis. For the avoidance of doubt, the Company shall pay for all professional services enumerated in Florida's Consultant's Competitive Negotiation Act, section 287.055, Florida Statutes, from its own funds and shall not use any funds received from the Customer for payment of any Feasibility Study, Implementation Services or any Services under this Master Agreement to pay for all or any portion of such professional services.

2.2 Alignment with County Climate Change Mitigation Goals, Objectives, and Policies. With respect to all Services provided and ERPs deployed through this Master Agreement, Company shall use commercially reasonable efforts to provide Customer with sufficient information to enable Customer to determine whether such Services and deployed ERPs align with County climate pollution mitigation goals, in particular the Miami-Dade County Climate Action Strategy and CDMP Objective LU-10 and connected policies. This includes, but is not limited to, greenhouse gas reduction targets and strategies required by policy LU-10 and the zero emissions target for countywide energy sources established in policy LU-10H, expansion of electric vehicle charging infrastructure in policy LU-10J; and timelines and targets established in policy LU-10K. Such information shall be provided in the Feasibility Study Proposals to inform the Customer's decision whether to approve specific ERPs.

2.3 Term. This Master Agreement shall commence upon Effective Date of Master Agreement and shall continue in effect for a period of twenty (20) years (the "Initial Term"). This Master Agreement shall automatically renew for additional twelve (12) month periods (each a "Renewal Term" and collectively with the Initial Term, the "Term") unless either party gives written notice of its intent not to renew the Term at least thirty (30) days prior to the expiration of the then current Term. The term of each individual Implementation Services Authorization Form or other mutually agreed upon agreement shall be as set forth therein.

ARTICLE 3- FEASIBILITY STUDY AND REPORT

3.1 Preparation of Feasibility Study Authorization Form by Company. The Company or Customer may prepare and deliver to the other Party a Feasibility Study Authorization Form, which identifies any potential ERPs that the Party believes, in its sole professional judgment, may provide appropriate justification to proceed with the preparation of a Feasibility Study. Each Feasibility Study Proposal shall include a designation of the Services to be provided, the technologies to be included in the proposed Feasibility Study and the Feasibility Study Price. A Form of Feasibility Study Authorization Form is attached to this Master Agreement as Schedule A.

3.2 Authorization to Proceed with Feasibility Study. Unless otherwise mutually agreed to by the Parties, a Feasibility Study Authorization Form must be executed by both Parties within one hundred and eighty (180) days after the Customer's receipt of the Feasibility Study Authorization Form to authorize the Company to proceed with

the Feasibility Study. Upon the Company's timely receipt of a properly completed Feasibility Study Authorization Form wherein the Customer requests a Feasibility Study for any or all of the ERPs identified in the Feasibility Study Authorization Form, then the Company shall prepare and submit a Feasibility Study to the Customer. If the Customer elects to not authorize a Feasibility Study, or if the Customer fails to deliver to the Company an executed Feasibility Study Authorization Form within the one hundred and eighty (180) day period provided by this Section 3.2, the Company shall have no duty or obligation to conduct a Feasibility Study with respect to any of the ERPs at the Service Locations identified in the Feasibility Study Authorization Form, nor shall the Customer have any payment obligation to Company for the preparation of the Feasibility Study Authorization Form.

3.3 Feasibility Report. Pursuant to a Customer-authorized Feasibility Study performed by the Company in accordance with a Feasibility Study Authorization Form, the Company shall provide a Feasibility Report setting forth the recommended ERPs for implementation at any Service Locations surveyed. The Company shall prepare and submit to the Customer a Feasibility Report specifying each recommended ERP and providing for each ERP, the expected Implementation Price and the estimated timing for Implementation.

3.4 Authorization to Proceed with Implementation Services. Each Feasibility Report will include an Implementation Services Authorization Form or other Company proposed form of agreement, as defined below in Section 4.1, which must be executed by the Customer and delivered to the Company within one hundred and eighty (180) days after the Customer's receipt of the Feasibility Report to authorize the Company to proceed with the Implementation Services in accordance with Article 4. If the Customer timely delivers to the Company an executed Implementation Services Authorization Form or other mutually agreed upon agreement, the Company will proceed with the Implementation Services authorized by the Customer on the Implementation Services Authorization Form or other mutually agreed upon agreement; provided, however, that if the Customer elects to proceed with less than thirty percent (30%) of the recommended ERPs (as determined on an estimated Implementation Price basis) identified in a Feasibility Report, the Company shall have the ability to refuse to proceed with the Implementation Services identified in a Feasibility Report for any ERPs that the Customer elects to proceed. Each Implementation Services Authorization Form or other Company proposed form of agreement accompanying and referencing a Feasibility Report will include an option allowing the Customer to defer payment of the Feasibility Study Price in accordance with Section 3.5.3 if the Customer elects to proceed with additional Implementation Services.

3.5 Feasibility Study Price and Payment Terms.

3.5.1 Feasibility Study Price. Except as otherwise provided in Section 3.5.3, the Customer shall pay to the Company the Feasibility Study Price, which is included in a Customer-executed Feasibility Study Authorization Form for all Services performed by the Company in conducting a Customer-authorized Feasibility Study and issuing a Feasibility Report. The Feasibility Study Price is the full compensation for the Services performed by the Company in conducting a Company-authorized Feasibility Study and rendering a Feasibility Report and includes all federal, state and local taxes, if any, assessed with respect to the Services or with respect to the furnishing of any items under the Feasibility Study.

3.5.2 Payment Upon Failure to Authorize Additional Services. If the Customer elects to not proceed with Implementation Services or fails to deliver to the Company a completed and executed Implementation Services Authorization Form or other mutually agreed upon agreement within one hundred and eighty (180) days of the Customer's receipt of a Feasibility Report, the Company shall have no duty or obligation to proceed with any Implementation Services with respect to the ERPs identified in the Feasibility Report, and the Company shall provide an invoice to the Customer for the full Feasibility Study Price determined in accordance with Section 3.5.1 and included in the Feasibility Study Authorization Form. The Customer shall pay the total amount of the invoice in full within sixty (60) days following the Customer's receipt of the invoice.

3.5.3 Deferral Election. In the event the Customer elects to proceed with Implementation Services for one or more ERPs pursuant to Section 3.4, the Customer shall elect on the Implementation Services Authorization Form or other Company proposed form of agreement accompanying and referencing a Feasibility Report to either (a) receive an invoice for the full amount of the Feasibility Study Price, or (b) defer and roll-over payment of the Feasibility Study Price until such time as compensation is payable to the Company pursuant to Article 4 for Implementation Services. If the Customer elects to receive an invoice pursuant to clause (a) of this Section 3.5.3, or if the Customer fails to make a timely election pursuant to the foregoing, the Company shall issue an invoice for

the full amount of the Feasibility Study Price, and the Customer shall pay such amount within thirty (30) days following receipt of the invoice.

3.5.4 Late Payments. Any overdue payment under Article 3 shall bear interest at the Delayed Payment Rate from the date such payment is due until and including the date of payment, unless otherwise required by the Local Government Prompt Payment Act (Section 218.70 *et seq.*, Florida Statutes).

ARTICLE 4- INSTALLATION, IMPLEMENTATION AND PAYMENT

4.1 Authorization to Proceed with Implementation Services. Each Feasibility Report will be referenced and incorporated into an Implementation Services Authorization Form or other Company proposed form of agreement which must be executed by the Customer and delivered to the Company within one hundred and eighty (180) days after the Customer's receipt of the Feasibility Report to authorize the Company to proceed with the Implementation Services identified in the Feasibility Report. A Form of Implementation Services Authorization Form is attached to this Master Agreement as Schedule B. If the Customer timely delivers to the Company an executed Implementation Services Authorization Form or other mutually agreed upon form of agreement, the Company will proceed with conducting the Implementation Services specified in the Feasibility Report. If the Customer elects to not authorize the Implementation Services or if the Customer fails to deliver to the Company an executed Implementation Services Authorization Form or other mutually agreed upon form of agreement within the one hundred and eighty (180) day period provided by this Section 4.1, the Company shall have no duty or obligation to perform any Implementation Services with respect to any of the ERPs at the Service Locations identified in the Feasibility Report, and the Customer shall pay the Company for the Feasibility Study prepared with respect to such ERPs.

4.1.1 Competitive Procurement. The Company shall procure all construction work required under agreed-upon Implementation Services pursuant to the competitive selection provisions set forth under sections 255.20 and 287.055 of the Florida Statutes.

4.1.2 Small Business and Workforce Programs. The Company shall comply with small business goals and measures that shall be established by Customer for each agreed Implementation Service prior to issuance of any authorization to perform Implementation Services as required by Customer's applicable small business measures, programs, responsible wages and local workforce requirements in accordance with the Code of Miami-Dade County, Florida, Miami-Dade County's Small Business Enterprise Program as set forth in Sections 10-33.02, 2-10.4.01, 2-8.1.1.1.1, and 2.8.1.1.1.2 of the County Code, and related implementing orders, including Implementing Orders 3-22, 3-32, and 3-41. With respect to the requirements specified in this Section, the Customer, prior to Company retaining any contractors for any Implementation Services, shall provide Company with applicable forms, documents, and contract language to be included into any subcontracts. Company shall only be responsible for inclusion of forms, documents, or language which was provided by the Customer prior to the procurement of contractors by Company. The Parties shall cooperate prior to procurement of contractors to ensure that the Customer is provided sufficient lead time to provide such forms, documents, or language. In the event of a dispute as to the applicability of a particular program to a particular Implementation Service, the Parties mutually agree to engage in good faith efforts to resolve that dispute prior to authorizing any Implementation Service. Company shall require that its contractor(s) shall, at a minimum, use the Customer's applicable Responsible Wages, Residents First Training and Employment, Employ Miami-Dade Program, and First Source Hiring programs, as set forth in Sections 2-11.16 and 2-11.17 of the County Code, and Administrative Order No. 3-63 for any agreed-upon Implementation Services.

4.1.3 Payment and Performance Bond

4.1.3.1 At least 10 days prior to ordering any supplies or materials, mobilizing, or undertaking any construction work required under agreed-upon Implementation Services, the Company shall obtain and shall record in the public records of Miami-Dade County, Florida, in compliance with section 255.05, Florida Statutes, a single instrument Payment and Performance Bond, satisfactory to the Customer.

4.1.3.2 The bond shall be written through surety insurers authorized to do business in the State of Florida as Surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

<u>Bond (Total Contract) Amount</u>	<u>Best's Rating</u>
\$500,001 to \$1,500,000	B V
\$1,500,001 to \$2,500,000	A VI
\$2,500,001 to \$5,000,000	A VII
\$5,000,000 to \$10,000,000	A VIII
Over \$10,000,000	A IX

4.1.3.3 The surety insurer must have been listed on the U.S. Treasury list for at least three consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.

4.1.3.4 Payment and Performance Bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.

4.1.3.5 The attorney-in-fact or other officer who signs a Payment and Performance Bond for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so.

4.1.3.6 The required bond shall be written by or through and shall be countersigned by, a licensed Florida agent of the surety insurer, pursuant to Section 624.425 of the Florida Statutes.

4.1.3.7 In the event the surety on the Payment and Performance Bond given by the Company becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in its State of domicile or the State of Florida suspended or revoked as provided by law, the Customer shall withhold all payments under the provisions of this Master Agreement until the Company has given a good and sufficient bond in lieu of bond executed by such surety.

4.1.3.8 Cancellation of any bond, or non-payment by the Company of any premium for any Bond required by this Contract, shall constitute a breach of this Contract.

4.1.3.9 The Customer shall be entitled to draw-down on the Performance Bond if Company fails to undertake and complete the construction work required under the Implementation Services in accordance with the terms and conditions of this Master Agreement following any notice and expiration of any cure period, to secure the completion of the Implementation Services free from all liens and claims of sub-contractors, mechanics, laborers and materialmen, and to ensure that Company complies with all other terms and conditions of this Master Agreement due or arising after the commencement of construction.

4.1.4 Notwithstanding anything to the contrary in this Master Agreement, Customer agrees and understands that implementation of ERPs that are the subject of a Feasibility Study hereunder and that are provided by Florida Power & Light Company (FPL) under a tariff agreement, must be implemented pursuant to a mutually agreed upon tariff agreement between Customer and FPL. Maintenance relating to implementation of ERPs that are provided by Florida Power & Light Company (FPL) under a tariff agreement will be performed by FPL pursuant to the applicable tariff agreements. Uptime relating to implementation of ERPs that are provided by FPL under a tariff agreement will be addressed in the statements of work of the applicable tariff agreements. For the avoidance of doubt, Company represents that FPL has agreed that the competitive bidding requirements of Section 4.1.1 can be included in the statements of work of applicable tariff agreements.

4.1.4.1 With respect to work at Miami International Airport ("MIA"), Company shall take all commercially reasonable actions to ensure that the work, inclusive of construction, maintenance, and operation of facilities owned or operated by Company, does not impact operation of MIA; Company acknowledges that this may entail some amount of night work or work at off peak hours, may involve some amount of minimizing staging, lay

down, or access areas, and shall involve coordination with the County prior to engaging in any activity which might impact operations at MIA. For the avoidance of doubt, Company represents that FPL has agreed that the above requirements can be included in the statements of work of applicable tariff agreements.

4.2 Substantial Completion and Final Acceptance.

4.2.1 Inspections and Notice of Substantial Completion. During the performance of Implementation Services under this Article 4, the Customer shall have the right to conduct reasonable inspections of the work of the Company or any Subcontractor at any time upon reasonable prior notice. Upon Substantial Completion of construction and installation of each ERP in accordance with the requirements of the applicable Feasibility Report, Company shall deliver to Customer a Notice of Substantial Completion in the form set forth in Schedule C. Within forty-five (45) days following receipt by the Customer of a Notice of Substantial Completion, (i) the Customer shall conduct an inspection, and either (ii)(a) the Customer shall complete a Punch List in the form set forth in Exhibit A to Schedule C and approve the Notice of Substantial Completion by delivering to Company an executed and completed Notice of Substantial Completion, or (ii)(b) the Customer shall provide Company notice of any potential Material Defect of the ERP. If the Customer fails to deliver a completed and executed Notice of Substantial Completion containing Punch List items within forty-five (45) days following the Customer's receipt of a Notice of Substantial Completion, the Customer shall be deemed to have approved the Notice of Substantial Completion without any Punch List items. The date on which the Customer approves or is deemed to have approved the Notice of Substantial Completion shall be the Substantial Completion date for such ERP ("Substantial Completion Date").

4.2.2 Correction of Material Defects or Deficiencies. Following Company's receipt of a timely notice by Customer of any potential defect or deficiency of the ERP, the Company shall determine in the reasonable exercise of its sole professional judgment whether the alleged defect or deficiency is material. If the Company determines that a Material Defect exists, then the Company shall cause any necessary corrections to be made to remedy the Material Defect. Thereafter, Company shall deliver a new Notice of Substantial Completion, which will restart the process of Section 4.2.1. Any dispute as to the existence of a Material Defect shall be handled pursuant to Article 16 of the Master Agreement. If the Customer (i) fails to deliver written notification to the Company of a material deficiency or defect of an ERP within forty-five (45) days following the Customer's receipt of a Notice of Substantial Completion, and (ii) fails to approve the Notice of Substantial Completion by delivering to Company an executed and completed Notice of Substantial Completion, the Customer shall be deemed to have approved the Notice of Substantial Completion without any Punch List items.

4.2.3 Correction of Punch List Items. Following Company's timely receipt of notice by Customer of any Punch List, the Company shall, within a reasonable period of time and at the most, within sixty (60) days), correct any Minor Deficiencies identified in the Punch List which the Company determines, in the reasonable exercise of its professional judgment, are necessary or appropriate for completion of the ERP. Any dispute as to the existence of any Minor Deficiencies shall be handled pursuant to Article 16 of the Master Agreement following good faith efforts by leadership of the Parties to resolve any dispute within thirty (30) days of the date the dispute arose.

4.2.4 Notice of Final Completion. Following approval or deemed approval of the Notice of Substantial Completion by Customer, and the correction of any Minor Deficiencies identified in the Punch List by Company, the Company shall deliver to Customer a Certificate of Final Acceptance in the form set forth in Schedule D. If the ERP is found to be complete, the Customer shall execute and return to the Company a Certificate of Final Acceptance within forty-five (45) following receipt by the Customer of the Certificate of Final Acceptance. If, upon inspection by the Customer, the ERP is not found to be complete, then the Customer shall so notify the Company within such forty-five (45) day period, and the Company shall promptly perform any necessary corrections and repairs. When the Company has completed such corrections and repairs, it shall again issue a Certificate of Final Acceptance to the Customer, and the foregoing procedure shall be repeated until such time as the Customer shall execute and return the Certificate of Final Acceptance; provided, however, that a failure of the Customer to respond altogether within any such forty-five (45) day period following the receipt of the Certificate of Final Acceptance from the Company shall be deemed approval by Customer of the Certificate of Final Acceptance; and further provided that Customer may not raise new claims of incompleteness as to issues not caused by new corrections or repairs. The date on which the Customer approves, or is deemed to have approved, the Final Acceptance Certificate for an ERP shall be the Final Acceptance Date for such ERP ("Final Acceptance Date").

4.2.5 Payment Unconditional Upon Substantial Completion. The Customer acknowledges that, notwithstanding the existence of any Minor Deficiencies, regardless of their inclusion in a Punch List, the Customer unconditionally agrees to make payment to the Company for the ERPs listed in a Notice of Substantial Completion once the ERPs are, or are deemed to be, Substantially Complete. The Customer acknowledges that, upon the Substantial Completion Date of an ERPs, the Customer's payment obligation of the Implementation Price set forth in the Feasibility Report for the ERPs (notwithstanding the existence of Minor Deficiencies or the failure of the Company to properly complete or correct such Minor Deficiencies), is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including, without limitation, any set-off, abatement, counterclaim, suspension, recoupment, reduction, rescission, defense or other right. The Customer's recourse for the Company's failure to complete any Minor Deficiencies identified in the Punch List items in accordance with this Master Agreement is to seek and use the provisions of the warranty, in accordance with Article 5, Warranty, prior to the pursuance of further legal action.

4.2.6 Effect of Final Acceptance. The Customer acknowledges that, upon the Final Acceptance Date of an ERP, the Customer's recourse for any subsequent failure or deficiency of an ERP is to seek and use the provisions of the warranty, in accordance with Article 5, Warranty, prior to the pursuance of further legal action.

4.2.7 Reliance. The provisions of Article 4 may be relied on by the Company and by any assignee of the Company in connection with the furnishing of ERP financing to the Customer in accordance with the provisions of the Master Agreement. Any assignee of the Company shall be entitled to the rights, but not the obligations, of the Company under this Article 4.

4.2.8 ERP Responsibility. The scope of maintenance of equipment by Company, and the fees related thereto, shall be addressed in the Implementation Services Authorization Form or other mutually agreed upon agreement. This should include, but not be limited to, (1) responsibility for maintenance of ERP equipment, (2) designation and agreement by the Parties of full service vs. preventative maintenance (3) responsibility for major equipment failure, (4) maintenance requirements and (5) responsibility for repairs. No Vendor is an agent of Company, and no Vendor or employee of any Vendor is authorized to waive, supplement or otherwise alter any terms, conditions, or agreement between the Company and the Customer.

4.2.9 Training. If applicable, and if set forth in a Customer-authorized implementation of a Feasibility Report pursuant to a Customer-authorized Implementation Services Authorization Form or other mutually agreed upon agreement, the Company shall provide on-site training for a reasonable number of the Customer's operating personnel with respect to completed ERPs, and the Customer shall assist in such training, all as more fully specified in the Feasibility Report. Unless otherwise provided in the Feasibility Report, such training shall be conducted with respect to an ERP following the Substantial Completion Date of the ERP.

4.3 Implementation Price and Payment.

4.3.1 Implementation Price. The Customer shall pay to the Company the Implementation Price set forth in the Feasibility Report for all Implementation Services performed by the Company pursuant to a Customer authorized Implementation Services Authorization Form or other mutually agreed upon agreement. The Implementation Price is the full compensation for such Implementation Services and includes all federal, state and local taxes, if any, including sales, use and excise taxes, assessed with respect to the Implementation Services or with respect to the furnishing of equipment and materials thereunder.

4.3.2 Implementation Price Payment. Within thirty (30) days following the Substantial Completion Date or as otherwise set forth in the draw or payment schedule attached to the Implementation Services Authorization Form or other mutually agreed upon agreement, the Company shall provide an invoice to the Customer for the Implementation Price together with any Feasibility Study Price for such ERP(s), and the Customer shall be obligated to pay the total of such amounts within thirty (30) days following receipt of the invoice. In the event the Master Agreement is terminated by either Party prior to the Substantial Completion Date, all accrued and unpaid Feasibility Study Price and Implementation Price including any unpaid interest accrued upon such amounts, shall be paid by the Customer to the Company within thirty (30) days following the Customer's receipt of an invoice therefor.

4.3.3 Late Payment. Any overdue payment under section 4.3 shall bear interest at the Delayed Payment Rate from the date such payment is due until and including the date of payment, unless otherwise required by the Local Government Prompt Payment Act (Section 218.70 *et seq.*, Florida Statutes).

4.3.4 Implementation Requirements. Company shall comply with the terms of the Feasibility Study in the implementation of any ERPs in accordance with this Agreement, including, but not limited to, the SBE participation percentages set forth in the Feasibility Study.

4.4 Liquidated Damages. The Parties may agree that liquidated damages be imposed upon Company for delays in implementation of each individual ERP. The terms of any specific liquidated damages clause shall be included within each individual Implementation Services Authorization Form or other mutually agreed upon agreement.

ARTICLE 5- WARRANTY

5.1 Equipment Warranties. The Company covenants and agrees that all materials and equipment to be installed as part of this Master Agreement shall be protected by appropriate original equipment manufacturer (OEM) written warranties covering all parts and equipment performance; provided that such warranties shall at a minimum warrant that the equipment shall (i) be new, unused and undamaged when delivered, (ii) be free from improper workmanship and defects. A minimum warranty period of one (1) year from installation date shall apply to all the equipment, except that the Company further agrees to warranty certain specified equipment for longer terms, as mutually agreed in any Implementation Services Authorization Form or other mutually agreed upon agreement ("Equipment Warranty Period"). In the event that any third-party warranty required by this Section 5.1 is provided for a period of less than the Equipment Warranty Period, Company shall not be in breach of this Agreement, but shall itself be deemed to have provided such warranty during the period commencing with the expiration of such third-party warranty and ending one (1) year from installation of such equipment. The Company further agrees to deliver to the Customer, for its inspection and approval, all such written warranties at the time of issuance by the Customer of a Certificate of Final Acceptance with respect to the equipment or materials. All warranties shall be transferable and extend to the Customer. Company agrees to act as the Customer's agent in pursuing rights and remedies against manufacturers and suppliers of the equipment in the event of a malfunction or defect during the Equipment Warranty Period. Customer agrees to notify Company, in writing, within ten (10) days of detection of defects in equipment which give rise to such rights and remedies provided by this Section 5.1. After the end of the Equipment Warranty Period, Customer shall be responsible for pursuing any and all rights and remedies provided under such third-party warranties. AS BETWEEN THE COMPANY AND THE CUSTOMER, WITH RESPECT TO SUCH EQUIPMENT MANUFACTURED BY THIRD PARTIES, ALL IMPLIED WARRANTIES AND EXPRESS WARRANTIES NOT INCLUDED HEREIN ARE EXPRESSLY DISCLAIMED BY THE COMPANY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF CUSTOM OR USAGE. CUSTOMER AGREES THAT IT WILL ONLY PURSUE ANY CLAIMS FOR WARRANTIES NOT PROVIDED UNDER THIS AGREEMENT AGAINST THE THIRD-PARTY MANUFACTURER OF THE APPLICABLE EQUIPMENT, AND HEREBY RELEASES AND WAIVES IT RIGHT AS TO ANY SUCH CLAIMS AGAINST COMPANY.

5.2 Labor Warranties. The Company warrants for a period of one (1) year following the Substantial Completion Date of each ERP that all Services performed under this Agreement complies with customary, reasonable and prudent standards of care in accordance with standards in the industry and are performed in a professional manner and consistent with any Customer supplied specifications and standards. The Customer shall promptly notify the Company in writing of the discovery during the applicable warranty period of any claim against the Company's warranties under this Section 5.2. As the Customer's sole and exclusive remedy for any such claim against the Company's warranties, the Company shall, at its own cost and expense, as soon as reasonably possible following the Company's receipt of notice of any claim against any warranty or the Company's otherwise obtaining knowledge of any claim of warranty, cause the repair of defective construction workmanship and/or provide at the Company's expense any changes, modifications or additions to the work which the Company determines necessary due to a failure to perform any Services hereunder in accordance with the standards set forth in this Section 5.2. All costs incidental to the Company's rework and testing thereof shall be borne by the Company. The Company shall use reasonable efforts to perform such remedial actions and make any tests in a timely manner and at such times so as to minimize

disruption of normal operations at the Customer's Service Location. The liabilities and obligations of the Company under Section 5.2 do not extend to any repairs, adjustments, alterations, replacements or maintenance which were not performed by Company or its subcontractors or approved in writing by the Company or may be required as a result of wear and tear in the operation or use of an ERP, or as a result of the Customer's failure to operate or maintain an ERP in accordance with the operating manuals or instructions supplied by the Company, or in accordance with the training provided by the Company to Customer's personnel.

5.3 NO IMPLIED WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE COMPANY MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, CONCERNING THE SERVICES OR ANY ERP, AND THE COMPANY DISCLAIMS ANY WARRANTY IMPLIED BY LAW, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF CUSTOM OR USAGE. UNLESS OTHERWISE EXPRESSLY STATED IN A FEASIBILITY REPORT ATTACHED TO AN IMPLEMENTATION AUTHORIZATION FORM, THE COMPANY MAKES NO WARRANTIES OR GUARANTEES OF ANY NATURE WHATSOEVER CONCERNING THE ACTUAL REDUCTION IN THE CUSTOMER'S ENERGY USAGE AS A RESULT OF THE INSTALLATION AND OPERATION OF ANY ERP.

ARTICLE 6 - LIMITATION OF LIABILITY

6.1 Consequential Damages. Neither Party shall be liable to the other Party for special, indirect, incidental, exemplify, consequential or punitive damages, even if the Party has been advised that such damages are possible. No Party shall be liable for lost profits, lost revenue, or lost institutional operating savings.

6.2 Aggregate Cap. Except with respect to (i) indemnity obligations under this Master Agreement related to third party claims, and (ii) Company's warranty obligations under Article 5, Company's aggregate liability for direct damages shall not exceed ten percent (10%) of the fees paid or payable by Customer for the Services giving rise to such damages.

6.3 Intent. Except in cases of willful misconduct, the Parties intend that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this Master Agreement shall apply even in the event of the fault, negligence (in whole or in part), strict liability or breach of contract of the person released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision, and shall extend to such person's affiliates and to its and their partners, shareholders, directors, officers, employees, contractors and agents. The Parties also intend and agree that such provisions shall continue in full force and effect notwithstanding the termination, suspension, cancellation or rescission of this Master Agreement. No officer, director, employee, agent or other individual representative of either Party shall be personally responsible for any liability arising under this Master Agreement.

6.4 Remedies. Where remedies are expressly afforded by this Master Agreement with respect to the Services provided by the Company, such remedies are intended by the Parties to be the sole and exclusive remedies of the Customer for liabilities of the Company arising out of or in connection with the Services or this Master Agreement, notwithstanding any remedy otherwise available at law or in equity.

ARTICLE 7 - ACCESS AND INFORMATION

7.1 Customer Cooperation. The Customer shall use reasonable efforts to assist the Company in performing the Services contemplated by this Master Agreement, including providing reasonable access to the Customer's Service Location(s), providing information concerning the Service Location(s), making appropriate Customer personnel available if requested by the Company to assist the Company in performing such Services, and taking any other actions the Company may reasonably request from time to time to achieve the purposes and intent of this Master Agreement.

7.2 Access to Service Locations. Upon the request of the Company, the Customer shall provide the Company and its Subcontractors with reasonable access to the Service Location(s) to enable the Company to perform

all Services hereunder and to verify and confirm the operation of any installed ERP following the Substantial Completion Date. The Company also shall have access to the Service Location(s) during the warranty period specified in Article 5 for purposes of performing its obligations thereunder. The Customer shall provide the Company with adequate storage and laydown areas at the Service Location(s), as applicable, during the installation of the ERP(s) and shall make available any construction power and other utilities required by the Company and its Subcontractors to perform the Services. The Company and its Subcontractors shall observe all of the Customer's safety and security procedures at the Service Location(s), to the extent made known to the Company, and shall not unreasonably disturb or interrupt the Customer's operations at such location(s).

7.3 Nondisclosure and Use of Confidential Information. Confidential Information shall not be used for any purpose other than to analyze, implement or complete the ERPs and/or Services. Confidential Information shall be held in strict confidence by the Customer and its agents and the Company and its agents and shall not be disclosed without prior written consent of the other party, except to the Customer's or Company's employees, affiliates, agents and subcontractors with a need to know the Confidential Information for the purpose of performing work related to the ERPs and/or Services. The Customer and Company shall require all of its agents receiving the Confidential Information to be bound by the terms of Sections 7.1 through 7.5 of this Master Agreement. The Customer shall be responsible for any breach of this Master Agreement by Customer or its agents, and the Company shall be responsible for any breach of this Master Agreement by Company or its agents. For the avoidance of doubt, the obligations of this Section 7.3 shall not apply to the extent that they are contrary to applicable Florida law concerning public records as set forth in Section 7.4 below.

7.4 Required Disclosure. The Parties acknowledge that Customer is a public entity subject to Florida's public records laws, including, but not limited to, Chapter 119, Florida Statutes. The Parties further acknowledge that Customer and/or Company may be required to disclose information related to this Agreement in response to a public records request. In the event that either Party is requested or required by legal or regulatory authority to disclose any Confidential Information, such Party shall promptly notify the other Party of such request or requirement prior to disclosure so that the other Party may seek an appropriate protective order. In the event that a protective order or other remedy is not obtained then each Party agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information.

The Company shall comply with the public records laws of the State of Florida and agrees to: (1) Keep and maintain public records required by Customer to perform the service; (2) Upon request from the Customer's custodian of public records, provide the Customer 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 this chapter 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 the contract term and following completion of the contract if the Company does not transfer the records to the Customer; (4) Upon completion of the contract, transfer, at no cost, to the Customer all public records in possession of the Company or keep and maintain public records required by the Customer to perform the service. If the Company transfers all public records to the Customer upon completion of the contract, the Company shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Company keeps and maintains public records upon completion of the contract, the Company shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Customer, upon request from the Customer's custodian of public records, in a format that is compatible with the information technology systems of the Customer.

IF COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1ST STREET, SUITE 1300, MIAMI, FLORIDA 33128.

7.5 Survival. Notwithstanding anything to the contrary, the obligations of the Parties under Sections 7.1 through 7.5 shall survive the termination of this Master Agreement.

ARTICLE 8 - DOCUMENTS AND DATA

8.1 Ownership Rights. Subject to Section 8.2 and the following sentence, any Feasibility Study, Feasibility Report or other report or document furnished or to be furnished by the Company pursuant to this Master Agreement shall be the sole and exclusive property of the Customer. The Customer shall not acquire any rights or interest with respect to the Company's or its Subcontractors' proprietary technology, know-how, processes or computer software or any other intellectual property that may be used in connection with the Services or the supply of equipment and materials hereunder. The Customer acknowledges that the Company provides Services to other companies and agrees that nothing in this Master Agreement will be deemed or construed to prevent the Company from carrying on such business. In particular, the Customer agrees that, notwithstanding anything to the contrary set forth herein, the Company may utilize software, methodologies, tools, specifications, models, samples and documentation, the Company's Confidential Information, as well as copyrights, trademarks, service marks, ideas, concepts, know-how, techniques, knowledge or data, which have been originated, developed or purchased by the Company or by third parties under agreements, to provide future services to third parties.

8.2 No Use of Documents After Termination. If any Feasibility Study, Feasibility Report or other document prepared by the Company under this Master Agreement is terminated, in whole or in part, by the Customer prior to completion of the installation of any ERP, or the Customer chooses not to proceed with the implementation by Company of an ERP as set forth herein, then the Customer shall only be entitled to use, subject to Section 8.1, any such document upon full payment therefore pursuant to Section 3.5; provided however that, notwithstanding anything to the contrary in this Master Agreement, if Customer uses any such Feasibility Study, Feasibility Report or other document, in whole or in part, prepared by the Company to implement, by or through any third party, any ERPs addressed therein, then (i) such documents are provided "AS IS" without any warranty of any kind, express or implied, and (ii) Customer agrees to release Company from and against any losses, damages or liabilities of any kind resulting or arising from Customer's use thereof.

ARTICLE 9- INSURANCE

9.1 Insurance to Be Maintained by the Company. At any time that the Company is performing Services under this Master Agreement at any Customer Location, the Company shall keep and maintain the following minimum insurance coverages and shall furnish to the County's Office of Resilience within the Regulatory and Economic Development Department (111 NW 1st Street, 12th floor, Miami, Florida 33128), Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined (insurers rated "A-, VII" or higher by A.M. Best's Key Rating Guide are deemed acceptable) that are licensed to do business in the State where the Services are performed or to be performed OR the Company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Financial Services. .:

9.1.1 Statutory Workers' Compensation Insurance: Workers' compensation insurance for all employees of the Company in compliance with Florida statutes, including Florida Statute 440. and as required by any other Applicable Laws where the Services are performed.

9.1.2 Employer's liability Insurance: Employer's liability insurance with a limit of liability 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.

9.1.3 General Liability Insurance: General liability insurance in an amount not less than one million dollars (\$1,000,000) combined single limit per occurrence and \$2,000,000 in the aggregate for bodily injury, death and/or property damage, not to exclude Products & Completed Operations. Miami-Dade County must be shown as an additional insured with respect to this coverage.

9.1.4 Automobile Liability Insurance: Automobile liability insurance, which shall apply to all owned, non-owned, leased and hired automobiles used in connection with the work, in the amount of no less than one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage for each accident, and \$5,000,000 if operating vehicles on the Airfield Operations Area, combined single limit for bodily injury and property damage liability.

9.1.5 Professional Liability Insurance: Professional liability insurance, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; provided that this requirement only applies to extent of professional services performed by Company and further provided that Company will require any subcontractors that perform professional services to carry such insurance.

9.1.6 Excess Liability or Umbrella Liability: Excess liability or umbrella liability insurance in an amount not less than three million dollars (\$3,000,000) for any one occurrence and four million (\$4,000,000) for any one occurrence if operating vehicles on the Airfield Operations Area. Any excess liability or umbrella policy will be applicable to the general liability, auto liability, and employer's liability policies that are required.

The Company shall provide the Customer with insurance certificates which provide evidence of the insurance coverage under this Master Agreement. At least thirty (30) days prior written notice of cancellation or non-renewal of the above-noted insurance, with the exception of ten (10) days for nonpayment of premiums, shall be provided by the Company to the Customer. Company shall include Customer on all the policies shown in this Section 9.1 as an "Additional Insured" (with the exception of policies listed in Subsection (9.1.1)) for any liability or damage arising out of the performance of the obligations assumed by Company under this Agreement. Certificate Holder must read: MIAMI-DADE COUNTY / 111 NW 1st STREET, SUITE 2340 / MIAMI, FL 33128. Any coverage provided under these policies to Customer would be primary to any other coverage available to Customer. Notwithstanding, the failure to provide certificates or add Customer as an additional insured in accordance with this Section shall not release Company in any manner of any liability established under this Agreement.

9.2 Notwithstanding any other requirement set forth in this Section 9, Company may self-insure (the "Self-Insurance") to the extent Company or an affiliate of Company (the "Self Insurer") maintains a self-insurance program under which Company may be insured; provided that: (a) the Self-Insurer's Credit Rating is rated at BBB- or better, by Standard & Poor's, and Baa3 or better by Moody's, and (b) Company has provided the Customer with Notice of its election to self-insure pursuant to this Section 9. For any period of time that the Self-Insurer is unrated by Standard & Poor's or the Self-Insurer's credit rating is rated at less than Investment Grade, Company shall comply with the insurance requirements applicable to it under this Section 9. The Company shall provide the Customer with insurance certificates or letters of Self-Insurance to evidence the insurance coverage under this Master Agreement. At least thirty (30) days prior written notice of cancellation or non-renewal of the above-noted insurance, with the exception of ten (10) days for nonpayment of premiums, shall be provided by the Company to the Customer.

9.3. Insurance to Be Maintained by the Customer. During and throughout the term of this Master Agreement and until all amounts payable to the Company pursuant to this Master Agreement are paid in full, the Customer shall maintain, as of the date of installation of each ERP, the Miami-Dade County on-going self-insurance program for Worker's Compensation, General Liability, Automobile Liability and Professional Liability covering employees and officials of the County. In compliance with and subject to the limitations of Florida Statutes, Section 768.28, - Negligence, the monetary limits are Two Hundred Thousand Dollars (\$200,000.00) per person and Three Hundred Thousand (\$300,000.00) per incident and Chapter 440- Workers' Compensation - no limits. Provisions have been made by the Customer to process any claims that may arise and the same protection will be afforded as would be provided by a policy of insurance.

ARTICLE 10—INDEMNIFICATION

10.1 Indemnity Obligations. The Company shall hold the Customer, its officers, agents, and employees harmless against claims by third parties to the extent resulting from the negligence of Company, its employees, representatives, or subcontractors. Subject to and within the limitations of the provisions of Florida Statutes, section 768.28, whereby Miami-Dade County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum set forth in said statute, or any claims or judgments or portions

thereof, which, when totaled with all other occurrences, exceeds the sum set forth in said statute. Customer shall hold harmless, indemnify and defend the Company against all liability, claims, judgments or costs for injury to, or death of any person or persons, for the loss or damage to any third party property, and for the imposition of any penalties, fines or other assessments by any governmental agency arising out of the use, ownership of each and any Service Location, operation or performance of the terms of this Master Agreement, but only to the extent resulting from any negligence by Customer, or any of its employees, agents, representatives or those in its care and custody.

10.2 Employee Claims. In any and all claims against a Party, its affiliates or contractors and their respective directors, partners, shareholders, officers, agents and employees (collectively, the "Indemnitee") by an employee of the other Party (the "Indemnitor") or of anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations stated in Section 10.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the indemnifying Party under any applicable worker's compensation law, disability law, or other employee benefit law.

10.3 Defense of Claims. An Indemnitor shall have the right to defend an Indemnitee by counsel (including insurance counsel) of Indemnitor's selection reasonably satisfactory to the Indemnitee, with respect to any claims within the indemnification obligations hereof. The Parties shall give each other prompt written notice of any asserted claims or actions indemnified against hereunder and shall cooperate with each other in the defense of any such claims or actions. No Indemnitee shall settle any such claims or actions without prior written consent of the Indemnitor.

10.4 Payment. In the event that either Party is required to make an indemnity payment under this Article 10, such Party shall promptly pay the Indemnitee the amount so determined. The amount owing to the Indemnitee shall be the amount of such Indemnitee's actual out-of-pocket loss or expense, net of any insurance or other recovery paid to such Indemnitee. If there should be a dispute as to the amount or manner of determination of any indemnity obligation, the Indemnitor shall nevertheless pay when due such portion, if any, of the obligation as is not subject to dispute. Upon the payment in full of any claim, the Indemnitor making payment shall be subrogated to the rights of the Indemnitee against any person with respect to the subject matter of such claim.

10.5 Survival. The obligations of the respective Parties under this Article 10 shall survive the termination of this Master Agreement with respect to any claims or liability arising prior to such termination.

10.6 Remedies. The express remedies of this Article 10 are the sole and exclusive obligations of Indemnitor and the sole and exclusive remedies of the Indemnitee with respect to any third-party claims within the scope of the indemnities set forth by Section 10.1.

ARTICLE 11- HAZARDOUS MATERIALS

Except to the extent of hazardous materials brought to the Customer Location by Company, the Customer shall have sole responsibility and liability with respect to the proper identification, removal and disposal of any hazardous materials (e.g., asbestos) or correction of any hazardous condition at a Service Location which affects the Company's performance of the Services under this Master Agreement. If, during the course of performing the Services, the Company becomes aware of any such hazardous materials or hazardous condition, the Company shall promptly report such matter to the Customer before disturbing (or further disturbing) such materials or condition. Work in the affected areas shall be resumed by the Company only upon the written notice from the Customer that such materials have been removed or such condition has been corrected, and then only if such continuation of work shall not violate any applicable law or permit. The Customer shall indemnify, defend and hold harmless the Company and its Subcontractors with respect to any liability, cost or expense of whatever nature incurred as a result of any such hazardous materials or hazardous condition.

ARTICLE 12 - TITLE, RISK OF LOSS, SECURITY INTEREST AND TAXES

12.1 Passage of Title. Legal title to each installed ERP, including all equipment and materials comprising a part thereof, shall pass to the Customer upon the Substantial Completion Date for the ERP. Notwithstanding the foregoing, the Customer shall bear all risk of loss or damage of any kind with respect to all or any part of an ERP

located at a Service Location, whether installed or not, and the Customer shall indemnify and pay the Company for the repair or replacement of any ERP, or component thereof stolen, lost, destroyed or damaged at a Service Location, unless such loss or damage is directly caused by the Company or a Subcontractor retained by the Company. Loss or damage to an ERP directly caused by the Company or its Subcontractor shall be the responsibility of the Company. The Customer hereby releases and waives, and will cause its insurers to release and waive, any right of subrogation against the Company and each of its Subcontractors.

12.2 Warranty of Title. The Company warrants good title to all ERPs and components thereof (not including any licensed third party software components) furnished or installed by the Company or its Subcontractors, and the Company warrants that title to such ERPs and components (not including any licensed third party software components) shall pass to and vest in the Customer as set forth in Section 12.1 free and clear of all liens, claims, charges, security interests, encumbrances and rights of other parties arising as a result of the actions or failure to act of the Company, its Subcontractors, or their employees.

12.3 Taxes. To the extent permitted by law, the Customer agrees to pay any taxes and assessments, whether real or personal, which are now or hereafter imposed or assessed by any governmental authority, whether it be federal, state or local, with respect to the installation, delivery, sale, use, operation or maintenance of the ERPs, and to make all filings in respect of any such taxes and assessments. The Company shall have no obligation or liability with respect to any property tax nor with respect to any income, excess profits, or revenue tax charged or levied against the Customer as a result of this Master Agreement. The Company shall pay any sales and use taxes imposed on the ERPs prior to the Company's delivery or installation of the ERPs, as required by applicable law, subject to any sales and use tax exemptions available to the Company and the Customer. Nothing in this section shall be deemed a representation or warranty on what taxes or assessments Customer is permitted to legally pay relating to this Master Agreement.

ARTICLE 13 - FORCE MAJEURE

If a Party is prevented or delayed in the performance of any obligation by a Force Majeure Event, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party so affected by a Force Majeure Event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable. Provided that the requirements of this Article 13 are satisfied by the affected Party, to the extent that performance of any obligation(s) is prevented or delayed by a Force Majeure Event, the obligation(s) of the affected Party that is obstructed or delayed shall be extended by the time period equal to the duration of the Force Majeure Event. Notwithstanding the foregoing, the occurrence of a Force Majeure Event shall not relieve the Customer of payment obligations set forth in Article 3, Feasibility Study and Report and Article 4, Installation and Implementation.

ARTICLE 14- CHANGES

14.1 Customer Initiated Changes. Upon receiving such a request, the Company may at its sole option prepare and deliver a proposed Change Order to the Customer listing the price of the Changes. If the Customer fails to return an executed Change Order, a form of which is attached to this Master Agreement as Schedule E, the Company shall have no obligation to complete the Changes. The Company shall not be obligated to proceed with or perform any Change requested by the Customer hereunder until the Parties have agreed in writing upon any such adjustments resulting from the Change. Except to the extent a Change specifically results in an amendment or adjustment to one or more provisions of this Master Agreement, all provisions of this Master Agreement shall apply to all Changes, and no Change shall be implied as a result of any other Change.

14.2 Change in Laws and/or Permits. If the Company (i) encounters a change in applicable laws, rules or regulations or applicable permits that affect the Company's ability to perform the Implementation Services at a Service Location and (ii) any such change causes an increase or decrease in the Implementation Price or time of performance, then Company shall notify the Customer thereof no later than thirty (30) days after the date of such change in applicable laws, rules or regulations or applicable permits at the Service Location, and the Customer may either issue a Change Order to equitably adjust the time of performance and/or Implementation Price or be released

of obligation to implement said services; provided however that Customer shall remain responsible for the cost of any Services performed prior to such release.

14.3 Customer-Caused Delay or Affect. Should the actions or inactions of the Customer or any of its representatives or agents cause a delay of, or any failure of the Customer or its representatives or agents to fulfill its obligations hereunder cause a materially adversely affect on the Company's performance of the Implementation Services which affects the completion of the Implementation Services or an increase or decrease in the Implementation Price, the Company shall promptly notify, but in no event more than thirty (30) calendar days after the Company becomes aware of the Customer-caused delay or affect, Customer in writing. The Customer shall issue a Change Order to equitably adjust the time of performance and/or Implementation Price.

14.4 Unknown Conditions. If the Company (i) encounters any concealed subsurface conditions which a reasonable, experienced contractor would not foresee existing at the Service Location and which vary from the conditions shown in the Feasibility Report, if any, and (ii) any such condition causes an increase or decrease in the Implementation Price or time of performance, then Company shall notify the Customer thereof no later than thirty (30) days after the date of such unknown or concealed Service Location condition, and the Customer shall issue a Change Order to equitably adjust the time of performance and/or Implementation Price.

ARTICLE 15 - TERMINATION AND DEFAULT

15.1 Termination for Convenience. Either Party may terminate this Master Agreement, in its sole discretion, at any time, without further liability, upon ten (10) days prior written notice to the other Party; provided, however, that such termination shall not apply with respect to any Services or work of the Company previously ordered by the Customer under an Authorization Form or other mutually agreed upon form of agreement executed by the Customer on or prior to the termination date. With respect to any such previously ordered Services or work, including any ERP under implementation, this Master Agreement and the applicable Customer-authorized proposals, shall remain in full force and effect in accordance with their terms, unless both Parties specifically agree in writing to the contrary.

15.2 Termination for Cause.

15.2.1 Termination by Either Party for Default. A Party shall have the right to terminate this Master Agreement or a Customer-authorized Implementation Services Authorization Form or other mutually agreed upon agreement for cause if: (a) any proceeding is instituted against a Party seeking to adjudicate such Party as bankrupt or insolvent, or if such Party makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of such Party, or if a Party files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up or composition or readjustment of debts and, in the case of any such proceeding instituted against such Party (but not by such Party) such proceeding is not dismissed within sixty (60) days of such filing; (b) the Customer fails to perform any payment obligation under this Master Agreement and fails to cure such obligation within thirty (30) days written notice from the Company; or (c) a Party substantially fails to perform any non-payment obligation under this Master Agreement and fails to cure or commence and diligently proceed to cure such obligation within thirty (30) days written notice from the other Party. The Customer shall pay the Company an amount (to the extent not already paid) equal to the sum of all of the Company's reasonable costs incurred in performing the Services up to the termination date, including all costs incurred with respect to any Subcontractors; provided that the Company makes available to the Customer all of the work product, equipment and materials produced or obtained by the Company in performing such Services (except any and all intellectual property of the Company or third parties).

15.2.2 Payment. All amounts payable by Customer pursuant to Section 15.2 shall be due within thirty (30) days following the submission by Company of an invoice therefore, which invoice shall include in reasonable detail an itemization of costs with respect to any amounts measured on the basis of reimbursable costs. Reimbursable costs also shall be subject to audit by the Customer, at the Customer's expense upon reasonable advance notice; provided that such audit shall be completed within sixty (60) days following the submission of the invoice. Amounts not paid by Customer to the Company when due hereunder shall bear interest from the date payment was due to and including the date of payment at the Delayed Payment Rate.

ARTICLE 16 - DISPUTES

16.1 No Set-Off. Anything to the contrary notwithstanding, all payments under this Master Agreement shall be made without set-off or deduction. Any payment not made by the date required by the Master Agreement shall bear interest from the date on which such payment was due and payable through and including the date such payment is actually received at the Delayed Payment Rate. If, as a result of a Dispute settled in favor of Customer, a refund is owed to Customer, then the amount of the overpayment shall bear interest from the date on which such payment was received by the Company through and including the date that the overpayment is refunded by the Company at an annual rate equal to the Delayed Payment Rate.

16.2 Pendency of Dispute. The existence of any Dispute, controversy or claim under this Master Agreement, or the pendency of the Dispute settlement or resolution procedures set forth in this Master Agreement, shall not in and of themselves relieve or excuse either Party from its ongoing duties and obligations hereunder or thereunder.

16.3 Alternative Dispute Resolution Process. Upon the written request of either Party, the Parties will meet for the purpose of resolving such Dispute. The Parties agree to discuss the problem and negotiate in good faith to attempt to resolve the Dispute. No formal proceedings may be commenced until either Party concludes in good faith that resolution of the Dispute through continued informal negotiations does not appear likely. Disputes that cannot be settled in a manner described via informal discussions may be settled by non-binding mediation. Mediation must occur within twenty (20) business days after the Parties agree to submit the dispute to mediation, and the duration of the mediation shall be limited to one (1) business day. The Parties shall mutually select an independent mediator experienced in energy related project contract disputes, and each Party shall designate a representative(s) to meet with the mediator in good faith in an effort to resolve the Dispute. The specific format of the mediation shall be left to the discretion of the mediator and the designated Party representatives.

ARTICLE 17 - ASSIGNMENT

17.1 Master Agreement Binding. This Master Agreement and each Customer-authorized Feasibility Study and Customer-authorized Implementation Services Authorization Form or other mutually agreed upon agreement entered into by the Parties shall be binding upon, and shall inure to the benefit of, the Parties and their successors and permitted assigns.

17.2 Permitted Assignment. (a) The Customer may not assign this Master Agreement without the prior written consent of the Company. No such assignment by the Customer or consent by the Company to the Customer's assignment shall release the Customer of any of its obligations under this Master Agreement or any associated supplements or Schedules. (b) Company may, with the consent of Customer, assign this Master Agreement, Services, or any portion thereof, to (i) any wholly-owned affiliate of Company's parent company, NextEra Energy, Inc., without the right to further assign or transfer any rights, obligations, duties or other interest in this Contract (except to any other wholly-owned affiliate of NextEra Energy, Inc.) without the consent of the Customer, which consent may be withheld in the Customer's sole and absolute discretion, or (ii) a successor corporation into which all or substantially all of assets of the Company are merged or otherwise consolidated, regardless of whether the Company is the surviving entity in such merger or consolidation. Upon such an assignment to a wholly-owned affiliate of NextEra Energy, Inc. and written notification to the Customer, Company shall be released from all obligations under the portions of this Master Agreement that have been assigned. (c) Any assignment which does not comply with the provisions of this Section 17.2 shall be null and void.

17.3 No Third-Party Beneficiaries. Except as otherwise expressly provided herein, this Master Agreement nor any term or provision or obligation arising hereof or hereunder, shall be construed as being for the benefit of any Party not a signatory hereto.

17.4 Timing of Receipt. Notices sent by mail shall be given as of four (4) business days after the date of the postmark, and notices delivered by overnight courier shall be deemed received on the date when left at the address of the recipient. Notices sent by fax shall be effective the date faxed, if a business day, or the following business day otherwise.

ARTICLE 18 - GENERAL PROVISIONS

18.1 Entire Master Agreement. This Master Agreement, including the Schedules attached hereto and any exhibits attached thereto, sets forth the full and complete understanding of the Parties relating to the subject matter hereof as of the Effective Date of Master Agreement, and supersedes any and all negotiations, agreements and representations made or dated prior hereto with respect to the subject matter of this Master Agreement. Any actions or Services described in this Master Agreement which were performed or implemented by the Parties prior to the Effective Date of Master Agreement shall for all purposes be deemed to have been performed under this Master Agreement.

18.2 Amendments. No change, amendment or modification of this Master Agreement or Schedule or exhibits thereto shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by both Parties.

18.3 Status of the Parties. The Company and its Subcontractors shall be independent contractors with respect to the Services performed hereunder irrespective of whether such Subcontractors are approved by the Customer, and neither the Company nor its Subcontractors, nor the employees of either, shall be deemed to be the employees, representatives or agents of the Customer. Nothing in this Master Agreement shall be construed as inconsistent with the foregoing independent contractor status or relationship, or as creating or implying any partnership, joint venture, trust or other relationship between the Company and the Customer.

18.4 Customer & Company. The Parties hereby represents and warrants to the other Party that (i) the execution and delivery by a Party of this Master Agreement and the performance of its obligations hereunder have been duly authorized by all requisite actions and proceedings; are not inconsistent with and do not and will not contravene any provisions of a Party's organizational documents or any applicable law, rule or regulation; have been approved by all necessary persons or entities; and do not and will not conflict with or cause any breach or default under any agreement or instrument to which a Party is a party or by which it or any of its properties is bound; and (ii) this Master Agreement has been duly executed and delivered by the Parties and constitutes the valid and legally binding obligation of each Party, enforceable against the other Party in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and subject to general equitable principles.

18.5 Drafting Interpretations and Costs. Preparation and negotiation of this Master Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Each Party shall be responsible for its own costs, including legal fees, incurred in negotiating and finalizing this Master Agreement.

18.6 Captions. The captions contained in this Master Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of such document or the intent of any provision contained therein.

18.7 Severability/Divisible Contracts. (a) The invalidity of one or more phrases, sentences, clauses, Sections or Articles contained in this Master Agreement shall not affect the validity of the remaining portions thereof so long as the material purposes of such document can be determined and effectuated. (b) Each Customer-authorized proposal for Services under this Master Agreement shall constitute a separate and divisible contract which the Company may assign to one or more assignees, in whole or in part, and each and every such assignee of the Company shall be entitled to the benefits and rights of the Company under this Master Agreement, and shall be entitled to exercise the rights of the Company under this Master Agreement. No assignee shall be responsible for any obligations of the Company except as expressly assumed in writing by such assignee in accordance with the terms and conditions of Section 17.2.

18.8 Further Assurances. The Company and the Customer each agree to do such other and further acts and things, and to execute and deliver such additional instruments and documents, as either Party may reasonably request from time to time whether at or after the execution of this Master Agreement, in furtherance of the express provisions of this Master Agreement.

18.9 Applicable Law and Venue. This Master Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida, exclusive of conflicts of laws provisions. Any disputes resulting in litigation between the Parties shall be conducted exclusively in the state or federal courts of the State of Florida. Proceedings shall take place in the Circuit Court for Miami-Dade County or Palm Beach County, Florida or the United States District Court for the Southern District of Florida.

18.10 Counterparts. This Master Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both Parties.

18.11 Waiver of Jury Trial. 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 HERON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MASTER AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS MASTER AGREEMENT.

18.12 No Waiver. The failure of a Party to enforce, insist upon, or comply with any of the terms, conditions or covenants of this Master Agreement, or a Party's waiver of the same in any instance or instances shall not be construed as a general waiver or relinquishment of any such terms, conditions or covenants, but the same shall be and remain at all times in full force and effect.

18.13 Notices. All notices, demands, offers or other written communications required or permitted to be given pursuant to this Master Agreement shall be in writing signed by the Party giving such notice and shall be hand-delivered, sent via certified mail, return receipt requested and postage prepaid, or sent via overnight courier as follows:

If to the Company:

Name: Troy W. Rice
Address: FPL Services, LLC
6001 Village Blvd.
West Palm Beach, Florida 33407

If to the Customer:

Name: Jimmy Morales, Chief Operating Officer
Address: Miami-Dade County
111 N.W. 1st Street, 29th Floor
Miami, Florida 33128
Telephone: (305) 375-2571
E-mail: Jimmy.morales2@miamidade.gov

Each Party shall have the right to change the place to which notices shall be sent or delivered or to specify additional addresses to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other Party.

18.14 Sovereign Rights. Notwithstanding and prevailing over any contrary provision in this Master Agreement, it is expressly understood that Miami-Dade County retains all of its sovereign prerogatives and rights as a county under Florida laws and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature. Miami-Dade County shall not by virtue of this Master Agreement be obligated to grant Company any approvals of applications for building, zoning, planning, improving, equipping, or development under present or future laws and ordinances of whatever nature.

Any Miami-Dade County covenant or obligation that may be contained in this Master Agreement shall not bind the Board of County Commissioners, any zoning appeals board, the Department of Regulatory and Economic Resources of Miami-Dade County or any other County, local, federal or state department, authority, or agency to grant or leave in effect any zoning changes, variances, permits, waivers, or any other approvals that may be granted, withheld or

revoked in the discretion of Miami-Dade County or other applicable governmental entities in the exercise of its police power.

18.15 Customer Inspector General Review

18.15.1 According to Section 2-1076 of the Miami-Dade County Code, as amended by Ordinance No. 99-63, the Customer has established the Office of the Inspector General which may, on a random basis, perform audits on all Customer contracts, throughout the duration of said contracts.


18.15.2 Nothing contained above shall in any way limit the powers of the Miami-Dade County Inspector General to perform audits on all Customer contracts. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed Customer and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Miami-Dade County Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs, all at no cost or expense to the Company. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Miami-Dade County Inspector General is empowered to retain, at no expense or cost to the Company, the services of an IPSIG to, subject to all applicable laws, audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement processes related to performance of the parties' obligations under this Master Agreement, including but not limited to project design, specifications, proposal submittals, activities of the Company, its officers, agents and employees, lobbyists, Customer staff and elected officials to ensure compliance with the Master Agreement and to detect fraud and corruption.

18.15.3 Upon thirty (30) days' prior written notice to the Company from the Inspector General or IPSIG retained by the Inspector General, the Company shall make the inspection records available to the Inspector General or IPSIG for inspection and copying, at no cost or expense to the Company. Any such audit shall take place at the Company premises and must not be disruptive to the Company's business and must take place at a mutually agreed time during the Company's normal business hours. In lieu of an audit of the inspection records at the Company's premises, the Company may provide such materials to Inspector General or IPSIG in a reasonably accessible electronic format. The Inspector General and IPSIG shall have the right to inspect and, at no cost or expense to the Company, copy all such documents and records in the Company's possession, custody or control which reasonably relate to Company's performance of this Master Agreement, including, but not limited to, original estimate files, change order estimate files, worksheets, proposals and agreements from and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records. Notwithstanding the foregoing or any other provision of this Master Agreement, the Company shall not be required to, disclose, permit the inspection of or examination of, or discuss, any document, information or other matter that (a) in respect of which disclosure is prohibited by law, or (b) is subject to attorney-client or similar privilege, employee privacy or constitutes attorney work product.

IN WITNESS WHEREOF, the Parties have executed this Form as of the Effective Date of Master Agreement.

Authorized By the Company:
FPL Services, LLC,
a Florida limited liability company

Acknowledged by the Customer:
Miami-Dade County,
a governmental entity

BY: 
NAME: Troy W. Rice
TITLE: President
DATE: 9/18/23

BY: _____
NAME: Daniella Levine Cava
TITLE: Mayor
DATE: _____

Attest: _____
Name: Juan Fernandez-Barquin
Title: Clerk of the Court and Comptroller

Approved as to form and legal sufficiency:

By: _____
Name: _____
Title: Assistant County Attorney

SCHEDULE A

**FORM OF
FEASIBILITY STUDY AUTHORIZATION FORM**

Project Name:

ERP No(s): Various

Service Location:

Company: FPL Services, LLC

Customer:

Company Representative:

Name: Francisco Sanchez
Address: FPL Services, LLC
6001 Village Blvd.
West Palm Beach, Florida 33407
Telephone: (561) 289-1719
E-mail: Francisco.sanchez@fpl.com

Customer Representative:

Name: _____
Address: _____
Telephone: _____
Facsimile: _____
E-mail: _____

I. AUTHORIZATION:

This Feasibility Study Authorization Form ("FSA Form") is issued by the Company to the Customer pursuant to that certain Master Agreement for Energy Related Products and Services, effective as of the [] day of [], 20[] ("Master Agreement"). This FSA Form authorizes the Company to commence Services as described herein pursuant to the terms and conditions of the Master Agreement. This FSA Form is not intended as a Change and in no way amends, varies or modifies the Master Agreement. Any alternate, different or additional terms or conditions referenced by the Customer in subsequent correspondence from the Customer are hereby rejected and will not become part of this FSA Form or alter the Master Agreement unless expressly set forth and incorporated herein. In order for the Company to commence Service set forth in this FSA Form, the Customer is required to sign this FSA Form. Capitalized terms used herein without other definition shall have the meanings set forth in the Master Agreement.

This FSA Form consists of this **FSA Form** and the following attachments, which are incorporated into this FSA Form by this reference: (i) **Exhibit A**—Feasibility Study, and (ii) **Exhibit B**—Feasibility Study Price.

II. SCOPE OF WORK:

The Company shall prepare a Feasibility Report which shall set forth the Services recommended ERP(s) for the implementation at the Service Location identified above, as more particularly described in the Feasibility Study, attached hereto and made a part hereof as **Exhibit A**.

III. FEASIBILITY STUDY PRICE:

Subject to Section 3.5 of the Master Agreement, the Customer shall compensate the Company for the Services provided in connection with the creation and development of the Feasibility Report for the price set forth in **Exhibit B**.

The Customer has examined and carefully studied all of this FSA Form, including the Master Agreement and all exhibits, appendices, specifications, terms and conditions thereto and hereby agrees to be bound by any and all terms, conditions, and obligations set forth therein. THIS FORM IS HEREBY ISSUED BY THE COMPANY TO THE CUSTOMER ON THIS _____ DAY OF _____, 20__ ("Effective Date of FSA Form").

IN WITNESS WHEREOF, the Parties have executed this Form as of the Effective Date of FSA Form.

Authorized By the Company:
FPL Services, LLC,
a Florida limited liability company

Acknowledged by the Customer:
Miami-Dade County,
a governmental entity

BY: _____
NAME: Troy W. Rice
TITLE: President
DATE: _____

BY: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A

EXHIBIT A

SCHEDULE A

EXHIBIT B

FEASIBILITY STUDY PRICE

Feasibility Study Price:

Payment Schedule:

Form of Invoice: TBD

Address for Invoice: TBD

Retainage Terms: No retainage on Professional Services

SCHEDULE B

FORM OF
IMPLEMENTATION SERVICES AUTHORIZATION FORM

Project Name: _____

ERP No(s): _____

Service Location: _____

Company: FPL Services, LLC

Customer: _____

Company Representative:

Name: Francisco Sanchez
Address: FPL Services, LLC
6001 Village Blvd.
West Palm Beach, Florida 33407
Telephone: (561) 289-1719
E-mail: Francisco.sanchez@fpl.com

Customer Representative:

Name: _____
Address: _____

Telephone: _____
Facsimile: _____
E-mail: _____

I. AUTHORIZATION:

This Implementation Services Authorization Form ("ISA Form") is issued by the Company to the Customer pursuant to that certain Master Agreement for Energy Related Products and Services effective as of the [] day of [], 20[] ("Master Agreement"). This ISA Form authorizes the Company to commence Services as described herein pursuant to the terms and conditions of the Master Agreement. This ISA Form is not intended as a Change and in no way amends, varies or modifies the Master Agreement. Any alternate, different or additional terms or conditions referenced by the Customer in subsequent correspondence from the Customer are hereby rejected and will not become part of this ISA Form or other the Master Agreement unless expressly set forth and incorporated herein. In order for the Company to commence Services set forth in this ISA Form, the Customer is required to sign this ISA Form. Capitalized terms used herein without other definition shall have the meanings set forth in the Master Agreement.

This ISA Form consists of this **ISA Form** and the following attachments, which are incorporated into this ISA Form by this reference: (i) **Exhibit A** – Feasibility Report, and (ii) **Exhibit B** – Implementation Price.

II. SCOPE OF WORK:

The Company shall implement the Feasibility Report which shall set forth Services recommended ERP(s) and the implementation at the Service Location identified above, as more particularly described in the Feasibility Report, attached hereto and made a part hereof as **Exhibit A**.

Pursuant to Section 4.2.8 of the Master Agreement, the Parties agree to address the scope of Company's maintenance obligations in Exhibit A.

III. TERM

The term of this ISA Form shall commence upon the Effective Date of ISA Form (as defined below) and shall end ninety (90) days after the Customer's final payment for the Implementation Services as set forth in **Exhibit B**.

IV. IMPLEMENTATION SERVICES PRICE:

Subject to Section 3.5 of the Master Agreement, the Customer shall compensate the Company for the Services provided in connection with the implementation of a Feasibility Report and any deferral payment obligations due for the Company's implementation and delivery of the ERP(s) at the Service Locations identified in the Feasibility Report to the Customer, which shall be set forth in **Exhibit A**.

V. CUSTOMER COOPERATION:

The Customer shall use reasonable efforts to assist the Company in performing the Services contemplated by this ISA Form, including providing reasonable access to each Service Location, providing information concerning each Service Location, making appropriate Customer personnel available if requested by the Company to assist the Company in performing such Services, and taking any other actions the Company may reasonably request from time to time to achieve the purposes and intent of this Schedule and the Master Agreement.

The Customer has examined and carefully studied all of this ISA Form, including the Master Agreement and all exhibits, appendices, specifications, terms and conditions thereto and hereby agrees to be bound by any and all terms, conditions, and obligations set forth therein.

THIS FORM IS HEREBY ISSUED BY THE COMPANY TO CUSTOMER ON THIS _____ DAY OF _____, 20__ ("Effective Date of ISA Form").

IN WITNESS WHEREOF, the Parties have executed this ISA Form as of the Effective Date of ISA Form.

Authorized By the Company:
FPL Services, LLC,
a Florida limited liability company

Acknowledged by the Customer:
Miami-Dade County,
a governmental entity

BY: _____
NAME: Troy W. Rice
TITLE: President
DATE: _____

BY: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE B

EXHIBIT A

FEASIBILITY REPORT

Project Description: **[PROVIDE GENERAL DESCRIPTION OF PROJECT]**

Service Location:

Scope of Services: **[ATTACH DETAILED SCOPE OF SERVICES]**

Procurement Services: **[SPECIFY ANY PROCUREMENT OBLIGATIONS]**

SCHEDULE B

EXHIBIT B

IMPLEMENTATION PRICE

ERP Implementation Price:
Payment Schedule/Deferred Payment Option:
Form of Invoice:
Address for Invoice:
Retainage Terms:
Additional Final Payment Conditions:

SCHEDULE C

**FORM OF
NOTICE OF SUBSTANTIAL COMPLETION**

Project Name: _____

Service Location: _____

ERP No(s): _____

Company: FPL Services, LLC

Customer: _____

Company Representative:

Name: Francisco Sanchez
Address: FPL Services, LLC
6001 Village Blvd.
West Palm Beach, Florida 33407
Telephone: (561) 289-1719
E-mail: Francisco.sanchez@fpl.com

Customer Representative:

Name: _____
Address: _____

Telephone: _____
Facsimile: _____
E-mail: _____

EFFECTIVE DATE OF SUBSTANTIAL COMPLETION: _____ (“Effective Date of Notice”)

This Notice of Substantial Completion (“Notice”) is issued by the Company to the Customer pursuant to that certain Master Agreement for Energy Related Products and Services, effective as of the [] day of [], 20[] (“Master Agreement”). Initial capitalized words used herein but not defined shall have the meaning ascribed to such words in the Master Agreement.

The Customer certifies that as of the Effective Date of Notice, the Company has achieved Substantial Completion of the ERPs specified in this Notice pursuant to the Implementation Service Authorization Form effective as of ____ date of _____, 20__, all in strict accordance with the Master Agreement.

A list of Punch List items to be completed or corrected by the Company is attached hereto as Exhibit A. In accordance with Section 4.2 of the Master Agreement, the Company will complete or correct the Punch List items listed in Exhibit A.

The ERPs have been reviewed by the Customer and based on that review and the information provided by the Company, the Customer has executed this Notice of Substantial Completion, without modifying the Parties obligations under the Master Agreement.

IN WITNESS WHEREOF, the Company and Customer have made and executed this Notice of Substantial Completion by and through their duly authorized representatives as of the Effective Date written above.

FPL Services, LLC
a Florida limited liability company

Miami-Dade County,
a governmental entity

By: _____
Name: _____
Title: Project Manager

By: _____
Name: _____
Title: _____

SCHEDULE C

EXHIBIT A

PUNCHLIST

[INSERT PUNCHLIST ITEMS TO BE COMPLETED]

SCHEDULE D

**FORM OF
FINAL ACCEPTANCE CERTIFICATE**

Project Name: _____

Service Location: _____

ERP No(s): _____

Company: FPL Services, LLC

Customer: _____

Company Representative:

Name: Francisco Sanchez
Address: FPL Services, LLC
6001 Village Blvd.
West Palm Beach, Florida 33407
Telephone: (561) 289-1719
E-mail: Francisco.sanchez@fpl.com

Customer Representative:

Name: _____
Address: _____

Telephone: _____
Facsimile: _____
E-mail: _____

EFFECTIVE DATE OF FINAL ACCEPTANCE: _____ (“Effective Date of FAC”)

This Final Acceptance Certificate (“FAC”) is issued by the Company to the Customer pursuant to that certain Master Agreement for Energy Related Products and Services effective as of the [] day of [], 20[], between the Customer and the Company (the “Master Agreement”). Initial capitalized words used herein but not defined shall have the meaning ascribed to such words in the Contract.

The Customer certifies that as of the Effective Date of FAC, the Company has achieved final completion of the ERPs required pursuant to the Implementation Service Authorization Form effective as of ___ date of _____, 20___, all in strict accordance with the Master Agreement.

This FAC and the certifications of the Customer set forth herein and on any FAC may be relied on by the Company and by any assignee of the Company in connection with the furnishing of the Implementation Services financing to the Customer in accordance with the provisions of the Contract. Any assignee of the Company shall be entitled to the rights, but not the obligations, of the Company under this Schedule.

This FAC is being provided by the Company to the Customer, acknowledging final acceptance of the ERPs specified in this FAC. The Customer has examined and carefully studied all of this FAC, including the Master Agreement and all exhibits, appendices, specifications, terms and conditions. IN WITNESS WHEREOF, the Parties have executed this FAC as of the Effective Date of FAC.

Company:

FPL Services, LLC
a Florida limited liability company

Customer:

Miami-Dade County,
a governmental entity

By: _____
Name: _____
Title: Project Manager

By: _____
Name: _____
Title: _____

SCHEDULE E

**FORM OF
CHANGE ORDER**

Project Name: _____
ERP NO(s): _____
SERVICE LOCATION: _____
CUSTOMER: _____
COMPANY: FPL Services, LLC
CUSTOMER: _____
DATE OF THIS CHANGE ORDER: _____ (“Effective Date of Change Order”)
CHANGE ORDER NUMBER: _____

This Change Order (“Change Order”) by and between the Customer and the Company, with reference to the above indicated Service Locations and ERPs. This Change Order is issued pursuant to that certain Master Agreement for Energy Related Products and Services effective as of the [] day of [], 20[], between the Customer and the Company (the “Master Agreement”). Capitalized terms used herein without other definition shall have the meanings set forth in the Master Agreement.

The Company and the Customer hereby authorize the following modifications and changes to the [Feasibility Study referenced in the Feasibility Study Authorization Form effective as of this ___ day of _____, 200__][Feasibility Report referenced in the Implementation Services Authorization Form effective as of this ___ day of _____, 200__][Master Agreement]:

(1) ADDITIONAL SERVICES AUTHORIZED. The Customer hereby authorizes the Company to perform the following additional items of work (in addition to all other Services described in the Master Agreement) and the [Feasibility Price][Implementation Price] is increased accordingly by the amount set forth in the table made a part of this Change Order: (describe additional work fully).

ADD

(the “Additional Services”)

[The Substantial Completion Date and the effective date of the anticipated Final Acceptance Date are hereby extended for a period of _____ () days in order for the Contractor to perform the Additional Services.][IT IS UNDERSTOOD THAT THE SUBSTANTIAL COMPLETION DATE AND THE FINAL ACCEPTANCE DATE DO NOT REQUIRE EXTENSIONS ON ACCOUNT OF THE ADDITIONAL SERVICES.]

This Change Order is being provided by the Company to the Customer, acknowledging acceptance of the modification(s) specified in this Change Order, and the Master Agreement, which is incorporated herein. The Customer has examined and carefully studied all of this Change Order, including the Master Agreement and all exhibits, appendices, specifications, terms and conditions thereto and hereby agrees to be bound by any and all terms, conditions, and obligations set forth therein. THIS FORM IS HEREBY ISSUED BY COMPANY TO THE CUSTOMER AS OF THE EFFECTIVE DATE OF CHANGE ORDER INDICATED ABOVE.

Authorized By the Company:
FPL Services, LLC,
a Florida limited liability company

Acknowledged by the Customer:
Miami-Dade County,
a governmental entity

BY: _____
NAME: Troy W. Rice
TITLE: President
DATE: _____

BY: _____
NAME: _____
TITLE: _____
DATE: _____

FEASIBILITY STUDY AUTHORIZATION FORM

Project Name: Resilient Infrastructure, Electrical Hardening, Sustainability & Electric Vehicle Services

ERP No(s): Various

Service Location: Various

Company: FPL Services, LLC

Customer: Miami-Dade County

Company Representative:

Name: Francisco Sanchez
Address: FPL Services, LLC
6001 Village Blvd.
West Palm Beach, Florida 33407
Telephone: (561) 640-2539
E-mail: Francisco.sanchez@fpl.com

Customer Representative:

Name: Kevin Montero, Division Director, Facilities and Infrastructure Management Division
Miami-Dade County Internal Services Department
111 N.W. 1st Street, 24th Floor
Miami, Florida 33128
Telephone: (305) 375-5242
E-mail: kevin.montero@miamidade.gov

Name: Victor Fernandez-Cuervo, P.E., Division Director, Facilities Management
Miami-Dade Aviation Department
P.O. Box 025504
Miami, Florida 33102-5504
Telephone: (305) 876-0259
E-mail: VFernandezCuervo@FlyMIA.com

I. AUTHORIZATION:

This Feasibility Study Authorization Form ("FSA Form") is issued by the Company to the Customer pursuant to that certain Master Agreement for Energy Related Products and Services ("Master Agreement"). This FSA Form authorizes the Company to commence Services as described herein pursuant to the terms and conditions of the Master Agreement. This FSA Form is not intended as a Change and in no way amends, varies or modifies the Master Agreement. Any alternate, different or additional terms or conditions referenced by the Customer in subsequent correspondence from the Customer are hereby rejected and will not become part of this FSA Form or alter the Master Agreement unless expressly set forth and incorporated herein. In order for the Company to commence Service set forth in this FSA Form, the Customer is required to sign this FSA Form. Capitalized terms used herein without other definition shall have the meanings set forth in the Master Agreement.

This FSA Form consists of this **FSA Form** and the following attachments, which are incorporated into this FSA Form by this reference: (i) **Exhibit A**—Feasibility Study, and (ii) **Exhibit B**—Feasibility Study Price.

II. SCOPE OF WORK:

The Company shall prepare a Feasibility Report which shall set forth the Services recommended ERP(s) for the implementation at the Service Location identified above, as more particularly described in the Feasibility Study, attached hereto and made a part hereof as **Exhibit A**.

III. FEASIBILITY STUDY PRICE:

Subject to Section 3.5 of the Master Agreement, the Customer shall compensate the Company for the Services provided in connection with the creation and development of the Feasibility Report for the price set forth in **Exhibit B**.

The Customer has examined and carefully studied all of this FSA Form, including the Master Agreement and all exhibits, appendices, specifications, terms and conditions thereto and hereby agrees to be bound by any and all terms, conditions, and obligations set forth therein.

THIS FORM IS HEREBY ISSUED BY THE COMPANY TO THE CUSTOMER ON THE DATE LAST SIGNED BELOW ("Effective Date of FSA Form").

IN WITNESS WHEREOF, the Parties have executed this Form as of the Effective Date of FSA Form.

Authorized By the Company:
FPL Services, LLC,
a Florida limited liability company

Acknowledged by the Customer:
Miami-Dade County,
a governmental entity

BY: 
NAME: Troy W. Rice

BY: _____
NAME: _____
TITLE: _____

TITLE: President
DATE: 9/17/23

FOR: Daniella Levine Cava
TITLE: Mayor
DATE: _____

EXHIBIT A

Feasibility Study Proposal
Resilient Infrastructure, Electrical Hardening, Sustainability
& Electric Vehicle Services
For Miami-Dade County Internal Services Department and
Aviation Department

Presented to:

Alex Muñoz
Director
Miami-Dade County Internal Services Department
111 NW 1st Street,
Suite 2130
Miami, FL 33128
and
Ralph Cutié
Director
Miami-Dade County Aviation Department
2100 NW 42nd Avenue
Miami, FL 33126

Submitted by:



FPL Services™

6001 Village Blvd.
West Palm Beach, FL 33407

February 21st, 2023

Except to the extent inconsistent with applicable law, this proposal or quotation includes data that shall not be disclosed outside of Miami Dade Internal Services Department and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate this proposal or quotation. If, however, a contract is awarded to this Offeror as a result of or in connection with the submission of this data, the Department shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Department's right to use information contained in this data if it is obtained from other sources without restriction. The data subject to this restriction are contained in this entire proposal, unless otherwise stated in writing by FPL Services.

Point of contact for any questions regarding this proposal:

Francisco Sanchez
Manager Business Operations
Optional Supplemental Power Services
6001 Village Blvd
West Palm Beach, FL 33407
561-289-1719
E-mail: francisco.sanchez@fpl.com

BACKGROUND

Miami-Dade County Internal Services Department and Aviation Department (Customer) provides a wide range of services for the ongoing operation of County government. The Customer supports operations of one of the largest airports in the world in terms of domestic/international passengers and cargo tonnage, as well as governmental facility management, design and construction management, fleet management, risk management, surplus property disposition services, capital inventory management, and small business program management and services.

The Customer owns and manages a complex electrical distribution networks that has grown with the County to support ongoing operational needs. Currently, this electrical distribution network is comprised of various OEMs, installation year vintages, and has been modified/expanded to meet immediate electrical needs over the years. The useful life, maintainability, parts availability, and current equipment condition may present operational risks to Miami Dade County.

FPL Services, LLC (Company), a wholly owned subsidiary of Florida Power & Light Company (FPL) Tariff programs designs, installs, owns, operates and maintain back-up generation, switchgear, power conditioning equipment (i.e. Uninterruptible Power Supply) with no upfront out-of-pocket commitment from the customer. Customer pays a fixed fee on its monthly electric bill for the contract term.

OBJECTIVE

Company proposes to assist the Customer in advanced energy management and continued improvement of the energy security through electrical infrastructure including increasing sustainability, resiliency, and reducing carbon emissions. This proposed work, to perform a Resilient Infrastructure, Electrical Hardening, Sustainability & Electric Vehicle Services (RIEHSEVS) Feasibility Study (Study), will evaluate the existing electrical distribution infrastructure, identify, and prioritize infrastructure improvements, and develop a plan for energy resiliency and sustainability that will include grid connected microgrids that can operate when the grid is inoperable, which are deployable for back-up generation, Solar Photovoltaic (PV), battery energy storage, and electric vehicle charging infrastructure at the Customer sites, including net zero carbon emissions options. The Study will determine the technical and economic viability of implementing each proposed solution at the identified sites and serve as the county's master plan. The electrical infrastructure system limits at Customer to be covered under the study include each FP&L vault all the way up to main distribution panel and include normal and emergency power. At a minimum, customer equipment to be evaluated should include: Electrical feeders, transformers, bushings, switches, disconnects, panels, switchgear, breakers, and should take into account the existing condition, age, and technology enhancements, remote monitoring systems, etc. to upgrade.

BENEFITS

The primary benefit of the RIEHSEVS is that the Customer will have the ability to keep Customer facilities operational in the event of storms/hurricanes, electrical equipment failure, or maintenance. The hardening of the electrical infrastructure can also yield multiple benefits, such as: the addition of equipment and installation of backup power generation for increased reliability;

elimination of single points of failure; easing of maintenance problems; streamlining troubleshooting; tracking and maintaining equipment easier; reduction of inventory replacement parts; simplification of logistics; and allowing for quality predictability. Additionally, hardening the electrical infrastructure in a master-plan method of execution will address known issues first without sacrificing long-term resiliency or wasteful spending. FPL's services will include all aspects of operating and maintaining the electrical infrastructure system at Customer sites between the FPL vaults and main distribution panel (MDP) for normal and emergency power, as well as EV charging stations.

PLAN OF ACTION

- The Company will conduct the proposed services in three phases. The first phase is to evaluate the electrical power distribution equipment at each MDP at specific facilities. The evaluation process includes analysis on single points of failure, equipment useful life remaining, maintainability, space considerations, and other visual observations. The second phase is to develop a high-level project plan for the Customer to incorporate comprehensive facility solution which includes: resolving issues discovered in Phase 1; incorporate potential opportunities to interconnect a variety of solar PV assets; whole facility backup generation, harden existing electrical infrastructure; The third phase is to prioritize needs and develop the overall plan for the Customer to achieve energy security through RIEHSEVS.

PHASE 1 – EXISTING DISTRIBUTION INFRASTRUCTURE EVALUATION

The objective of the first phase is to understand the existing site conditions and consolidate useful system information, such as electrical drawings, service records, and interviews with operators. The time expected on-site is about 6 – 8 weeks, based on 68 Customer sites, 52 sites at Miami International Airport & 90-120 minutes per site including time for facility safety briefings for Customer personnel.

Resilient Infrastructure and Electrical Hardening

- 1) Walkthrough and visual inspection (non-invasive) of each MDP (see appendix for Service Locations)
 - a. Panels located near the primary point of utility electric service
- 2) Interview with Facilities Staff to capture known issues/considerations
 - a. Discuss Scope of Work of site visit and any safety briefing necessary from either Company or the Customer
- 3) Evaluation of each customer owned distribution system for the following:
 - a. Method of tie-in (switchgear, automatic transfer switch) and controls overview
 - b. Single points of failure
 - c. Age/useful life of existing equipment
 - d. Maintainability of existing equipment
 - e. Space considerations impacting resiliency (such as equipment access issues)
 - f. Exposure to other operations (such as baggage handling vehicles)

- g. Other observations impacting resiliency Vulnerability assessments provided by the Customer will be taken into consideration in placement of equipment.

Scope of Services - Per Site Basis

Site Development

- Initial Request for Existing and Available Information (RFI)
 - Most recent electrical drawing package
 - Is it current with existing system?
 - Electrical load profile for all services
 - Standard FPL two-year historical report
 - Most recent arc flash study, if available.
 - Most recent coordination study
 - Most recent motor loading study (if applicable)
 - Where not available, Company will create single-line diagrams and floor plan layouts for the existing space for each main service disconnect and generation source. The system capacities, type of equipment, existing loads, future planned EV loads, and system configuration, including space and egress, will be considered as part of development of the Master Plan. Arc flash assessments will be included in the implementation stage for all new equipment and existing equipment impacted by the implementation stage.
- One (1) main travel trip – four (4) personnel
 - Travel trips budgeted in groups of ten (10) sites
 - One additional travel trip as needed per site
 - Company reserves the right to revisit site after initial site visit as needed
- One (1) site survey per site
 - 60-120 minutes of on-site time expected to review existing conditions
 - Maximum of 2 sites per day
- Verify labor requirements (union/non-union)
- Electric Vehicle Services
 - Collaborative feasibility analysis, including strategic recommendations on fleet transition from ICE to EV and evaluating desired Service Locations based on power and equipment needs
 - County will provide any current plans regarding fleet electrification to ensure solutions provided match County's needs (types of fleet vehicles, timing of procurements of vehicles, etc.)
 - County to provide average annual gasoline and diesel consumption of ICE vehicles included in its current fleet electrification plan
 - Pursuant to the requirements of Section 2.2 of the Master Agreement, based upon the above County data, Company will provide an estimate of gasoline and diesel reduction resulting from implementation of the Electric Vehicle Services.
 - Provide infrastructure recommendation and power analysis on each site the County requires EV charging infrastructure

The final phase of the Study prioritizes the various project solutions created in phase 2 based on business needs and risks identified in phase 1. The prioritization creates a schedule of estimated cashflows and finalizes the Master Plan. The report compilation, deliverables, and final acceptance phase is expected to take 14 weeks after acceptance of high-level project solution deliverable.

- 1) Development of written narrative to qualify the need and priority of each new project
- 2) Sequencing and grouping of each new project phase, by year, to quantify the capital required and associated costs of electrical hardening
- 3) Finalization of the Master Plan that contains each project initiative (scope), prioritization/schedule, and costs laid out in an executable resiliency roadmap

Deliverables

- Standard turnkey proposal with firm budgets, +/- 5%, 90-day expiration from release date (vendor permitting). Budget costs and timelines assumes project to be implemented by Company, not by Customer.
- 30% proposal drawing set in accordance with National Electric Code, Florida Building Code, FAA, and other rules and standards within the local Authority(s) Having Jurisdiction, including any ancillary systems impacting the resiliency of the electrical equipment (such as HVAC in the space, auxiliary circuits, remote monitoring, etc) that may need to be added or upgraded to meet current codes and regulations as well as associated cost and timeline impacts.
 - Not for construction
 - Not for permitting submittal

Completion Schedule

- Company to deliver above items 32 weeks of receipt and acceptance of RFI for each facility.

CUSTOMER RESPONSIBILITIES

1. The Customer to supply copies of appropriate record drawings in both hard copy and electronic formats, as available.
2. Provide an escort to host walk-through
3. Assistance with site access and parking
4. Respond to RFI's for validation of circuit nomenclature

EXCLUSIONS

1. Invasive audit techniques such as shutdown of equipment, exposure to primary conductors, or disassembly of equipment is not included.
2. Formal engineering design drawings are not included.
3. Competitive bids for new project work are not included in this phase.
4. Consideration for the installation of additional facilities or infrastructure for future use, such future fire alarm systems, security systems and remote annunciator panels are not included.

5. Fault current and arc-flash studies are not included as part of the Study. Fault current and arc flash studies for proposed equipment to be included in the implementation phase. The single-line diagram included in the deliverables will provide sufficient information for firm system pricing.

COST

Company is offering the cost for the completion of the aforementioned Study for \$497,947 (four-hundred ninety-seven thousand nine-hundred forty-seven dollars).

PAYMENT OBLIGATION

In the event the Customer elects to proceed with implementation of the Study proposed Services, the Customer shall elect to either (a) receive an invoice for the full amount of the Study Price, or (b) defer and roll-over payment of the Study Price until such time as compensation is payable to the Company for implementation of the Study proposed Services. If the Customer elects to receive an invoice pursuant to clause (a) above, or if the Customer fails to make a timely election pursuant to the foregoing, the Company shall issue an invoice for the full amount of the Study Price, and the Customer shall pay such amount within thirty (30) days following receipt of the invoice.

APPENDIX

The following list is the Service Locations that will be included in this Study pending approval from other departments. In addition, the Customer reserves the right to remove for consideration any facility listed or replace sites prior to the commencement of Company services related thereto with no impact to the Study Price. Additional EV sites may be added to the extent there is no cost associated with the Feasibility Study for such sites.

Site Count	Site Name Internal Services Department	Service Locations	Electric Vehicle	Solar Photovoltaic	Backup Generation	Electrical Hardening
1	OTV NORTH	701 NW 1st Court, Miami, FL 33136	Yes	No	No	No
2	Training Institute Surface Lot	9601 NW 58 St	Yes	No	No	No
3	Water & Sewer LeJeune	3575 S LeJeune Road, Miami, 33146	Yes	No	No	No
4	DTMP NORTH SURFACE LOT	201 NW 1ST STREET, 33128	Yes	No	No	No
5	William Lehman Center	6601 NW 72 Avenue Miami, Florida 33166	Yes	No	No	No
6	Water & Sewer Douglas	3071 SW 38th Ave., Miami, 33146	Yes	No	No	No
7	Corrections Facility Maintenance	1351 nw 78 ave	Yes	No	No	No

8	Park Ranger Station	12451 SW 184th Street, Miami, FL 33177	Yes	No	No	No
9	Shop 3 Complex (SW)	8831 NW 58TH ST DORAL FL 33178	Yes	No	No	No
10	PROS Kendall Shop	11395 SW 79th Street, Miami, FL 33173	Yes	No	No	No
11	Health and Fitness Region Office	10901 SW 24th St, Miami, FL 33165	Yes	No	No	No
12	Newberg Warehouse	7101 NE Miami Ct, Miami, FL 33138	Yes	No	No	No
13	MIA Park 8 Garage	4331 NW 22 Street, 33126	Yes	Yes	Yes	Yes
14	Seaport Facilities Maintenance	1580 N. Cruise Blvd, 33132	Yes	No	No	No
15	DISTRIBUTION/11 ST YARD	1001 NW 11th Street, Miami, 33136	Yes	No	No	No
16	Biscayne Plaza	15201 SW 288 St. Miami, FL 33033	Yes	No	No	No
17	Solid Waste Kendall Office	8000 SW 107th Ave, Miami, FL 33173	Yes	No	No	No
18	Central Bus Facility	3300 NW 32 Avenue Miami, Florida 33142	Yes	No	No	No
19	Zoo Miami	12400 SW 152nd Street, Miami, FL 33177	Yes	No	No	No
20	Water & Sewer Virginia Key	3939 Crandon Blvd, Virginia Key, 33149	Yes	No	No	No
21	ALEXANDER ORR PLANT	6801 SW 87th Ave., Miami, 33173	Yes	No	No	No
22	Water & Sewer Blackpoint	8950 SW 232nd Street, Miami, 33170	Yes	No	No	No
23	Westchester Regional Library	9445 Coral Way, Miami, FL 33165	Yes	No	No	No
24	Metro West Detention Center	13850 nw 41 st	Yes	No	No	No
25	Pre-Trial Detention Center	1321 nw 13 st	Yes	No	No	No
26	Turner Guilford Knight Correctional	7000 NW 41 ST	Yes	No	No	No

27	Crandon Park	4000 Crandon Blvd., Key Biscayne, FL 33149	Yes	No	No	No
28	Shop 3 Complex (SW Mosquito)	8901 NW 58TH ST DORAL, FL 33178	Yes	No	No	No
29	Matheson Hammock Park	9610 Old Cutler Road, Coral Gables, FL 33156	Yes	No	No	No
30	Miami-Dade County Auditorium	2901 W. Flagler St. Miami FL 33135	Yes	No	No	No
31	South Miami-Dade Cultural Arts Center	10950 SW 211 Street, Cutler Bay, FL 33189	Yes	No	No	No
32	Beach Operations	7929 Atlantic Way, Miami Beach, FL 33141	Yes	No	No	No
33	North Trades Shop	200 West 74th Place, Hialeah, FL 33014	Yes	No	No	No
34	Seaport Admin Parking Lot.	1002 N. America Way, 33132	Yes	No	No	No
35	Shop 1 Main	703 NW 25 Street, Miami FL	Yes	No	No	No
36	Shop 2 North Surface Lot	6100 NW 87th Ave., 33173	Yes	No	No	No
37	Shop 3 Complex (FMD)	8801 NW 58th St., 33178	Yes	No	No	No
38	Tropical Park	7900 SW 40th Street, Miami, FL 33155	Yes	No	No	No
39	WESTWOOD LAKES	4801 SW 117th Ave., Miami, 33156	Yes	No	No	No
40	North Dade Regional Library	2455 NW 183 Street, Miami Gardens, FL 33056	Yes	No	No	No
41	Deering Estate	16701 SW 72nd Ave, Miami, FL 33157	Yes	No	No	No
42	Richmond Naval Air Station Radio Site	12450 SW 152 Street, Miami, FL 33177	Yes	No	No	No
43	Old Shelter	7401 NW 74 St , 33166	Yes	No	No	No

44	North Dade Landfill	21500 NW 47 Ave. Miami Gardens FL 33055	Yes	No	No	No
45	Solid Waste Resources Recovery	6990 NW 97th Ave, Doral, FL 33178	Yes	No	No	No
46	PROS Natural Areas Management Office (Kendall)	22200 SW 137th Avenue, Miami, FL 33170	Yes	No	No	No
47	Applicant and Leasing Center	2936 NW 17th Ave., Miami, FL 33142	Yes	No	No	No
48	Fire Station 70	11451 SW 248TH ST. Miami, FL 33032	Yes	No	No	No
49	Larry and Penny Trade Shop	12451 SW 184th Street, Miami, FL 33177	Yes	No	No	No
50	Haulover Park	10800 Collins Avenue, Miami, FL 33154	Yes	No	No	No
51	SD TRANSFER HEAVY LOT	23707 SW 97th Ave, Homestead, FL 33032	Yes	No	No	No
52	Crandon Marina	4000 Crandon Blvd., Key Biscayne, FL 33149	Yes	No	No	No
53	Greynolds Park	17530 Dixie Hwy, North Miami Beach, FL 33160	Yes	No	No	No
54	RAAM Facility	7998 SW 107th Avenue, Miami, FL 33173	Yes	No	No	No
55	Kendall Warehouse	10775 SW 84th St, Miami, FL 33173	Yes	No	No	No
56	Turner Guilford Knight Correctional (Boot Camp)	6950 NW 41 st, Doral, FL	Yes	No	No	No
57	New Car Get Ready Surface Lot	6100 SW 87 Ave 33173 Miami, FL	Yes	No	No	No
58	Hickman Garage	270 NW 2nd Street, Miami, FL 33128	Yes	Yes	Yes	Yes
59	MDFR Headquarters Campus	9300 N.W. 41 St. Miami, FL 33178	Yes	Yes	Yes	Yes
60	MDPD HQ	9101 NW 25 ST Miami, FL	Yes	Yes	Yes	Yes

61	Trade Shops	3501 NW 46 ST Miami, FL	Yes	Yes	Yes	Yes
62	ITD - DPCC	5680 S.W. 87th Ave., Miami, FL 33177	Yes	Yes	Yes	Yes
63	Cultural Center Campus - Central Support, Garage, Museum, Library	50 NW 2nd Ave Miami, FL 33128	Yes	Yes	Yes	Yes
64	South Dade Government Center	10710 SW 211 St, Cutler Bay, FL 33189	Yes	Yes	Yes	Yes
65	Medical Examiners Office	1851 NW 10th Ave. Miami, FL 33136	Yes	Yes	Yes	Yes
66	ITD Radio Shop	6010 SW 87th Ave., Miami, FL 33173	Yes	Yes	Yes	Yes
67	Lightspeed	11500 NW 25 Street, Doral, FL. 33172	Yes	Yes	Yes	Yes
68	Data Processing Center Annex	5600 SW 87 Ave, Miami, FL	Yes	Yes	Yes	Yes
Total			68	12	12	12

Site Count	Site Group Miami International Airport	Service Locations	Electr ic Vehicl e	Solar Photovolta ic	Backup Generati on	Electrical Hardenin g
30	Total Main Airport Area		Yes	Yes	Yes	Yes
	Parking Garages	Dolphin + Flamingo, 4 Electrical Rooms	Yes	Yes	Yes	Yes
	Central Chiller Plant	2 main electrical rooms	Yes	Yes	Yes	Yes
	Terminal D	7 Electrical Rooms	Yes	Yes	Yes	Yes
	Terminal E	5 Electrical Rooms	Yes	Yes	Yes	Yes
	Terminal F	3 Electrical Rooms	Yes	Yes	Yes	Yes
	Terminal G	1 Electrical Room	Yes	Yes	Yes	Yes
	Terminal H	2 Electrical Rooms	Yes	Yes	Yes	Yes
	Rotunda	1 Electrical Room	Yes	Yes	Yes	Yes
	Rental Car Area	2 Electrical Rooms	Yes	Yes	Yes	Yes
	MDAD Facilities	3030, 3090, Shop Area	Yes	Yes	Yes	Yes
14	Cargo Area		Yes	Yes	Yes	Yes

	MDAD Controlled	14 Total Electrical Rooms	Yes	Yes	Yes	Yes
8	36th Street Corridor		Yes	Yes	Yes	Yes
	MDAD Controlled	8 Electrical Rooms	Yes	Yes	Yes	Yes
		Total	0	52	52	52

EXHIBIT B

FEASIBILITY STUDY PRICE

Feasibility Study Price: \$497,947.00

Payment Schedule: Pursuant to Section 3.5 of the Master Agreement

Form of Invoice: TBD

Address for Invoice: TBD

Retainage Terms: No retainage on Professional Services

SOLAR POWER FACILITIES SERVICE AGREEMENT

This Solar Power Facilities Service Agreement ("Agreement") is made and entered into this _____ day of _____, 20____, by and between _____, a [insert entity type], having its principal office at _____ (the "Customer") and Florida Power & Light Company, a Florida corporation, having offices at 700 Universe Boulevard, Juno Beach, Florida 33408 (the "Company") (each a "Party" and collectively the "Parties"). The Service (as defined in the paragraph below) provided under this Agreement is subject to the Rules and Orders of the Florida Public Service Commission ("FPSC") and to Company's Electric Tariff, including, but not limited to, the Solar Power Facilities Service Rider, Rate Schedule [SPF-1], as approved or subsequently revised by the FPSC and the General Rules and Regulations for Electric Service as they are now written, or as they may be hereafter revised, amended or supplemented (collectively, hereafter referred to as the "Electric Tariff"). In case of conflict between any provision of this Agreement and the Electric Tariff, this Agreement shall control. Capitalized terms not defined herein shall have the meaning set forth in the Electric Tariff.

WHEREAS, the Customer hereby applies to Company, as more specifically described in a Statement of Work ("SOW") for the installation and maintenance of solar structures, such as solar trees and solar canopies, and related equipment, such as lighting and batteries (the "Service"), at the Customer facility located at _____ (the "Facility").

NOW THEREFORE, in consideration of their mutual promises and undertakings, the Parties agree to the following terms and conditions in this Agreement:

1. **Effective Date.** This Agreement shall become effective upon the acceptance hereof by Company ("Effective Date"), evidenced by the signature of Company's authorized representative appearing below, which, together with the Electric Tariff and the SOW, shall constitute the entire agreement between the Customer and Company with respect to provision of the Service.
2. **Term of Agreement.** The term of this Agreement (the "Term") will commence on the Effective Date and will continue for 10 years following the date on which Company delivers notice to Customer that the Equipment is ready for commercial operation (the "Commercial Operation Date").
3. **Scope of Services.** Company will design, permit, procure, install, own, operate and provide maintenance to all solar structures, such as solar trees and solar canopies, and related equipment, such as lighting and batteries ("Equipment") to furnish the Service as more specifically described in the SOW. Customer acknowledges and agrees that (i) the Equipment may be removed at the end of the term, at the Company's sole option and unless otherwise extended, (ii) Company will own the Equipment, and Customer has no ownership interest in the Equipment. For the avoidance of doubt, it is the Parties' intent that this Agreement (i) is for the Company's provision of Services to Customer using Company's Equipment, and (ii) is not for the license, rental or lease of the Equipment by Company to Customer. Company shall have the right to access and use of Customer's electrical systems for purposes of powering Company's computer equipment used in monitoring the power generated by the Equipment. If Customer has internet access, it will permit Company access to be used in connection with such power monitoring systems. Customer acknowledges and agrees that Company and/or its contractors (i) will gather data and information from the Equipment and (ii) have the rights to use such data, including the right to own any derivative works created using such data.
4. **Equipment Maintenance; Alterations.** During the Term, Company shall provide maintenance to the applicable Equipment in accordance with generally accepted industry practices. Customer shall promptly notify Company when Customer has knowledge of any operational issues or damage related to the Equipment. Company shall inspect and repair Equipment that is not properly operating within the timelines agreed upon in the SOW.
5. **Customer Payments.**
 - (a) **Fees.** The Customer's monthly Service payment shall be in the amount set forth in the SOW ("Monthly Service Payment"). Customer's obligation to pay the Monthly Service Payment, plus applicable charges and taxes, shall begin on the Commercial Operation Date and shall be due and payable by Customer pursuant to the General Rules and Regulations for Electric Service.
 - (b) **Late Payment.** Charges for Services due and rendered which are unpaid as of the past due date are subject to a Late Payment Charge of the greater of \$5.00 or 1.5% applied to any past due unpaid balance of all accounts, except the accounts of federal, state, and local governmental entities, agencies, and instrumentalities. A Late Payment Charge shall be applied to the accounts of federal, state, and local governmental entities, agencies, and instrumentalities at a rate no greater than allowed, and in a manner permitted, by applicable law. Further if the Customer fails to make any undisputed payment

(Continue on Sheet No. 9.850)

(Continued from Sheet No. 9.849)

owed the Company hereunder within five (5) business days of receiving written notice from the Company that such payment is past due, Company may cease to supply Service under this Agreement until the Customer has paid the bills due. It is understood, however, that discontinuance of Service pursuant to the preceding sentence shall not constitute a breach of this Agreement by Company, nor shall it relieve the Customer of the obligation to comply with all payment obligations under this Agreement.

6. **Customer Credit Requirements.** At the discretion of the Company and subject to the confidentiality obligations set forth in this Agreement, Company may request and Customer shall provide Company with the most recent financial statements of each of the Customer and/or its parent company and with such other documents, instruments, agreements and other writings to determine the creditworthiness of Customer. The Company may also use debt ratings provided by the major credit rating agencies or consult other credit rating services to determine Customer creditworthiness. In the reasonable discretion of Company to assure Customer payment of Monthly Service Payments, Company may request and Customer will be required to provide cash security, a surety bond or a bank letter of credit, in an amount as set forth in the SOW, prior to Company's procurement or installation of Equipment. Each Customer that provides a surety bond or a bank letter of credit must enter into the agreement(s) set forth in Sheet No. 9.440 of the Company's Electric Tariff for the surety bond and Sheet Nos. 9.430 and 9.435 of the Company's Electric Tariff for the bank letter of credit. Failure to provide the requested security in the manner set forth above within ninety (90) days of the date of this Agreement shall be a material breach of this Agreement unless such 90-day period is extended in writing by Company. Upon the end of the Term and after Company has received final payment for all bills, including any applicable Termination Fee pursuant to Section 11(a), for Service incurred under this Agreement, any cash security held by the Company under this Agreement will be refunded, and the obligors on any surety bond or letter of credit will be released from their obligations to the Company.
7. **Grant of Access.** Customer hereby grants Company access to the Facility sufficient to allow Company, in Company's sole discretion, to (i) laydown and stage the Equipment, tools, materials, other equipment and rigging and to park construction crew vehicles in connection with the installation or removal of the Equipment, (ii) inspect and provide maintenance to the Equipment; or (iii) provide any other service contemplated or necessary to perform under this Agreement, including required distribution services, equipment and needs. In the event that Company, in its sole discretion, determines that an easement is necessary for the purpose of connecting the Equipment to the electrical grid, then Customer shall grant Company an easement in a mutually agreeable location in, on, over, under, through and across a portion of the Facility to be identified by the Parties on the Company's customary form. Furthermore, if any event creates an imminent risk of damage or injury to the Equipment, any person or person's property, Customer grants Company immediate unlimited access to the Facility to take such action as Company deems appropriate to prevent such damage or injury (collectively "Access"). Upon execution of this Agreement and the Parties agreement to the Equipment location, Company shall obtain a legal description of the necessary Access locations. The Customer must also obtain and provide mortgage subordinations, as necessary to protect the Company's right of Access. Failure to provide the above requested documents in the manner set forth above within ninety (90) days of the date of this Agreement shall be a material breach of this Agreement unless such 90-day period is extended in writing by Company. Customer agrees that it will not interfere with Company's right of access to the Facility as reasonably necessary for (i) Company's laydown and installation of the Equipment, (ii) Company's maintenance and/or removal of Equipment, and (iii) Company's performance of the Service.
8. **Customer Responsibilities.** The Customer shall be obligated, at its sole expense, to keep the Facility free and clear of anything that may (i) impair the maintenance or removal of Equipment, or (ii) cause damage to the Equipment.
9. **Permits and Regulatory Requirements.** The Customer shall be responsible for obtaining and for compliance with any license, permits, and/or approvals from proper authorities required to be in Customer's name in order for the Customer to receive the Service. Each Party agrees to cooperate with the other Party and to assist the other Party in obtaining any required permits.
10. **Title and Risk of Loss.**
 - (a) **Title.** The Customer agrees that Equipment installed at the Facility is and will remain the sole property of Company unless and until such time as the Customer purchases the Equipment as set forth in the Agreement and pays such applicable purchase price to Company. Company reserves the right to modify or upgrade Equipment as Company deems necessary, in its sole discretion, for the continued supply of the Service. Any modifications, upgrades, alterations, additions to the Equipment or replacement of the Equipment shall become part of the Equipment and shall be subject to the ownership provisions of this Section 10(a). The Parties agree that the Equipment is personal property of Company and not a fixture

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(Continued from Sheet No. 9.850)

to the Facility and shall retain the legal status of personal property as defined under the applicable provisions of the Uniform Commercial Code. With respect to the Equipment, and to preserve the Company's title to, and rights in the Equipment, Company may file one or more UCC financing statements or fixture filings, as applicable, in such jurisdictions, as Company deems appropriate. Furthermore, the Parties agree that Company has the right to record notice of its ownership rights in the Equipment in the public records of the county of the Facility. The Company will collect and own the data related to usage of the Equipment.

- (b) Liens. Customer shall keep the Equipment free from any liens by third parties. Customer shall provide timely notice of Company's title and ownership of the Equipment to all persons that may come to have an interest in or lien upon the Facility.
- (c) Risk of Loss to Equipment (Customer Responsibility). **CUSTOMER SHALL BEAR ALL RISK OF LOSS OR DAMAGE OF ANY KIND WITH RESPECT TO ALL OR ANY PART OF THE EQUIPMENT LOCATED AT THE FACILITY TO THE EXTENT SUCH LOSS OR DAMAGE IS CAUSED BY THE ACTIONS, NEGLIGENCE, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF CUSTOMER, ITS EMPLOYEES, CONTRACTORS, AGENTS, INVITEES AND/OR GUESTS, AND IN THE EVENT THAT THE EQUIPMENT IS DAMAGED BY A FORCE MAJEURE EVENT OR BY THIRD PARTY CRIMINAL ACTS OR TORTIOUS CONDUCT, THE CUSTOMER SHALL BE LIABLE TO THE EXTENT SUCH DAMAGES ARE RECOVERABLE UNDER THE CUSTOMER'S INSURANCE AS REQUIRED TO BE PROVIDED BY SECTION 16(b) OR UNDER ANY OTHER AVAILABLE INSURANCE OF CUSTOMER (COLLECTIVELY, A "CUSTOMER CASUALTY").** Any proceeds provided by such insurance for loss or damage to the Equipment shall be promptly paid to Company.
- (d) Risk of Loss to Equipment (Company Responsibility). In the event the Equipment is damaged and is not a Customer Casualty, the Company will repair or replace the Equipment at Company's cost, or, in the event that Equipment is so severely damaged that substantial replacement is necessary, the Company may in its sole discretion either (i) terminate this Agreement for its convenience upon written notice to Customer, provided that Company will have the right to remove the Equipment at its cost within a reasonable period of time, and Customer will be obligated to pay any outstanding Monthly Service Payments and applicable taxes for Service provided to Customer up to and through the date the Equipment was damaged, or (ii) replace the Equipment and adjust the Monthly Service Payments to reflect the new in-place cost of the Equipment less the in-place cost of the replaced Equipment. For the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election.

11. Expiration or Termination of Agreement.

- (a) Early Termination for Convenience by Customer. Subject to the obligation of Customer to pay Company the Termination Fee (as defined below), the Customer has the right to terminate this Agreement for its convenience upon written notice to Company at least one-hundred eighty (180) days prior to the effective date of termination. The "Termination Fee" will be an amount equal to (i) any outstanding Monthly Service Payments and applicable taxes for Service provided to Customer prior to the effective date of termination, plus (ii) any maintenance costs expended by Company prior to the effective date of termination, plus (iii) the unrecovered capital costs of the Equipment less any salvage value of Equipment removed by Company, plus (iv) any removal cost of any Equipment, minus (v) any payment security amounts recovered by the Company under Section 6 (Customer Credit Requirements). For the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election. Company will invoice Customer the Termination Fee, due and payable by Customer within thirty (30) days of the date of such invoice. Company's invoice may include an estimated salvage value of Equipment removed by Company.
- (b) Early Termination by Company for Convenience or by Company Due to Change in Law. The Company has the right to terminate this Agreement for its convenience upon written notice to Customer at least one-hundred eighty (180) days prior to the effective date of termination, or, in whole or in part, immediately upon written notice to Customer as a result of FPSC actions or change in applicable laws, rules, regulations, ordinances or applicable permits of any federal, state or local authority, or of any agency thereof, that have the effect of terminating, limiting or otherwise prohibiting Company's ability to provide the Service. Upon a termination for convenience by Company pursuant to this Section 11(b), Customer must choose to either: (i) purchase the Equipment upon payment of a transfer price mutually

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(Continued from Sheet No. 9.851)

agreeable to Company and Customer; or (ii) request that Company remove the Equipment, at Company's sole cost, within a reasonable time period, provided that, for the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election. If Customer and Company cannot reach agreement as to the transfer price of the Equipment within ninety (90) days of Company's notice of termination for convenience, Customer shall be deemed to have elected the request for Company to remove the Equipment.

- (c) **Early Termination of Agreement for Cause.** In addition to any other termination rights expressly set forth in this Agreement, Company and Customer, as applicable, may terminate this Agreement for cause upon any of the following events of default (each an "Event of Default"): (i) Customer fails to timely pay the Monthly Service Payment and fails to cure such deficiency within thirty (30) days of written notice from the Company; (ii) Company materially breaches its obligations under the Agreement and such failure is not cured within thirty (30) days after written notice thereof by Customer; (iii) Customer fails to perform or observe any other covenant, term or condition under the Agreement and such failure is not cured within thirty (30) days after written notice thereof by Company; (iv) Subject to Section 19, Customer sells, transfers or otherwise disposes of the Facility; (v) Customer or any guarantor of Customer's obligations or liabilities hereunder ("Guarantor") sells, transfers or otherwise dispose of all or substantially all of its assets; (vi) Customer or Guarantor enters into any voluntary or involuntary bankruptcy or other insolvency or receivership proceeding, or makes as assignment for the benefit of creditors; (vii) any representation or warranty made by Customer or Guarantor or otherwise furnished to Company in connection with the Agreement shall prove at any time to have been untrue or misleading in any material respect; or (viii) Customer removes or allows a third party to remove, any portion of the Equipment from the Facility.
- i. Upon a termination for cause by Company, the Company shall have the right to access and remove the Equipment and Customer shall be responsible for paying the Termination Fee as more fully described in Section 11(a). For the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election. Additionally, the Customer shall be liable to Company for any attorney's fees or other costs incurred in collection of the Termination Fee. In the event that Company and a purchaser of the Facility (who has not assumed the Agreement pursuant to Section 19) agree upon a purchase price of the Equipment, such purchase price shall be credited against the Termination Fee owed by Customer.
- ii. Upon a termination for cause by Customer, Customer must choose to either (i) purchase the Equipment upon payment of a transfer price mutually agreeable to Company and Customer, or (ii) request that Company remove the Equipment, at Company's sole cost, within a reasonable time period, and pay no Termination Fee; provided that, for the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election.
- (d) **Expiration of Agreement.** At least ninety (90) days prior to the end of the Term, Customer shall provide Company with written notice of an election of one of the three following options: (i) to renew the Term of this Agreement, subject to modifications to be agreed to by Company and the Customer, for a period and price to be agreed upon between Company and the Customer, (ii) to purchase the Equipment upon payment of a transfer price mutually agreeable to Company and Customer plus applicable taxes, plus any outstanding Monthly Service Payments and applicable taxes, for Service provided to Customer prior to the expiration of the Term, or (iii) to request that Company remove the Equipment and for Customer to pay Company the Termination Fee. In the event that Customer fails to make a timely election, Customer shall be deemed to have elected option (iii). For the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election. If option (i) or (ii) is selected by Customer but the Parties have failed to reach agreement as to the terms of the applicable option by the expiration of the then current Term, the Agreement will auto-renew on a month-to-month basis until (A) the date on which the Parties reach agreement and finalize the option, or (B) the date that either Customer or Company provides written notice to the other Party to change the election to option (iii) above.

(Continue on Sheet No. 9.853)

(Continued from Sheet No.9.852)

12. Warranty and Representations.

- (a) Company's Disclaimer of Express and/or Implied Warranties. **CUSTOMER ACKNOWLEDGES AND AGREES THAT COMPANY HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING, OR WITH RESPECT TO THE COMPANY'S OBLIGATIONS, SERVICES AND/OR THE EQUIPMENT. CUSTOMER ACKNOWLEDGES THAT THERE IS NO WARRANTY IMPLIED BY LAW, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND THE IMPLIED WARRANTY OF CUSTOM OR USAGE. CUSTOMER FURTHER ACKNOWLEDGES IN NO EVENT DOES COMPANY WARRANT AND/OR GUARANTY TO THE CUSTOMER THAT THE ELECTRICAL SERVICES TO THE FACILITY WILL BE UNINTERRUPTED OR THAT THE INSTALLATION OF THE EQUIPMENT AND PROVISION OF SERVICES PROVIDED HEREUNDER WILL AVERT OR PREVENT THE INTERRUPTION OF ELECTRIC SERVICES.**
- (b) Customer Representations and Warranties. The Customer represents and warrants that (i) the Facility at which Company's Equipment is to be located is suitable for the location of such Equipment; (ii) the placing of such Equipment at such Facility will comply with all laws, rules, regulations, ordinances, zoning requirements or any other federal, state and local governmental requirements applicable to Customer; (iii) all information provided by the Customer related to the Facility is accurate and complete; (iv) Customer holds title to the real property on which the Facility is located or has the right of possession of the real property on which the Facility is located for the Term; and (v) Customer has the right to grant Company access and/or easement rights related to the real property on which the Facility is located, or has the right to require the owner of the real property on which the Facility is located to grant Company such access and/or easement rights.

13. LIMITATIONS OF LIABILITY.

- (a) **IT IS UNDERSTOOD AND ACKNOWLEDGED BY CUSTOMER THAT COMPANY IS NOT AN INSURER OF LOSSES OR DAMAGES THAT MIGHT ARISE OR RESULT FROM THE EQUIPMENT NOT OPERATING AS EXPECTED. BY SIGNING THIS AGREEMENT, CUSTOMER ACKNOWLEDGES AND AGREES THAT COMPANY SHALL NOT BE LIABLE TO THE CUSTOMER FOR COMPLETE OR PARTIAL INTERRUPTION OF SERVICE, RESULTING FROM CAUSES BEYOND ITS CONTROL OR THROUGH THE ORDINARY NEGLIGENCE OF ITS EMPLOYEES, SERVANTS OR AGENTS.**
- (b) **SUBJECT TO SECTION 13(c), NEITHER COMPANY NOR CUSTOMER SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT OR INCIDENTAL LOSSES OR PUNITIVE DAMAGES UNDER THE AGREEMENT, INCLUDING LOSS OF USE, COST OF CAPITAL, LOSS OF GOODWILL, LOST REVENUES OR LOSS OF PROFIT, AND COMPANY AND CUSTOMER EACH HEREBY RELEASES THE OTHER FROM ANY SUCH LIABILITY.**
- (c) **THE LIMITATIONS OF LIABILITY UNDER SECTION 13(a) AND SECTION 13(b) ABOVE SHALL NOT BE CONSTRUED TO LIMIT ANY INDEMNITY OR DEFENSE OBLIGATION OF CUSTOMER UNDER SECTION 16(c).**

Customer's initials below indicate that Customer has read, understood and voluntarily accepted the terms and provisions set forth in Section 13.

Agreed and accepted by Customer: _____(Initials)

(Continue on Sheet No. 9.854)

(Continued from Sheet No. 9.853)

14. **Force Majeure.** Force Majeure is defined as an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, sabotage, epidemics, pandemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, or labor disputes or difficulties (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure event, such Party shall provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. The Party so affected by a Force Majeure event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable. Provided that the requirements of this Section 14 are satisfied by the affected Party, to the extent that performance of any obligation(s) is prevented or delayed by a Force Majeure event, the obligation(s) of the affected Party that is obstructed or delayed shall be extended by the time period equal to the duration of the Force Majeure event. Notwithstanding the foregoing, the occurrence of a Force Majeure event shall not relieve Customer of payment obligations under this Agreement.
15. **Confidentiality.** "Confidential Information" shall mean all nonpublic information, regardless of the form in which it is communicated or maintained (whether oral, written, electronic or visual) and whether prepared by a disclosing Party or otherwise ("Disclosing Party"), which is disclosed to a receiving Party ("Receiving Party"). Confidential Information shall not be used for any purpose other than for purposes of this Agreement. The Receiving Party shall use the same degree of care to protect the Confidential Information as the Receiving Party employs to protect its own information of like importance, but in no event less than a reasonable degree of care based on industry standard. Except to the extent required by applicable law, Customer shall not make any public statements that reference the name of Company or its affiliates without the prior written consent of Company.
16. **Insurance and Indemnity.**
- (a) Insurance to Be Maintained by the Company.
- i. At any time that the Company is performing Services under this Agreement at the Customer Facility, the Company shall, maintain, at its sole cost and expense, with insurer(s) rated "A-, VII" or higher by A.M. Best's Key Rating Guide, (i) commercial general liability policy with minimum limits of One Million (\$1,000,000.00) Dollars per occurrence for bodily injury or death and/or property damage, (ii) automobile liability policy with minimum limits of One Million (\$1,000,000.00) Dollars combined single limit for all owned, non-owned, leased and hired automobiles, (iii) umbrella liability policy with minimum limits of Two Million (\$2,000,000.00) Dollars per occurrence, and (iv) workers' compensation insurance coverage as mandated by the applicable laws of the State of Florida and Employers' Liability cover with limits of One Million (\$1,000,000.00) Dollars per accident, by disease and per policy and per employee.
- ii. Notwithstanding any other requirement set forth in this Section 16(a), Company may meet the above required insurance coverage and limits with any combination of primary, excess, or self-insurance.
- (b) Insurance to Be Maintained by the Customer.
- i. The Customer, during and throughout the Term of this Agreement, shall, maintain, at its sole cost and expense, with insurer(s) rated "A-, VII" or higher by A.M. Best's Key Rating Guide, (i) commercial general liability policy with minimum limits of One Million (\$1,000,000.00) Dollars per occurrence for bodily injury or death and/or property damage, (ii) automobile liability policy with minimum limits of One Million (\$1,000,000.00) Dollars combined single limit for all owned, non-owned, leased and hired automobiles, (iii) umbrella liability policy with minimum limits of Two Million (\$2,000,000.00) Dollars per occurrence, and (iv) workers' compensation insurance coverage as mandated by the applicable laws of the State of Florida and Employers' Liability cover with limits of One Million (\$1,000,000.00) Dollars per accident, by disease and per policy and per employee. With respect to insurance required in (i), (ii), and (iii) above, Customer shall name Company as an additional insured and provide a waiver of subrogation in favor of Company.

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(Continued from Sheet No. 9.854)

- ii. In the event Customer is subject to Section 768.28 Florida Statutes, Customer acknowledges, without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, that Customer is self-insured for general liability under Florida sovereign immunity statutes with coverage limits of Two Hundred Thousand (\$200,000.00) Dollars per person and Three Hundred Thousand (\$300,000.00) Dollars per occurrence, or such monetary waiver limits that may change and be set forth by the legislature. Customer shall also maintain workers' compensation insurance in accordance with Chapter 440, Florida Statutes. Coverage shall also include Employers' Liability coverage with limits of One Million (\$1,000,000.00) Dollars per accident.
- (c) **Indemnity.** The Customer shall indemnify, hold harmless and defend Company from and against any and all liability, proceedings, suits, cost or expense for loss, damage or injury to persons or property ("Losses") to the extent arising out of, connected with, relating to or in any manner directly or indirectly connected with this Agreement; provided, that nothing herein shall require Customer to indemnify Company for Losses caused by Company's own negligence, gross negligence or willful misconduct. The provisions of this paragraph shall survive termination or expiration of this Agreement.
17. **Non-Waiver.** The failure of either Party to insist upon the performance of any term or condition of this Agreement or to exercise any right hereunder on one or more occasions shall not constitute a waiver or relinquishment of its right to demand future performance of such term or condition, or to exercise such right in the future.
18. **Tax Credits; Financial Incentives; Sale of Energy.** Installation and operation of the Equipment at the Facility may result in the availability of federal and/or state tax credits, and other financial incentives (collectively hereinafter "Incentives"). Company shall be the sole recipient and beneficiary of any Incentives. Company may decide, in its sole discretion, how any Incentives shall be distributed, disbursed or assigned. Customer shall have no right to any Incentives. All electricity produced by the Equipment, and the right to utilize such electricity, shall be the sole property and right of the Customer.
19. **Assignment.** Neither this Agreement, nor the Service, nor any duty, interest or rights hereunder shall be subcontracted, assigned, transferred, delegated or otherwise disposed of by Customer without Company's prior written approval. Customer will provide written notice to Company of a prospective sale of the real property upon which the Equipment is installed, at least thirty (30) days prior to the sale of such property. In the event of the sale of the real property upon which the Equipment is installed, subject to the obligations of this Agreement including Section 6 (Customer Credit Requirements), such sale shall be considered an early termination of this Agreement by Customer unless the Company agrees in writing to an assignment of this Agreement to the purchaser of the real property.
20. **Dispute Resolution, Governing Law, Venue and Waiver of Jury Trial.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida, exclusive of conflicts of laws provisions. Each Party agrees not to commence or file any formal proceedings against the other Party related to any dispute under this Agreement for at least forty-five (45) days after notifying the other Party in writing of the dispute. A court of competent jurisdiction in the Circuit Court for Palm Beach County, Florida or the United States District Court for the Southern District of Florida only, as may be applicable under controlling law, shall decide any unresolved claim or other matter in question between the Parties to this Agreement arising out of or related in any way to this Agreement, with such court having sole and exclusive jurisdiction over any such matters. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS THAT MIGHT EXIST TO HAVE A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED UPON, RELATING TO, ARISING OUT OF, UNDER OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF EITHER PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.
21. **Modification.** No statements or agreements, oral or written, made prior to the date hereof, shall vary or modify the written terms set forth herein and neither Party shall claim any amendment, modification or release from any provision hereof by reason of a course of action or mutual agreement unless such agreement is in writing, signed by both Parties and specifically states it is an amendment to this Agreement.
22. **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(Continue on Sheet No. 9.856)

(Continued from Sheet No.9.855)

- 23. **Survival.** The obligations of the Parties hereunder which by their nature survive the termination or expiration of the Agreement and/or the completion of the Service hereunder, shall survive and inure to the benefit of the Parties. Those provisions of this Agreement which provide for the limitation of or protection against liability shall apply to the full extent permitted by law and shall survive termination or expiration of this Agreement and/or completion of the Service.
- 24. **Notices.** All notices, demands, offers or other written communications required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and, shall be either hand- delivered, sent via certified mail, return receipt requested and postage prepaid, or sent via overnight courier to such Party's address as set forth in the first paragraph of this Agreement. Each Party shall have the right to change the place to which notices shall be sent or delivered or to specify additional addresses to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other Party.
- 25. **Further Assurances.** Company and Customer each agree to do such other and further acts and things, and to execute and deliver such additional instruments and documents, as either Party may reasonably request from time to time whether at or after the execution of this Agreement, in furtherance of the express provisions of this Agreement.
- 26. **Governmental Entities.** For those Customers which are a governmental entity of the State of Florida or political subdivision thereof ("Governmental Entity"), to the extent the Governmental Entity is legally barred by Florida state or federal law from executing or agreeing to any provision of this Agreement, then such provision of this Agreement will be deemed modified to the extent necessary to make such provisions consistent with Florida state or federal law. The remainder of this Agreement shall not be affected thereby and will survive and be enforceable.
- 27. **Entire Agreement.** The Agreement constitutes the entire understanding between Company and the Customer relating to the subject matter hereof, superseding any prior or contemporaneous agreements, representations, warranties, promises or understandings between the Parties, whether oral, written or implied, regarding the subject matter hereof.

IN WITNESS WHEREOF, the Parties hereby caused this Agreement to be executed by their duly authorized representatives, effective as of the Effective Date.

Customer

Florida Power & Light Company

By: _____
(Signature of Authorized Representative)

By: _____
(Signature of Authorized Representative)

(Print or Type Name)

(Print or Type Name)

Title: _____

Title: _____

Date: _____

Date: _____

SOLAR POWER FACILITIES PILOT RIDER

(OPTIONAL)

RATE SCHEDULE: SPF-1AVAILABLE:

In all areas served. This optional rider ("Rider") is available on a voluntary basis to Non-Residential Customers who desire the installation and maintenance of solar structures ("Service"), such as solar trees and solar canopies, and related equipment, such as lighting and batteries ("Equipment"). This Rider shall expire four years from the effective date of this program, unless extended by approval of the FPSC. Service under this Rider shall be provided under the terms specified in the Solar Power Facilities Service Agreement ("Agreement") that is in effect at such time as the Rider expires. No new Agreements may be executed following the expiration of this Rider

APPLICATION:

Service is provided through the design, permitting, procurement, installation and maintenance of Equipment by the Company at the Customer's premise, the purpose of which is to meet the Customer's requested scope of Service, as more specifically described in a Statement of Work that will be completed pursuant to the Agreement. In order to meet the Service need identified by the Customer, the Company will conduct an evaluation of Customer requirements and of potential solutions. The Company and the Customer shall thereafter execute an Agreement which shall include a description of the equipment to be installed, detailed design, the Service to be provided, and the monthly charge for the Service. Upon receipt of the proposed Agreement from Company, the Customer shall have no more than ninety (90) days to execute the Agreement. After 90 days, the proposed Agreement shall be considered expired, unless extended in writing by the Company. All rates and charges under the Customer's otherwise applicable metered rate schedule shall apply.

LIMITATION OF SERVICE:

Installation of Equipment shall be made only when, in the judgment of the Company, the location and the type of the Equipment are, and will continue to be, accessible and viable. The Company will own, operate, and maintain the Equipment for the term of the Agreement.

MONTHLY SERVICE PAYMENT:

The Company will design, procure, install, own, operate and provide maintenance to all Equipment included in the determination of the Monthly Service Payment. The Monthly Service Payment under this Rider is in addition to the monthly billing determined under the Customer's otherwise applicable rate schedule and any other applicable charges, and shall be calculated based on the following formula:

$$\text{Monthly Service Payment} = \text{Capital Costs} + \text{Expenses}$$

Where:

Capital Costs includes the as-installed cost of the Equipment. Capital costs shall be levelized over the term of Service based upon the installed cost of Equipment times a carrying cost. The carrying cost is the cost of capital, reflecting the Company's current capital structure and most recent FPSC-approved return on common equity.

Capital Costs also includes any replacement cost(s) expected to be incurred during the term of Service. Any equipment installed by the Company that is not necessary to support Service to the customer shall not be included in the Monthly Service Payment. Unexpected replacement cost(s) shall be addressed as set forth in the Agreement.

Expenses will be recovered on a levelized basis over the term of Service and may, depending on the type of Equipment installed, include: operations and maintenance expenses, monitoring expenses associated with the installed Equipment, administrative and general expenses, depreciation expense, income taxes, property taxes, and any expenses that are particular to a specific type of Equipment.

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(Continued from Sheet No. 8.939)

NET METERING OF EXCESS GENERATION

For Customers that have executed an Interconnection Agreement with the Company, the following billing parameters will apply.

The Customer will be charged for electricity used in excess of the generation supplied by the Equipment, as applicable, in accordance with the Company's normal billing practices. If any excess generation from the Equipment is delivered to the Company's electric grid during the course of a billing cycle, it will be credited to the customer's energy consumption for the next month's billing cycle.

All excess energy credits will be accumulated and be used to offset the customer's energy usage in subsequent months for a period of not more than twelve months. In the last billing cycle month of each calendar year, any unused credits for excess kWh generated will be credited to the next month's billing cycle using the average annual rate based on the Company's COG-1, As-Available Energy Tariff. In the event a customer closes the account, any of the customer's unused credits for excess kWh generated will be paid to the customer at an average annual rate based on the Company's COG-1, As-Available Energy Tariff.

REVISIONS TO MONTHLY SERVICE PAYMENT:

When applicable, during the term of the Service, the Monthly Service Payment(s) may be adjusted, by agreement of both the Customer and the Company, to reflect the Customer's request for modifications to the Service and Equipment specified in the Agreement. Modifications include, but are not limited to, Equipment modifications necessitated by changes in the character of Service required by the Customer, requests by the Customer for supplemental equipment or services, or changes or increases in the Customer's facilities which will materially affect the operation of the Company's equipment.

TERM OF SERVICE:

The term of Service will be set forth in the Agreement. At the end of the term of Service, the Customer may choose to (i) renew the Agreement; (ii) purchase the Equipment; or (iii) request that the Company remove the equipment, as more fully set forth in the Agreement.

RULES AND REGULATIONS:

Service under this Rider is subject to orders of governmental bodies having jurisdiction and to the currently effective "General Rules and Regulations for Electric Service" on file with the Florida Public Service Commission. In case of conflict between any provision of this Rider and said "General Rules and Regulations for Electric Service" the provision of this Rider shall apply.

COMMERCIAL ELECTRIC VEHICLE CHARGING SERVICES AGREEMENT

This Commercial Electric Vehicle Charging Services Agreement ("Agreement") is made and entered into this ____ day of _____, 20__ by and between _____, a _____, having its principal office at _____ (hereafter, the "Customer") and Florida Power & Light Company, a Florida corporation, having offices at 700 Universe Boulevard, Juno Beach, Florida 33408 (hereafter "Company") (each a "Party" and collectively the "Parties"). The Service (as defined in the paragraph below) provided under this Agreement is subject to the Rules and Orders of the Florida Public Service Commission ("FPSC") and to Company's Electric Tariff, including, but not limited to, the Commercial Electric Vehicle Charging Services Rider, Rate Schedule [OCEVS-1], as approved or subsequently revised by the FPSC and the General Rules and Regulations for Electric Service as they are now written, or as they may be hereafter revised, amended or supplemented (collectively, hereafter referred to as the "Electric Tariff"). In case of conflict between any provision of this Agreement and the Electric Tariff, this Agreement shall control. Capitalized terms not defined herein shall have the meaning set forth in the Electric Tariff.

WHEREAS, the Customer hereby applies to Company for receipt of service, as more specifically described in a Statement of Work ("SOW") for the purpose of providing commercial electric vehicle charging infrastructure (hereafter the "Service"), at the Customer facility located at _____ (hereafter the "Facility").

NOW THEREFORE, in consideration of their mutual promises and undertakings, the Parties agree to the following terms and conditions in this Agreement:

1. **Effective Date.** This Agreement shall become effective upon the acceptance hereof by Company ("Effective Date"), evidenced by the signature of Company's authorized representative appearing below, which, together with the Electric Tariff and the SOW, shall constitute the entire agreement between the Customer and Company with respect to provision of the Service.
2. **Term of Agreement.** The term of this Agreement (the "Term") will commence on the Effective Date and will continue for ten (10) years following the date on which Company delivers notice to Customer that the Equipment is ready for commercial operation (the "Commercial Operation Date").
3. **Scope of Services.** Company will design, procure, install, own, operate and provide maintenance to electric vehicle charging equipment ("Equipment") to furnish the Service as more specifically described in the SOW. Customer acknowledges and agrees that (i) the Equipment will be removable and will not be a fixture or otherwise part of the Facility, (ii) Company will own the Equipment, and (iii) Customer has no ownership interest in the Equipment. The Company reserves the right to remotely control charging session schedules and/or curtail the energy delivered by the Equipment at any time. For the avoidance of doubt, it is the Parties' intent that this Agreement (i) is for the Company's provision of Services to Customer using Company's Equipment, and (ii) is not for the license, rental or lease of the Equipment by Company to Customer. Customer acknowledges and agrees that Company and/or its contractors (i) will gather data and information from the Equipment and (ii) have the rights to use such data, including the right to own any derivative works created using such data.
4. **Equipment Maintenance; Alterations.** During the Term, Company shall provide maintenance to the applicable Equipment in accordance with generally accepted industry practices. Customer shall promptly notify Company when Customer has knowledge of any operational issues or damage related to the Equipment. Company shall inspect and repair Equipment that is not properly operating within the timelines agreed upon in the SOW. Company will invoice Customer for repairs that are the Customer's financial responsibility under Section 11(c), due and payable by Customer within thirty (30) days of the date of such invoice. The Customer shall not move, modify, remove, adjust, alter or change in any material way the Equipment, or any part thereof, during the term of the Agreement, except in the event of an occurrence reasonably deemed by the Customer or Company to constitute a bona fide emergency. All replacements of, and alterations or additions to, the Equipment shall become part of the Equipment. In the event of a breach of this Section 4 by Customer, Company may, at its option and sole discretion, restore Equipment to its original condition at Customer's sole cost and expense.
5. **Customer Payments.**
 - (a) **Fees.** The Customer's monthly Service payment shall be in the amount set forth in the SOW ("Monthly Service Payment"). Applicable taxes will also be included in or added to the Monthly Service Payment. Customer's obligation to pay the Monthly Service Payment, plus applicable taxes due, shall begin on the Commercial Operation Date and shall be due and payable by Customer pursuant to the General Rules and Regulations for Electric Service.

(Continue on Sheet No. 9.834)

(Continued from Sheet No. 9.833)

- (b) **Late Payment.** Charges for Services due and rendered which are unpaid as of the past due date are subject to a Late Payment Charge of the greater of \$5.00 or 1.5% applied to any past due unpaid balance of all accounts, except the accounts of federal, state, and local governmental entities, agencies, and instrumentalities. A Late Payment Charge shall be applied to the accounts of federal, state, and local governmental entities, agencies, and instrumentalities at a rate no greater than allowed, and in a manner permitted, by applicable law.
6. **Customer Credit Requirements.** At the discretion of the Company and subject to the confidentiality obligations set forth in this Agreement, Company may request and Customer shall provide Company with the most recent financial statements of each of the Customer and/or its parent company and with such other documents, instruments, agreements and other writings to determine the creditworthiness of Customer. The Company may also use debt ratings provided by the major credit rating agencies or consult other credit rating services to determine Customer creditworthiness. In the reasonable discretion of Company to assure Customer payment of Monthly Service Payments, Company may request and Customer will be required to provide cash security, a surety bond or a bank letter of credit, in an amount as set forth in the SOW, prior to Company's procurement or installation of Equipment. Each Customer that provides a surety bond or a bank letter of credit must enter into the agreement(s) set forth in Sheet No. 9.440 of the Company's Electric Tariff for the surety bond and Sheet Nos. 9.430 and 9.435 of the Company's Electric Tariff for the bank letter of credit. Failure to provide the requested security in the manner set forth above within ninety (90) days of the date of this Agreement shall be a material breach of this Agreement unless such 90-day period is extended in writing by Company. Upon the end of the Term and after Company has received final payment for all bills, including any applicable Termination Fee pursuant to Section 12(a), for Service incurred under this Agreement, any cash security held by the Company under this Agreement will be refunded, and the obligors on any surety bond or letter of credit will be released from their obligations to the Company.
7. **Grant of Access.** Customer hereby grants Company access to the Facility sufficient to allow Company, in Company's sole discretion, to (i) laydown, stage and install the Equipment, tools, materials, other equipment and rigging and to park construction crew vehicles in connection with the installation or removal of the Equipment, (ii) inspect and provide maintenance to the Equipment; or (iii) provide any other service contemplated or necessary to perform under this Agreement, including required distribution services, equipment and needs. In the event that Company, in its sole discretion, determines that an easement is necessary for the purpose of connecting the Equipment to the electrical grid, then Customer shall grant Company an easement in a mutually agreeable location in, on, over, under, through and across a portion of the Facility to be identified by the Parties on the Company's customary form. Furthermore, if any event creates an imminent risk of damage or injury to the Equipment, any person or person's property, Customer grants Company immediate unlimited access to the Facility to take such action as Company deems appropriate to prevent such damage or injury (collectively "Access"). Upon execution of this Agreement and the Parties agreement to the Equipment location, Company shall obtain a legal description of the necessary Access locations. The Customer must also obtain and provide mortgage subordinations, as necessary to protect the Company's right of Access. Failure to provide any Company-requested documents in the manner set forth above within ninety (90) days of the date of this Agreement shall be a material breach of this Agreement unless such 90-day period is extended in writing by Company. Customer agrees that it will not interfere with Company's right of access to the Facility as reasonably necessary for (i) Company's laydown and installation of the Equipment, (ii) Company's maintenance and/or removal of Equipment, and (iii) Company's performance of the Service.
8. **Company Testing of Equipment.** The Company shall have the exclusive right to manually and/or remotely test the Equipment to verify that it will operate within required parameters.
9. **Customer Responsibilities.** The Customer shall not modify its electrical system at the Facility in a manner that adversely impacts the Equipment or its use. Company shall be entitled to rely on the accuracy and completeness of any information provided by the Customer related to the Facility. The Customer shall be obligated, at its sole expense, to keep the Facility free and clear of anything that may (i) impair the maintenance or removal of Equipment, (ii) impair the Company's testing of the Equipment pursuant to Section 8, or (iii) cause damage to the Equipment.

(Continue on Sheet No. 9.835)

(Continued from Sheet No. 9.834)

10. **Permits and Regulatory Requirements.** Company shall be responsible for obtaining and for compliance with any license or permit required to be in Company's name to enable it to provide the Service. The Customer shall be responsible for obtaining and for compliance with any license, permits, and/or approvals from proper authorities required to be in Customer's name in order for the Customer to receive the Service. Each Party agrees to cooperate with the other Party and to assist the other Party in obtaining any required permits.

11. **Title and Risk of Loss.**

- (a) **Title.** The Customer agrees that Equipment installed at the Facility is and will remain the sole property of Company unless and until the end of the original Term (or upon any earlier termination if the Company elects to not remove the Equipment). Company reserves the right to modify or upgrade Equipment as Company deems necessary, in its sole discretion, for the continued supply of the Service but will not degrade the capability. Any modifications, upgrades, alterations, additions to the Equipment or replacement of the Equipment shall become part of the Equipment and shall be subject to the ownership provisions of this Section 11(a). The Parties agree that the Equipment is personal property of Company and not a fixture to the Facility and shall retain the legal status of personal property as defined under the applicable provisions of the Uniform Commercial Code. With respect to the Equipment, and to preserve the Company's title to, and rights in the Equipment, Company may file one or more UCC financing statements or fixture filings or take similar action, as applicable, in such jurisdictions, as Company deems appropriate. Furthermore, the Parties agree that Company has the right to record notice of its ownership rights in the Equipment in the public records of the county of the Facility or the state of Florida.
- (b) **Liens.** Customer shall keep the Equipment free from any liens by third parties. Customer shall provide timely notice of Company's title and ownership of the Equipment to all persons that may come to have an interest in or lien upon the Facility.
- (c) **Risk of Loss to Equipment (Customer Responsibility).** **CUSTOMER SHALL BEAR ALL RISK OF LOSS OR DAMAGE OF ANY KIND WITH RESPECT TO ALL OR ANY PART OF THE EQUIPMENT LOCATED AT THE FACILITY TO THE EXTENT SUCH LOSS OR DAMAGE IS CAUSED BY THE ACTIONS, NEGLIGENCE, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF CUSTOMER, ITS EMPLOYEES, CONTRACTORS, AGENTS, INVITEES AND/OR GUESTS, AND IN THE EVENT THAT THE EQUIPMENT IS DAMAGED BY A FORCE MAJEURE EVENT OR BY THIRD PARTY CRIMINAL ACTS OR TORTIOUS CONDUCT, THE CUSTOMER SHALL BE LIABLE TO THE EXTENT SUCH DAMAGES ARE RECOVERABLE UNDER THE CUSTOMER'S INSURANCE AS REQUIRED TO BE PROVIDED BY SECTION 17(b) OR UNDER ANY OTHER AVAILABLE INSURANCE OF CUSTOMER (COLLECTIVELY, A "CUSTOMER CASUALTY").** Any proceeds provided by such insurance for loss or damage to the Equipment shall be promptly paid to Company.
- (d) **Risk of Loss to Equipment (Company Responsibility).** In the event the Equipment is damaged and is not a Customer Casualty, the Company will repair or replace the Equipment at Company's cost, or, in the event that Equipment is so severely damaged that substantial replacement is necessary, the Company may in its sole discretion either (i) terminate this Agreement for its convenience upon written notice to Customer, provided that Company will have the right, but not the obligation, to remove the Equipment at its cost within a reasonable period of time, and Customer will be obligated to pay any outstanding Monthly Service Payments and applicable taxes for Service provided to Customer up to and through the date the Equipment was damaged, or (ii) replace the Equipment and adjust the Monthly Service Payments to reflect the new in-place cost of the Equipment less the in-place cost of the replaced Equipment. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election.

12. **Expiration or Termination of Agreement.**

- (a) **Early Termination for Convenience by Customer.** Subject to the obligation of Customer to pay Company the Termination Fee (as defined below), the Customer has the right to terminate this Agreement for its convenience upon written notice to Company at least sixty (60) days prior to the effective date of termination. The "Termination Fee" will be an amount equal to (i) any outstanding Monthly Service Payments and applicable taxes for Service provided to Customer prior to the effective date of termination, plus (ii) any unrecovered maintenance costs expended by Company prior to the effective date of termination, plus (iii) the unrecovered capital costs of the Equipment less any salvage value of Equipment

(Continue on Sheet No. 9.836)

(Continued from Sheet No. 9.835)

removed by Company, plus (iv) any removal cost of any Equipment, minus (v) any payment security amounts recovered by the Company under Section 6 (Customer Credit Requirements). For the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election. Company will invoice Customer the Termination Fee, due and payable by Customer within thirty (30) days of the date of such invoice. Company's invoice may include an estimated salvage value of Equipment removed by Company.

- (b) **Early Termination by Company for Convenience or by Company Due to Change in Law.** The Company has the right to terminate this Agreement for its convenience upon written notice to Customer at least sixty (60) days prior to the effective date of termination, or, in whole or in part, upon written notice to Customer as a result of FPSC actions or change in applicable laws, rules, regulations, ordinances or applicable permits of any federal, state or local authority, or of any agency thereof, that have the effect of terminating, limiting or otherwise prohibiting Company's ability to provide the Service. Upon a termination for convenience by Company pursuant to this Section 12(b), Customer must choose to either: (i) Purchase the Equipment upon payment of a transfer price mutually agreeable to Company and Customer, negotiated in good faith; or (ii) Request that Company remove the Equipment, at Company's sole cost, within a reasonable time period, provided that, for the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election. If Customer and Company cannot reach agreement as to the transfer price of the Equipment within ninety (90) days of Company's notice of termination for convenience, Customer shall be deemed to have elected the request for Company to remove the Equipment.
- (c) **Early Termination of Agreement for Cause.** In addition to any other termination rights expressly set forth in this Agreement, Company and Customer, as applicable, may terminate this Agreement for cause upon any of the following events of default (each an "Event of Default"): (i) Customer fails to timely pay the Monthly Service Payment and fails to cure such deficiency within thirty (30) days of written notice from the Company; (ii) Company materially breaches its obligations under the Agreement and such failure is not cured within thirty (30) days after written notice thereof by Customer; (iii) Customer fails to perform or observe any other covenant, term or condition under the Agreement and such failure is not cured within thirty (30) days after written notice thereof by Company; (iv) subject to Section 19, Customer sells, transfers or otherwise disposes of the Facility; (v) Customer or any guarantor of Customer's obligations or liabilities hereunder ("Guarantor") sells, transfers or otherwise dispose of all or substantially all of its assets; (vi) Customer or Guarantor enters into any voluntary or involuntary bankruptcy or other insolvency or receivership proceeding, or makes an assignment for the benefit of creditors; (vii) any representation or warranty made by Customer or Guarantor or otherwise furnished to Company in connection with the Agreement shall prove at any time to have been untrue or misleading in any material respect; or (viii) Customer removes or allows a third party to remove, any portion of the Equipment from the Facility.
- i. Upon a termination for cause by Company, the Company shall have the right to access and remove the Equipment and Customer shall be responsible for paying the Termination Fee as more fully described in Section 12(a). For the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election. Additionally, the Customer shall be liable to Company for any attorney's fees or other costs incurred in collection of the Termination Fee. In the event that Company and a purchaser of the Facility (who has not assumed the Agreement pursuant to Section 19) agree upon a purchase price of the Equipment, such purchase price shall be credited against the Termination Fee owed by Customer.
- ii. Upon a termination for cause by Customer, Customer must choose to either (i) purchase the Equipment upon payment of a transfer price mutually agreeable to Company and Customer, negotiated in good faith, or (ii) request that Company remove the Equipment, at Company's sole cost, within a reasonable time period, and pay no Termination Fee; provided that, for the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election.
- (d) **Expiration of Agreement.** At the end of the Term and subject to Customer making payments of all outstanding amounts due, title to the Equipment shall transfer to Customer at no additional charge. Thereafter, Customer shall be responsible (i) for payment of all electric usage by the Equipment pursuant to the Company's Electric Tariff and Company shall be permitted to make any needed adjustments to the Equipment; and (ii) Customer shall be responsible for all maintenance and other costs related to ownership of the Equipment.

(Continue on Sheet No. 9.837)

(Continued from Sheet No. 9.836)

13. Warranty and Representations.

- (a) Company's Disclaimer of Express and/or Implied Warranties. **CUSTOMER ACKNOWLEDGES AND AGREES THAT COMPANY HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING, OR WITH RESPECT TO THE COMPANY'S OBLIGATIONS, SERVICES AND/OR THE EQUIPMENT. CUSTOMER ACKNOWLEDGES THAT THERE IS NO WARRANTY IMPLIED BY LAW, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND THE IMPLIED WARRANTY OF CUSTOM OR USAGE. CUSTOMER FURTHER ACKNOWLEDGES IN NO EVENT DOES COMPANY WARRANT AND/OR GUARANTY TO THE CUSTOMER THAT THE ELECTRICAL SERVICES TO THE FACILITY WILL BE UNINTERRUPTED OR THAT THE INSTALLATION OF THE EQUIPMENT AND PROVISION OF SERVICES PROVIDED HEREUNDER WILL AVERT OR PREVENT THE INTERRUPTION OF ELECTRIC SERVICES.**
- (b) Customer Representations and Warranties. The Customer represents and warrants that (i) the Facility at which Company's Equipment is to be located is suitable for the location of such Equipment; (ii) the placing of such Equipment at such Facility will comply with all laws, rules, regulations, ordinances, zoning requirements or any other federal, state and local governmental requirements applicable to Customer; (iii) all information provided by the Customer related to the Facility is accurate and complete; (iv) Customer holds title to the real property on which the Facility is located or has the right of possession of the real property on which the Facility is located for the Term; and (v) Customer has the right to grant Company access and/or easement rights related to the real property on which the Facility is located, or has the right to require the owner of the real property on which the Facility is located to grant Company such access and/or easement rights.

14. LIMITATIONS OF LIABILITY.

- (a) **IT IS UNDERSTOOD AND ACKNOWLEDGED BY CUSTOMER THAT COMPANY IS NOT AN INSURER OF LOSSES OR DAMAGES THAT MIGHT ARISE OR RESULT FROM THE EQUIPMENT NOT OPERATING AS EXPECTED. BY SIGNING THIS AGREEMENT, CUSTOMER ACKNOWLEDGES AND AGREES THAT COMPANY SHALL NOT BE LIABLE TO THE CUSTOMER FOR COMPLETE OR PARTIAL INTERRUPTION OF SERVICE, OR FLUCTUATION IN VOLTAGE, RESULTING FROM CAUSES BEYOND ITS CONTROL OR THROUGH THE ORDINARY NEGLIGENCE OF ITS EMPLOYEES, SERVANTS OR AGENTS.**
- (b) **SUBJECT TO SECTION 14(c), NEITHER COMPANY NOR CUSTOMER SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT OR INCIDENTAL LOSSES OR PUNITIVE DAMAGES UNDER THE AGREEMENT, INCLUDING LOSS OF USE, COST OF CAPITAL, LOSS OF GOODWILL, LOST REVENUES OR LOSS OF PROFIT, AND COMPANY AND CUSTOMER EACH HEREBY RELEASES THE OTHER FROM ANY SUCH LIABILITY.**
- (c) **THE LIMITATIONS OF LIABILITY UNDER SECTION 14(a) AND SECTION 14(b) ABOVE SHALL NOT BE CONSTRUED TO LIMIT ANY INDEMNITY OR DEFENSE OBLIGATION OF CUSTOMER UNDER SECTION 17(c).**

Customer's initials below indicate that Customer has read, understood and voluntarily accepted the terms and provisions set forth in Section 14.

Agreed and accepted by Customer: _____ (Initials)

(Continue on Sheet No. 9.838)

(Continued from Sheet No. 9.837)

15. **Force Majeure.** Force Majeure is defined as an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, sabotage, epidemics, pandemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, or labor disputes or difficulties (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure event, such Party shall provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. The Party so affected by a Force Majeure event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable. Provided that the requirements of this Section 15 are satisfied by the affected Party, to the extent that performance of any obligation(s) is prevented or delayed by a Force Majeure event, the obligation(s) of the affected Party that is obstructed or delayed shall be extended by the time period equal to the duration of the Force Majeure event. Notwithstanding the foregoing, the occurrence of a Force Majeure event shall not relieve Customer of payment obligations under this Agreement.
16. **Confidentiality.** "Confidential Information" shall mean all nonpublic information, regardless of the form in which it is communicated or maintained (whether oral, written, electronic or visual) and whether prepared by a disclosing Party or otherwise ("Disclosing Party"), which is disclosed to a receiving Party ("Receiving Party"). Confidential Information shall not be used for any purpose other than for purposes of this Agreement. The Receiving Party shall use the same degree of care to protect the Confidential Information as the Receiving Party employs to protect its own information of like importance, but in no event less than a reasonable degree of care based on industry standard. Except to the extent required by applicable law, Customer shall not make any public statements that reference the name of Company or its affiliates without the prior written consent of Company.
17. **Insurance and Indemnity.**
- (a) Insurance to Be Maintained by the Company.
- i. At any time that the Company is performing Services under this Agreement at the Customer Facility, the Company shall, maintain, at its sole cost and expense, with insurer(s) rated "A-, VII" or higher by A.M. Best's Key Rating Guide, (i) commercial general liability policy with minimum limits of One Million (\$1,000,000.00) Dollars per occurrence for bodily injury or death and/or property damage, (ii) automobile liability policy with minimum limits of One Million (\$1,000,000.00) Dollars combined single limit for all owned, non-owned, leased and hired automobiles, (iii) umbrella liability policy with minimum limits of Two Million (\$2,000,000.00) Dollars per occurrence, and (iv) workers' compensation insurance coverage as mandated by the applicable laws of the State of Florida and Employers' Liability cover with limits of One Million (\$1,000,000.00) Dollars per accident, by disease and per policy and per employee.
- ii. Notwithstanding any other requirement set forth in this Section 17(a), Company may meet the above required insurance coverage and limits with any combination of primary, excess, or self-insurance.
- (b) Insurance to Be Maintained by the Customer.
- i. The Customer, during and throughout the Term of this Agreement, shall, maintain, at its sole cost and expense, with insurer(s) rated "A-, VII" or higher by A.M. Best's Key Rating Guide, (i) commercial general liability policy with minimum limits of One Million (\$1,000,000.00) Dollars per occurrence for bodily injury or death and/or property damage, (ii) automobile liability policy with minimum limits of One Million (\$1,000,000.00) Dollars combined single limit for all owned, non-owned, leased and hired automobiles, (iii) umbrella liability policy with minimum limits of Two Million (\$2,000,000.00) Dollars per occurrence, and (iv) workers' compensation insurance coverage as mandated by the applicable laws of the State of Florida and Employers' Liability cover with limits of One Million (\$1,000,000.00) Dollars per accident, by disease and per policy and per employee. With respect to insurance required in (i), (ii), and (iii) above, Customer shall name Company as an additional insured and provide a waiver of subrogation in favor of Company.

(Continue on Sheet No. 9.839)

(Continued from Sheet No. 9.838)

- ii. In the event Customer is subject to Section 728.28 Florida Statute, Customer acknowledges, without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, that Customer is self-insured for general liability under Florida sovereign immunity statutes with coverage limits of Two Hundred Thousand (\$200,000.00) Dollars per person and Three Hundred Thousand (\$300,000.00) Dollars per occurrence, or such monetary waiver limits that may change and be set forth by the legislature. Customer shall also maintain workers' compensation insurance in accordance with Chapter 440, Florida Statute. Coverage shall also include Employers' Liability coverage with limits of One Million (\$1,000,000.00) Dollars per accident.
 - (c) **Indemnity.** The Customer shall indemnify, hold harmless and defend Company from and against any and all liability, proceedings, suits, cost or expense for loss, damage or injury to persons or property ("Losses") to the extent arising out of, connected with, relating to or in any manner directly or indirectly connected with this Agreement; provided, that nothing herein shall require Customer to indemnify Company for Losses caused by Company's own negligence, gross negligence or willful misconduct. The provisions of this paragraph shall survive termination or expiration of this Agreement.
18. **Non-Waiver.** The failure of either Party to insist upon the performance of any term or condition of this Agreement or to exercise any right hereunder on one or more occasions shall not constitute a waiver or relinquishment of its right to demand future performance of such term or condition, or to exercise such right in the future.
 19. **Assignment.** Neither this Agreement, nor the Service, nor any duty, interest or rights hereunder shall be subcontracted, assigned, transferred, delegated or otherwise disposed of by Customer without Company's prior written approval. Customer will provide written notice to Company of a prospective sale of the real property upon which the Equipment is installed, at least thirty (30) days prior to the sale of such property. In the event of the sale of the real property upon which the Equipment is installed, subject to the obligations of this Agreement including Section 6 (Customer Credit Requirements), such sale shall be considered an early termination of this Agreement by Customer unless the Company agrees in writing to an assignment of this Agreement to the purchaser of the real property.
 20. **Dispute Resolution, Governing Law, Venue and Waiver of Jury Trial.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida, exclusive of conflicts of laws provisions. Each Party agrees not to commence or file any formal proceedings against the other Party related to any dispute under this Agreement for at least forty-five (45) days after notifying the other Party in writing of the dispute. A court of competent jurisdiction in the Circuit Court for Palm Beach County, Florida or the United States District Court for the Southern District of Florida only, as may be applicable under controlling law, shall decide any unresolved claim or other matter in question between the Parties to this Agreement arising out of or related in any way to this Agreement, with such court having sole and exclusive jurisdiction over any such matters. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS THAT MIGHT EXIST TO HAVE A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED UPON, RELATING TO, ARISING OUT OF, UNDER OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF EITHER PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.
 21. **Modification.** No statements or agreements, oral or written, made prior to the date hereof, shall vary or modify the written terms set forth herein and neither Party shall claim any amendment, modification or release from any provision hereof by reason of a course of action or mutual agreement unless such agreement is in writing, signed by both Parties and specifically states it is an amendment to this Agreement.
 22. **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
 23. **Survival.** The obligations of the Parties hereunder which by their nature survive the termination or expiration of the Agreement and/or the completion of the Service hereunder, shall survive and inure to the benefit of the Parties. Those provisions of this Agreement which provide for the limitation of or protection against liability shall apply to the full extent permitted by law and shall survive termination or expiration of this Agreement and/or completion of the Service.

(Continue on Sheet No. 9.840)

(Continued from Sheet No. 9.839)

- 24. **Notices.** All notices, demands, offers or other written communications required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and, shall be either hand-delivered, sent via certified mail, return receipt requested and postage prepaid, or sent via overnight courier to such Party's address as set forth in the first paragraph of this Agreement. Each Party shall have the right to change the place to which notices shall be sent or delivered by similar notice sent or delivered in like manner to the other Party.
- 25. **Further Assurances.** Company and Customer each agree to do such other and further acts and things, and to execute and deliver such additional instruments and documents, as either Party may reasonably request from time to time whether at or after the execution of this Agreement, in furtherance of the express provisions of this Agreement.
- 26. **Governmental Entities.** For those Customers which are a governmental entity of the State of Florida or political subdivision thereof ("Governmental Entity"), to the extent the Governmental Entity is legally barred by Florida state or federal law from executing or agreeing to any provision of this Agreement, then such provision of this Agreement will be deemed modified to the extent necessary to make such provisions consistent with Florida state or federal law. The remainder of this Agreement shall not be affected thereby and will survive and be enforceable.
- 27. **Entire Agreement.** The Agreement constitutes the entire understanding between Company and the Customer relating to the subject matter hereof, superseding any prior or contemporaneous agreements, representations, warranties, promises or understandings between the Parties, whether oral, written or implied, regarding the subject matter hereof.

IN WITNESS WHEREOF, the Parties hereby caused this Agreement to be executed by their duly authorized representatives, effective as of the Effective Date.

Customer

Florida Power & Light Company

By: _____
(Signature of Authorized Representative)

By: _____
(Signature of Authorized Representative)

(Print or Type Name)

(Print or Type Name)

Title: _____

Title: _____

Date: _____

Date: _____

COMMERCIAL ELECTRIC VEHICLE CHARGING SERVICES RIDER PILOT
(OPTIONAL)

RATE SCHEDULE: CEVCS-1

AVAILABLE:

In all areas served. This optional rider ("Rider") is available on a voluntary basis to Customers who desire commercial electric vehicle charging service ("Service") for fleet vehicles through the installation of Company owned, operated, and maintained electric vehicle charging equipment ("Equipment"). This Rider shall expire four years from the effective date of this program, unless extended by approval of the FPSC. Service under this Rider shall continue to be provided under the terms specified in the Commercial Electric Vehicle Charging Services Agreement ("Agreement") that is in effect at such time as the Rider expires. No new Agreements may be executed following the expiration of this Rider.

APPLICATION:

Service is provided through the installation of Equipment by the Company at the Customer's premise in accordance with the Scope of Services set forth in the Agreement. In order to meet the Service need identified by the Customer, the Company will conduct an evaluation of Customer requirements and of potential solutions. The Company and the Customer thereafter shall execute an Agreement which shall include the Service to be performed, a description of the Equipment to be installed, and the monthly charge for the Service, calculated in accordance with the provisions of this Rider. All rates and charges under the Customer's otherwise applicable metered rate schedule shall apply.

LIMITATION OF SERVICE:

Installation of Equipment shall be made only when, in the judgment of the Company, the location and the type of the Equipment are, and can continue to be, accessible and viable. Service shall be limited to Customers that already are receiving General Service under their otherwise applicable rate schedule. The Company will own, operate and maintain the Equipment for the term of the Agreement. The Company reserves the right to remotely control charging session schedules and/or curtail the energy delivered by the Equipment.

MONTHLY SERVICE PAYMENT:

The Company will design, procure, install, own, operate and provide maintenance to all equipment included in the determination of the Monthly Service Payment. The Monthly Service Payment under this Rider is in addition to the monthly billing determined under the Customer's otherwise applicable rate schedule and any other applicable charges, and shall be calculated based on the following formula:

$$\text{Monthly Service Payment} = \text{Monthly Equipment Cost} + \text{Monthly Expenses}$$

Where:

Monthly Equipment Cost includes the as-installed cost of the Equipment. The Monthly Equipment Cost will be levelized over the term of Service based upon the installed cost of Equipment times a carrying cost. The carrying cost is the cost of capital, reflecting the Company's current capital structure and most recent FPSC-approved return on common equity.

Monthly Equipment Cost also includes any replacement cost(s) expected to be incurred during the term of Service. Any Equipment installed by the Company that is not necessary to support Service to the customer shall not be included in the Monthly Service Payment. Unexpected replacement cost(s) shall be addressed as set forth in the Agreement.

Monthly Expenses will be recovered on a levelized basis over the term of Service and may, depending on the type of Equipment installed include: operations and maintenance expenses, monitoring expenses associated with the installed Equipment, administrative and general expenses, depreciation expense, income taxes, property taxes, and any expenses that are particular to a specific type of Equipment.

(Continue on Sheet No. 8.846)

(Continued from Sheet No. 8.845)

TERM OF SERVICE:

The term of Service will be set forth in the Agreement. At the end of the term of Service, ownership of the Equipment shall transfer to the Customer.

PROVISIONS FOR EARLY TERMINATION:

Customer has the right to terminate the Agreement for its convenience upon written notice to the Company at least sixty (60) days prior notice. Termination fees will be assessed in accordance with the Agreement.

RULES AND REGULATIONS:

Service under this Rider is subject to orders of governmental bodies having jurisdiction and to the currently effective "General Rules and Regulations for Electric Service" on file with the Florida Public Service Commission. In case of conflict between any provision of this Rider and said "General Rules and Regulations for Electric Service" the provision of this Rider shall apply.

NON-RESIDENTIAL OPTIONAL SUPPLEMENTAL POWER SERVICES AGREEMENT

THIS Non-Residential Optional Supplemental Power Services Agreement (“Agreement”) is made and entered into this _____ day of _____, 20__ by and between _____, a _____, having its principal office at _____ (hereafter, the “Customer”) and Florida Power & Light Company, a Florida corporation, having offices at 700 Universe Boulevard, Juno Beach, Florida 33408 (hereafter “Company”) (each a “Party” and collectively the “Parties”). The Service (as defined in the paragraph below) provided under this Agreement is subject to the Rules and Orders of the Florida Public Service Commission (“FPSC”) and to Company’s Electric Tariff, including, but not limited to, the Optional Supplemental Power Services Rider, Rate Schedule OSP-1, as approved or subsequently revised by the FPSC (hereafter the “Rider”) and the General Rules and Regulations for Electric Service as they are now written, or as they may be hereafter revised, amended or supplemented (collectively, hereafter referred to as the “Electric Tariff”). In case of conflict between any provision of this Agreement and the Electric Tariff, this Agreement shall control. Capitalized terms not defined herein shall have the meaning set forth in the Electric Tariff.

WHEREAS, the Customer hereby applies to Company for receipt of service, as more specifically described in a Statement of Work (“SOW”) for the purpose of providing an alternative source of power supply and/or power conditioning service in the event Customer’s normal electric supply is disrupted (hereafter the “Service”), at the Customer facility located at _____ (hereafter the “Facility”).

NOW THEREFORE, in consideration of their mutual promises and undertakings, the Parties agree to the following terms and conditions in this Agreement:

1. **Effective Date.** This Agreement shall become effective upon the acceptance hereof by Company (“Effective Date”), evidenced by the signature of Company’s authorized representative appearing below, which, together with the Electric Tariff and the SOW, shall constitute the entire agreement between the Customer and Company with respect to provision of the Service.
2. **Term of Agreement.** The term of this Agreement will commence on the Effective Date and will continue for _____ years following the Commercial Operation Date as defined in Section 4(a) below (the “Term”).
3. **Scope of Services.** Company will design, procure, install, own, operate and provide maintenance to all alternative sources of power supply and/or power conditioning equipment (“Equipment”) to furnish the Service as more specifically described in the SOW. Customer acknowledges and agrees that (i) the Equipment will be removable and will not be a fixture or otherwise part of the Facility, (ii) Company will own the Equipment, and (iii) Customer has no ownership interest in the Equipment. For the avoidance of doubt, it is the Parties’ intent that this Agreement (i) is for the Company’s provision of Services to Customer using Company’s Equipment, and (ii) is not for the license, rental or lease of the Equipment by Company to Customer.
4. **Design and Installation.** Company will design, procure, and install the Equipment pursuant to the requirements of the SOW.
 - (a) **Commercial Operation.** Upon completion of the installation of the applicable Equipment in accordance with the requirements of the SOW, Company shall deliver to Customer a notice that the Equipment is ready for commercial operation, with the date of such notice being the “Commercial Operation Date”.
 - (b) **Commencement of Monthly Service Payment Upon Commercial Operation Date.** Customer’s obligation to pay the applicable Customer’s monthly Service payment, plus applicable fuel charges and taxes due from Customer pursuant to Section 6 (Customer Payments), shall begin on the Commercial Operation Date and shall be due and payable by Customer pursuant to the General Rules and Regulations for Electric Service.
5. **Equipment Maintenance; Alterations.** During the Term, Company shall provide maintenance to the applicable Equipment in accordance with generally accepted industry practices. Customer shall promptly notify Company when Customer has knowledge of any operational issues or damage related to the Equipment. Company shall inspect and repair Equipment that is not properly operating within the timelines agreed upon in the SOW. Company will invoice Customer for repairs that are the Customer’s financial responsibility under

(Continue on Sheet No. 9.821)

(Continued from Sheet No. 9.820)

Section 12(c), due and payable by Customer within thirty (30) days of the date of such invoice. The Customer shall not manually operate or test Equipment, move, modify, remove, adjust, alter or change in any material way the Equipment, or any part thereof, during the term of the Agreement, except in the event of an occurrence reasonably deemed by the Customer or Company to constitute a bona fide emergency. All replacements of, and alterations or additions to, the Equipment shall become part of the Equipment. In the event of a breach of this Section 5 by Customer, Company may, at its option and sole discretion, restore Equipment to its original condition at Customer's sole cost and expense.

6. Customer Payments.

(a) Fees. The Customer's monthly Service payment shall be in the amount set forth in the SOW ("Monthly Service Payment"). Any monthly fuel charges specified in the SOW will be in addition to the Monthly Service Payment. Monthly fuel charges, if applicable, will be recalculated annually by Company in accordance with the Rider, and such recalculated monthly fuel charges shall be effective upon written notice to Customer. Applicable taxes will also be included in or added to the Monthly Service Payment and any fuel charges. In the event that Company agrees to a Customer's request to connect Equipment on the Company's side of the billing meter, energy provided by such Equipment will be billed under the Customer's otherwise applicable general service rate schedule.

(b) Late Payment. Charges for Services due and rendered which are unpaid as of the past due date are subject to a Late Payment Charge of the greater of \$5.00 or 1.5% applied to any past due unpaid balance of all accounts, except the accounts of federal, state, and local governmental entities, agencies, and instrumentalities. A Late Payment Charge shall be applied to the accounts of federal, state, and local governmental entities, agencies, and instrumentalities at a rate no greater than allowed, and in a manner permitted, by applicable law. Further if the Customer fails to make any undisputed payment owed the Company hereunder within five (5) business days of receiving written notice from the Company that such payment is past due, Company may cease to supply Service under this Agreement until the Customer has paid the bills due. It is understood, however, that discontinuance of Service pursuant to the preceding sentence shall not constitute a breach of this Agreement by Company, nor shall it relieve the Customer of the obligation to comply with all payment obligations under this Agreement.

7. Customer Credit Requirements. At the discretion of the Company and subject to the confidentiality obligations set forth in this Agreement, Company may request and Customer shall provide Company with the most recent financial statements of each of the Customer and/or its parent company and with such other documents, instruments, agreements and other writings to determine the creditworthiness of Customer. The Company may also use debt ratings provided by the major credit rating agencies or consult other credit rating services to determine Customer creditworthiness. In the reasonable discretion of Company to assure Customer payment of Monthly Service Payments, Company may request and Customer will be required to provide cash security, a surety bond or a bank letter of credit, in an amount as set forth in the SOW, prior to Company's procurement or installation of Equipment. Each Customer that provides a surety bond or a bank letter of credit must enter into the agreement(s) set forth in Sheet No. 9.440 of the Company's Electric Tariff for the surety bond and Sheet Nos. 9.430 and 9.435 of the Company's Electric Tariff for the bank letter of credit. Failure to provide the requested security in the manner set forth above within ninety (90) days of the date of this Agreement shall be a material breach of this Agreement unless such 90-day period is extended in writing by Company. Upon the end of the Term and after Company has received final payment for all bills, including any applicable Termination Fee pursuant to Section 13(a), for Service incurred under this Agreement, any cash security held by the Company under this Agreement will be refunded, and the obligors on any surety bond or letter of credit will be released from their obligations to the Company.

(Continue on Sheet No. 9.822)

(Continued from Sheet No. 9.821)

8. **Grant of Easement to Company.** Customer hereby grants Company an access easement to the Facility sufficient to allow Company, in Company's sole discretion, to (i) laydown and stage the Equipment, tools, materials, other equipment and rigging and to park construction crew vehicles in connection with the installation or removal of the Equipment, (ii) inspect and provide maintenance to the Equipment; or (iii) provide any other service contemplated or necessary to perform under this Agreement. Furthermore, if any event creates an imminent risk of damage or injury to the Equipment, any person or person's property, Customer grants Company immediate unlimited access to the Facility to take such action as Company deems appropriate to prevent such damage or injury (collectively "Access"). Upon execution of this Agreement and the Parties agreement to the Equipment location, Company shall obtain a legal description of the necessary Access locations and provide Customer with an applicable easement form for Customer's approval and signature. The Customer must also obtain and provide mortgage subordinations, as necessary to protect the Company's right of Access. Upon receiving the signed easement form and any associated mortgage subordinations, the Company shall record Company's easement rights in the public records of the County where the Facility is located. All such costs related thereto shall be included as part of calculating the Customer's Monthly Service Payment. Failure to provide the above requested documents in the manner set forth above within ninety (90) days of the date of this Agreement shall be a material breach of this Agreement unless such 90-day period is extended in writing by Company. Customer agrees that it will not interfere with Company's right of access to the Facility as reasonably necessary for (i) Company's laydown and installation of the Equipment, (ii) Company's maintenance and/or removal of Equipment, and (iii) Company's performance of the Service.
9. **Company Operation and Testing of Equipment.** The Company shall have the exclusive right to manually and/or remotely operate the Equipment, and, except as expressly provided in the SOW, has the right to manually and/or remotely operate the Equipment at all times it deems appropriate, including, but not limited to, for the purpose of testing the Equipment to verify that it will operate within required parameters.
10. **Customer Responsibilities.** Except for an agreed upon Change (as defined in the SOW), the Customer shall not modify its electrical system at the Facility in a manner that exceeds the capacity of the Equipment. Company shall be entitled to rely on the accuracy and completeness of any information provided by the Customer related to the Facility. The Customer shall be obligated, at its sole expense, to keep the Facility free and clear of anything that may (i) impair the maintenance or removal of Equipment, (ii) impair the Company's operation of the Equipment pursuant to Section 9, or (iii) cause damage to the Equipment.
11. **Permits and Regulatory Requirements.** Company shall be responsible for obtaining and for compliance with any license or permit required to be in Company's name to enable it to provide the Service. The Customer shall be responsible for obtaining and for compliance with any license, permits, and/or approvals from proper authorities required to be in Customer's name in order for the Customer to receive the Service. Each Party agrees to cooperate with the other Party and to assist the other Party in obtaining any required permits.
12. **Title and Risk of Loss.**
- (a) **Title.** The Customer agrees that Equipment installed at the Facility is and will remain the sole property of Company unless and until such time as the Customer exercises any purchase option set forth in the Agreement and pays such applicable purchase price to Company. Company reserves the right to modify or upgrade Equipment as Company deems necessary, in its sole discretion, for the continued supply of the Service. Any modifications, upgrades, alterations, additions to the Equipment or replacement of the Equipment shall become part of the Equipment and shall be subject to the ownership provisions of this Section 12(a). The Parties agree that the Equipment is personal property of Company and not a fixture to the Facility and shall retain the legal status of personal property as defined under the applicable provisions of the Uniform Commercial Code. With respect to the Equipment, and to preserve the Company's title to, and rights in the Equipment, Company may file one or more precautionary UCC financing statements or fixture filings, as applicable, in such jurisdictions, as Company deems appropriate. Furthermore, the Parties agree that Company has the

(Continue on Sheet No. 9.823)

(Continued from Sheet No. 9.822)

right to record notice of its ownership rights in the Equipment in the public records of the county of the Facility.

- (b) Liens. Customer shall keep the Equipment free from any liens by third parties. Customer shall provide timely notice of Company's title and ownership of the Equipment to all persons that may come to have an interest in or lien upon the Facility.
- (c) Risk of Loss to Equipment (Customer Responsibility). **CUSTOMER SHALL BEAR ALL RISK OF LOSS OR DAMAGE OF ANY KIND WITH RESPECT TO ALL OR ANY PART OF THE EQUIPMENT LOCATED AT THE FACILITY TO THE EXTENT SUCH LOSS OR DAMAGE IS CAUSED BY THE ACTIONS, NEGLIGENCE, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF CUSTOMER, ITS EMPLOYEES, CONTRACTORS, AGENTS, INVITEES AND/OR GUESTS, AND IN THE EVENT THAT THE EQUIPMENT IS DAMAGED BY A FORCE MAJEURE EVENT OR BY THIRD PARTY CRIMINAL ACTS OR TORTIOUS CONDUCT, THE CUSTOMER SHALL BE LIABLE TO THE EXTENT SUCH DAMAGES ARE RECOVERABLE UNDER THE CUSTOMER'S INSURANCE AS REQUIRED TO BE PROVIDED BY SECTION 18(b) OR UNDER ANY OTHER AVAILABLE INSURANCE OF CUSTOMER (COLLECTIVELY, A "CUSTOMER CASUALTY").** Any proceeds provided by such insurance for loss or damage to the Equipment shall be promptly paid to Company.
- (d) Risk of Loss to Equipment (Company Responsibility). In the event the Equipment is damaged and is not a Customer Casualty, the Company will repair or replace the Equipment at Company's cost, or, in the event that Equipment is so severely damaged that substantial replacement is necessary, the Company may in its sole discretion either (i) terminate this Agreement for its convenience upon written notice to Customer, provided that Company will have the right to remove the Equipment at its cost within a reasonable period of time, and Customer will be obligated to pay any outstanding Monthly Service Payments, fuel charges and applicable taxes for Service provided to Customer up to and through the date the Equipment was damaged, or (ii) replace the Equipment and adjust the Monthly Service Payments to reflect the new in-place cost of the Equipment less the in-place cost of the replaced Equipment. For the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election.

13. Expiration or Termination of Agreement.

- (a) Early Termination for Convenience by Customer. Subject to the obligation of Customer to pay Company the Termination Fee (as defined below), the Customer has the right to terminate this Agreement for its convenience upon written notice to Company at least one-hundred eighty (180) days prior to the effective date of termination. The "Termination Fee" will be an amount equal to (i) any outstanding Monthly Service Payments, fuel charges and applicable taxes for Service provided to Customer prior to the effective date of termination, plus (ii) any unrecovered fuel and maintenance costs expended by Company prior to the effective date of termination, plus (iii) the unrecovered capital costs of the Equipment less any salvage value of Equipment removed by Company, plus (iv) any removal cost of any Equipment, minus (v) any payment security amounts recovered by the Company under Section 7 (Customer Credit Requirements). For the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election. Company will invoice Customer the Termination Fee, due and payable by Customer within thirty (30) days of the date of such invoice. Company's invoice may include an estimated salvage value of Equipment removed by Company. Company retains the right to invoice Customer based upon actual salvage value within one-hundred eighty (180) days of the date of the Company's removal of Equipment.

(Continue on Sheet No. 9.824)

(Continued from Sheet No. 9.823)

- (b) **Early Termination by Company for Convenience or by Company Due to Change in Law.** The Company has the right to terminate this Agreement for its convenience upon written notice to Customer at least one-hundred eighty (180) days prior to the effective date of termination, or, in whole or in part, immediately upon written notice to Customer as a result of FPSC actions or change in applicable laws, rules, regulations, ordinances or applicable permits of any federal, state or local authority, or of any agency thereof, that have the effect of terminating, limiting or otherwise prohibiting Company's ability to provide the Service. Upon a termination for convenience by Company pursuant to this Section 13(b), Customer must choose to either: (i) Purchase the Equipment upon payment of (A) a transfer price mutually agreeable to Company and Customer, plus (B) Company's cost to reconfigure the Equipment to accept standard electric service from the Company, plus (C) any outstanding Monthly Service Payments, fuel charges and applicable taxes for Service provided to Customer prior to the effective date of termination, plus (D) any unrecovered fuel and maintenance costs expended by Company prior to the effective date of termination, minus (E) any cash security held by the Company under this Agreement; or (ii) Request that Company remove the Equipment, at Company's sole cost, within a reasonable time period, provided that, for the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election. If Customer and Company cannot reach agreement as to the transfer price of the Equipment within ninety (90) days of Company's notice of termination for convenience, Customer shall be deemed to have elected the request for Company to remove the Equipment.
- (c) **Early Termination of Agreement for Cause.** In addition to any other termination rights expressly set forth in this Agreement, Company and Customer, as applicable, may terminate this Agreement for cause upon any of the following events of default (each an "Event of Default"): (i) Customer fails to timely pay the Monthly Service Payment and fails to cure such deficiency within five (5) business days of written notice from the Company; (ii) Company materially breaches its obligations under the Agreement and such failure is not cured within thirty (30) days after written notice thereof by Customer; (iii) Customer fails to perform or observe any other covenant, term or condition under the Agreement and such failure is not cured within thirty (30) days after written notice thereof by Company; (iv) Subject to Section 20, Customer sells, transfers or otherwise disposes of the Facility; (v) Customer or any guarantor of Customer's obligations or liabilities hereunder ("Guarantor") sells, transfers or otherwise dispose of all or substantially all of its assets; (vi) Customer or Guarantor enters into any voluntary or involuntary bankruptcy or other insolvency or receivership proceeding, or makes as assignment for the benefit of creditors; (vii) any representation or warranty made by Customer or Guarantor or otherwise furnished to Company in connection with the Agreement shall prove at any time to have been untrue or misleading in any material respect; or (viii) Customer removes or allows a third party to remove, any portion of the Equipment from the Facility.
- i. Upon a termination for cause by Company, the Company shall have the right to access and remove the Equipment and Customer shall be responsible for paying the Termination Fee as more fully described in Section 13(a). For the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election. Additionally, the Customer shall be liable to Company for any attorney's fees or other costs incurred in collection of the Termination Fee. In the event that Company and a purchaser of the Facility (who has not assumed the Agreement pursuant to Section 20) agree upon a purchase price of the Equipment, such purchase price shall be credited against the Termination Fee owed by Customer.

(Continue on Sheet No. 9.825)

(Continued from Sheet No. 9.824)

- ii. Upon a termination for cause by Customer, Customer must choose to either (i) pursue the purchase option pursuant to Section 13(e), or (ii) request that Company remove the Equipment, at Company's sole cost, within a reasonable time period, and pay no Termination Fee; provided that, for the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election.
- (d) **Expiration of Agreement.** At least ninety (90) days prior to the end of the Term, Customer shall provide Company with written notice of an election of one of the three following options: (i) to renew the Term of this Agreement, subject to modifications to be agreed to by Company and the Customer, for a period and price to be agreed upon between Company and the Customer, (ii) to purchase the Equipment by payment of the purchase option price set forth in Section 13(e) plus applicable taxes, plus any outstanding Monthly Service Payments, fuel charges and applicable taxes, for Service provided to Customer prior to the expiration of the Term, or (iii) to request that Company remove the Equipment and for Customer to pay Company the Termination Fee. In the event that Customer fails to make a timely election, Customer shall be deemed to have elected the request for Company to remove the Equipment and for Customer to pay the Termination Fee. For the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election. If options (i) or (ii) is selected by Customer but the Parties have failed to reach agreement as to the terms of the applicable option by the expiration of the then current Term, the Agreement will auto-renew on a month-to-month basis until (A) the date on which the Parties reach agreement and finalize the option, or (B) the date Customer provides written notice to Company to change its election to option (iii) above.
- (e) **Customer Purchase Option.** Pursuant to a purchase option under Section 13(c), Section 13(d), or Section 20, the Customer may elect to purchase and take title to the Equipment upon payment of (i) the greater of (A) Company's unrecovered capital cost of the Equipment, or (B) the mutually agreed upon fair market value of the Equipment, plus (ii) Company's cost to reconfigure the Equipment to accept standard electric service from the Company, plus (iii) any outstanding Monthly Service Payments, fuel charges and applicable taxes for Service provided to Customer prior to the effective date of termination, plus (iv) any unrecovered fuel and maintenance costs expended by Company prior to the effective date of termination; minus (v) any cash security held by the Company under this Agreement. Company will invoice Customer the purchase option price within thirty (30) days of Customer's election of the purchase option, due and payable by Customer within thirty (30) days of the date of such invoice. If Customer and Company cannot reach agreement as to the fair market value of the Equipment within thirty (30) days of Customer's election of the purchase option, then such purchase option will expire and Customer must proceed subject to and pay the Termination Fee pursuant to Section 13(a).
- (f) **Termination of Easements.** Following expiration or termination of this Agreement and satisfaction of all Customer obligations under this Section 13, Company shall provide Customer with a release of Easements in a form mutually agreed upon between the Parties.

(Continue on Sheet No. 9.826)

(Continued from Sheet No. 9.825)

14. Warranty and Representations.

- (a) Company's Disclaimer of Express and/or Implied Warranties. CUSTOMER ACKNOWLEDGES AND AGREES THAT COMPANY HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING, OR WITH RESPECT TO THE COMPANY'S OBLIGATIONS, SERVICES AND/OR THE EQUIPMENT. CUSTOMER ACKNOWLEDGES THAT THERE IS NO WARRANTY IMPLIED BY LAW, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND THE IMPLIED WARRANTY OF CUSTOM OR USAGE. CUSTOMER FURTHER ACKNOWLEDGES IN NO EVENT DOES COMPANY WARRANT AND/OR GUARANTY TO THE CUSTOMER THAT THE ELECTRICAL SERVICES TO THE FACILITY WILL BE UNINTERRUPTED OR THAT THE INSTALLATION OF THE EQUIPMENT AND PROVISION OF SERVICES PROVIDED HEREUNDER WILL AVERT OR PREVENT THE INTERRUPTION OF ELECTRIC SERVICES.
- (b) Customer Representations and Warranties. The Customer represents and warrants that (i) the Facility at which Company's Equipment is to be located is suitable for the location of such Equipment; (ii) the placing of such Equipment at such Facility will comply with all laws, rules, regulations, ordinances, zoning requirements or any other federal, state and local governmental requirements applicable to Customer; (iii) all information provided by the Customer related to the Facility is accurate and complete; (iv) Customer holds title to the real property on which the Facility is located or has the right of possession of the real property on which the Facility is located for the Term; and (v) Customer has the right to grant Company easement rights related to the real property on which the Facility is located, or has the right to require the owner of the real property on which the Facility is located to grant Company such easement rights.

15. LIMITATIONS OF LIABILITY.

- (a) IT IS UNDERSTOOD AND ACKNOWLEDGED BY CUSTOMER THAT COMPANY IS NOT AN INSURER OF LOSSES OR DAMAGES THAT MIGHT ARISE OR RESULT FROM THE EQUIPMENT NOT OPERATING AS EXPECTED. BY SIGNING THIS AGREEMENT, CUSTOMER ACKNOWLEDGES AND AGREES THAT COMPANY SHALL NOT BE LIABLE TO THE CUSTOMER FOR COMPLETE OR PARTIAL INTERRUPTION OF SERVICE, OR FLUCTUATION IN VOLTAGE, RESULTING FROM CAUSES BEYOND ITS CONTROL OR THROUGH THE ORDINARY NEGLIGENCE OF ITS EMPLOYEES, SERVANTS OR AGENTS.
- (b) SUBJECT TO SECTION 15(c), NEITHER COMPANY NOR CUSTOMER SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT OR INCIDENTAL LOSSES OR PUNITIVE DAMAGES UNDER THE AGREEMENT, INCLUDING LOSS OF USE, COST OF CAPITAL, LOSS OF GOODWILL, LOST REVENUES OR LOSS OF PROFIT, AND COMPANY AND CUSTOMER EACH HEREBY RELEASES THE OTHER FROM ANY SUCH LIABILITY.
- (c) THE LIMITATIONS OF LIABILITY UNDER SECTION 15(a) AND SECTION 15(b) ABOVE SHALL NOT BE CONSTRUED TO LIMIT ANY INDEMNITY OR DEFENSE OBLIGATION OF CUSTOMER UNDER SECTION 18(c).

Customer's initials below indicate that Customer has read, understood and voluntarily accepted the terms and provisions set forth in Section 15.

Agreed and accepted by Customer: _____ (Initials)

(Continue on Sheet No. 9.827)

(Continued from Sheet No. 9.826)

16. **Force Majeure.** Force Majeure is defined as an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, strikes, lockouts or other labor disputes or difficulties (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure event, such Party shall provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. The Party so affected by a Force Majeure event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable. Provided that the requirements of this Section 16 are satisfied by the affected Party, to the extent that performance of any obligation(s) is prevented or delayed by a Force Majeure event, the obligation(s) of the affected Party that is obstructed or delayed shall be extended by the time period equal to the duration of the Force Majeure event. Notwithstanding the foregoing, the occurrence of a Force Majeure event shall not relieve Customer of payment obligations under this Agreement.
17. **Confidentiality.** “Confidential Information” shall mean all nonpublic information, regardless of the form in which it is communicated or maintained (whether oral, written, electronic or visual) and whether prepared by a disclosing Party or otherwise (“Disclosing Party”), which is disclosed to a receiving Party (“Receiving Party”). Confidential Information shall not be used for any purpose other than for purposes of this Agreement. The Receiving Party shall use the same degree of care to protect the Confidential Information as the Receiving Party employs to protect its own information of like importance, but in no event less than a reasonable degree of care based on industry standard. Except to the extent required by applicable law, Customer shall not make any public statements that reference the name of Company or its affiliates without the prior written consent of Company.
18. **Insurance and Indemnity.**
- (a) **Insurance to Be Maintained by the Company.**
- i. At any time that the Company is performing Services under this Agreement at the Customer Facility, the Company shall, maintain, at its sole cost and expense, with insurer(s) rated “A-, VII” or higher by A.M. Best’s Key Rating Guide, (i) commercial general liability policy with minimum limits of One Million (\$1,000,000.00) Dollars per occurrence for bodily injury or death and/or property damage, (ii) automobile liability policy with minimum limits of One Million (\$1,000,000.00) Dollars combined single limit for all owned, non-owned, leased and hired automobiles, (iii) umbrella liability policy with minimum limits of Two Million (\$2,000,000.00) Dollars per occurrence, and (iv) workers’ compensation insurance coverage as mandated by the applicable laws of the State of Florida and Employers’ Liability cover with limits of One Million (\$1,000,000.00) Dollars per accident, by disease and per policy and per employee.
 - ii. Upon the request of Customer, the Company shall provide the Customer with insurance certificates which provide evidence of the insurance coverage under this Agreement.
 - iii. Notwithstanding any other requirement set forth in this Section 18(a), Company may meet the above required insurance coverage and limits with any combination of primary, excess, or self-insurance. In the event Company self-insures any of the above required coverages, Company will provide Customer with a letter of self-insurance upon written request by Customer.

(Continue on Sheet No. 9.828)

(Continued from Sheet No. 9.827)

(b) Insurance to Be Maintained by the Customer.

- i. The Customer, during and throughout the Term of this Agreement, shall, maintain, at its sole cost and expense, with insurer(s) rated "A-, VII" or higher by A.M. Best's Key Rating Guide, (i) commercial general liability policy with minimum limits of One Million (\$1,000,000.00) Dollars per occurrence for bodily injury or death and/or property damage, (ii) automobile liability policy with minimum limits of One Million (\$1,000,000.00) Dollars combined single limit for all owned, non-owned, leased and hired automobiles, (iii) umbrella liability policy with minimum limits of Two Million (\$2,000,000.00) Dollars per occurrence, and (iv) workers' compensation insurance coverage as mandated by the applicable laws of the State of Florida and Employers' Liability cover with limits of One Million (\$1,000,000.00) Dollars per accident, by disease and per policy and per employee. With respect to insurance required in (i), (ii), and (iii) above, Customer shall name Company as an additional insured and provide a waiver of subrogation in favor of Company.
- ii. In the event Customer is subject to Section 728.28 Florida Statute, Customer acknowledges, without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, that Customer is self-insured for general liability under Florida sovereign immunity statutes with coverage limits of Two Hundred Thousand (\$200,000.00) Dollars per person and Three Hundred Thousand (\$300,000.00) Dollars per occurrence, or such monetary waiver limits that may change and be set forth by the legislature. Customer shall also maintain workers' compensation insurance in accordance with Chapter 440, Florida Statute. Coverage shall also include Employers' Liability coverage with limits of One Million (\$1,000,000.00) Dollars per accident.

(c) Indemnity. The Customer shall indemnify, hold harmless and defend Company from and against any and all liability, proceedings, suits, cost or expense for loss, damage or injury to persons or property ("Losses") to the extent arising out of, connected with, relating to or in any manner directly or indirectly connected with this Agreement; provided, that nothing herein shall require Customer to indemnify Company for Losses caused by Company's own negligence, gross negligence or willful misconduct. The provisions of this paragraph shall survive termination or expiration of this Agreement.

19. Non-Waiver. The failure of either Party to insist upon the performance of any term or condition of this Agreement or to exercise any right hereunder on one or more occasions shall not constitute a waiver or relinquishment of its right to demand future performance of such term or condition, or to exercise such right in the future.

20. Assignment. Neither this Agreement, nor the Service, nor any duty, interest or rights hereunder shall be subcontracted, assigned, transferred, delegated or otherwise disposed of by Customer without Company's prior written approval. Customer will provide written notice to Company of a prospective sale of the real property upon which the Equipment is installed, at least thirty (30) days prior to the sale of such property. In the event of the sale of the real property upon which the Equipment is installed, subject to the obligations of this Agreement including Section 7 (Customer Credit Requirements), the Customer has the option to purchase the Equipment pursuant to Section 13(e) or, this Agreement may be assigned by the Customer to the purchaser if such obligations have been assumed by the purchaser and agreed to by the Customer and the Company in writing. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and Company.

(Continue on Sheet No. 9.829)

(Continued from Sheet No. 9.828)

21. **Dispute Resolution, Governing Law, Venue and Waiver of Jury Trial.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida, exclusive of conflicts of laws provisions. Each Party agrees not to commence or file any formal proceedings against the other Party related to any dispute under this Agreement for at least forty-five (45) days after notifying the other Party in writing of the dispute. A court of competent jurisdiction in the Circuit Court for Palm Beach County, Florida or the United States District Court for the Southern District of Florida only, as may be applicable under controlling law, shall decide any unresolved claim or other matter in question between the Parties to this Agreement arising out of or related in any way to this Agreement, with such court having sole and exclusive jurisdiction over any such matters. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS THAT MIGHT EXIST TO HAVE A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED UPON, RELATING TO, ARISING OUT OF, UNDER OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF EITHER PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.
22. **Modification.** No statements or agreements, oral or written, made prior to the date hereof, shall vary or modify the written terms set forth herein and neither Party shall claim any amendment, modification or release from any provision hereof by reason of a course of action or mutual agreement unless such agreement is in writing, signed by both Parties and specifically states it is an amendment to this Agreement.
23. **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
24. **Survival.** The obligations of the Parties hereunder which by their nature survive the termination or expiration of the Agreement and/or the completion of the Service hereunder, shall survive and inure to the benefit of the Parties. Those provisions of this Agreement which provide for the limitation of or protection against liability shall apply to the full extent permitted by law and shall survive termination or expiration of this Agreement and/or completion of the Service.
25. **Notices.** All notices, demands, offers or other written communications required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and, shall be either hand-delivered, sent via certified mail, return receipt requested and postage prepaid, or sent via overnight courier to such Party's address as set forth in the first paragraph of this Agreement, and with respect to Company, sent to the attention of _____. Each Party shall have the right to change the place to which notices shall be sent or delivered or to specify additional addresses to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other Party.
26. **Further Assurances.** Company and Customer each agree to do such other and further acts and things, and to execute and deliver such additional instruments and documents, as either Party may reasonably request from time to time whether at or after the execution of this Agreement, in furtherance of the express provisions of this Agreement.
27. **Governmental Entities.** For those Customers which are a governmental entity of the State of Florida or political subdivision thereof ("Governmental Entity"), to the extent the Governmental Entity is legally barred by Florida state or federal law from executing or agreeing to any provision of this Agreement, then such provision of this Agreement will be deemed modified to the extent necessary to make such provisions consistent with Florida state or federal law. The remainder of this Agreement shall not be affected thereby and will survive and be enforceable.

(Continue on Sheet No. 9.830)

(Continued from Sheet No. 9.829)

28. **Entire Agreement.** The Agreement constitutes the entire understanding between Company and the Customer relating to the subject matter hereof, superseding any prior or contemporaneous agreements, representations, warranties, promises or understandings between the Parties, whether oral, written or implied, regarding the subject matter hereof.

IN WITNESS WHEREOF, the Parties hereby caused this Agreement to be executed by their duly authorized representatives, effective as of the Effective Date.

Customer

Florida Power & Light Company

By: _____
(Signature of Authorized Representative)

By: _____
(Signature of Authorized Representative)

(Print or Type Name)

(Print or Type Name)

Title: _____

Title: _____

Date: _____

Date: _____

SUPPLEMENTAL POWER SERVICES RIDER PILOT
(OPTIONAL)RATE SCHEDULE: OSP-1AVAILABLE:

In all areas served. This optional rider ("Rider") is available on a voluntary basis to Customers who desire an alternative source of power supply and/or power conditioning service ("Service") in the event Customers' normal electric supply is disrupted. This Rider shall expire on December 31, 2025 unless extended by approval of the FPSC. No new Optional Supplemental Power Services Agreements may be executed following the expiration of this Rider. Service under this Rider shall be provided under the terms specified in the Optional Supplemental Power Services Agreements that are outstanding at such time as the Rider expires.

APPLICATION:

Service is provided through the installation of equipment by the Company at the Customer's premise, the purpose of which is to meet the Customer's requested scope of Service. In order to meet the Service need identified by the Customer, the Company will conduct an evaluation of Customer requirements and of potential solutions, including the potential need of a detailed professional engineering design through a feasibility study. The Company and the Customer may thereafter execute a Residential or Non-Residential Optional Supplemental Power Services Agreement ("Agreement") which must include a description of the equipment to be installed, the Service to be performed, and the monthly charge for the Service. Upon receipt of the proposed Agreement from Company, the Customer shall have no more than ninety (90) days to execute the Agreement. After 90 days, the proposed Agreement shall be considered expired, unless extended in writing by the Company.

Service would be at the Customer's request and is not considered by the Company to be usual and customary for the type of installation to be served.

LIMITATION OF SERVICE:

Installation of Service equipment shall be made only when, in the judgment of the Company, the location and the type of the Service equipment are, and will continue to be economical, accessible and viable. The Company will own, operate and maintain the Service equipment for the term of the Agreement.

The Company may, at its option, provide and maintain equipment required by the Customer beyond the point of delivery for standard electric service. In the event that Company agrees to a Customer's request to connect generating equipment on the Company's side of the billing meter, energy provided by such equipment will be billed under the Customer's otherwise applicable general service rate schedule.

MONTHLY SERVICE PAYMENT:

The Company will design, procure, install, own, operate and provide maintenance to all equipment included in the determination of the Monthly Service Payment. The Monthly Service Payment under this Rider is in addition to the monthly billing determined under the Customer's otherwise applicable rate schedule and any other applicable charges, and shall be calculated based on the following formula:

$$\text{Monthly Service Payment} = \text{Capital Cost} + \text{Expenses}$$

Where:

Capital Cost shall be levelized over the term of Service based upon the estimated installed cost of equipment times a carrying cost. The carrying cost is the cost of capital, reflecting current capital structure and most recent FPSC-approved return on common equity.

Any replacement cost(s) expected to be incurred during the term of Service will also be included. Any equipment installed by the Company that is not necessary to support Service to the customer shall not be included in the Monthly Service Payment.

Except for fuel expenses, projected expenses will be recovered on a levelized basis over the term of Service and may include, but not be limited to: non-fuel operations and maintenance expenses associated with the installed equipment, administrative and general expenses, depreciation expense, income taxes, and property taxes that will be recorded as costs are incurred.

(Continue on Sheet No. 8.846)

(Continued from Sheet No. 8.845)

Fuel expenses, if applicable, will be recalculated annually for the following 12-month period based on forecasted operating parameters and expected fuel costs, and will be in addition to the Monthly Service Payment. Fuel expense will be based upon an estimate of the cost of fuel consumed for back-up operation and testing and also includes, but is not limited to, delivery costs, inventory costs, administrative expenses and taxes applicable to Company's acquisition, storage and delivery of the fuel. Actual fuel expenditures will be reconciled to projected fuel revenues annually and any differential will be incorporated into the following twelve (12) month fuel charge component.

REVISIONS TO MONTHLY SERVICE PAYMENT:

In addition to annual revisions to fuel expense, when applicable, during the term of the Service, the Monthly Service Payment(s) may be adjusted, by agreement of both the Customer and the Company, to reflect the Customer's request for modifications to the Service and equipment specified in the Optional Supplemental Power Services Agreement. Modifications include, but are not limited to, equipment modifications necessitated by changes in the character of Service required by the Customer, requests by the Customer for supplemental equipment or services, or changes or increases in the Customer's facilities which will materially affect the operation of the Company's equipment.

TERM OF SERVICE:

The term of Service will be specific to each Optional Supplemental Power Services Agreement.

RULES AND REGULATIONS:

Service under this Rider is subject to orders of governmental bodies having jurisdiction and to the currently effective "General Rules and Regulations for Electric Service" on file with the Florida Public Service Commission. In case of conflict between any provision of this Rider and said "General Rules and Regulations for Electric Service" the provision of this Rider shall apply.

STATEMENT OF WORK

This Statement of Work (“SOW”), effective on the date last signed below (“Effective Date”), is made subject to and will be governed by the [Commercial/Industrial or Residential] Optional Supplemental Power Services Agreement (“Agreement”) by and between TBD (hereinafter, the “Customer”) and Florida Power & Light Company (hereinafter “Company”) (each a “Party” and collectively the “Parties”) effective _____ (“Agreement”). Capitalized terms not otherwise defined herein have the definitions given to them in the Agreement.

A. Objective

The “Objective” is to provide an alternative source of electrical power to

B. Monthly Service Payment

1. Monthly Service Payment Amount:

To be added to FPL Account Number:

C. Description of Work

1. Project Description.

Generator System to provide an alternative source of electrical power to . Based on site installation conditions and load data, Company will provide a

The Equipment is intended to supply Services only as an Optional Standby System as defined by Article 702 of the NFPA 70 National Electrical Code.

2. Scope of Work.

(a) Design/engineering services

Registered Professional Engineering Services
Construction Documents (Signed and Sealed)
Construction/AHJ/Fuel Permitting

(b) Equipment to be installed

i. Specifications:

Generator:

Fuel Tank:

Automatic Transfer Switch:

ii. Location / Easement information: Easement as Described in Appendix A

iii. Connection to customer equipment:

iv. In-scope structural/site work:

v. Estimated timeframe for installation ESTIMATED to be (TBD) months from date that recorded Easements are received by FPL, per Estimated Project Schedule provided in Appendix B.

vi. Assumptions related to equipment specifications:

AHJ Accepts Generator and Switchgear Location

- (c) Specific Permitting requirements/responsibilities
 - i. Detail of environmental permitting/compliance responsibilities
 - ii. construction permits
 - iii. Florida Dept of Environmental Protection fuel tank registration
- (d) Interconnection specifications (if applicable)
 - i.
- (e) Operating conditions:
 - i. Monitoring
FPL will monitor the System, based on capabilities of equipment, for identification, diagnosis and remediation of potential and actual system faults and failures.
 - a.
 - ii. Customer requests; FPL will make reasonable efforts to accommodate customer requests for system operations and testing
- (f) Maintenance Services:
Company will maintain the Equipment in accordance with the manufacturer's recommended scheduled maintenance.
- (g) Service Levels. Pursuant to Section 5 of the Agreement, Customer and Company agree to the following service levels for Equipment repair:
 - i. Commence inspection and repair activities relating to the Equipment within [TBD] hours from Customer notice of any operational issues or damage related to the Equipment.
 - ii. Complete the repair of the Equipment within a commercially reasonable period of time; provided that if the repair cannot be completed within [TBD] hours,
- (h) Fueling and Diesel Exhaust Fluid Services
 - i. FPL will provide monitoring of fuel and maintain fuel at adequate levels for continuous generator operation
 - ii. Other fluids, including Diesel Exhaust Fluid, if applicable: FPL will provide monitoring of diesel exhaust fluid (DEF) and maintain DEF at adequate levels for continuous generator operation
- (i) Customer / site specific requirements provided by FPL and not noted above
 - i. FPL to provide Spill Prevention and Response Plan (SPRP) as required by local permitting / approval authorities
- (j)
- (k) . . .
- (l) . . .

2. Out of Scope. IN NO EVENT DOES COMPANY WARRANT OR REPRESENT THAT THE SYSTEM WILL SATISFY OBLIGATIONS UNDER FLORIDA ADMINISTRATIVE CODE, SECTIONS 58A-5.036 OR 59A-4.1265, OR THAT COMPANY WILL PROVIDE ANY CERTIFICATIONS RELATED THERETO; PROVIDED HOWEVER THAT CUSTOMER MAY SUBMIT THE AGREEMENT AS AN ATTACHMENT TO ANY PLANS FILED BY CUSTOMER IN COMPLIANCE THEREWITH.

D. Assumptions/Dependencies

Permitting authority will impose a sound attenuation requirement no more stringent than (TBD)db at 23 feet. **[INSERT ALL OTHER ASSUMPTIONS AND DEPENDENCIES OF THIS SOW]**

E. Responsibilities of Customer

Customer is responsible for all landscaping, screening, fencing, walls and other aesthetic requirements that may be imposed by the permitting authority as condition of permit approval. Customer will inspect the Equipment every [XXXXX]. Customer will use its best efforts to promptly report details (including insurance information) to Company in the event of any damage to the Equipment. Customer will use its best efforts to promptly report details to Company and law enforcement authorities in the event of any damage to the Equipment that could reasonably be deemed to have been caused by third party negligence, willful misconduct or criminal activity.

[INSERT ALL OTHER RESPONSIBILITIES OF CUSTOMER SPECIFIC TO CUSTOMER/SITE CONDITIONS OR REQUIREMENTS]

F. Changes.

1. Customer Initiated Changes. Upon receiving a request for a Customer initiated change to the scope of the Equipment or the Services to be performed or provided by Company under the Agreement (“Change”), Company may at its sole option prepare and deliver a proposed Change order to Customer listing the Monthly Service Payment adjustments and/or scheduling adjustments for the Change. Company shall not be obligated to proceed with or perform any Change requested by Customer hereunder unless and until the Parties have agreed in writing upon any such Change order.
2. Change in Laws and/or Permits. If Company (i) encounters a change in applicable laws, rules regulations, ordinances or applicable permits of any federal, state or local authority, or of any agency thereof, that causes an increase in the Company’s cost to perform the Services and/or an increase in the Company’s time for performance of the Services, then Company shall issue Customer a Change order to equitably adjust the Monthly Service Payments and/or time for performance of the Services, as applicable, which the Customer will thereafter accept and approve within thirty (30) days of receipt. In the event that Customer does not accept and approve the Change order within thirty (30) days of receipt, Company shall be permitted to terminate this Agreement and the Customer will be liable to pay Company the Termination Fee as described in **Section 13(a)** of the Agreement.
3. Customer-Caused Delay or Effect. Should the actions or inactions of Customer or any of its representatives or agents cause a delay of, or any failure of the Customer or any of its representatives or agents to fulfill its obligations hereunder cause a materially adverse effect on, Company’s time for performance of the Services or the cost of providing the Services, Company shall promptly, but in no event more than thirty (30) days after Company becomes aware of such Customer-caused delay, issue Customer a Change order to equitably adjust the time for performance of the Services and/or Monthly Service Payments, as applicable, which the Customer will thereafter accept and approve within thirty (30) days of receipt. In the event that Customer does not accept and approve the Change order within thirty (30) days of receipt, Company shall be permitted to terminate this Agreement and the Customer will be liable to pay Company the Termination Fee as described in **Section 13(a)** of the Agreement.
4. Unknown Conditions. After execution of this Agreement, there is a possibility of the existence of unknown conditions at or on Customer’s premises that may adversely affect Company’s ability to perform the Service or provide the pricing offered by Company. In the event that Company becomes aware of any such unknown conditions, Company shall notify the Customer and provide a description of such conditions and

a quote for the resulting impact on the Monthly Service Payment and/or the time for performance of the Services, at which time Customer shall within thirty (30) days either: (i) agree to a Company change order to amend the Monthly Service Payment and/or the time for performance of the Services to conform with such quote; or (ii) agree to promptly remedy, at Customer's sole expense, such unknown condition within a time period agreed to by Customer and Company such that Company can continue with the Service without being burdened by any additional costs associated with such unknown condition. In the event that Customer does not timely complete the foregoing actions, Company shall be permitted to terminate this Agreement and Customer will be liable to pay Company the Termination Fee as described in **Section 13(a)** of the Agreement. In the event that all Equipment has not been installed at the time of any such termination, the Termination Fee shall be equitably adjusted by the Company.

Customer

By: _____
(Signature of Authorized Representative)

(Print or Type Name)

Title: _____

Date: _____

Florida Power & Light Company

By: _____
(Signature of Authorized Representative)

(Print or Type Name)

Title: _____

Date: _____

Customer

By: _____
(Signature of Authorized Representative)

(Print or Type Name)

Title: _____

Date: _____

MEMORANDUM

Amended
Agenda Item No. 11(A)(3)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

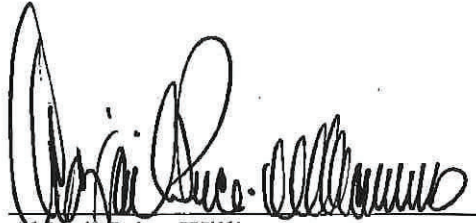
DATE: April 10, 2018

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving Joint
Participation Agreements with
Florida Power & Light Company
providing for development of (1)
an advanced reclaimed water
project and (2) Next Generation
Energy Projects; and authorizing
the Mayor to execute the
Agreements and exercise the
provisions contained therein

Resolution No. R-292-18

The accompanying resolution was prepared and placed on the agenda at the request of Co-Prime Sponsors Chairman Esteban L. Bovo, Jr. and Commissioner Rebeca Sosa and Co-Sponsors Vice Chairwoman Audrey M. Edmonson, Commissioner Sally A. Heyman and Senator Javier D. Souto.



Abigail Price-Williams
County Attorney

APW/cp



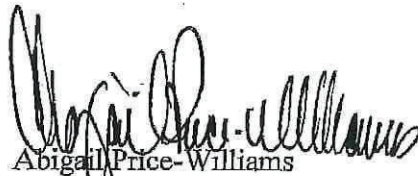
MEMORANDUM

(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: April 10, 2018

FROM:


Abigail Price-Williams
County Attorney

Amended

SUBJECT: Agenda Item No. 11(A)(3)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's _____, 3/5's _____, unanimous _____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved  Mayor
Veto _____
Override _____

Amended
Agenda Item No. 11(A)(3)
4-10-18

RESOLUTION NO. R-292-18

RESOLUTION APPROVING JOINT PARTICIPATION AGREEMENTS WITH FLORIDA POWER & LIGHT COMPANY PROVIDING FOR DEVELOPMENT OF (1) AN ADVANCED RECLAIMED WATER PROJECT AND (2) NEXT GENERATION ENERGY PROJECTS; AND AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE THE AGREEMENTS AND EXERCISE THE PROVISIONS CONTAINED THEREIN

WHEREAS, Miami Dade County (the County) and Florida Power and Light Company (FPL) share an interest in enhancing the sustainability of water resources and the resilience of energy supplies in the region; and

WHEREAS, pursuant to Resolution R-722-16, the Board of County Commissioners supported the Mayor's efforts in seeking a solution to the environmental problems existing in the cooling canal system at Turkey Point; and

WHEREAS, FPL has an obligation to restore water quality conditions in the cooling canal system serving their facilities at Turkey Point and the County has an obligation to utilize reclaimed wastewater in cost-effective and beneficial ways; and

WHEREAS, FPL and Miami-Dade County have an opportunity to partner to support two significant transportation-related projects: battery storage to support the Metrorail system and electric-vehicle charging stations for County facilities; and

WHEREAS, based upon preliminary planning, there are significant opportunities for the County and FPL to collaborate on using reclaimed water for various purposes at the Turkey Point complex and for deploying solar generating capacity and battery storage capacity at a number of County facilities and properties throughout Miami-Dade County; and

WHEREAS, this collaboration could result in the largest wastewater reuse project in State history to support zero-emissions energy sources and the production of sufficient solar-generated electrical power to match all of the County's electrical needs essential to preserve clean air and address climate change; and

WHEREAS, a collaborative effort can reduce the cost burdens of these projects to both parties and provide new cooperative opportunities while enhancing the resilience of critical infrastructure; and

WHEREAS, each entity will be solely responsible for the costs associated with facilities and assets beneficial to each entity's customers; and

WHEREAS, a formal engagement in detailed planning and preliminary engineering will provide the basis for specific long term agreements by which the County and FPL can realize the mutual benefits of these projects; and

WHEREAS, any agreement to implement the projects set forth in the JPAs will be presented to this Board for approval prior to incurring any County obligations,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves Joint Participation Agreements with Florida Power & Light Company providing for the development of agreements for (1) an advanced reclaimed water project and (2) next generation energy projects.

The Reclaimed Water Service Agreement which is to be negotiated by Florida Power and Light and the County to implement the Advanced Reclaimed Water Project (the "Project") and is subject to Board approval shall include the following: (1) the County, through DERM, shall maintain regulatory oversight and control of the Project; (2) DERM or other independent experts shall provide annual reports regarding the testing of water in the cooling canals to ensure that the Project is working properly; (3) DERM shall provide quarterly reports to the Board regarding the environmental aspects of the Project; (4) adequate protections built in so that at a minimum, if the Project is not meeting the goals of the County in the agreement within a year, that the County can revisit all aspects of the agreement; and (5) the County shall retain control of the water with respect to the Project. In addition, the County Mayor or his designee shall negotiate and come back to the Board with respect to a requirement in the agreement that reuse water be treated to meet the Biscayne Bay anti-degradation water target standards identified by the Biscayne Bay Coastal Wetlands Project Delivery Team. The County Mayor or his designee is authorized to execute the Joint Participation Agreements, in substantially the form attached hereto and made a part hereof as Exhibits "A" and "B", respectively, and to exercise the provisions contained therein.

The Co-Prime Sponsors of the foregoing resolution are Chairman Esteban L. Bovo, Jr. and Commissioner Rebeca Sosa and the Co-Sponsors are Vice Chairwoman Audrey M. Edmonson, Commissioner Sally A. Heyman and Senator Javier D. Souto. The motion was offered by Commissioner **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **Audrey M. Edmonson** and upon being put to a vote, the vote was as follows:

Esteban L. Bovo, Jr., Chairman	aye		
Audrey M. Edmonson, Vice Chairwoman	aye		
		Daniella Levine Cava	nay
Jose "Pepe" Diaz	absent	Sally A. Heyman	aye
Barbara J. Jordan	aye	Joe A. Martinez	aye
Jean Monestime	aye	Dennis C. Moss	aye
Rebeca Sosa	aye	Sen. Javier D. Souto	aye
Xavier L. Suarez	aye	District 5	vacant

The Chairperson thereupon declared the resolution duly passed and adopted this 10th day of April, 2018. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Henry N. Gillman

Exhibit A

**JOINT PARTICIPATION AGREEMENT
BETWEEN
MIAMI-DADE COUNTY
AND
FLORIDA POWER & LIGHT COMPANY**

**PROVIDING FOR DEVELOPMENT OF AN ADVANCED RECLAIMED WATER
PROJECT**

This Joint Participation Agreement (the "**Agreement**") is entered into as of _____, 2018 (the "**Effective Date**") between Miami-Dade County, a political subdivision of the State of Florida (hereinafter the "**County**") and Florida Power & Light Company, a Florida Corporation (hereinafter "**FPL**"). The County and FPL are jointly referred to as the ("**Parties**") and individually as a ("**Party**").

RECITALS

WHEREAS, FPL operates two (2) nuclear power units ("**Units 3 and 4**") and one natural gas fueled Combined Cycle Unit ("**Unit 5**") at its existing Turkey Point generating complex located in Miami-Dade County (the "**TP Complex**"); and

WHEREAS, the County currently provides wastewater treatment within Miami-Dade County through three treatment facilities owned and operated by the County: (i) the North District Wastewater Treatment Plant ("**NDWWTP**"), (ii) the Central District Wastewater Treatment Plant ("**CDWWTP**"), and (iii) the South District Wastewater Treatment Plant ("**SDWWTP**"), (NDWWTP, CDWWTP, and SDWWTP, jointly the "**County Wastewater Facilities**"); and

WHEREAS, the Parties anticipate that FPL will be able to utilize up to 60 MGD of treated wastewater as additional sources for cooling and freshening in connection with its operation of the existing Units 3, 4 and 5 and that the County desires to find beneficial uses within the boundaries of Miami-Dade County for the treated wastewater that is produced at the County Wastewater Facilities provided such treated wastewater is further treated to meet the requirements of this specific reuse application; and

WHEREAS, the Parties have engaged in preliminary discussions related to the joint development of an advanced wastewater treatment project that would further process and transport the County's treated wastewater to the TP Complex for cooling and freshening in connection with its operation of the existing Units 3, 4 and 5 and desire to enter into this Agreement in order to advance the development of the proposed advanced wastewater treatment project.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, and good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, and subject to the terms and conditions hereinafter set forth, the County and FPL hereby covenant and agree as follows:

ARTICLE I
DEFINITIONS

The following terms, when used herein, shall have the meanings set forth below.

“Advanced Reclaimed Water Project” or the **“ARWP”** means the siting, permitting, construction, commissioning, operation and maintenance of the Advanced Wastewater Treatment Facility, the Pipelines and other facilities owned by the County or FPL to transport, deliver, receive and process Reclaimed Water from the County Wastewater Facilities into Processed Water for use by FPL at the TP Complex for cooling and other purposes (e.g., process and freshening).

“Advanced Reclaimed Treatment Facility” means the advanced wastewater treatment facility that would process Reclaimed Water into Processed Water.

“Agreement” has the meaning specified in the preamble hereto, and includes all exhibits, schedules, appendices attached hereto.

“Applicable Laws” means any and all federal, state, regional or local statutes, laws, municipal charter provisions, regulations, ordinances, rules, mandates, judgments, orders, decrees, governmental approvals, codes, licenses or permit requirements or other governmental requirements or restrictions, or any interpretation or administration of any of the foregoing by any Governmental Authority that apply to the facilities, services or obligations of either Party under this Agreement, whether now or hereafter in effect.

“Business Day” means any day on which Federal Reserve Member Banks in Miami, Florida are open for business.

“County” has the meaning specified in the preamble to this Agreement.

“County Facilities” has the meaning set forth in Section 3.3.

“County Wastewater Facilities” has the meaning specified in the preamble to this Agreement.

“Delivery Point(s)” means a location or locations in the general proximity of the SDWWTP at which the County will deliver Reclaimed Water to FPL.

“DEP” means the Florida Department of Environmental Protection.

“Dispute” has the meaning specified in Section 7.3.

“FPL” has the meaning specified in the preamble to this Agreement.

“FPL Facilities” has the meaning set forth in Section 3.2.

“Governmental Authority” means any national, state, regional or local government (whether domestic or foreign), any political subdivision thereof or any other governmental,

quasi-governmental, judicial, executive, legislative, administrative, public or statutory instrumentality, authority, body, agency, department, bureau or entity or any arbitrator with authority to bind a party at law.

"Institution" has the meaning specified in Section 7.8.

"MGD" means million gallons per day.

"Parties" has the meaning specified in the preamble to this Agreement.

"Pipelines" means the pipelines that transport Reclaimed Water from the Delivery Point(s) to the Advanced Reclaimed Treatment Facility and the Processed Water from the Advanced Reclaimed Treatment Facility to the TP Complex and associated pipelines required for operation of the project.

"Processed Water" means the Reclaimed Water that has been processed and treated by the Advanced Reclaimed Water Project that satisfies the Processed Water Quality Requirements.

"Processed Water Quality Requirements" means Reclaimed Water treated in the Advanced Reclaimed Treatment Facility that meets or exceeds the applicable local, state and federal regulatory requirements for FPL's intended use.

"Reclaimed Water" means treated wastewater delivered by the County at the Delivery Point(s) that satisfies the Reclaimed Water Quality Requirements.

"Reclaimed Water Quality Requirements" means wastewater that (i) has received high level disinfection as defined in Rule 62-600.440(6), F.A.C., as amended from time to time; (ii) satisfies the water quality treatment requirements of Rule 62-610.668(2)(d), F.A.C., and (iii) satisfies the requirements of Chapter 62-528, F.A.C., as amended from time to time, for injection of non-hazardous wastewater in a Class I UIC well.

"Reclaimed Water Service Agreement" has the meaning specified in Section 2.1.

"Term" has the meaning specified in Section 2.3.

"Turkey Point Complex" or "TP Complex" means FPL's power generation site located in southeastern Miami-Dade County.

"Unit" means any of the included power generation units (Units 3, 4 and 5) that FPL operates at the TP Complex.

ARTICLE II PURPOSE; TERM

2.1 Purpose. This Agreement sets forth the mutually agreed to terms and conditions pursuant to which the Parties intend to develop jointly the Advanced Reclaimed Water Project. The Parties understand that additional discussions and negotiations with respect to the development of the Advanced Reclaimed Water Project will be required and that, neither Party

will be bound to proceed with the development of the Advanced Reclaimed Water Project unless and until a mutually acceptable, service agreement for the processing of the Reclaimed Water into Processed Water is negotiated, approved and executed (the “**Reclaimed Water Service Agreement**”) and subject to the terms and conditions precedent of the Reclaimed Water Service Agreement. However, to facilitate further such discussions and negotiations, the Parties desire to set forth the basic proposed terms of the Advanced Reclaimed Water Project and their understandings with respect thereto.

2.2 Expected Sequence of Events. The expected sequence of events under this Agreement and the proposed Reclaimed Water Service Agreement is as follows:

- (1) FPL and County execute the Agreement (Spring 2018).
- (2) FPL, in coordination with the County, begins preliminary design, engineering, and negotiation of the Reclaimed Water Service Agreement (2018 and 2019).
- (3) County provides utility connection information to FPL (Spring 2018).
- (4) FPL completes preliminary design of the FPL Facilities, Pipelines and associated facilities (Fall 2018).
- (5) FPL receives Subsequent License Renewal Approval for Units 3 & 4 (Fall 2019)
- (6) The Reclaimed Water Service Agreement is presented to FPL management and Miami-Dade County Board of County Commissioners for approval (Fall 2019).
- (7) FPL obtains assurance that it can recover the costs it incurs in connection with the Reclaimed Water Service Agreement (tbd).
- (8) Upon Board of County Commission and FPL management approval, FPL and County execute the Reclaimed Water Service Agreement (Fall 2019), subject to any applicable or necessary regulatory approvals.
- (9) FPL and County commence detailed design, engineering and initiate permitting process (Fall 2019).
- (10) FPL and County complete cost and schedule estimates for their respective facilities, in accordance with the Reclaimed Water Service Agreement (Spring 2020).
- (11) FPL and the County commence construction of FPL and County Facilities in accordance with the terms of the Reclaimed Water Service Agreement.
- (12) FPL and the County complete construction of the FPL and County Facilities.

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- (13) FPL test period with intermittent delivery of Reclaimed Water from County.
- (14) Full delivery of Reclaimed Water for processing into Processed Water and utilization at the TP Complex commences (NLT 12/31/2025).

2.3 **Term.** The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate upon execution of the Reclaimed Water Service Agreement; provided, either FPL or the County shall have the right to terminate this Agreement for its convenience in whole or in part at any time, and for any reason, upon thirty (30) days' written notice to the other Party. Upon termination of this Agreement, the Parties shall have no further obligations, duties or liabilities hereunder, other than those obligations which expressly survive the termination of this Agreement.

ARTICLE III
RESPONSIBILITIES; EXPENSES

3.1 **General Responsibilities of the Parties.** During the Term, each of the Parties agree to (a) make available the personnel and resources reasonably necessary to complete such Party's responsibilities hereunder, (b) cooperate fully with the other Party to that end, and (c) support those activities reasonably necessary to secure other components of value associated with the Advanced Reclaimed Water Project, including, without limitation, any applicable credits, offsets and environmental mitigation. Consistent with the foregoing, the Parties shall also:

3.1.1 Support the Advanced Water Reclamation Project as a mutually beneficial partnership.

3.1.2 Use good faith efforts to comply with the estimated sequence of events set forth in Section 2.2.

3.1.3 Pursue two initiatives that are made possible by the Advanced Reclaimed Water Project:

3.1.3.1 Opportunities to improve cooling canal surface water quality that will minimize impact to regional groundwater quality and enable the restoration of a balanced and healthy ecosystem featuring submerged aquatic vegetation within the first ten years of operation following completion of the ARWP. Such improvement would support future decommissioning of the cooling canal system; and

3.1.3.2 Opportunities for future expansion of the ARWP to achieve 100% of County reuse targets when designing, siting and permitting the AWRP.

3.2 **Responsibilities of FPL.** FPL will undertake all reasonably necessary and appropriate development activities related to designing, engineering, permitting, constructing, operating, and maintaining, the Advanced Reclaimed Treatment Facility, Pipelines, and such

other improvements and facilities that would be necessary: (a) for treatment of the Reclaimed Water, as necessary to meet the Process Water Quality Requirements (b) to transport the Processed Water from the Advanced Reclaimed Treatment Facility and subsequently to the TP Complex, (c) to maximize the reasonable utilization of the Processed Water at the Turkey Point Complex, and (d) to utilize or dispose of the Processed Water delivered to the TP Complex (collectively, "FPL Facilities"), in a manner consistent with the County's groundwater and surface water standards and clean up target levels provided in Chapter 24 of the Code of Miami Dade County, at the applicable points of compliance. Until execution of the Reclaimed Water Services Agreement, FPL's activities will primarily involve the following:

3.2.1 Perform a limited engineering design study to provide a refined construction budget and schedule that will serve as the basis for the project plan and any financial commitments to be relied upon in the Reclaimed Water Service Agreement.

3.2.2 Develop an estimate of fixed and variable operations and maintenance costs for the Advanced Reclaimed Water Project that will serve as the basis for the project plan and any financial commitments to be relied upon in the Reclaimed Water Service Agreement.

3.2.3 Develop and maintain a schedule that will identify key milestones related to the development of the FPL Facilities taking into account when Unit 3, 4 and 5 will be in-service and otherwise equipped to receive specified volumes of Reclaimed Water from the County, such schedule to be used to manage the timing of each Party's efforts and in the development of a delivery schedule anticipated to become part of the Reclaimed Water Service Agreement.

3.2.4 Pursue all permits, approvals, and licenses from all applicable Governmental Authorities as may be necessary for the Advanced Reclaimed Water Project.

3.2.5 Potentially commence activities to include the FPL Facilities, as required, in the Florida State Site Certification Application as an "Associated Facility" as defined in Section 403.503(7) Fla. Stat.

3.3 Responsibilities of the County. The County will undertake such reasonably necessary and appropriate activities related to development of facilities that would be necessary: (a) to produce and pump the Reclaimed Water in the specified quantities from its point(s) of origination at the County Wastewater Facilities to the Delivery Point or Delivery Points, (b) for treatment of the Reclaimed Water at its point(s) of origination to the Reclaimed Water Quality Requirements, (c) to maintain the ability to dispose of all treated wastewater produced at SDWWTP if the FPL Facilities are unavailable, and (d) to satisfy any redundancy requirements of FPL, at FPL's expense, such as additional pipeline(s) and/or other infrastructure (collectively, the "County Facilities"). Until execution of the Reclaimed Water Services Agreement, the County's activities will involve the following:

3.3.1 Identify County-owned real property suitable for potential use in conjunction with an Advanced Wastewater Treatment Facility and Pipelines and to identify real property not owned by the County and suitable to be secured by FPL for the Pipelines.

3.3.2 Consult and coordinate with FPL to assist FPL in the design of the FPL Facilities which satisfy all necessary permits, approvals, and licenses, subject to the limitations set forth in Section 7.6.

3.3.3 Perform a limited engineering design study to provide a refined construction budget and schedule for the County Facilities.

3.3.4 Develop and maintain a schedule that will identify key milestones related to the development of the County Facilities, such schedule will be used to manage the timing of each Party's efforts and in the development of a delivery schedule anticipated to become a part of the Reclaimed Water Services Agreement.

3.3.5 If requested by FPL, support the ARWP by providing reasonably prompt reviews of those materials necessary in order to include the FPL Facilities in the Florida State Site Certification Application as an "Associated Facility", as necessary.

3.4 Reclaimed Water Service Agreement. During the Term, each of the Parties shall exercise reasonable efforts to develop and negotiate jointly the terms and conditions and form of the Reclaimed Water Service Agreement pursuant to which the County would deliver at the Delivery Point, up to 60 MGD of Reclaimed Water for processing by FPL at the Advanced Reclaimed Treatment Facility into Processed Water, which would be used by FPL at the TP Complex, for a term expiring not earlier than December 31, 2053. It is anticipated that the terms and conditions of the Reclaimed Water Service Agreement would provide for, without limitation, the following:

3.4.1 The responsibility and allocation of costs associated with actions to: (1) design, engineer, and construct FPL Facilities, and (2) apply for and manage compliance with the environmental permitting of the FPL Facilities and implementation of the mitigation plan and associated capital cost, if any, in connection with the FPL Facilities.

3.4.2 The responsibility and allocation of costs associated with actions to: (1) design, engineer, and manage the construction of the County Facilities, and (2) apply for and manage compliance with the environmental permitting of the County Facilities and implementation of the mitigation plan and associated cost, if any, in connection with the County Facilities, provided, however, FPL be responsible for the incremental cost of any pipeline(s) and or/or other infrastructure required by FPL to satisfy its redundancy concerns, if any.

3.4.3 The County shall provide, the real property upon which the Advanced Reclaimed Treatment Facility will be constructed and the County and FPL shall cooperate and share in the costs associated with obtaining the easements, rights of way, or other real property rights or licenses for the Pipelines.

3.4.4 The County will deliver up to 60 MGD of the Reclaimed Water to the Delivery Point(s), for processing by FPL to the Processed Water Quality Requirements.

3.4.5 FPL will process all of the Reclaimed Water received to the Processed Water Quality Requirements for use as cooling water and other purposes for the existing Units 3, 4 and 5, as stipulated in the Reclaimed Water Service Agreement.

3.4.6 The responsibility and allocation of costs incurred to provide the treatment and disposal of the Reclaimed Water, based on the annual fixed and variable costs of operating and maintaining the ARWP.

3.4.7 FPL and the County will incorporate appropriate contractual mechanisms and oversight to incentivize the lowest practicable capital, operations and maintenance costs through design and operation that reliably meets the Processed Water Quality Requirements.

3.4.8 FPL will maintain an independent cooling water supply sufficient to provide the full requirements of existing Units 3, 4 and 5, such independent cooling water supply would allow for the County Facilities to be designed and built on a schedule that would not place a significant burden on the County, and provide adequate cooling water supply in the event of system operational or maintenance issues on either Party's facilities.

3.4.9 FPL and the County will jointly form an Oversight Committee that will provide review and approval of annual O&M budgets and capital replacement decisions necessary for the safe and reliable ongoing operations of the Advanced Reclaimed Water Project.

3.4.10 The Parties understand that additional discussions and negotiations with respect to developing the Reclaimed Water Service Agreement will be required, and that neither Party will be bound to proceed with the Reclaimed Water Service Agreement unless and until all necessary approvals are obtained (including without limitation senior management and board of director approvals).

3.5 Expenses. Each Party shall bear its own costs and expenses (including fees of counsel and outside advisors) in connection with the preparation, negotiation and execution of this Agreement, in connection with performing its obligations under this Agreement, and in connection with the negotiation, authorization, execution and delivery of the Reclaimed Water Service Agreement.

ARTICLE IV **INFORMATION; CONFIDENTIALITY**

4.1 Access to Information. The Parties shall exercise reasonable efforts in order to provide each other data, documents, and any other information in its possession regarding the development of the Advanced Reclaimed Water Project as reasonably necessary and pertinent to permit each Party to perform its obligations under this Agreement; provided, however, neither Party shall have any obligation to provide the other Party any information which it determines is internal confidential or proprietary information of such Party, or would give the other party an advantage in any potential competitive process necessary to accomplish the goals of this Agreement or any other government purpose.

FPL acknowledges that the County, as a public entity, is subject to Florida's public records law. Said law establishes a right of access to any public record made or received in connection with the official business of any public body, except those records specifically exempted or made confidential by Florida law. The County agrees to use reasonable efforts to notify FPL of any request for disclosure. Failure of FPL to provide written objection to such disclosure within 48 hours shall be considered a waiver of any confidentiality to the requested information and consent to the disclosure. In the event FPL objects to the disclosure, FPL shall

within 48 hours of notice seek an injunction restricting disclosure of the information. This provision shall survive termination of this Agreement.

ARTICLE V
INDEMNIFICATION; LIMITS

5.1 FPL and the County shall each be responsible for its own facilities, for protection of its own systems, and for ensuring adequate safeguards for FPL and the County customers, and the personnel and equipment of the County and FPL. The County to the extent permitted by law, and subject to the limitations set forth in Section 768.28, Florida Statutes, shall indemnify, defend and hold FPL harmless, and FPL shall indemnify, defend and hold the County harmless, from any and all claims, demands, costs or expenses, for loss, damage or injury to persons or property caused by, arising out of, or resulting from: (a) any act or omission by the respective Party or that Party's contractors, agents, servants and employees in connection with the development, construction or operation of that Party's facilities or systems, or the operation thereof in connection with the other Party's facilities or systems, (b) any defect in, failure of, or fault related to, a Party's facilities or systems, or (c) the negligence of the respective Party or negligence of that Party's contractors, agents, servants or employees. The respective Party shall pay all claims, costs, damages and losses in connection with (a), (b) or (c) above, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the other Party, where applicable, including appellate proceedings and shall pay all costs, judgment and attorney's fees that may issue thereon. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by either Party to indemnify the other Party for such other Party's negligent, willful, or intentional acts or omissions. The provisions of this Section 5.1 shall survive termination, cancellation, suspension, completion or expiration of this Agreement

5.2 To the fullest extent permitted by law, neither the County nor FPL, nor their respective officers, directors, agents, employees, members, parents, subsidiaries or affiliates, successors or assigns, or their respective officers, directors, agents, employees, members, parents, subsidiaries or affiliates, successors or assigns, shall be liable to the other party or their respective officers, directors, agents, employees, members, parents, subsidiaries or affiliates, successors or assigns, for claims, suits, actions or causes of action for incidental, indirect, special, punitive, multiple or consequential damages connected with or resulting from performance or non-performance of this Agreement, or any actions undertaken in connection with or related to this Agreement, including without limitation, any such damages which are based upon causes of action for breach of contract, tort (including negligence and misrepresentation), breach of warranty, strict liability, statute, operation of law, under any indemnity provision or any other theory of recovery. If no remedy or measure of damages is expressly provided herein, the obligor's liability shall be limited to direct damages only, and such direct damages shall be the sole and exclusive measure of damages and all other remedies or damages at law or in equity are waived; provided, however, that this sentence shall not apply to limit the liability of a party whose actions giving rise to such liability constitute gross negligence or willful misconduct. The provisions of this Section 5.2 shall apply regardless of fault and shall survive termination, cancellation, suspension, completion or expiration of this Agreement. Nothing contained in this Agreement shall be deemed to be a waiver of a party's right to seek injunctive relief.

ARTICLE VI
COMPLIANCE WITH CERTAIN REQUIREMENTS

6.1 Compliance with Certain Legal Requirements. Each Party shall comply and cause its contractors and consultants to comply with Applicable Laws in performing their respective duties, responsibilities and obligations pursuant to this Agreement. The Parties shall not unlawfully discriminate in the performance of their respective duties under this Agreement. Such laws include but are not limited to the following: Miami-Dade County Resolution No. R-385-95, which creates a policy prohibiting contracts with firms violating the Americans with Disabilities Act of 1990 ("ADA") and other laws prohibiting discrimination on the basis of disability, Miami-Dade County Ordinance No. 72-82 (Conflict of Interest), Resolution No. R-1049 93 (Affirmative Action Plan Furtherance and Compliance), Resolution No. R.-185-00 (Domestic Leave Ordinance) and Ordinance No. 02-68 (Security).

6.2 Inspections. FPL acknowledges that the Office of the Miami-Dade County Inspector General ("IG") has the authority and power to review past, present and proposed County programs, accounts, records, contracts and transactions pursuant to Section 2-1076 of the Miami-Dade County Code.

ARTICLE VII
MISCELLANEOUS

7.1 Representations and Warranties. Each Party represents and warrants that (a) it is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and is qualified to do business in all jurisdictions where it is required to be qualified; (b) it has the necessary power and authority to enter into and perform its obligations under this Agreement; (c) it has duly authorized the person(s) signing this Agreement to execute this Agreement on its behalf; and (d) the execution and delivery of this Agreement and its performance by such Party will not violate, result in a breach of or conflict with any law, rule, regulation, order or decree applicable to such Party, its organizational documents or the terms of any other agreement binding on such Party.

7.2 Notice. All notices required under this Agreement shall be in writing unless expressly specified otherwise herein, and shall be delivered in person, by certified mail or by a nationally recognized overnight courier, return receipt requested, or by facsimile transmission or electronic mail, if an electronic mail address is provided, with confirmation by voice or automatic answer-back service promptly following such facsimile transmission or electronic mail, as specified below:

As to the County:
Carlos Gimenez, Miami-Dade County Mayor
Stephen P. Clark Center
111 N.W. 1st Street, 29th Floor
Miami, Florida 33128
Facsimile: (305) 375-3618

With a copy to:

Mayor's Designee
Stephen P. Clark Center
111 N.W. 1st Street, 29th Floor
Miami, Florida 33128
Facsimile: (305) 375-1262

Lester Sola, P.E., Director
Miami-Dade Water and Sewer Department
3071 SW 38th Avenue
Miami, Florida 33146
Facsimile: (786) 552-8647

Miami-Dade County Attorney
Stephen P. Clark Center
111 N.W. 1st Street, 28th Floor
Miami, Florida 33128
Facsimile: (305) 375-5634

As to FPL:

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408
Facsimile: (561) 304-5233
Attention: Vice President of FPL Development

With a copy to:

Florida Power & Light Company
Law Department (Law/JB)
700 Universe Boulevard
Juno Beach, Florida 33408
Facsimile: (561) 691-7305
Attention: Managing Attorney-Commercial Transactions

Notices shall be effective upon receipt; provided, that in the event a Party fails to notify the other of the correct person and address for notices pursuant to Section 7.2, any notice to that Party shall be deemed effective on the third day following the date such notice is sent to the person and address last provided by such Party. Either Party may, at any time, by notice designate any different person(s) or different address(es) or phone number(s) for receipt of notices and correspondence.

7.3 Disputes. In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a "Dispute"), the project managers shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the Mayor's Designee and VP of FPL Development of the Parties for resolution. If

the Dispute has not been resolved within twenty (20) Business Days after such referral to the director of WASD and VP of FPL Development of the Parties, then either Party may pursue all available remedies. The Parties agree to attempt to promptly resolve all Disputes promptly, equitably and in a good faith manner.

7.4 Governing Law; Submission to Jurisdiction.

7.4.1 This Agreement and the rights and the obligations of the Parties hereunder shall be construed under, and in accordance with, the laws of the State of Florida.

7.4.2 Any litigation between the Parties shall be conducted in the courts of the State of Florida in the Circuit Court for Miami-Dade County, Florida, or the United States District Court for the Southern District of Florida and the parties hereby submit to the exclusive jurisdiction of such courts. The Parties irrevocably waive any objection that any of them may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions, including any objection to the laying of venue based on the grounds of *forum non conveniens* and any objection based on the grounds of lack of *in personam* jurisdiction.

7.4.3 In any litigation arising from or related to the Agreement, the Parties hereto each hereby knowingly, voluntarily and intentionally waive the right each may have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in connection with the Agreement, or any course of conduct, course of dealing, statements (whether oral or written) or actions of either Party to the Agreement. This provision is a material inducement for the County and FPL to enter into this Agreement.

7.5 Relationship of Parties.

The Parties understand and agree that no Party is an agent, employee, contractor, vendor, representative or partner of any other Party, that (except as expressly set forth in writing) no Party shall owe a fiduciary duty to any other Party, that no Party shall hold itself out as such to third parties and that no Party is capable of binding any other Party to any obligation or liability without the prior written consent of the other Party. Neither the execution and delivery of this Agreement, nor consummation of the transactions contemplated hereby, shall create or constitute a partnership, joint venture or any other form of business organization or arrangement among the Parties.

7.6 County as Sovereign. It is expressly understood that notwithstanding any provision of this Agreement and the County's status thereunder:

The County retains all of its sovereign prerogatives and rights as a county under Florida laws and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the planning, design, construction and development of the FPL Facilities or the operation thereof, or be liable for the same; and

The County shall not by virtue of this Agreement be obligated to grant FPL any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the FPL Facilities.

Notwithstanding and prevailing over any contrary provision in this Agreement, any County covenant or obligation that may be contained herein, including but not limited to the following:

(a) to cooperate with, or provide good faith, diligent, reasonable or other similar efforts to assist FPL regardless of the purpose required for such cooperation;

(b) to execute documents or give approvals, regardless of the purpose required for such execution or approvals;

(c) to apply for or assist FPL in applying for any County, City or third party permit or needed approval; or

(d) to contest, defend against, or assist FPL in contesting or defending against any challenge of any nature;

shall not bind the Board, the Regulatory and Economic Resources Department (RER) or its successor(s) or any other County, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police power; and the County shall be released and held harmless, by FPL from any liability, responsibility, claims, consequential or other damages, or losses to FPL or to any third parties resulting from denial, withholding or revocation (in whole or in part) of any zoning or other changes, variances, permits, waivers, amendments, or approvals of any kind or nature whatsoever. Without limiting the foregoing, the Parties recognize that the approval of development approvals and permits will require the County to exercise its quasi-judicial or police powers. Notwithstanding any other provision of this Agreement, the County shall have no obligation to approve, in whole or in part, any application for a development entitlement. The County's obligation to use reasonable good faith efforts in the processing and obtaining of such development approvals and permits shall not extend to any exercise of quasi-judicial or police powers, and shall be limited solely to ministerial actions, including the timely acceptance and processing of any applications. Moreover, in no event shall a failure of the County to adopt any of the development approvals and permits be construed a breach or default of this Agreement.

7.7 Remedies.

7.7.1 In the event of any breach or threatened breach of this Agreement by any Party hereto, the other Party shall be entitled to equitable relief through an injunction in addition to any other rights and remedies available to it.

7.7.2 Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default.

7.7.3 Any failure of a Party to exercise any right or remedy as provided in this Agreement shall not be deemed a waiver by that Party of any claim for damages it may have by reason of the default. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement. Waiver by either Party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

7.8 **Assignment or Sale, Etc.** Neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided, that without the prior consent of FPL, the County may assign its rights and interests under this Agreement to a financial institution (the "**Institution**") as collateral security, or create a security interest in favor of the Institution over its rights and interests in this Agreement. Any attempt by a Party to make any assignment, sale, lease, transfer or other disposition described in this **Section 7.8** in violation of this **Section 7.8** shall be void **ab initio** and shall not be effective.

7.9 **Amendments.** This Agreement shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set forth in a written instrument authorized and executed by the Parties. This Agreement, as it may be amended from time to time, shall be binding upon, and inure to the benefit of, the Parties' respective successors-in-interest and permitted assigns.

7.10 **Survival.** The obligations, rights, and remedies of the Parties hereunder, which by their nature survive the termination of this Agreement, shall survive such termination and inure to the benefit of the Parties.

7.11 **Construction of Agreement.** The Parties expressly agree that no provision of this Agreement should be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party having been deemed to have structured or dictated such provision.

7.12 **Complete Agreement.** This Agreement is intended as the complete and exclusive statement of the agreement with respect to the subject matter hereof between the Parties. Parol or extrinsic evidence shall not be used to vary or contradict the express terms of this Agreement and recourse may not be had to alleged prior drafts, negotiations, prior dealings, usage of trade, course of dealing or course of performance to explain or supplement the express terms of this Agreement. Except as specifically set forth in this Agreement, there shall be no warranties, representations or other agreements among the Parties in connection with the subject matter hereof.

7.13 **Counterparts.** This Agreement may be executed and delivered in counterparts, and may be delivered by facsimile transmission.

7.14 **Integration.** The terms and provisions contained in this Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes and terminates all previous undertakings, representations and agreements, both oral and written, between the Parties with respect to the Reclaimed Water Project.

7.15 General Interpretive Provisions. Whenever the context may require, terms used in this Agreement shall include the singular and plural forms, and any pronoun shall include the corresponding masculine and feminine forms. The term "including", whenever used in any provision of this Agreement, means including but without limiting the generality of any description preceding or succeeding such term. Each reference to a Person shall include a reference to such Person's successors and assigns. All references to "Sections" shall be references to the Sections to this Agreement, except to the extent that any such reference specifically refers to another document. Each of the Parties has agreed to the use of the particular language of the provisions of this Agreement and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the draftsman.

7.16 Absence of Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to (a) confer upon any person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise except as specifically provided in this Agreement; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement.

7.17 Headings. Captions and headings in this Agreement are included for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

7.18 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Agreement.

[signatures on following page]

IN WITNESS WHEREOF, the COUNTY and FPL, by their duly authorized officials, have executed this Agreement as of the day and year above.

ATTEST:

MIAMI-DADE COUNTY

By: _____
Clerk (Seal)

By: _____
County Mayor

ATTEST:

FLORIDA POWER & LIGHT COMPANY

By: Alana M. Alana
Witness

By: [Signature]
Name: Eric Silagy
Title: President and CEO, Florida Power & Light

Approved as to form
and legal sufficiency:

Assistant County Attorney

**JOINT PARTICIPATION AGREEMENT
BETWEEN
MIAMI-DADE COUNTY
AND
FLORIDA POWER & LIGHT COMPANY**

PROVIDING FOR DEVELOPMENT OF NEXT GENERATION ENERGY PROJECTS

This Joint Participation Agreement (the "Agreement") is entered into as of _____, 2018 (the "Effective Date") between Miami-Dade County, a political subdivision of the State of Florida (hereinafter the "County") and Florida Power & Light Company, a Florida Corporation (hereinafter "FPL"). The County and FPL are jointly referred to as the ("Parties") and individually as a ("Party").

RECITALS

WHEREAS, FPL and the County embrace a shared vision of next generation water and energy use for the citizens of the County to allow the County and FPL to lead the way forward toward the next generation of energy in the United States; and

WHEREAS, in an effort to advance the application of renewable energy and innovative technologies within the County, FPL has worked with County staff to identify a series of solar and technology initiatives within the County (collectively, the "Next Generation Energy Projects"); and

WHEREAS, the Parties desire to enter into this Agreement in order to advance the development of the proposed Next Generation Energy Projects.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, and good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, and subject to the terms and conditions hereinafter set forth, the County and FPL hereby covenant and agree as follows:

ARTICLE I
DEFINITIONS

The following terms, when used herein, shall have the meanings set forth below.

"Agreement" has the meaning specified in the preamble hereto, and includes all exhibits, schedules, appendices attached hereto.

"Applicable Laws" means any and all federal, state, regional or local statutes, laws, municipal charter provisions, regulations, ordinances, rules, mandates, judgments, orders, decrees, governmental approvals, codes, licenses or permit requirements or other governmental requirements or restrictions, or any interpretation or administration of any of the foregoing by any Governmental Authority that apply to the facilities, services or obligations of either Party under this Agreement, whether now or hereafter in effect.

“**Business Day**” means any day on which Federal Reserve Member Banks in Miami, Florida are open for business.

“**County**” has the meaning specified in the preamble to this Agreement.

“**Dispute**” has the meaning specified in Section 7.3.

“**FPSC**” means the Florida Public Service Commission.

“**FPL**” has the meaning specified in the preamble to this Agreement.

“**Governmental Authority**” means any national, state, regional or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, executive, legislative, administrative, public or statutory instrumentality, authority, body, agency, department, bureau or entity or any arbitrator with authority to bind a party at law.

“**Institution**” has the meaning specified in Section 7.8.

“**Parties**” has the meaning specified in the preamble to this Agreement.

“**Term**” has the meaning specified in Section 2.3.

ARTICLE II **PURPOSE; TERM**

2.1 Purpose. This Agreement sets forth the mutually agreed to terms and conditions pursuant to which the Parties intend to develop the Next Generation Energy Projects. The Parties understand that additional discussions and negotiations with respect to the development of the Next Generation Energy Projects will be required and that neither Party will be bound to proceed with the development of the Next Generation Energy Projects unless and until mutually acceptable definitive agreements for the individual projects are negotiated, approved and executed and all regulatory conditions have been satisfied.

2.2 Next Generation Energy Projects. The Next Generation Energy Projects include the following:

- (1) **Universal Solar:** The development, construction, and operation of at least 223.5 MW (ac) of photovoltaic electricity generating facilities owned and operated by FPL to provide electric service to its customers, to be located within the County.
- (2) **Shared Solar:** The development, construction, and operation of a Shared Solar project on County owned or contributed land.
- (3) **Floating Solar:** The development, construction, and operation of a Floating

Solar pilot program within the County to assess the viability and challenges of this novel approach.

- (4) SolarNow: The development, construction, and operation of multiple SolarNow projects in highly-visible community spaces throughout the County.
- (5) Battery Storage: The development, construction, and operation of two battery storage projects within the County – one of which will support Metrorail systems.
- (6) Electric Vehicle Charging Stations: The development, construction, and operation of several electric vehicle charging stations at or adjacent to County buildings.
- (7) START Corridor: A “START corridor” concept to coordinate the installation of future solar, battery and electric vehicle infrastructure

2.3 Term and Right of Termination. The term of this Agreement (the “Term”) shall commence on the Effective Date and shall terminate upon execution of definitive agreements for each of the Next Generation Energy Projects; provided, either FPL or the County shall have the right to terminate this Agreement for its convenience in whole or in part at any time, and for any or no reason, upon thirty (30) days' written notice to the other Party. Upon termination of this Agreement, the Parties shall have no further obligations, duties or liabilities hereunder other than those obligations which expressly survive the termination of this Agreement.

ARTICLE III **RESPONSIBILITIES; EXPENSES**

3.1 General Responsibilities of the Parties. During the Term, each of the Parties agree to (a) make available the personnel and resources reasonably necessary to complete such Party's responsibilities hereunder, and (b) support those activities reasonably necessary to secure other components of value associated with the Next Generation Energy Projects including, without limitation, any applicable credits, offsets and environmental mitigation

3.2 Responsibilities of FPL. FPL will undertake all reasonably necessary and appropriate development activities related to designing, engineering, permitting, constructing, operating, and maintaining, the Next Generation Energy Projects (subject to obtaining sites and securing all applicable permits, administrative and budgetary approvals). FPL's activities will primarily involve the following:

3.2.1 FPL will pursue site acquisition and permitting in order to develop and construct at least 223.5 MW (ac) of Universal projects within the County.

3.2.2 FPL will file a petition with the FPSC with the objective of authorizing a Shared Solar project on real property owned by the County.

3.2.3 FPL will develop a Floating Solar pilot project within the County to assess the viability and challenges of this approach.

3.2.4 FPL will develop and construct multiple SolarNow projects in highly-visible community spaces throughout the County.

3.2.5 FPL will develop and construct multiple electric vehicle charging stations within the County.

3.2.6 FPL will work with the County on a "START corridor" concept to develop the vision for the installation of future solar, battery and electric vehicle infrastructure within the County.

3.2.7 FPL will pursue all permits, approvals, and licenses from all applicable Governmental Authorities as may be necessary for the Next Generation Energy Projects.

3.3 Responsibilities of the County. The County will undertake such reasonably necessary and appropriate activities related to supporting the development of the Next Generation Energy Projects as set forth herein. The County's activities will involve the following:

3.3.1 Identify County-owned real property suitable for potential use in conjunction with a Next Generation Energy Project or other similar solar power projects.

3.3.2 Identify real property not owned by the County and suitable to be secured by FPL for Next Generation Energy Projects.

3.3.3 Consult and coordinate with FPL to assist FPL in the design of Next Generation Energy Projects which satisfy all necessary permits, approvals, and licenses, subject to the limitations set forth in Section 7.6.

3.4 Expenses. Each Party shall bear its own costs and expenses (including fees of counsel and outside advisors) in connection with the preparation, negotiation and execution of this Agreement, in connection with performing its obligations under this Agreement, and in connection with the negotiation, authorization, execution and delivery of any definitive agreements and regulatory filings associated with the Next Generation Energy Projects.

ARTICLE IV
INFORMATION; CONFIDENTIALITY

4.1 Access to Information. The Parties shall exercise reasonable efforts in order to provide each other data, documents, and any other information in its possession regarding the development of the Next Generation Energy Projects as reasonably necessary and pertinent to permit each Party to perform its obligations under this Agreement; provided, however, neither Party shall have any obligation to provide the other Party any information which it determines is internal confidential or proprietary information of such Party or would give the other party an advantage in any potential competitive process necessary to accomplish the goals of this Agreement or any other government purpose.

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FPL acknowledges that the County, as a public entity, is subject to Florida's public records law. Said law establishes a right of access to any public record made or received in connection with the official business of any public body, except those records specifically exempted or made confidential by Florida law. The County agrees to use reasonable efforts to notify FPL of any request for disclosure. Failure of FPL to provide written objection to such disclosure within 48 hours shall be considered a waiver of any confidentiality to the requested information and consent to the disclosure. In the event FPL objects to the disclosure, FPL shall within 48 hours of notice seek an injunction restricting disclosure of the information. This provision shall survive termination of this Agreement.

ARTICLE V

INDEMNIFICATION; LIMITS

5.1 FPL and the County shall each be responsible for its own facilities, for protection of its own systems, and for ensuring adequate safeguards for FPL and the County customers, and the personnel and equipment of the County and FPL. The County, to the extent permitted by law, and subject to the limitations set forth in Section 768.28, Florida Statutes, shall indemnify, defend and hold FPL harmless, and FPL shall indemnify, defend and hold the County harmless, from any and all claims, demands, costs or expenses, for loss, damage or injury to persons or property caused by, arising out of, or resulting from: (a) any act or omission by the respective Party or that Party's contractors, agents, servants and employees in connection with the development, construction or operation of that Party's facilities or systems, or the operation thereof in connection with the other Party's facilities or systems, (b) any defect in, failure of, or fault related to, a Party's facilities or systems, or (c) the negligence of the respective Party or negligence of that Party's contractors, agents, servants or employees. The respective Party shall pay all claims, costs, damages and losses in connection with (a), (b) or (c) above, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the other Party, where applicable, including appellate proceedings and shall pay all costs, judgment and attorney's fees that may issue thereon. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by either Party to indemnify the other Party for such other Party's negligent, willful, or intentional acts or omissions. The provisions of this Section 5.1 shall survive termination, cancellation, suspension, completion or expiration of this Agreement.

5.2 To the fullest extent permitted by law, neither the County nor FPL, nor their respective officers, directors, agents, employees, members, parents, subsidiaries or affiliates, successors or assigns, or their respective officers, directors, agents, employees, members, parents, subsidiaries or affiliates, successors or assigns, shall be liable to the other party or their respective officers, directors, agents, employees, members, parents, subsidiaries or affiliates, successors or assigns, for claims, suits, actions or causes of action for incidental, indirect, special, punitive, multiple or consequential damages connected with or resulting from performance or non-performance of this Agreement, or any actions undertaken in connection with or related to this Agreement, including without limitation, any such damages which are based upon causes of action for breach of contract, tort (including negligence and misrepresentation), breach of warranty, strict liability, statute, operation of law, under any indemnity provision or any other theory of recovery. If no remedy or measure of damages is expressly provided herein, the obligor's liability shall be limited to direct damages only, and such direct damages shall be the sole and exclusive measure of damages and all other remedies or damages at law or in equity are waived; provided, however, that this sentence shall not apply

to limit the liability of a party whose actions giving rise to such liability constitute gross negligence or willful misconduct. The provisions of this Section 5.2 shall apply regardless of fault and shall survive termination, cancellation, suspension, completion or expiration of this Agreement. Nothing contained in this Agreement shall be deemed to be a waiver of a party's right to seek injunctive relief.

ARTICLE VI

COMPLIANCE WITH CERTAIN REQUIREMENTS

6.1 Compliance with Certain Legal Requirements. Each Party shall comply and cause its contractors and consultants to comply with Applicable Laws in performing their respective duties, responsibilities and obligations pursuant to this Agreement. The Parties shall not unlawfully discriminate in the performance of their respective duties under this Agreement. Such laws include but are not limited to the following: Miami-Dade County Resolution No. R-385-95, which creates a policy prohibiting contracts with firms violating the Americans with Disabilities Act of 1990 ("ADA") and other laws prohibiting discrimination on the basis of disability, Miami-Dade County Ordinance No. 72-82 (Conflict of Interest), Resolution No. R-1049 93 (Affirmative Action Plan Furtherance and Compliance), Resolution No. R.-185-00 (Domestic Leave Ordinance) and Ordinance No. 02-68 (Security).

6.2 Inspections. FPL acknowledges that the Office of the Miami-Dade County Inspector General ("IG") has the authority and power to review past, present and proposed County programs, accounts, records, contracts and transactions pursuant to Section 2-1076 of the Miami-Dade County Code.

ARTICLE VII

MISCELLANEOUS

7.1 Representations and Warranties. Each Party represents and warrants that (a) it is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and is qualified to do business in all jurisdictions where it is required to be qualified; (b) it has the necessary power and authority to enter into and perform its obligations under this Agreement; (c) it has duly authorized the person(s) signing this Agreement to execute this Agreement on its behalf; and (d) the execution and delivery of this Agreement and its performance by such Party will not violate, result in a breach of or conflict with any law, rule, regulation, order or decree applicable to such Party, its organizational documents or the terms of any other agreement binding on such Party.

7.2 Notice. All notices required under this Agreement shall be in writing unless expressly specified otherwise herein, and shall be delivered in person, by certified mail or by a nationally recognized overnight courier, return receipt requested, or by facsimile transmission or electronic mail, if an electronic mail address is provided, with confirmation by voice or automatic answer-back service promptly following such facsimile transmission or electronic mail, as specified below:

As to the County:
Carlos Gimenez, Miami-Dade County Mayor

Stephen P. Clark Center
111 N.W. 1st Street, 29th Floor
Miami, Florida 33128
Facsimile: (305) 375-3618

With a copy to:

Mayor's Designee
Stephen P. Clark Center
111 N.W. 1st Street, 29th Floor
Miami, Florida 33128
Facsimile: (305) 375-1262

Miami-Dade County Attorney
Stephen P. Clark Center
111 N.W. 1st Street, 28th Floor
Miami, Florida 33128
Facsimile: (305) 375-5634

As to FPL:

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408
Facsimile: (561) 304-5233
Attention: Vice President of FPL Development

With a copy to:

Florida Power & Light Company
Law Department (Law/JB)
700 Universe Boulevard
Juno Beach, Florida 33408
Facsimile: (561) 691-7305
Attention: Managing Attorney-Commercial Transactions

Notices shall be effective upon receipt; provided, that in the event a Party fails to notify the other of the correct person and address for notices pursuant to Section 7.2, any notice to that Party shall be deemed effective on the third day following the date such notice is sent to the person and address last provided by such Party. Either Party may, at any time, by notice designate any different person(s) or different address(es) or phone number(s) for receipt of notices and correspondence.

7.3 Disputes. In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a "Dispute"), the applicable project managers shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party,

then such Dispute shall be referred to the director of WASD and VP of FPL Development of the Parties for resolution. If the Dispute has not been resolved within twenty (20) Business Days after such referral to the Mayor's Designee and VP of FPL Development of the Parties, then either Party may pursue all available remedies. The Parties agree to attempt to promptly resolve all Disputes promptly, equitably, and in a good faith manner.

7.4 Governing Law; Submission to Jurisdiction.

7.4.1 This Agreement and the rights and the obligations of the Parties hereunder shall be construed under, and in accordance with, the laws of the State of Florida.

7.4.2 Any litigation between the Parties shall be conducted in the courts of the State of Florida in the Circuit Court for Miami-Dade County, Florida, or the United States District Court for the Southern District of Florida and the parties hereby submit to the exclusive jurisdiction of such courts. The Parties irrevocably waive any objection that any of them may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions, including any objection to the laying of venue based on the grounds of *forum non conveniens* and any objection based on the grounds of lack of *in personam* jurisdiction.

7.4.3 In any litigation arising from or related to the Agreement, the Parties hereto each hereby knowingly, voluntarily and intentionally waive the right each may have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in connection with the Agreement, or any course of conduct, course of dealing, statements (whether oral or written) or actions of either Party to the Agreement. This provision is a material inducement for the County and FPL to enter into this Agreement.

7.5 Relationship of Parties.

The Parties understand and agree that no Party is an agent, employee, contractor, vendor, representative or partner of any other Party, that (except as expressly set forth in writing) no Party shall owe a fiduciary duty to any other Party, that no Party shall hold itself out as such to third parties and that no Party is capable of binding any other Party to any obligation or liability without the prior written consent of the other Party. Neither the execution and delivery of this Agreement, nor consummation of the transactions contemplated hereby, shall create or constitute a partnership, joint venture or any other form of business organization or arrangement among the Parties.

7.6 County as Sovereign. It is expressly understood that notwithstanding any provision of this Agreement and the County's status thereunder:

The County retains all of its sovereign prerogatives and rights as a county under Florida laws and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the planning, design, construction and development of the FPL Facilities or the operation thereof, or be liable for the same; and

The County shall not by virtue of this Agreement be obligated to grant FPL any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the FPL Facilities.

Notwithstanding and prevailing over any contrary provision in this Agreement, any County covenant or obligation that may be contained herein, including but not limited to the following:

(a) to cooperate with, or provide good faith, diligent, reasonable or other similar efforts to assist FPL regardless of the purpose required for such cooperation;

(b) to execute documents or give approvals, regardless of the purpose required for such execution or approvals;

(c) to apply for or assist FPL in applying for any County, City or third party permit or needed approval; or

(d) to contest, defend against, or assist FPL in contesting or defending against any challenge of any nature;

shall not bind the Board, the Regulatory and Economic Resources Department (RER) or its successor(s) or any other County, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police power; and the County shall be released and held harmless, by FPL from any liability, responsibility, claims, consequential or other damages, or losses to FPL or to any third parties resulting from denial, withholding or revocation (in whole or in part) of any zoning or other changes, variances, permits, waivers, amendments, or approvals of any kind or nature whatsoever. Without limiting the foregoing, the Parties recognize that the approval of development approvals and permits will require the County to exercise its quasi-judicial or police powers. Notwithstanding any other provision of this Agreement, the County shall have no obligation to approve, in whole or in part, any application for a development entitlement. The County's obligation to use reasonable good faith efforts in the processing and obtaining of such development approvals and permits shall not extend to any exercise of quasi-judicial or police powers, and shall be limited solely to ministerial actions, including the timely acceptance and processing of any applications. Moreover, in no event shall a failure of the County to adopt any of the development approvals and permits be construed a breach or default of this Agreement.

7.7 Remedies.

7.7.1 In the event of any breach or threatened breach of this Agreement by any Party hereto, the other Party shall be entitled to equitable relief through an injunction in addition to any other rights and remedies available to it.

7.7.2 Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default.

7.7.3 Any failure of a Party to exercise any right or remedy as provided in this Agreement shall not be deemed a waiver by that Party of any claim for damages it may have by

reason of the default. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement. Waiver by either Party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

7.8 Assignment or Sale, Etc. Neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided, that without the prior consent of FPL, the County may assign its rights and interests under this Agreement to a financial institution (the "Institution") as collateral security, or create a security interest in favor of the Institution over its rights and interests in this Agreement. Any attempt by a Party to make any assignment, sale, lease, transfer or other disposition described in this Section 7.8 in violation of this Section 7.8 shall be void ab initio and shall not be effective.

7.9 Amendments. This Agreement shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set forth in a written instrument authorized and executed by the Parties. This Agreement, as it may be amended from time to time, shall be binding upon, and inure to the benefit of, the Parties' respective successors-in-interest and permitted assigns.

7.10 Survival. The obligations, rights, and remedies of the Parties hereunder, which by their nature survive the termination of this Agreement, shall survive such termination and inure to the benefit of the Parties.

7.11 Construction of Agreement. The Parties expressly agree that no provision of this Agreement should be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party having been deemed to have structured or dictated such provision.

7.12 Complete Agreement. This Agreement is intended as the complete and exclusive statement of the agreement with respect to the subject matter hereof between the Parties. Parol or extrinsic evidence shall not be used to vary or contradict the express terms of this Agreement and recourse may not be had to alleged prior drafts, negotiations, prior dealings, usage of trade, course of dealing or course of performance to explain or supplement the express terms of this Agreement. Except as specifically set forth in this Agreement, there shall be no warranties, representations or other agreements among the Parties in connection with the subject matter hereof.

7.13 Counterparts. This Agreement may be executed and delivered in counterparts, and may be delivered by facsimile transmission.

7.14 Integration. The terms and provisions contained in this Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes and terminates all previous undertakings, representations and agreements, both oral and written, between the Parties with respect to the Next Generation Energy Projects.

7.15 General Interpretive Provisions. Whenever the context may require, terms used in this Agreement shall include the singular and plural forms, and any pronoun shall include the corresponding masculine and feminine forms. The term "including", whenever used in any provision of this Agreement, means including but without limiting the generality of any

description preceding or succeeding such term. Each reference to a Person shall include a reference to such Person's successors and assigns. All references to "Sections" shall be references to the Sections to this Agreement, except to the extent that any such reference specifically refers to another document. Each of the Parties has agreed to the use of the particular language of the provisions of this Agreement and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the draftsman.

7.16 Absence of Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to (a) confer upon any person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise except as specifically provided in this Agreement; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement.

7.17 Headings. Captions and headings in this Agreement are included for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

7.18 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Agreement.

[signatures on following page]

IN WITNESS WHEREOF, the COUNTY and FPL, by their duly authorized officials, have executed this Agreement as of the day and year above.

ATTEST:

MIAMI-DADE COUNTY

By: _____
Clerk (Seal)

By: _____
County Mayor

ATTEST:

FLORIDA POWER & LIGHT COMPANY

By: Alene D. Alarick
Witness

By: [Signature]
Name: Eric Silagy
Title: President and CEO, Florida Power & Light

Approved as to form
and legal sufficiency:

Assistant County Attorney