

City of Quincy

City Hall

404 West Jefferson Street

Quincy, FL 32351

www.myquincy.net



Meeting Agenda

Tuesday, January 27, 2015

6:00 PM

City Hall Commission Chambers

City Commission

Derrick Elias, Mayor (Commissioner District Three)

Micah Brown, Mayor Pro-Tem (Commissioner District Two)

Keith Dowdell (Commissioner District One)

Andy Gay (Commissioner District Four)

Daniel McMillan (Commissioner District Five)

AGENDA FOR THE REGULAR MEETING OF
THE CITY COMMISSION OF
QUINCY, FLORIDA
Tuesday
January 27, 2015
6:00 PM
CITY HALL CHAMBERS

Call to Order

Invocation

Pledge of Allegiance

Roll Call

Approval of Agenda

Special Presentations by Mayor or Commission

Riverchase Nursing Home Recognition

Approval of the Minutes of the previous meetings

1. Approval of Minutes of the 01/13/2015 Regular Meeting
(Sylvia Hicks, City Clerk)

Proclamations

Public Hearings as scheduled or agended

Public Opportunity to speak on Commission propositions – (Pursuant to Sec. 286.0114, Fla. Stat. and subject to the limitations of Sec. 286.0114(3)(a), Fla. Stat.)

Ordinances

Resolutions

Reports by Boards and Committees

Reports, requests and communications by the City Manager

2. FMPA Contract Requirements
(Mike Wade, Interim City Manager)

3. Fire Department Year End Report
(Mike Wade, Interim City Manager; Scott Haire, Fire Chief)
4. Police Department December Crime Report
(Mike Wade, Interim City Manager; Glenn Sapp, Interim Police Chief)

Other items requested to be agendaed by Commission Member(s), the City Manager and other City Officials

Comments

a) City Manager

b) City Clerk

c) City Attorney

New requirement that elected local municipal officials have 4 hours of annual ethics training – March 16, 2015 FLC Ethics Workshop (free of charge).

d) Commission Members

Comments from the audience

Adjournment

*Item(s) Not in Agenda Packet

**CITY OF QUINCY
CITY COMMISSION
AGENDA REQUEST**

MEETING DATE: January 27, 2015

DATE OF REQUEST: January 22, 2015

TO: Honorable Mayor and Members of the City Commission

FROM: Mike Wade, City Manager
Bernard O. Piawah, Director, Building and Planning

SUBJECT: Report: National Recognition for Riverchase Health and Rehabilitation Center

Statement of Issue:

This agenda item is intended to share with the Commission and the public the national recognition that a local business: Riverchase Health and Rehabilitation Center received. In 2014, Riverchase Health and Rehabilitation Center, received the recognition of "Best Nursing Home" from the U.S. News and World Report. This is a special recognition that is set aside for only a few elite rehabilitation centers in the county.

Background: Riverchase Health and Rehabilitation Center is a for-profit health center. It is a 120-bed facility that is located at 1017 Strong Road, Quincy Florida. The center was founded in 1985 and it provides nursing care to seniors with varying levels of disabilities.

Evaluation Measures: The rating based performance on three categories of evaluations: health inspections, nurse staffing, and quality of medical care. The organization received a rating of five on their performance on health inspections, five on quality of medical care, and four on nurse staffing; the center received an overall rating of five (five is the maximum number of stars that could be earned).

Conclusion: The City of Quincy is very proud of the stellar quality of health care provided by Riverchase Health and Rehabilitation Center and would encourage them to continue to provide that same level of service in the years ahead. The City would like to present to the Center this award of excellence for their outstanding performance.

RIVERCHASE HEALTH AND REHABILITATION CENTER Overview

- Overview
- Health Inspections
- Nurse Staffing
- Quality Measures
- Fire Safety



More Best Nursing Homes
How We Rated Homes

RIVERCHASE HEALTH AND REHABILITATION CENTER

1017 Strong RD, Quincy, FL 32351
(850) 875-3711

Medicare/Medicaid: **Medicare and Medicaid**
 Number of Medicare/Medicaid beds: **120**
 Ownership: **For profit - Corporation**
 Continuing Care Retirement Community: **No**
 Part of a chain: **No**

Overall Rating:



From ratings in health inspections, nurse staffing, and measures of medical quality of care.

Health Inspections »



How well this home met health and safety standards for food preparation and other nursing-home activities in the latest three state inspections. Such inspections are conducted at least every 15 months.

[See health inspections details »](#)

Nurse Staffing »



Average number of hours per day of care received per resident from nurses at all levels.

[See nurse staffing details »](#)

Quality Measures »

Percentages of residents who got recommended care such as flu vaccinations, and percentages of residents who had pain, bedsores, urinary tract infections, and other care-related problems.

[See quality measures details »](#)

Fire Safety »

How well this home met National Fire Protection Association standards in the most recent inspection.

[See fire safety details »](#)

Penalties

This nursing home has not been fined or denied payment in the last three years.

Last updated December 19, 2014.



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CITY COMMISSION
CITY HALL
QUINCY, FLORIDA

REGULAR MEETING
JANUARY 13, 2015
6:00 P.M.

The Quincy City Commission met in regular session Tuesday, January 13, 2015, with Mayor Commissioner Derrick D. Elias presiding and the following present:

Commissioner Micah Brown
Commissioner Daniel McMillan
Commissioner Gerald A. Gay, III
Commissioner Keith A. Dowdell

Also Present:

Interim City Manager Mike Wade
City Attorney Scott Shirley
City Clerk Sylvia Hicks
Planning Director Bernard Piawah
Interim Police Chief Glenn Sapp
Finance Director Ted Beason
Account Control Specialist Catherine Robinson
Human Resources Director Bessie
Parks and Recreation Director Gregory Taylor
Interim Public Works Director Reginald Bell
Customer Service Representative Clemey Parramore
Customer Service Representative Beatriz Tobias
CRA Manager Regina Davis
Sergeant At Arms Captain Troy Gilyard

Call to Order

Mayor Elias called the meeting to order, followed by invocation and the Pledge of Allegiance.

Approval of Agenda

Commissioner Gay made a motion to approve the revised agenda with the following change: Move item no. 4 Downtown Master Plan under item 2b. Commissioner Brown seconded the motion. The ayes were unanimous

Special Presentations by Mayor or Commission

Approval of the Minutes of the previous meeting

Commissioner Gay made a motion to approve the minutes of the December 09, 2015 regular meeting with corrections if necessary. Commissioner Brown seconded the motion. The ayes were unanimous.

Proclamations

Interim Chief Sapp read the following proclamation honoring First Responders and added Communication Officers as being first responders.

January 5-9 as Florida First Responder Appreciation Week:

WHEREAS, City of Quincy first responders include law enforcement officers, firefighters, and EMTs are dedicated to the protection of life and property in the City of Quincy and surrounding areas; and

WHEREAS, the members of these various First Responders organizations undergo significant education, training and personal sacrifice in order to achieve the expertise required to respond to any type of emergency; and

WHEREAS, courage, selfless concern for others and the duty to protect and serve are commonly held values among these First Responders; and

WHEREAS, First Responders provide vital public service twenty four hours a day, seven days a week and fifty two weeks a years with no down time for holidays and other special occasions; and

WHEREAS, acts of kindness and appreciation from citizens for first responders provide them needed encouragement and support to confront the dangerous and uncertain situations they face every day;

NOW, THEREFORE, I, Derrick D. Elias Mayor of the City of Quincy do hereby proclaim January 5-9, 2015 as *First Responder Appreciation Week* and encourage all Citizens to take time out of their day to show first responders and their families how much we value their service to our city.

Dated this 13th day of January 2015.

Public Hearings as scheduled or agended

Public Opportunity to speak on Commission propositions – (Pursuant to Sec. 286.0114. Fla. Stat. and subject to the limitations of Sec. 286.0114(3)(a). Fla. Stat.)

Willie Earl Banks of 362 East King Street came before the Commission and stated it is a conflict of interest for Commissioner Brown to be represented by Mr. Larkin.

Janice Shackford of 64 North Cleveland Street came before the Commission and stated that if the Commission is thinking about hiring an attorney for Commissioner Brown that state law clearly states that no funds can be given to Mr. Brown unless he wins and he

hasn't won yet. She stated the allegations the he was acting outside of the scope of his duties as a Commissioner and he used his office for someone else's gain. Ms. Shackford stated what reassurance that the citizens have that Commissioner Brown would pay the money back should he be given the opportunity. She stated that she is always hearing that the City is "moving in a new direction" we can't afford to spend money we don't have. She asked the Commission to consider holding a public hearing before a decision is made.

Emanuel Sapp of 821 2nd Street came before the Commission and told the Commission that he is representing a group of four people and presented to the City a copy of the Ordinance. The Mayor informed Mr. Sapp that he had three minutes. Mr. Sapp stated that the City should impose a ½ cents sales tax. Mayor Elias informed Mr. Sapp that we are discussing items that on the agenda. Mr. Sapp went on to say that the petition is against Mr. Brown. He stated that everyone knows that Mr. Brown used services from Ms. Taylor a County Commissioner and received a special favor. Mr. Sapp asked that the City check with Ethics and if you vote yes to an attorney we have some real concern that is a conflict of interest and our tax payers will bear the blunt. Mr. Sapp stated he would return to address the other items i.e. Police Department and ½ cents sales tax.

Ordinances

Resolutions

Reports by Boards and Committees

Reports, request and communications by the City Manager

Fred Fox CDBG

Downtown Master Plan Project Completion

John Boudreau and Joel Sampson of Atkins presented to the Commission the Downtown Master Plan. Mr. Boudreau stated that the plan is a guide to promote businesses downtown, develop gateway and way-finding signage program, develop a comprehensive streetscape and intersection improvement program, development a comprehensive bicycle improvement program and develop a comprehensive parking strategy. Commissioner Gay made a motion to accept the Downtown Master Plan. Commissioner Brown seconded the motion. The ayes were unanimous.

FY 2012-2013 Audit Report

Chris Moran of Moran and Smith came before the Commission to present the FY 2012 - 2013 Audit Report. Mr. Moran reported that they found the City to be in compliance with the Government Auditing Standards and issued a clean audit opinion. Mr. Moran did report that the independent auditor expresses an unmodified opinion on the basic financial statements of the City. The audit disclosed significant and/or material weakness in internal control over financial reporting. He also reported instance of noncompliance

material to the basic financial statement of the City were disclosed in the audit. Commissioner Gay made a motion to accept the FY 2012-2013 Audit Report.

Bulk Power Supply

Interim City Manager Mike Wade reported to the Commission that our current power contract with Florida Municipal Power Agency (FMPA) will expire in December 2015. He stated that FMPA provided a contract extension offer to the City on December 27, 2013. An analysis of the offer was performed by Fred Wilson & Associates and WHH Enterprises. The terms of the contract extension were not as attractive as the original contract. The evaluation of the extension showed that the proposal offer by FMPA results in a 17% increase in power supply costs for 2016 and an additional 8% in each of years 2017 and 2018. The Manager reported to the Commission that the consultant's analysis that it is very likely based on the recent market activity, that the City can obtain bulk power prices lower than were originally proposed by the FMPA extension offer. He stated that Fred Wilson & Associates has submitted a proposal not to exceed \$25,000 for issuing and evaluating an RFP and presenting a final recommendation to the City Commission. Commissioner McMillan made a motion for the approval and to authorize the Mayor to execute the proposal from Fred Wilson & Associates to provide RFP services for Bulk Power Purchase in an amount not to exceed \$25,000 and to complete contract negotiations in an amount not to exceed \$20,000. Commissioner Gay seconded the motion. The ayes were unanimous.

Tanyard Creek Park Rules

City Attorney Scott Shirley presented to the Commission proposed changes to the Rules and Regulation for the use of Tanyard Creek Park. The Attorney proposed the following changes: removed prohibition on political activities, added political events and fundraiser to private activities, added the presence of City staff/service personnel at the facility on an as needed basis will facilitate compliance with the rules and regulations and help to protect the facility from damage or misuse, clarified the difference between Rental Deposit and Damage Deposit, added the right to refuse the use of the park, The Commission will have to adopt a definitive numeric standard 85dBA as measured at mixing board, containers, ice chest outside food and drink allowed for private activities, added, service animals, added off-duty officers will act as independent contractors, suggest the City investigate an interlocal agreement with the school board that allows parking on athletic fields and submit parking plans not later than 60 days prior to the event, add requires promotional materials include an internet link to Amphitheater Rules and that advertising and promotional materials shall also identify approved parking, Commercial General liability insurance increased to \$2,000,000, special pricing for professional promotions to be determined, delete activity information, deleted ticket sales, delete equipment details,

Firehouse Sub Grant Report

Interim City Manager Mike Wade reported to the Commission that Fire Chief Haire applied for a grant with Firehouse Subs for rescue equipment. The equipment is valued at

\$24,884.60 and was awarded to the City with no match. The Commission thanked Chief Haire for the initiative he took in applying for the grant.

Fire Department Monthly Activity Report

Fire Department Monthly Activity Report was presented to the Commission – No comments.

P-Card Statement

P-Card Statement was presented to the Commission – No comments

Other items requested to be agendaed by Commission Member(s) the City Manager and other City Officials

Comments

City Manager

Interim City Manager Mike Wade thanked everyone who participated in the Christmas Parade he stated it was a success. He stated that the Gadsden County Sheriff Department's float took first place, St. John Elementary School second place and BASF was in third place.

The City Manager informed the Commission that we are moving forward with the telephone.

The City Manager stated that the Recreation Department has open registration for Basketball for ages 4-12 and must contact Mr. Taylor.

City Manager Wade stated that Minister Alphonso Figgers has been discharged from the hospital and we all wish him the best.

City Manager Wade stated that the City will be closed in observance of Dr. Martin Luther King, Jr. holiday on Monday, January 19, 2014.

City Clerk - None

City Attorney

City Attorney Scott Shirley gave a brief update on the recall process. He stated that a drive has been launched against Commissioner Brown. This is a two stage process and the first petitions were presented to the City Clerk who then forwarded them to the Supervisor of Elections for verification and to certify that the proper number met the statute. He stated that once the certification is complete the recall committee must go out and get a second round of petition and defense signatures a 60 day process then the committee will present them to the City Clerk who will then forward them to the Supervisor of Election for certification; after the Supervisor certifies the signatures and gives them back to the City

Clerk, the Clerk must notify the Commission, and that is where we are now. The Attorney stated that the statement of grounds for the recall alleges misfeasance or malfeasance in the conduct of public duties. It is routine for the courts to resolve the disputes about the legal sufficiency of the petitions. He stated that case law is clear this is not a process of political grievances. The statement in the recall has to clearly state the basis for the grounds of the illegal act. The recall process is to recall an individual that has committed an unlawful act. He stated that he has coordinated with Mr. Larkin of Allen Norton and Blue, researching to see if this is an appropriate expense for the City. Attorney Shirley stated that this is an appropriate expense for the City. A verification has been prepared by Rob Larkin that this is an appropriate expense for the City to finance the defense of Commissioner Brown as he was acting in the capacity of a Commissioner. He stated It is his opinion that the City should finance the defense of Commissioner Brown or any other Commissioner sitting or in the future Commissioner that is engaged in his public duties meets the statutory requirements. Attorney Shirley asked for a motion. Commissioner Brown stated he would abstain. Commissioner McMillan made a motion to approve for the defense to allow Rob Larkin of Allen, Norton and Blue to provide defense in the recall of Commissioner Brown. Commissioner Gay seconded the motion. Commissioner Dowdell asked how a recall is in the line of duty; this is nothing the City should pay for the City is not involved. Commissioner Dowdell stated that we should not get involved in this it is between District II and Commissioner Brown. Commissioner Dowdell stated this should be an agendaed item. The Attorney stated this is an agendaed item. Attorney Shirley stated this is an appropriate City expense. The Mayor asked Mr. Newton to control his outburst in the meeting then asked the Sergeant to remove Mr. Newton from the meeting. Commissioner Dowdell asked how you can take tax dollars to defend a recall. The Attorney stated it is an appropriate expense. Commissioner Dowdell stated if this motion passes he would file a lawsuit. Upon roll call by the Clerk the ayes were Commissioner McMillan, Gay and Elias. Nay was Commissioner Dowdell. Commissioner Brown abstained. The motion carried.

Attorney Shirley reported to the Commission that the NetQuincy is acquiring the service of a qualified Engineer to review the assets and revenues of the Bond proceeds to make sure that the assets don't exceed ten percent. This will be brought back to the Commission in the form of a resolution. We do have an Engineer with expenditure of 9 to 10 thousand dollars. We have had interest in the purchase of the system but advise not to pursue anything until we get out from under the bond covenants.

Commission

Commissioner Dowdell stated that he is going to file a law suit and the city will hire an attorney to defend him. He stated that Commissioner Brown brought his attorney and asked him to come to the podium.

Commissioner Gay stated the general fund in 2011 was \$684,000 if we hold fast our spending and only provide necessary expenditures we would be in good shape.

Commissioner Gay stated he was impressed with the details as presented by Moran and Smith.

Commissioner Gay stated he noticed a significant drop in revenue in the electric and asked the Manager if he knew the cause. The Manager stated the following reasons: change in power suppliers, rates and fuel adjustments were lower, loss of businesses (Printing House, Quincy Joist, Higdon),

Commissioner Gay stated that Minister Figgers is back at home after heart surgery and is doing well.

Commissioner Brown asked who is responsible to the TCC property on Pat Thomas Parkway because there is debris on the property. The Manager stated he would check into it.

Commissioner Brown commended Public Works for a job well done on 10th Street.

Commissioner Brown stated that the street light is out on South Calhoun

Commissioner Brown thanked the Auditor for a job well done.

Commissioner McMillan thanked Public Works for the work on 14th Street and Code Enforcement for removing the signs off the right-of-way.

Commissioner McMillan stated that the screening committee for the City Manager has to go through too many steps. Ms. Evan stated this is just a guide.

Mayor Elias announced that CRA will meet Tuesday, January 27,, 2015 at 5:00 p.m.

Mayor Elias told the Manager that the bathrooms at the track field are locked.

Mayor Elias stated that the Christmas Parade was a success and thanked all the participants.

Mayor Elias asked when would be Quincy Bypass open. The Manager stated he would have to get back with him on the date that is to be determined.

Mayor Elias asked the status of speed calming devices on Madison Street.

Mayor Elias stated that he had received a complaint from the funeral home director regarding humps in Sunnyvale Cemetery their vehicles drag. Second, water exposes the graves and this needs to be addressed. Third we need a policy on infant graves.

Mayor Elias stated that the Dr. King Holiday is Monday please come out and participate.

Mayor Elias asked the time frame for the City Manager's position. Ms. Evans Human Resources Director stated that we had received 48 applicants 24 met the requirements and the committee will narrow it's list down to five then three and present them to the Commission.

Mayor Elias asked the status of the Police Chief position. The Manager stated he needs to get with Ms. Evans.

Mayor Elias stated the vote tonight was on the entire process it was not just for one Commissioner it was to protect the City of Quincy's best interest.

Citizens

Freida Bass Prieto of 329 East King Street wished everyone a Happy New Year.

Ms. Bass-Prieto thanked Chief Haire for taking the initiative to apply for the equipment grant from Firehouse Subs and she stated she called headquarters and thanked them as well.

Ms. Bass-Prieto stated that she hopes the Commission would stay on top of our finances and make sure that our books are reconciled.

Ms. Bass-Prieto stated that in the Downtown Master Plan the Commission needs to look at density.

Commissioner Brown stated that the Commission should know everything that goes on the finance.

Commissioner Brown made a motion to adjourn. Commissioner Gay seconded the motion. There being no further business to discuss the meeting was adjourned.

APPROVED:

Derrick D. Elias, Mayor and
Presiding Officer the City Commission
And of the City of Quincy, Florida

ATTEST:

Sylvia Hicks
Clerk of the City of Quincy
Clerk of the City of Commission thereof

**City of Quincy
City Commission
Agenda Request**

Date of Meeting: January 27, 2015

Date Submitted: January 23, 2015

To: Honorable Mayor and Members of the Commission

From: Mike Wade, Interim City Manager
Ted Beason, Finance Director

Subject: Financial Surety for the Florida Municipal Power Agency

Issue:

The City is in need of securing a letter of credit to meet financial surety provisions of the Full Requirements Power Sales Contract between the Florida Municipal Power Agency (FMPA) and the City of Quincy.

Background:

The City entered into a 5-year contract with the FMPA in December of 2010. In order to guarantee that the City would pay its power bill, FMPA required a \$1,000,000 line of credit or a deposit equivalent to \$550,000 (see section 5.2 (b) and 5.2 (d) of the contract). The City established the required \$1,000,000 line of credit with Capital City Bank.

The City started to draw on its line of credit for purposes other than to pay its power bill to FMPA. In March of 2014, Capital City Bank asked that the line of credit be repaid and this was done.

With its last power bill, FMPA billed the City \$183,000, for 1/3 of the required deposit \$550,000, and this was paid on January 20th. FMPA will do this again in February and March unless the City establishes other acceptable surety such as a letter of credit.

In addition to the line of credit requirement to assure prompt payment of utility bills, FMPA requires that the City maintain a General Fund fund balance of 20% of total revenues (see Article 18 of the contract "Required Ratios"). In Fiscal Year 2013, total revenues were approximately \$24,000,000 and 20% would be \$4,800,000. In 2013, our General Fund fund balance was well short of this goal as it was negative \$92,000.

According to the FMPA contract, FMPA could require additional \$1,000,000 of deposit because the City did not maintain the required General Fund fund balance.

In conversations with the FMPA staff, we have reached a tentative agreement that the City would not be required to place \$1,550,000 deposit (\$550,000 for not having a line of credit and \$1,000,000 for not having the required General Fund fund balance) as we could be required under the contract, but rather a combination of a letter of credit and deposit that would total \$1,000,000.

The City staff recommends that the Commission authorize the staff to try to obtain a letter of credit naming the FMPA as the beneficiary.

Options:

1. Authorize the staff to try to obtain a letter of credit naming the FMPA as the beneficiary.
2. Do not authorize the staff to try to obtain a letter of credit naming the FMPA as the beneficiary

Recommendation:

Option 1

Attachments:

1. Full Requirements Power Sales Contract

EXECUTION ORIGINAL

FULL REQUIREMENTS POWER SALES CONTRACT

between

FLORIDA MUNICIPAL POWER AGENCY
(ALL-REQUIREMENTS POWER SUPPLY PROJECT),

a governmental legal entity created and existing pursuant to Florida law,

and

the CITY OF QUINCY, FLORIDA,

a Florida municipality operating a retail electric utility in Gadsden County, Florida.

dated as of
December 9, 2010

EXECUTION ORIGINAL

FULL REQUIREMENTS POWER SALES CONTRACT

between

FLORIDA MUNICIPAL POWER AGENCY
(ALL-REQUIREMENTS POWER SUPPLY PROJECT),

a governmental legal entity created and existing pursuant to Florida law,

and

the CITY OF QUINCY, FLORIDA,

a Florida municipality operating a retail electric utility in Gadsden County, Florida.

dated as of
December 9, 2010

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FULL REQUIREMENTS POWER SALES CONTRACT

This full requirements power sales contract is dated as of December 9, 2010, and is between FLORIDA MUNICIPAL POWER AGENCY (ALL-REQUIREMENTS POWER SUPPLY PROJECT), a governmental legal entity created and existing pursuant to Florida law ("FMPA") and the CITY OF QUINCY, FLORIDA, a Florida municipality operating a retail electric utility in Gadsden County, Florida (the "City").

FMPA was created pursuant to the Florida Interlocal Cooperation Act of 1969, § 163.01, Fla. Stat. (the "**Interlocal Act**"), and the Joint Power Act, Ch. 361, part II, Fla. Stat. (the "**Joint Power Act**"), and exercises power and authority granted to it under both or either provision pursuant to its enumerated powers set forth in the Interlocal Agreement Creating the Florida Municipal Power Agency, as amended and supplemented to the date of this contract and as may be amended and supplemented afterwards (the "**Interlocal Agreement**," and collectively with the Interlocal Act and the Joint Power Act, the "**Act**") to, among other things, provide a means for Florida municipalities and other entities which are members of FMPA to cooperate with each other on a basis of mutual advantage to provide for the present and projected electric energy needs of such municipal corporations and other entities.

FMPA is authorized and empowered, among other things, (1) to plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend, or otherwise participate jointly in one or more electric projects; (2) to make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of FMPA under Florida law; (3) to issue bonds, notes, and other evidences of indebtedness to pay all or part of the costs of acquiring or participating in such electric projects; (4) to exercise all other powers which may be necessary and proper to further the purposes of FMPA which have been or may be granted to FMPA under the laws of the State of Florida; and (5) to market and dispose of its surplus capacity and energy for the economic benefit of the All-Requirements Power Supply Project.

In order to secure an adequate, reliable, and economical supply of electric capacity and energy to supply, with certain exceptions, all of the needs for electric capacity and energy of the Project Participants contracting with FMPA, FMPA established the "**All-Requirements Power Supply Project**," which constitutes an "electric project" and a "project" as defined in the Interlocal Act and the Joint Power Act, respectively, and created the System to carry out the All-Requirements Power Supply Project.

FMPA has implemented the All-Requirements Power Supply Project by acquiring electric capacity and energy and providing for dispatch, transmission, and other services included or to be included in the System for sale and delivery to Project Participants contracting with FMPA through whatever means it deems advisable, including, without limitation, the purchase of capacity and energy and dispatching, transmission, and other services, and the ownership or leasing of

generation, dispatching, and transmission facilities or any interest therein or output or services from such generation, dispatching, and transmission facilities.

The actions taken and to be taken by FMPA to implement the All-Requirements Power Supply Project have been authorized by the Interlocal Act, the Joint Power Act and the Interlocal Agreement, which Interlocal Agreement, the All-Requirements Contract, and this contract each constitute an "agreement to implement a project" and a "joint power agreement," as such terms are used in the Joint Power Act

The City is a member of FMPA, and the capacity and energy that FMPA is selling and delivering to the City pursuant to the terms of this contract is surplus to the needs of the All-Requirements Power Supply Project.

The City has a separate agreement for the purchase of 8,400 kW of capacity and associated energy, as of the Effective Date (as defined in section 1.1 (Effective Date)), from the Southeastern Power Administration ("SEPA"), which is the scheduling responsibility of the City, in coordination with PEF.

Subject to the terms and conditions of this contract, the parties desire that FMPA sell and the City purchase all capacity and energy necessary for the City to meet its native electric load requirements, above the City's purchases from SEPA, pursuant to the terms of this contract.

The parties therefore agree as follows:

Article 1
CONTRACT TERM

- 1.1 **Effective Date.** This contract becomes effective on the latest date it is signed by the parties ("**Effective Date**").
- 1.2 **Service Term.**
- (a) Services will be provided pursuant to this contract for five years beginning January 1, 2011 (or, pursuant to notice by the City, a later date when FMPA makes the initial schedules of capacity and energy to the City), and ending on December 31, 2015 ("**Service Term**").
 - (b) No later than January 1, 2014, FMPA may, at its sole option, provide the City with proposed new terms and conditions, including, at a minimum, rates for capacity, non-fuel energy charges, and a fuel energy charge projection, for the City's consideration to extend the Service Term for an additional two years, or a longer extension of the Service Term as mutually may be agreed upon by the parties. If

FMPA and the City agree, this contract shall be extended based upon those agreed upon terms and conditions.

Article 2
SALE OF ELECTRIC CAPACITY AND ENERGY

- 2.1 **Quantity.** FMPA agrees to sell to the City, and the City agrees to purchase from and pay FMPA for, the City's total capacity and energy needs for its electric load as forecast by FMPA at the Meter Points and scheduled by FMPA at the Delivery Point, after being reduced by the SEPA Capacity and the SEPA Adjustment Factor, respectively, subject to the terms and conditions of this contract.
- 2.2 **Availability.** FMPA shall provide capacity and energy to the City, as a Firm Full-Requirements Member, at the Delivery Point. FMPA shall provide such capacity and energy with a priority that is equal to the priority FMPA gives to its other Firm Full-Requirements Members.
- 2.3 **Applicability.**
- (a) The monthly rates are applicable during the Service Term to electric capacity and energy purchased from FMPA by the City for its own use and for resale to its retail customers. The City shall not use the electric capacity and energy purchased under this contract to make wholesale sales or to serve wholesale customers of any type. The electric capacity and energy provided under this contract is three-phase 60 cycle alternating current at a standard nominal voltage, as delivered to the Transmission System at the Delivery Point.
 - (b) The City acknowledges and agrees that FMPA, or its agent(s), shall have the absolute authority, which FMPA or its agent(s) may exercise in their sole discretion, to manage, control, operate and maintain the electricity resources used to supply energy to the City under this contract. FMPA may serve the City with energy from any resource(s) available to it without limitation.
- 2.4 **Exclusivity of Supply.** The City shall not purchase electric capacity or energy to serve any of its retail load requirements from any Person other than FMPA, and SEPA, without the prior written consent of FMPA unless FMPA fails to furnish capacity or energy to the City pursuant to the terms of this contract, except that this section 2.4 (Exclusivity of Supply) is not intended, nor is it to be construed, to prohibit the interconnection and net metering of customer-owned renewable generation resources that are located on such customer's premises (*i.e.*, the load side of the customer meter) and sized primarily to offset part or all of the retail customer's electric requirements with renewable energy.

2.5 **Operating Requirements.**

- (a) The City shall, at its own expense, comply with the PEF power factor requirements set forth in Attachment V to the OATT.
- (b) Insofar as practicable, the City shall protect, operate, and maintain the City's System so as to avoid or minimize the likelihood of disturbances which might cause impairment of service on the Transmission System. The City shall implement load shedding programs to maintain the reliability and integrity of the Transmission System, consistent with the standards of NERC and FRCC, as provided in section 33.6 of the OATT. Load shedding includes: (1) automatic load shedding by under frequency relay or (2) manual load shedding. Automatic load shedding devices must operate without notice. When manual load shedding is necessary, PEF or FMPA shall notify the City's dispatchers or schedulers of the required action, and the City shall comply within 10 minutes or as soon as practicable. PEF and FMPA shall implement load shedding on a non-discriminatory basis as between themselves and the City.
- (c) The City shall, at its own expense, provide, operate, and maintain in service under frequency load shedding equipment. The under frequency load shedding equipment shall enable the automatic disconnection of its network load (under the OATT) in a manner consistent with that required by the FRCC.

Article 3
MONTHLY CHARGES

3.1 **Capacity and Energy Payments.** Service rendered to the City under this contract will be billed by FMPA at the aggregate of the monthly charges set forth in clauses (1), (2), (3), and (4) of this section 3.1 (Capacity and Energy Payments) as follows:

- (1) **Capacity Charge.** The City shall pay to FMPA a capacity charge (the "Capacity Charge") equal to the product of:
 - (A) \$5.00 per kW/month, and
 - (B) the Billing Demand, calculated in accordance with clause (4)(A) of this section 3.1 (Capacity and Energy Payments).
- (2) **Non-Fuel Energy Charge.** The City shall pay to FMPA a non-fuel energy charge (the "Non-Fuel Energy Charge") equal to the product of:
 - (A) (i) \$0.00825 per kWh for On-Peak Periods, and

(ii) \$0.004 per kWh for Off-Peak Periods,

respectively, and

(B) the Billing Energy, calculated in accordance with clause (4)(B) of this section 3.1 (Capacity and Energy Payments).

(3) **Fuel Charge.**

(A) The City shall pay to FMPA a fuel charge (the “Fuel Charge”) equal to the product of:

(i) the Fuel Cost, and

(ii) the Billing Energy.

(B) The calculation of fuel cost is calculated as follows:

(i) FMPA's actual energy costs (excluding FMPA's working capital adjustments) booked in a month associated with serving its Firm Full-Requirement Members (excluding nuclear energy resources) for all energy delivered in such month;

minus:

(ii) (aa) FMPA natural gas fuel hedging expenses and associated gains and losses, and

(bb) any other costs deemed by FMPA, in its sole discretion, not to be associated with serving the City pursuant to this contract;

the result of which is then divided by:

(iii) the sum of FMPA's total net energy delivered to serve its Firm Full-Requirement Members' load (measured in kWh, excluding nuclear energy resources), the quotient of which equals a \$/kWh energy charge;

such \$/kWh energy charge is then multiplied by:

- (iv) 1.08 (representing an eight percent energy charge adjustment factor to compensate the Project Participants for the incremental cost associated with serving the City pursuant to this contract).

which results in the month's \$/kWh "**Fuel Cost.**"

- (4) **Capacity and Energy Billing Determinants.** All forecast capacity and energy values at the Meter Points will be reduced by applying the SEPA Capacity and SEPA Adjustment Factor and, then, scheduled (including losses) to PEF at the Delivery Point. The resulting hourly quantity of capacity (measured in kW) and energy (measured in kWh) will be scheduled (including losses) to PEF at the Delivery Point and is deemed to be sold to the City by FMPA pursuant to this contract.
 - (A) FMPA shall determine the "**Billing Demand**" based on the highest aggregate kW usage scheduled for delivery at the Delivery Point for any one hour period for each monthly billing period during the Service Term.
 - (B) FMPA shall determine the "**Billing Energy**" (measured in kWh) based on the sum of the hourly scheduled values at the Delivery Point for each monthly billing period during the Service Term.
- (5) **Estimated Fuel Charge.** Notwithstanding clause (3) of this section 3.1 (Capacity and Energy Payments), FMPA may reasonably estimate the Fuel Charge for any monthly billing period. If FMPA estimates the Fuel Charge for any monthly billing period, FMPA shall note on the invoice for such monthly billing period that the Fuel Charge has been estimated and FMPA shall true-up the estimated Fuel Charge on the next monthly billing period invoice. The amount of any true-up adjustment credit or charge will be determined by FMPA by using:
 - (A) the actual Fuel Cost of the month,
minus:
 - (B) the estimated Fuel Cost for the applicable billing month,the result of which is multiplied by:
 - (C) the Billing Energy for such month.

In the event FMPA estimates the Fuel Charge for the last month of the Service Term, it shall issue a true-up summary in the next month, in accord with the monthly billing cycle provided in this contract. Such summary must document FMPA's true-up calculation, made pursuant to the methodology set out in this clause (5) of section 3.1 (Capacity and Energy Payments), for the last month of the Service Term, together with a payment to the City for any credit or an invoice to the City for any charge owed.

- 3.2 **Transmission Fee.** The City shall pay FMPA the Transmission Fee (as defined in section 4.4 (Transmission Fee Components)) as invoiced by FMPA.
- 3.3 **Other Payments.** In addition to the payments specified in this article 3 (Monthly Charges), the City shall pay all amounts for which it is responsible pursuant to the other provisions of this contract.

Article 4 TRANSMISSION SERVICE

- 4.1 **FMPA Network Service.** Prior to the start of the Service Term, FMPA shall arrange for and secure all necessary transmission service, except transmission associated with capacity and energy provided to the City by SEPA, across the Transmission System to serve the City for the entirety of the Service Term by entering into a network integrated transmission service arrangement with PEF pursuant to its OATT or taking other actions as necessary to cause the electrical demand of the City to be integrated with the other native electrical demand interconnected with the Transmission System and served by FMPA, in a manner comparable to FMPA's other Firm Full-Requirements Members. However, the parties both recognize and agree that constraints or contingencies may occur on the Transmission System that may require PEF to curtail transmission and scheduled deliveries in accordance with its OATT. To the extent PEF requires FMPA to curtail a scheduled delivery, FMPA shall, to the extent practicable and consistent with Prudent Utility Practices, curtail deliveries to the City and its affected Firm Full Requirements Members on a non-discriminatory basis. Pursuant to this section 4.1 (FMPA Network Service), FMPA shall designate the Meter Points for the City to effectuate the delivery of capacity and energy, sold by FMPA under this contract, into the City System.
- 4.2 **Ancillary Services.** FMPA shall arrange for and secure all necessary ancillary services (including, scheduling and dispatch, reactive power and voltage control, loss compensation, load following, energy imbalance (which may be a charge or credit), regulation, spinning reserve, and supplemental services) to meet its obligations under this contract from PEF, FMPP, another Person, or a combination of the same as FMPA, in its sole discretion, deems appropriate.

4.3 **Other Obligations.**

- (a) In addition to its obligations under section 4.1 (FMPA Network Service), FMPA shall take all actions necessary and secure whatever services or rights may otherwise be necessary with transmission providers and other Persons, other than PEF, to meet its obligations under this contract and deliver the capacity and energy sold to the City at the Delivery Point designated in Schedule F.
- (b) FMPA shall not be responsible for the transmission, distribution, control, use, or application of electric capacity and energy provided under this contract on the City's System or on the City's side of any Delivery Point that is not located on the City's System. The City shall not be responsible for the transmission, distribution, control, use, or application of electric capacity and energy provided under this contract outside of the City's System in the case of a Meter Point on the City's System or on FMPA's side of a Delivery Point if such Delivery Point is not on the City's System.

4.4 **Transmission Fee Components.** All costs and charges incurred by FMPA to meet its obligations under sections 4.1 (FMPA Network Service), 4.2 (Ancillary Services), and section 4.3 (Other Obligations) shall be invoiced to the City on a monthly basis as a part of the "Transmission Fee."

4.5 **General Arrangement.** For informational purposes only, the parties desire to recite the general arrangement that FMPA will implement to provide for the transmission service necessary for FMPA to supply capacity and energy to the City under this contract:

- FMPA will be the PEF network transmission service customer;
- the City will remain in the PEF balancing area;
- the City will comply with the power factor and load shedding requirements specified in the OATT (described in section 2.5(a) (Operational Requirements));
- FMPA will forecast the City's SEPA Adjustment Factor and apply the same to the City's hourly load forecast to determine FMPA's hourly capacity and energy sold and delivered to the City under this contract for each month during the Service Term;
- FMPA will schedule for delivery at the Delivery Point its portion (kWh) of the City's forecasted hourly demand, plus transmission losses;
- each month the parties expect there will be an energy imbalance and a corresponding imbalance charge from PEF billed to FMPA; and

- the monthly PEF imbalance charges will be passed through by FMPA, without mark-up, and paid by the City as a component of the Transmission Fee.

Article 5
BILLING AND PAYMENT

5.1 **Billing and Payment.**

- (a) As promptly as practical after the end of each month during the Service Term, but no later than the 20th Day of the following month, FMPA shall provide to the City an invoice showing the total amount due to FMPA and itemizing (1) the monthly Capacity Charge; (2) the monthly Non-Fuel Energy Charge; (3) the monthly Fuel Charge; (4) the Transmission Fee; (5) the Delinquency Charge (as defined in section 5.1(d) (Billing and Payment)), if applicable; and (6) any other payment amounts for which the City is responsible under this contract for the previous month. FMPA shall provide monthly invoices to the City electronically and by mailed hard-copy. A sample monthly City invoice is provided as schedule C for illustrative purposes only.
- (b) In addition to the payments set forth in section 5.1(a) (Billing and Payment), each FMPA invoice shall include the following adjustments:
 - (1) any billing corrections or adjustments, including charges or credits, or both, identified by either of the parties subsequent to the last invoice, which are not be subject to interest;
 - (2) any billing corrections, including charges or credits, that the parties have mutually agreed upon or otherwise resolved in accordance with section 5.3 (Billing Adjustments) subsequent to the last invoice, which are subject to interest in accordance with section 5.3 (Billing Adjustments); and
 - (3) any delinquent amounts, which are subject to interest in accordance with section 5.1(c) (Billing and Payment).
- (c) Each monthly payment by the City shall be due and payable on or before the 20th Day of the month following the invoice month, or the next Business Day if the 20th Day of the month following the invoice month falls on a non-Business Day (the “**Due Date**”). The City shall make payment to FMPA in accordance with section 5.2 (Automatic Debit Authorization). If payment in full has not been received by FMPA on or before the Due Date, then the City shall pay interest on the “**Delinquent Payment Amount**” (which is that amount of the City’s monthly invoice not paid, in whole or in part, by the Due Date, including the Delinquency

Charge) from the Due Date until such Delinquent Payment Amount is paid in full, together with all accrued interest. Such interest shall be compounded daily at the Interest Rate.

- (d) In addition to the interest applicable to Delinquent Payment Amounts provided for in subsection (c), the City shall pay the following delinquency charge on all Delinquent Payment Amounts, which such delinquency charge is itself subject to interest: an amount equal to the Delinquent Payment Amount multiplied by the greater of the then in effect Federal Funds Target Rate or two percent (the "Delinquency Charge").

5.2 Automatic Debit Authorization.

- (a) The City hereby authorizes FMPA and its successors and assigns to initiate electronic debit entries to the City's account indicated below and the City authorizes its financial institution named below (the "Bank") to debit these entries from the City's account. The City shall not terminate nor amend this authorization to debit its account(s) for all amounts owed to FMPA under this contract without receipt of FMPA's prior written consent.

Bank Name: Capital City Bank	City/State Tallahassee, Florida
Account Name: Energy Provider Account	EIN 596000416
Bank ABA No. 063100688	Bank Phone No. (850) 402-7500
Bank Account No. [To Come]	

- (b) The City shall have in place at all times during the Term of this contract a line of credit for its use in a principal amount of not less than \$1,000,000 (the "Line of Credit"). The City shall direct and authorize the Bank to use the Line of Credit as automatic overdraft protection on the account provided for in section 5.2(a) (Automatic Debit Authorization) so that every automatic debit by FMPA from such account pursuant to this contract is covered and paid up to the total of the funds available in such account plus the funds available from the Line of Credit. The City shall not cause nor permit, to the extent within the City's control, the Line of Credit to be decreased, withdrawn, cancelled, or amended (in a manner that adversely affects FMPA's reliance on the Line of Credit pursuant to this contract) during the Term without the prior written consent of FMPA.
- (c) The parties shall reconsider the need for the Line of Credit and negotiate in good faith as to its continued purpose, based upon the City's payment history with FMPA, within 24 months after the Effective Date.
- (d) If at anytime during the Term the Line of Credit is cancelled, the City shall pay to FMPA a replacement deposit in an amount equal to

- (1) the City's highest monthly invoice under this contract, or
- (2) the City's highest electrical demand under its predecessor power supply arrangement, if applicable, applied to the rates and charges provided for in this contract,

during the previous 12 months. The deposit must be paid to FMPA within three months following cancellation of the Line of Credit in three monthly installments. FMPA shall invoice the City for the deposit installment payments pursuant to this section 5.2(d) (Automatic Debit Authorization). FMPA may draw against the deposit to cover Delinquent Payment Amounts in lieu of exercising its rights under article 12 (Events of Default and Termination). FMPA shall give the City notice of each draw on the deposit by FMPA and the City shall provide to FMPA a replenishment of the deposit, equal to FMPA's draw, by payment to FMPA in immediately available funds within 15 days. FMPA shall keep the deposit in an interest earning account. Any deposit remaining with FMPA at the end of the Service Term must be returned to the City, along with interest actually earned on the deposit, within 45 days of the end of the Service Term provided that all amounts owed by the City have been paid.

- (e) Notwithstanding subsection (d), if within 90 days of the cancellation of the Line of Credit, the City puts in place a replacement Line of Credit that meets the requirements of this contract, then FMPA shall return the deposit being held by FMPA, with interest actually earned on the deposit. Likewise, if at anytime after the cancellation of the Line of Credit or a subsequent Line of Credit, the City puts in place a replacement Line of Credit that meets the requirements of this contract, then FMPA shall return the deposit being held by FMPA, with interest actually earned on the deposit.

5.3 **Disputed Bills Must be Paid.**

- (a) If, after receiving an invoice (or any other statement or bill pursuant to this contract), the City reasonably questions or disputes the amount or propriety of any payment or amount claimed by FMPA to be due pursuant to this contract, the City shall provide FMPA with written notice of such disputed invoice amount. FMPA and the City shall cooperate in good faith to resolve any question or dispute prior to the Due Date. However, notwithstanding the notice of a disputed invoice amount, the City shall make all payments in full in accordance with all invoices issued by FMPA. Adjustments with interest shall subsequently be made, if appropriate, as set forth in section 5.4 (Billing Adjustments).

5.4 **Billing Adjustments.** The City shall have 24 months after the receipt of any invoice (or any other statement or bill made pursuant to this contract) to question or contest the amount or propriety of any charge or credit, or both, on such invoice, statement, or bill. In the event that the City questions or disputes any such charge or credit, or both, FMPA shall within 60 Days of its receipt of any such question or dispute review the subject charge or credit and notify City of the findings of its review. Any error in the amounts reflected on such disputed invoice, statement, or bill and the amount of any adjusted payment that either party is required to make as a result of such re-determination will be identified by FMPA in writing. Not later than the 15th Day after receipt by the City of such a written notification from FMPA, the party required to make such payments, if any, shall make payment to the other party in immediately available funds. Payments made by a party under this section 5.4 (Billing Adjustments) shall include interest, compounded daily, at the Interest Rate from the Due Date until the date such payment together with all added interest is received.

5.5 **Availability of Records.** Until the end of 24 months after the receipt of any invoice, each party shall, at its own expense with respect to any invoice submitted or payment requested under this contract for capacity and energy provided to the City, make available to the other party and each party may audit, such books and records of the other party (or other relevant information to which such party has access) as are reasonably necessary to calculate and determine the accuracy of amounts shown on such invoice to verify the appropriateness of the invoiced amounts. Upon written request and reasonable notice, each party shall make available to the other party copies of or access to such books and records during normal business hours, at such requesting party's sole expense for purposes of conducting such an audit. In the event either party determines that an invoice was not accurate or appropriate, it shall notify the other party in writing of the alleged discrepancy and, in its opinion, the necessary correction. Within 15 Days following receipt of such notice, the party receiving such notice shall make such payments or take such other actions as are necessary to correct or dispute the alleged discrepancy.

Article 6 CHARACTER OF SERVICE

6.1 **Constancy of Supply.**

- (a) Pursuant to section 2.2 (Availability), FMPA shall provide capacity and energy to the City, as a Firm Full-Requirements Member, at the Delivery Point. FMPA shall provide such capacity and energy with a priority that is equal to the priority FMPA gives to its other Firm Full-Requirements Members. However, and notwithstanding any other provision of this contract, FMPA does not guarantee nor warrant that FMPA will supply a constant or uninterrupted supply of energy under this contract, except that FMPA shall use commercially reasonable efforts, consistent with Prudent Utility Practices and the provisions of this contract, to

provide capacity and energy to the City in an uninterrupted fashion for the charges and payments described in Article 3 (Monthly Charges). The parties understand and agree that FMPA is not required to deliver under this contract a constant or uninterrupted supply of energy at all times during the Service Term.

- (b) Subject to Section 6.1(a) (Constancy of Supply), to the extent practicable and consistent with Prudent Utility Practices, FMPA shall provide or arrange for regulation service as necessary to follow the moment-by-moment changes in the load requirements of the City. FMPA shall also provide or arrange for spinning and supplemental reserves consistent with the amount of capacity purchased under this contract.
- (c) Notwithstanding any other provision of this contract, in the event that FMPA, or one of its agents, determines in its sole discretion that it is necessary or appropriate for FMPA or the FMPP control area to shed, interrupt, or curtail load of its Firm Full-Requirements Members (including for reason that adequate resources are not available), and FMPA or the FMPP control area does shed, interrupt or curtail such loads, then the City's similar firm loads or interruptible/curtailable loads shall share, on a pro rata basis, in such interruption, curtailment or load shedding. Thereafter, the City may restore service to such shed, interrupted or curtailed loads consistent with the restoration of service to FMPA's and FMPP's similar firm or interruptible/curtailable loads. For actions taken pursuant to this section 6.1(c) (Constancy of Supply), neither FMPA, nor its agents shall be in breach of this contract by reason of, and shall have no liability whatsoever to the City and FMPA hereby expressly disclaims all third party liability for, any failure to make capacity available under this contract, or for any failure to deliver or any interruption in the delivery of energy under this contract or for any deficiency in the quality of service under this contract unless such failure is the sole result of the gross negligence or willful misconduct of FMPA.

6.2 **Character of Transactions.** The sale of capacity by FMPA under this contract does not constitute either: (1) a sale, lease, transfer, or conveyance of an ownership interest or contractual right in or to any specific generation facility or resources; or (2) a dedication of ownership or an entitlement to the capacity or output of any specific generation facility or resource.

Article 7
METERING AND DATA ACQUISITION

7.1 **Metering.**

- (a) The sale of energy under this contract is to be measured by meters as PEF selects and deems necessary. The City shall be responsible for and shall pay all costs of purchasing, installing, owning, reading, testing, inspecting, operating, and maintaining the meters used in connection with service to City under this contract (including meters owned by PEF), except to the extent that a different Person is made responsible for such costs under a network operating agreement entered into by City in connection with transmission service under the OATT for Delivered Energy. FMPA shall invoice for and the City shall pay all metering costs in addition to the monthly Capacity Charge, the monthly Non-Fuel Energy Charge, the monthly Fuel Charge, and the Transmission Fee. The parties shall cause meters to be read monthly at times mutually agreed upon. Metering records shall be available at all times during normal business hours to authorized agents and employees of the parties for the purposes of this contract.
- (b) All meters, wires, and other electrical equipment or systems furnished or installed by PEF or the City pursuant to this contract will remain the property of PEF or the City, respectively. The City agrees that FMPA shall have no liability whatsoever for meters, wires, and other electrical equipment or systems owned by the City or PEF.

7.2 **Meter Testing.**

- (a) FMPA shall arrange for each meter used in determining the demand for or amount of electric energy supplied under this contract to be tested and calibrated by PEF, by comparison with accurate standards, in the presence of FMPA personnel, at intervals not to exceed once every 24 months. FMPA shall provide, or cause PEF to provide, the City with reasonable prior notice of such tests so that the City may have a representative present. If a meter shall be found incorrect or inaccurate, it shall be restored to an accurate condition or a new meter shall be substituted. In addition, the City shall have the right to request that a special meter test be made at any time at the sole cost of the City.
- (b) The results of all meter tests and calibrations shall be open to examination by the City and a report of every test shall be furnished to the City as soon as reasonably practical after it is available to FMPA. Any meters tested and found to be not more than 2% above or below normal shall be considered, solely for purposes of this contract, to be correct and accurate insofar as correction of billing is

concerned. If as a result of any test, any meter is found to register in excess of 2% either above or below normal, then, solely for purposes of this contract, the readings of such meter previously taken for billing purposes must be corrected according to the percentage of inaccuracy found, but no such correction shall extend beyond 90 days prior to the day on which an inaccuracy is discovered by such test.

- (c) For any period that a meter is found to have failed to register, then solely for purposes of this contract, the parties agree to assume that the demand established, or electric energy delivered, as the case may be, during meter failure period is the same as that for a period of similar conditions, as determined by FMPA, during which the meter(s) was(were) in service and operating.

7.3 Data Acquisition Equipment.

- (a) Real time data acquisition equipment required for FMPA to provide service to the City pursuant to the terms and conditions of this contract shall be determined by PEF and FMPA, in their sole discretion, as deemed necessary for reliability, security, economics, and necessary or desirable monitoring of system operations. Telemetry and data requirements include loads, line flows, voltages, and breaker status at the Meter Points. FMPA shall invoice the City for and the City shall pay all data acquisition equipment costs (including one-time and monthly costs for communication facilities necessary to provide telemetry and data to FMPA) in addition to the monthly Capacity Charge, the monthly Non-Fuel Energy Charge, the monthly Fuel Charge, and the Transmission Fee.
- (b) All data acquisition equipment, wires, and other electrical equipment or systems furnished or installed by PEF or the City pursuant to this contract will remain the property of PEF or the City, respectively. The City agrees that FMPA shall have no liability whatsoever for data acquisition equipment, wires, and other electrical equipment or systems owned by the City or PEF.

7.4 **Applicability.** The provisions of this article 7 apply only with respect to metering and data acquisition equipment under this contract and have no application with respect to any network operating agreement entered into by FMPA under the OATT.

Article 8 SEPA COST IMPACTS

8.1 **Change in the SEPA Contract.** The City and FMPA agree that changes in the City's rights or obligations with regard to its agreement with SEPA (each a "SEPA Change") could increase FMPA's costs of providing capacity and energy to the City pursuant to this contract. The City shall provide FMPA with copies of all SEPA and PEF invoices (related to SEPA) as

requested by FMPA. The City shall further notify FMPA of all SEPA Changes before such changes are effective, if possible, but in no event later than five days after the effectiveness of a SEPA Change. In the event that FMPA determines that any such change will result in increased costs for FMPA to meet its obligations under this contract, FMPA shall notify the City in writing of the resulting increased costs. Such notice of increased costs must include reasonable documentation supporting FMPA's determination. If FMPA cannot determine the actual increased costs, FMPA's notice must include a reasonable estimate of such increased costs.

8.2 Invoicing.

- (a) For SEPA Changes that are (1) not discussed between the parties reasonably in advance of their effectiveness as contemplated in section 8.2(b) (Invoicing), or (2) not subject to the consent or agreement of the City (*i.e.*, are made binding on the City without the necessity of the City's consent or agreement), FMPA shall be entitled to recover all its increased costs due to such SEPA Changes. In the first monthly invoice following the issuance of a notice by FMPA pursuant to section 8.1 (Change in the SEPA Contract), and thereafter, FMPA shall be entitled to add its increased costs to the monthly City invoice, which must be shown in a separate line item, except that FMPA shall recover no more than its actual increased costs. In the event that FMPA's increased costs are estimated by FMPA, FMPA shall include a true-up amount in a subsequent monthly invoice (either a credit or an additional charge, as appropriate), with interest on any credit or additional charge calculated at the Interest Rate, to reflect the actual increased costs once they are known by FMPA.
- (b) The City shall discuss with FMPA all SEPA Changes that are being considered by the City at anytime during the Term of this contract, before agreeing or consenting to any such SEPA Change, if permitted. For SEPA changes that are discussed with FMPA pursuant to this section 8.2(b) (Invoicing), FMPA shall be entitled to recover its increased costs due to such SEPA Changes to the extent agreed upon with the City, except that FMPA shall be entitled to recover all its increased costs due to such SEPA Changes if FMPA communicates to the City that it will incur increased costs, or that it believes it will incur increased costs, due to such a SEPA Change, and the City agrees or consents to such SEPA Change after that communication, despite the City and FMPA having not yet reached agreement on the extent to which FMPA may recover its increased costs. In the first monthly invoice following the City's agreement or consent to a SEPA Change as provided for in this section 8.2(b) (Invoicing), and thereafter, FMPA shall be entitled to add its agreed increased costs, or all increased costs pursuant to this section 8.2(b) (Invoicing), to the monthly City invoice, which must be shown in a separate line item, except that FMPA shall recover no more than its actual increased costs. In the event that FMPA's increased costs are estimated by FMPA,

FMPA shall include a true-up amount in a subsequent monthly invoice (either a credit or an additional charge, as appropriate), with interest on any credit or additional charge calculated at the Interest Rate, to reflect the actual increased costs once they are known by FMPA.

- 8.3 **Termination Rights.** In the event sections 8.1 (Change in the SEPA Contract) and 8.2 (Invoicing), or any material part of such provisions, are held by a court or administrative agency of competent jurisdiction to be unenforceable or otherwise contrary to Law, FMPA shall have the right to terminate this contract in its sole discretion upon 60 Days Notice to the City without any penalty or further obligation to the City.

Article 9
CHANGE IN LAW AND REGULATORY RIGHTS

9.1 **Change in Law.**

- (a) The parties acknowledge that changes in a Law could increase FMPA's costs of providing capacity or energy, or both, to the City under this contract ("**Change in Law**"). As such, the parties hereby agree that a "Change in Law" includes (1) the enactment, adoption, promulgation, implementation, or issuance of, or a new or changed interpretation of any tariff, or binding instrument having a direct impact on the City, any Law, or other statute, regulation, permit, license, judgment, order, or approval by a Governmental Authority that takes effect after the Effective Date; (2) any revision to CAIR or CAMR and any repromulgation or reissuance of such rules in response to a petition for reconsideration or litigation challenging such rules, regardless of the date on which those requirements are imposed. In addition to other charges that are the responsibility of the City under this contract, the City shall pay all increased bulk power costs to FMPA, associated with FMPA's performance under this contract, which may include both capital and variable costs, through an additional payment each month (the "**Change in Law Recovery Charge**").
- (b) If FMPA determines that a Change in Law will result in or has resulted in increased bulk power costs to FMPA to provide capacity and energy to the City under this contract, FMPA shall notify the City of (1) the Change in Law giving rise to the increased costs; (2) the resulting increased costs; and (3) the effective date or anticipated effective date of the increased bulk power costs (the "**Change in Law Notice**"). The Change in Law Notice must include reasonable documentation of the applicable Change in Law and the resulting increased costs. If FMPA does not know the actual increased costs, the Change in Law Notice must include a reasonable estimate of such increased costs.

(c) Within 60 Days after receipt of the Change in Law Notice, the City shall provide FMPA with a good faith, written determination that it either accepts or questions or disputes (1) whether the increased costs result from a Change in Law as specified in this contract and (2) whether the increased costs have been determined by FMPA in accordance with the terms of this contract. In the event the City does not provide written Notice of its determinations within such time period, FMPA shall deem the City to have agreed with the Change in Law Notice and to have agreed to pay the Change in Law Recovery Charge. If the City provides FMPA a timely written Notice that it disagrees with the Change in Law Notice, the parties shall commence discussions in an effort to address and resolve the basis for the City's disagreement.

9.2 **Change in Law Invoicing.** Notwithstanding the existence of a disagreement between the parties regarding a Change in Law Notice, FMPA may initiate a Change in Law Recovery Charge (or, if applicable, an increase in the Change in Law Recovery Charge) in the first monthly invoice following the effective date of the increased bulk power costs, except that FMPA shall recover no more than the City's appropriate pro rata share of such costs as compared to FMPA's other Firm Full-Requirements Customers. In the event that the Change in Law Recovery Charge is based on an estimate of increase costs, FMPA shall include a true-up amount in a subsequent monthly invoice (either a credit or an additional charge, as appropriate), with interest on any credit or additional charge calculated at the Interest Rate, to reflect the actual increased costs once they are known by FMPA.

9.3 **Termination if Invalid.** In the event sections 9.1 (Change in Law) and 9.2 (Change in Law Invoicing), or any material part of such provisions, are held by a court or administrative agency of competent jurisdiction to be unenforceable or otherwise contrary to Law, FMPA shall have the right to terminate this contract in its sole discretion upon six months notice to the City without any penalty or further obligation to the City.

Article 10

INDEMNIFICATION; TITLE; COSTS AND EXPENSES

10.1 **Indemnification.** The following provisions shall apply with respect to energy deemed delivered under this contract to the City:

(a) FMPA shall defend, indemnify and save the City and its respective agents and employees harmless from and against any and all Claims arising out of, resulting from, or in any way connected with the generation, transmission, or delivery of such energy and associated capacity prior to the Delivery Point(s), except to the extent the Claims are caused or contributed to by the negligence or willful misconduct of a contractor, agent, official, employee, or any other Person acting under the direction or control, or both, of the City, subject to the limited waiver

of sovereign immunity recovery limits provided for in section 768.28(5), Florida Statutes.

- (b) The City shall defend, indemnify and save FMPA, its officers, directors, agents, employees and members harmless from and against any and all Claims arising out of, resulting from, or in any way connected with the generation, transmission, or use of such energy and associated capacity at and after the Delivery Point(s), except, in each case, to the extent the same is caused by the negligence or willful misconduct of an officer, director, agent or employee of FMPA, subject to the limited waiver of sovereign immunity recovery limits provided for in section 768.28(5), Florida Statutes.
- (c) The rights, obligations and protections afforded by this section 10.1 (Indemnification) shall survive the termination, expiration or cancellation of this contract, and shall apply to the fullest extent permitted by law.
- (d) A party that becomes entitled to indemnification under this contract (the "**Indemnified Party**") shall promptly notify the party required to indemnify such Indemnified Party ("**Indemnifying Party**") of any Claims or proceeding in respect of which it is to be indemnified. Such notice must be given as soon as reasonably practicable after the Indemnified Party becomes aware of such Claims or proceeding. Failure to give such notice does not excuse an indemnification obligation except to the extent a failure to provide notice adversely affects the Indemnifying Party's interests. The Indemnifying Party shall assume the defense of the Indemnified Party with counsel designated by the Indemnifying Party, except that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel. The Indemnified Party shall be responsible for the expenses associated with such separate counsel, unless a liability insurer pays the expenses of such separate counsel. If the Indemnifying Party fails to assume the defense of any Claim, the indemnification of which is required under this contract, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such Claim; provided, however, that settlement or full payment of any such Claim may be made only with the Indemnifying Party's consent or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

10.2 Fees, Charges, and Taxes.

- (a) Except as otherwise provided in this contract, all fees, charges and taxes associated with energy delivered to the City at and after the Delivery Point(s) shall be the sole responsibility of the City. Except as otherwise provided in this contract (*i.e.*, those provisions that require the City to reimburse FMPA for certain fees, charges and taxes, such as Increased Costs), all fees, charges and taxes associated with energy delivered to the City prior to the Delivery Point(s) shall be the sole responsibility of FMPA.
- (b) The City represents and warrants that all capacity and energy purchased from FMPA under this contract is for its own use and the resale to its retail customers. The City shall as of the Effective Date provide to FMPA a valid sale for resale certificate, as required by the Florida Department of Revenue rules and regulations, to evidence the sale for resale nature of this transaction. If the City fails to provide such a sale for resale certificate or otherwise causes FMPA to incur any tax liability as a result of the City's act or omission, the City agrees to reimburse FMPA for all costs and charges it incurs as a result of such act or omission of the City.

10.3 **Title.** Title to energy delivered hereunder shall pass from FMPA to the City at the Delivery Point, and, for purposes of this contract, the City shall be deemed to be in exclusive possession and control of such energy at and after the Delivery Point.

Article 11 FORCE MAJEURE

11.1 **Force Majeure Event.**

- (a) For the purposes of this contract, a "**Force Majeure Event**" means any occurrence, nonoccurrence or set of circumstances, whether or not foreseeable, affecting a party, but that is beyond the reasonable control of such party and is not caused by such party's negligence or lack of due diligence, including any strike, stoppage in labor, failure of contractors or suppliers of materials or services, flood, ice, earthquake, storm or eruption; fire; explosion; invasion, riot, war, commotion or insurrection; sabotage, terrorism or vandalism; military or usurped power; act of God or of a public enemy; or Transmission Force Majeure Event. The term "Force Majeure Event" does not include: (1) a change or circumstance in market conditions that affects the value of this contract for either party; (2) difficulty or inability to make payments for any reason; (3) City's inability to use or a lack of need for the capacity and energy purchased under this Contract; or (4) City's inability, to any extent, to recover in its customer rates the amounts to be paid under this contract for any reason, including due to action or inaction of any Governmental Authority.

- (b) Subject to clauses (1), (2), and (3) of section 11.2 (Notice and Remedy of Force Majeure Events), either party may be excused from performance (other than payment obligations) and shall not be construed to be in breach or default in respect of any obligation under this contract for so long as the affected party is rendered unable to perform such obligation and has suspended its performance under this contract due to a Force Majeure Event.
- (c) Subject to section 11.1(d) (Force Majeure Event), during the suspension of performance due to or resulting from a Force Majeure Event, the City shall not be relieved from the obligation to make and be responsible for monthly Capacity Charge, monthly Non-Fuel Energy Charge, monthly Fuel Charge, and the Transmission Fee.
- (d) In the event that FMPA suspends performance under this contract for a period greater than 90 consecutive Days due to a Force Majeure Event directly affecting FMPA's generation resources prior to the Delivery Point(s), the monthly Capacity Charge applicable to capacity provided after such 90 Day period shall be reduced on a pro rata basis to reflect the amount of capacity FMPA does not provide after such 90 Day period as a result of the Force Majeure Event.

11.2 Notice and Remedy of Force Majeure Events. Following the occurrence of a Force Majeure Event, the affected party shall:

- (1) give the other party oral or written notice of the Force Majeure Event, followed by written notice if the first notice is not written, as promptly as practicable after the affected party becomes aware of the Force Majeure Event, describing the particulars of such Force Majeure Event;
- (2) use its reasonable efforts consistent with Prudent Utility Practice to remedy its inability to perform as soon as practicable, except that this provision does not require the settlement of any strike, walkout, lockout or other labor dispute on terms which in the sole judgment of the party involved in the dispute, are contrary to its interest, it being understood and agreed by the parties that the settlement of strikes, lockouts or other labor disputes is entirely within the discretion of the party having the difficulty; and
- (3) provide the other party with prior written notice when it is able to resume performance of its obligations under this contract.

11.3 Suspension of Performance. A party's suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by such

Force Majeure Event. No Force Majeure Event shall extend this contract beyond its stated Term.

Article 12
EVENTS OF DEFAULT AND TERMINATION

- 12.1 **Events of Default.** “**Event of Default**” means the occurrence of any of the following events with respect to a party (the “**Defaulting Party**,” and the other party not in default being the “**Non-Defaulting Party**”):
- (1) the failure by the Defaulting Party to make, when due, payment of any amount required under this contract if such failure is not remedied within five Business Days after written notice of such failure is given to the Defaulting Party by the Non-Defaulting Party;
 - (2) any representation or warranty of the Defaulting Party pursuant to this contract shall prove to have been false or misleading in any material respect when made or deemed made and have been known by the Defaulting Party to have been so at the time made or deemed made unless (A) the fact, circumstances or condition that is the subject of such representation or warranty is made true within 30 Days after notice thereof has been given to the Defaulting Party and (B) such cure removes any adverse effect on the Non-Defaulting Party of such fact, circumstance or condition being otherwise than as first represented;
 - (3) the Defaulting Party or its Guarantor, if any:
 - (A) makes a general assignment or arrangement for the benefit of its creditors;
 - (B) (i) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or (ii) has such petition filed or proceeding commenced against it and, in the case of a petition filed or proceeding commenced against it, such petition or proceeding results in a judgment of insolvency or bankruptcy or the entry of any order for relief or the making of an order for the winding-up or liquidation of such entity, or is not dismissed, discharged, stayed or restrained within five Business Days of the filing or commencement thereof;
 - (C) otherwise becomes bankrupt or insolvent;

- (D) fails or is unable or admits in writing its inability generally to pay its debts as they become due;
 - (E) is dissolved (other than pursuant to a consolidation, acquisition, amalgamation or merger);
 - (F) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, acquisition, amalgamation or merger);
 - (G) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for all or substantially all of its utility assets;
 - (H) has a secured party take possession of all or substantially all of its utility assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its utility assets and subject secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 Days thereafter;
 - (I) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (3)(A) through (3)(H) (inclusive);
 - (J) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or
 - (K) merges with any other party and the surviving entity does not assume the Defaulting Party's or its Guarantor's obligations with respect to this contract;
- (4) the material failure by the Defaulting Party to perform or observe any material obligation or covenant set forth in this contract (other than obligations which are otherwise specifically covered in this section 12.1 (Events of Default) as a separate Event of Default), and such failure is not cured within 30 Days after written notice of such default is given to the Defaulting Party; or

- (5) the failure of the Defaulting Party to provide information requested of it under this contract and such failure is not cured within ten days if such failure causes the Non-Defaulting Period to suffer some disadvantage or additional cost.

12.2 **Notification of Default.** In the event a party becomes aware of any event or circumstance that constitutes an Event of Default, such party shall promptly notify the other party.

12.3 **Event of Default by FMPA.**

- (a) Upon and after the occurrence of an Event of Default by FMPA that constitutes a failure of FMPA to materially meet its obligation under this contract to deliver capacity and energy, so long as such Event of Default is continuing, the City shall be entitled to suspend the performance of its obligations to FMPA under this contract. In addition to such suspension, City's sole and exclusive remedy (whether arising in contract, tort or otherwise) with respect to an Event of Default by FMPA shall be to terminate this contract and collect the City Liquidated Damages pursuant to this section 12.3 (Event of Default by FMPA).
- (b) If an Event of Default by FMPA, that constitutes a failure of FMPA to materially meet its obligation under this contract to deliver capacity and energy, has occurred and is continuing, the City shall have the right (in its sole discretion) by notice to FMPA to designate a Business Day that is no less than 120 Days from the date of such notice as the "**City Termination Date.**" On the City Termination Date, (1) FMPA shall pay to City the City Liquidated Damages; and (2) this contract terminates and neither party shall have any further liability or obligation to one another under this contract, except for any obligations and liabilities occurring prior to termination and FMPA's obligation to pay the amounts under this subsection (b).
- (c) As used in this section 12.3 (Event of Default by FMPA), "**City Liquidated Damages**" means \$100,000 per month for the lesser of: (1) 24 months, or (2) the months remaining in the Service Term.

12.4 **Event of Default by the City.**

- (a) Upon and after the occurrence of an Event of Default by the City, so long as such Event of Default is continuing, FMPA shall be entitled to suspend the performance of its obligations to the City under this contract including supplying capacity and energy to the City. In addition to such suspension, FMPA's sole and exclusive remedy (whether arising in contract, tort or otherwise) with respect to an Event

of Default by the City shall be to terminate this contract and collect FMPA Liquidated Damages pursuant to section 12.4(c) (Event of Default by the City).

- (b) Notwithstanding any other provision to the contrary, upon the occurrence of an Event of Default by the City for payment described in clause (1) of section 12.1 (Events of Default) that is not cured within 30 Days, FMPA shall have the right to terminate this contract and cease performing its obligations under this contract, including supplying capacity and energy to the City, after not less than 15 Days prior notice to the City. Upon a termination of this contract pursuant to this section 12.4(b), the City shall immediately pay to FMPA the FMPA Liquidated Damages which, if not paid immediately by the City, are subject to interest at the Interest Rate compounded daily on all outstanding amounts until paid in full.
- (c) Except as provided in section 12.4 (b) (Event of Default by the City), if an Event of Default by the City has occurred and is continuing, FMPA shall have the right (in its sole discretion) by notice to the City to designate a Business Day that is no less than 90 Days from the date of such notice as the “**FMPA Termination Date.**” On the FMPA Termination Date, (1) the City shall pay to FMPA the FMPA Liquidated Damages; and (2) this contract terminates and neither party shall have any further liability or obligation to one another under this contract, except for any obligations and liabilities accruing prior to termination and the City’s obligation to pay the amounts under this Section 12.4 (Event of Default by the City).
- (d) As used in this section 12.4 (Event of Default by the City), “**FMPA Liquidated Damages**” means \$150,000 per month for the lesser of: (1) 24 months, or (2) the months remaining in the Service Term.

12.5 **Exclusive Remedy.** The exercise by either party of its rights under sections 12.3 (Event of Default by FMPA) or 12.4 (Event of Default by the City), as applicable, unless otherwise provided expressly in this contract, are the sole and exclusive remedies of the respective parties for an Event of Default by or attributable to the Defaulting Party. The parties acknowledge and agree that in the event of an Event of Default, all or a portion of the amount of damages arising from the Event of Default are not susceptible to an accurate determination. The parties further acknowledge and agree that the liquidated damages set forth above are not intended as a penalty and represent a fair and reasonable approximation of all or a portion of the damages the Non-Defaulting Party may incur in each particular case.

Article 13 CREDITWORTHINESS AND SECURITY

13.1 **Credit Assurance.**

- (a) The parties shall at all times each maintain Acceptable Creditworthiness or shall provide Performance Assurance to the Non-Affected Party. To maintain “Acceptable Creditworthiness,” the parties shall not be in default of any payment obligations set out in this contract and the parties shall each maintain an Acceptable Rating.
- (b) As used in this contract “Performance Assurance” means one of the following:
 - (1) as to either party, Eligible Collateral equal to the amount that FMPA reasonably estimates that the City would owe to FMPA for the three months of the calendar year in which the City’s bills are expected to be the highest; or
 - (2) as to the City, advance payment for each month’s service based on FMPA’s reasonable estimate of the amount that the Customer will owe for that month, paid not less than five days prior to the beginning of the month, and trued up at the time of the second succeeding month’s advance payment to reflect the actual amount the City owes. FMPA shall pay interest on any prepayments made pursuant to this section 13.1(b) (Credit Assurance) at the rate calculated by FMPA equal to what it actually earned on any such prepayment.

13.2 Maintaining Acceptable Creditworthiness.

- (a) If a party that originally demonstrates Acceptable Creditworthiness subsequently fails to maintain Acceptable Creditworthiness, as determined by the Non-Affected Party, the Non-Affected Party shall notify the Affected Party within five Business Days of the date on which it no longer meets the Acceptable Creditworthiness standards and shall request it to provide Performance Assurance to the Non-Affected Party within 15 Business Days of the date on which it ceased to maintain Acceptable Creditworthiness.
- (b) If an Affected Party fails to provide Performance Assurance as set out in section 13.2(a) (Maintaining Acceptable Creditworthiness), then:
 - (1) in the event that the City is the Affected Party, FMPA may suspend service to the City, provided that FMPA notifies the City in writing of its intent to suspend service at least 30 Days prior to the date on which service is to be suspended to give the City time to correct the deficiency (the “Cure Period”). FMPA’s right to suspend service under this section 13.2 (Maintaining Acceptable Creditworthiness) is in addition to its right to take action for default pursuant to article 12 (Events of Default and Termination);

- (2) in the event that FMPA is the Affected Party, the City may terminate this contract, provided that the City notifies FMPA in writing of its intent to terminate service at least 30 Days prior to the date on which termination is to occur, which shall be for FMPA a Cure Period. The City's right to terminate service under this section 13.2 (Maintaining Acceptable Creditworthiness) is in addition to its right to take action for default pursuant to article 12 (Events of Default and Termination).
 - (c) If a party that has previously been deemed to not exhibit Acceptable Creditworthiness is subsequently upgraded or otherwise achieves Acceptable Creditworthiness pursuant to section 13.1 (Credit Assurance), then the Non-Affected Party shall notify the Affected Party within five Business Days of the date that it shall return any Performance Assurance being held by the Non-Affected Party within 30 Business Days of the date on which it gained Acceptable Creditworthiness.
- 13.3 **Compliance.** FMPA and the City shall furnish or cause to be furnished to each other within 45 Days of the end of each fiscal year after the Effective Date, for as long as this contract is in effect, or as either party may so request, such financial information, statements and certificates as such party reasonably requests to ascertain whether the other party has or does not have an Acceptable Rating. In addition, each party shall immediately provide to the other party all information, after it is available, regarding any change or potential change in its credit ratings, whether negative or positive, including being placed on negative watch.
- 13.4 **Revenue Covenant.**
- (a) The City covenants and agrees, to the extent permitted by Florida law, to (1) maintain the Utility System in good repair and operating condition; (2) cooperate with FMPA in the performance of the respective obligations of the City and FMPA under this contract; and (3) to otherwise collect sufficient revenue by whatever means it deems desirable to meet its payment obligations under this contract.
 - (b) The City further covenants and agrees, to the extent permitted by Florida law, that it will establish, maintain, and collect rents, rates, fees, and charges for the goods and services provided by the Utility System, or otherwise collect sufficient revenue by whatever means it deems desirable, to produce revenues at least sufficient to enable the City to pay all expenses incurred in the operation and maintenance of the Utility System (including the obligations under this contract), to pay the debt service requirements on any bonds, notes, or other evidences of indebtedness, whether now outstanding or incurred in

the future, secured by such revenues and issued to finance improvements to the Utility System and to make other payments required by the laws of the State of Florida.

- (c) Notwithstanding subsections (a) and (b), nothing in this contract requires the City to (1) impose *ad valorem* taxes or to increase its *ad valorem* tax rates, nor (2) to impose an increase in retail electric monthly rates or minimum charges.
- (d) The City's failure to comply with this section 13.4 (Revenue Covenant) constitutes an Event of Default by the City.

Article 14 REPRESENTATIONS AND WARRANTIES

14.1 Execution.

- (a) The City represents and warrants to FMPA as of the Effective Date that: (1) City has all the necessary municipal and legal power and authority and has been duly authorized by all necessary municipal or other actions to enable it to lawfully execute, deliver and perform under this contract; and (2) the City is a valid legal entity duly organized and validly existing in good standing under the laws of the State of Florida and is, to the extent required, qualified to do business in the State of Florida.
- (b) FMPA represents and warrants to the City as of the Effective Date that: (1) FMPA has all necessary legal power and authority and has been duly authorized by all necessary action to enable it to lawfully execute, deliver and perform under this contract; and (2) FMPA is a valid legal entity duly organized and validly existing in good standing under the laws of the State of Florida and is, to the extent required, qualified to do business in the State of Florida.

14.2 **Binding Obligations.** Both parties represent and warrant to the other party that as of the Effective Date this contract is the valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting enforcement generally, and by equitable principles regardless of whether such principals are considered in a proceeding at law or in equity.

14.3 **Execution and Consummation.** Both parties represent and warrant to the other party that as of the Effective Date the execution and delivery of this contract, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this contract do not and will not conflict with any of the terms, conditions or provisions of its organizational documents or any law applicable to it

or result in a breach or default under any evidence of its indebtedness or any other agreement or instrument to which it is a party or by which it or any of its property is bound which has a reasonable likelihood of materially and adversely affecting the consummation of the transactions contemplated hereby or the performance by the party of any of its obligations under this contract.

14.4 **Actions and Proceedings.** Both parties represent and warrant to the other that as of the Effective Date there is no pending or, to the knowledge of such party, threatened action or proceeding affecting such party before any Governmental Authority that has a reasonable likelihood of materially adversely affecting or reasonably threatening the ability of such party to perform its obligations under this contract or the validity or enforceability of this contract against it and that there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

14.5 **Absence of Certain Events.** Both parties represent and warrant to the other party that as of the Effective Date no Event of Default attributable to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this contract.

Article 15 CONFIDENTIALITY

15.1 **Confidential Information.** “**Confidential Information**” means proprietary confidential business information received by a party in connection with this contract, and which has been designated by the disclosing party as proprietary confidential business information or which has been designated as confidential or secret by a court of competent jurisdiction, including trade secrets; internal auditing controls and reports of internal auditors; security measures, systems, or procedures; information concerning bids or other contractual data (including the pricing and other terms and conditions of this contract), the disclosure of which would impair efforts of a party to contract for services on favorable terms; employee personnel information unrelated to compensation, duties, qualifications, or responsibilities; and formulas, patterns, devices, combinations of devices, contract costs, or other information the disclosure of which would injure the affected party in the marketplace.

15.2 **Disclosure of Confidential Information.**

- (a) Each party agrees that during the Term of this contract and for a period of two years from the date of termination of this contract it will not, without the written consent of the other party or as otherwise provided for in this article 15 (Confidentiality), disclose the Confidential Information of another party to any other person, except that each party is entitled to disclose Confidential Information to its agents, employees, officers, directors, representatives,

contractors, advisors, lenders, accountants, rating agencies, underwriters, consultants, and advisors who need to know such information in connection with the performance of their duties or services for such party or in connection with the analysis, issuance or rating of any debt or financial activities of such party ("**Confidential Advisors**") and that both parties agree to use reasonable efforts to cause their respective Confidential Advisors to maintain the confidentiality of Confidential Information and each party shall be responsible for any use or disclosure by its Confidential Advisors inconsistent with this article 15 (Confidentiality).

- (b) To the extent either party is required to provide Confidential Information in this contract to any Governmental Authority, other than the parties, the disclosing party shall seek confidential treatment of such Confidential Information, if available, and the other party shall provide reasonable cooperation in connection with such request for confidential treatment.
- (c) Nothing in this section 15.2 (Disclosure of Confidential Information) prohibits or otherwise limits the use or disclosure of Confidential Information if such Confidential Information: (1) was previously known to the disclosing or using party unrelated to this contract without an obligation of confidentiality; (2) was developed by or for the disclosing or using party unrelated to this contract using non-confidential information; (3) was acquired by the disclosing or using party from a third party which is not, to the disclosing or using party's knowledge, under an obligation of confidence with respect to such information; (4) is or becomes publicly available other than through a manner inconsistent with this section 15.2 (Disclosure of Confidential Information); or (5) is provided or made available for inspection by any party under public records or public disclosure laws but only to the extent required to be so provided or made available.

15.3 Required Disclosure. Notwithstanding anything in this article 15 (Confidentiality) to the contrary, a party may disclose Confidential Information if necessary to comply, in the opinion of legal counsel for the party, with any applicable law (including, without limitation, the Florida Public Records Law, Chapter 119, Florida Statutes), public records request, order, regulation, ruling, subpoena or order of a governmental authority or tribunal with competent jurisdiction. In the event that a party is so requested or required to disclose any Confidential Information, such party shall promptly notify the other party of such request or requirement prior to disclosure, if reasonably possible, so that the other party may, if it so elects, seek an appropriate protective order or other designation of such Confidential Information as containing trade secrets or other commercially sensitive information or otherwise seek to contest, limit or protect the confidentiality of any such requested or required disclosure. All costs of seeking any protective order or other designation and for contesting, limiting, or protecting the disclosure of Confidential Information in response to a valid request or demand shall be borne and paid in full by

the disclosing party. With respect to any disclosure made by a party pursuant to this section 15.3 (Required Disclosure), such party agrees to furnish only that portion of the Confidential information that it reasonably determines, in consultation with its legal 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. Each party shall provide reasonable cooperation with the other party and its legal counsel with respect to performance of the covenants undertaken pursuant to this article 15 (Confidentiality).

15.4 **Remedies.** A breach of the confidentiality obligations of this contract by either party or any of the Confidential Advisors of either party shall be deemed a breach of this article 15 (Confidentiality) by such party. As a result, the affected party shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, these confidentiality obligations except that all monetary damages shall be limited to actual direct damages, and a breach of the confidentiality obligations of Section 15.2 (Disclosure of Confidential Information), notwithstanding anything to the contrary in this contract, shall not give rise to a right to suspend or terminate any ongoing transaction under this contract nor result in an Event of Default.

15.5 **Return of Confidential Information.** Except as otherwise required by Law, upon the request of the party who has disclosed Confidential Information, the receiving party shall return or destroy all written Confidential Information (including written confirmation of oral communications) provided by the disclosing party which was indicated to be "CONFIDENTIAL PROPRIETARY BUSINESS INFORMATION" and shall not retain any copies of such written Confidential Information. In the event of such request (but except as required otherwise by Law), all copies, documents, analyses, compilations, studies or other materials prepared by the returning party or its representatives that contain or reflect Confidential Information shall be destroyed and no copy thereof shall be retained (such destruction to be confirmed in writing by a duly authorized officer of the returning party). Notwithstanding the foregoing provisions of this section 15.4 (Return of Confidential Information), the parties agree that neither party shall be required to return or destroy such party's execution copy of this contract and each party may keep, for legal purposes, on record copy of all Confidential Information.

Article 16 DISPUTE RESOLUTION

16.1 **Negotiated Resolution.**

- (a) The parties expressly agree that they will first engage in good faith negotiations to resolve any dispute (including billing disputes) arising out of or related to this contract. Good faith negotiations include the following:

- (1) Any dispute will be first reviewed by representatives of the parties, of their choosing, who shall endeavor to define the issues underlying the dispute and prepare a mutually agreeable resolution within 30 days of a party's first communication with the other party of the dispute.
 - (2) If at anytime, the representative of either party is unwilling or unable to accept resolution as proposed by the other party, then the dispute, along with an explanation of the underlying issues, shall be presented to the general manager of FMPA and to the city manager of the City (collectively, the "Executives"). The Executives shall diligently work toward a mutually agreeable and timely resolution of the dispute.
- (b) If either party determines at anytime that further negotiations will be fruitless, or the Executives cannot agree on a resolution of a dispute, and that an impasse has been reached, then either party may declare the negotiations at an impasse. The party declaring the negotiations at an impasse must so notify the other party in writing:
- (1) stating with particularity the issues or points believed to be the basis of the impasse,
 - (2) providing a detailed explanation of that party's position on the issues in dispute, and
 - (3) stating with particularity what resolution of the issues would be agreeable to that party.
- (c) The party receiving the notice of an impasse must, within seven Business Days of receipt of such notice, issue a written response that:
- (1) provides a detailed explanation of the party's position on the issues in dispute, and
 - (2) states with particularity what resolution of the issues would be agreeable to the party.
- (d) If the negotiations between the parties are declared to be at an impasse, (1) the mayor and city manager of the City and (2) the FMPA Executive Committee chairperson and general manager (collectively, the "**Negotiating Representatives**") shall meet at FMPA's offices in Orlando, Florida, or other mutually agreeable location to discuss resolution of the dispute. At such meeting, the Negotiating Representatives shall:

- (1) consider the issues of the dispute as defined by their respective staffs;
- (2) seek a resolution of the dispute that is agreeable to both parties; and
- (3) as necessary, schedule additional meetings to continue to seek resolution of the dispute.

16.2 **Rights Not Limited.** The rights and remedies set forth in this contract are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently exist in law or in equity or by statute or otherwise. However, the parties expressly intend that all disputes arising out of or relating to this contract be resolved pursuant to the process set out in section 16.1 (Negotiated Resolution), to the extent possible or unless there is a need for equitable relief or a legal ruling that is not within the capability of the Negotiating Representatives to determine (*e.g.*, an issue of law where there are no material facts in dispute). If the parties are unable to resolve a dispute through the process set out in section 16.1 (Negotiated Resolution), either party may pursue any other available remedy at law or in equity.

16.3 **Costs and Expenses.** To the extent FMPA or the City prevails against the other party in a court action (including proceedings at all levels of trial and appellate courts) involving any dispute related to this contract, reasonable costs and expenses, including attorney fees and costs, and court costs and other expenses shall be paid by the losing party. Each party, to the extent permitted by law, hereby knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or relating to this contract and the transactions it contemplates. This waiver applies to any action or legal proceeding, whether sounding in contract, tort, or otherwise.

16.4 **Obligation to Mitigate.** Nothing in this contract is to be construed to limit either party's duty to mitigate damages to the extent required by law.

Article 17 GENERAL PROVISIONS

17.1 **Assignment.** It is understood and agreed that neither party may transfer, sell, mortgage, pledge, hypothecate, convey, designate, or otherwise assign this contract, or any interest in this contract or any rights or obligations under this contract, in whole or in part, either voluntarily or by operation of law, (including by merger, consolidation, or otherwise), without the express written consent of the other party (and any such attempt shall be void), which consent shall not be unreasonably conditioned, withheld or delayed. Subject to the foregoing, this contract shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

- 17.2 **No Third Party Beneficiaries.** This contract is solely for the benefit of FMPA and the City and no right nor any cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this contract. Nothing in this contract, expressed or implied, is intended or shall be construed to confer upon any person or corporation other than FMPA and the City, any right, remedy, or claim under or by reason of this contract; or any of the provisions or conditions of this contract; and all provisions, representations, covenants and conditions contained in this contract shall inure to the sole benefit of and be binding upon FMPA and the City and their respective representatives, successors, and permitted assigns.
- 17.3 **No Consequential Damages.** Notwithstanding any other provision of this contract, but subject to sections 12.3 (Event of Default by FMPA) and 12.4 (Event of Default by the City), the sole and exclusive remedy for any liability under this contract is limited to direct actual damages. Subject to sections 12.3 (Event of Default by FMPA) and 12.4 (Event of Default by the City), neither party shall be liable to the other party for any special, indirect, incidental, consequential, lost profits or other business interruption damages under, arising out of, due to, or in connection with its performance or nonperformance of this contract, whether based on contract, tort (including negligence), strict liability, warranty or otherwise. To the extent any damages required to be paid under this contract are liquidated, the parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.
- 17.4 **Disclaimer of Warranty.** Except as expressly provided in article 14 (Representations and Warranties) and as otherwise expressly set forth in this contract, there are no warranties under this contract, and each party hereby disclaims any and all express, implied or statutory warranties relating to the subject matter of this contract, including any and all warranties as to merchantability, fitness for a particular purpose, availability, accuracy, quality, quantity or otherwise.

- (2) If a notice is sent by facsimile, upon receipt by the party giving or making the notice of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the Addressee's facsimile number.
- (3) If the Addressee rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change of address for which no notice was given, then upon the rejection, refusal, or inability to deliver.
- (4) Despite the other clauses in this subsection (c), if any notice is received after 5:00 p.m. on a Business Day where the Addressee is located, or on a Day that is not a Business Day where the addressee is located, then the notice is deemed received at 9:00 a.m. on the next Business Day where the Addressee is located.

- 17.10 **Governing Law.** The validity and interpretation of this contract and the right and obligations of the parties under this contract shall be governed and construed in accordance with the laws of the State of Florida without regard for any conflicts of law provisions that might cause the law of other jurisdictions to apply.
- 17.11 **Venue.** All controversies, claims, or disputes arising out of or related to this contract or any agreement, instrument, or document contemplated hereby, shall be brought exclusively in the state or federal courts located in Leon County, Florida, as appropriate. The parties consent to and agree to submit to the personal jurisdiction of such courts. Each of the parties hereby waives, and agrees not to assert in any such controversy, claim, or dispute, to the fullest extent permitted by Applicable Laws or other legal restrictions on a party, any argument or claim that: (1) such party is not personally subject to the jurisdiction of such courts, (2) such party and such party's property is immune from any legal process issued by such courts, or (3) any litigation or other process commenced in such courts is brought in an inconvenient forum.
- 17.12 **Information Exchange.** The implementation and administration of this contract may require the City to provide certain information relating to the City's historical and projected loads, and any other necessary information as determined by the parties ("**City Information**"). FMPA may request, and if so requested, the City shall provide City Information to FMPA, FMPP, or Orlando Utilities Commission ("**OUC**"), as agent for FMPA. The City understands that FMPA, FMPP, and OUC will only use City Information for the limited purpose of implementing and administering this contract, and for no other purpose, and that such information will not be used or disseminated in any manner contrary to the confidentiality provisions of this contract.

- 17.13 **Severability.** Wherever possible, each provision of this contract is to be interpreted in such a manner as to be effective and valid under applicable law. Should any portion of this contract be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this contract. In the event any provision of this contract is held by any tribunal of competent jurisdiction to be contrary to applicable law, the remaining provisions of this contract shall remain in full force and effect.
- 17.14 **Survival of Obligations.** Upon the expiration or termination of the parties' sale, purchase, receipt, and delivery obligations under this contract, any monies, penalties, or other charges due and owing to FMPA or subsequently becoming due and owing (including the monthly Capacity Charge, the monthly Non-Fuel Energy Charge, the monthly Fuel Charge, the Transmission Fee, and other amounts due under this contract for the last month of the Service Term and the true-up amounts calculated under schedule C) are to be paid in accordance with the terms of this contract, any corrections or adjustments to payments previously made shall be determined, and any refunds due City made, as soon as practicable. To the extent necessary to enforce or resolve matters or claims under this contract, the provisions of articles 3 (Capacity and Energy and Other Payments), 5 (Billing and Payment), 9 (Change in Law; Environmental Provisions; Regulatory), 10 (Indemnification; Title; Costs and Expenses), 11 (Force Majeure), 12 (Events of Default and Termination), 13 (Creditworthiness and Security), and 16 (Dispute Resolution) and sections 17.2 (No Third Party Beneficiaries), 17.3 (No Consequential Damages), 17.4 (Disclaimer of Warranty), 17.5 (Waiver and Amendment), 17.6 (Entire Agreement), 17.7 (Good Faith Dealings), 17.8 (No Joint Venture), 17.10 (Governing Law), 17.11 (Venue), 17.14 (Survival of Obligations), 17.15 (Mobile-Sierra), 17.17 (All-Requirements Project Responsibility), 17.18 (No Construction Against Drafter), 17.19 (Drafting Conventions), and 17.20 (Counterparts), including the rights and obligations of the parties provided in those articles and sections, shall survive the termination or expiration of this contract and the performance by the parties of their obligations under this contract.
- 17.15 **Mobile-Sierra.** Absent the express agreement of both parties to any proposed change of rates provided by this contract, the standard of review for changes to any provision of this contract proposed by a party or a non-party shall be the "public interest" standard of review set forth in *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).
- 17.16 **Amendment.** No amendment to this contract is valid unless mutually agreed and signed by both parties.
- 17.17 **All-Requirements Project Responsibility.** For FMPA, this contract is a liability and obligation of the All-Requirements Power Supply Project only. No FMPA liability or obligation under this contract inures to or binds any of the funds, accounts, monies, property, instruments, or rights of the Florida Municipal Power Agency generally or any of any other "project" of FMPA as that term is defined in the Interlocal Agreement.

17.18 **No Construction Against Drafter.** This contract reflects the negotiated agreement of the parties. Accordingly, this contract is to be construed as if both parties jointly prepared it, and no presumption shall be made as to whether one party or the other prepared this contract for purposes of interpreting or construing any of the provisions of this contract or otherwise.

17.19 **Drafting Conventions.** The following drafting conventions are applicable to the reading of this contract:

- (1) the words "include," "includes," and "including" are to be read as if they were followed by the phrase "without limitation;"
- (2) the headings provided in this contract are for convenience only and do not affect its meaning;
- (3) any reference to a contract (including this contract), document, or instrument means such contract, document, or instrument as amended or modified and in effect from time to time in accordance with the terms of that contract, document, or instrument;
- (4) unless specified otherwise, any reference to a law, statute, or regulation means that law, statute, or regulation as amended or supplemented from time to time and any corresponding provisions of successor laws, statutes, or regulations;
- (5) the words "party" and "parties" refer only to a named party to this contract;
- (6) the definitions in this contract apply equally to both singular and plural forms of the terms defined;
- (7) unless specified otherwise, references in this contract to articles, sections, and schedules are references to articles, sections, and schedules of this contract; and
- (8) words and abbreviations not defined in this contract which have recognized technical, engineering, or electric utility industry meanings are used in this contract in accordance with such recognized meanings.

17.20 **Counterparts.** This contract may be executed in counterparts, each of which is deemed to be an original, but all of which together shall constitute one and the same instrument.

17.21 **Conditions Precedent.** The obligations of FMPA to sell and deliver, and the obligations of the City to purchase and receive, capacity and energy pursuant to the terms of this contract begin as of the commencement of the Service Term, but such obligations are subject to the fulfillment and satisfaction of each of the following conditions precedent, on or before the dates indicated, each of which may only be waived in writing by the parties:

- (1) no material adverse change in the electric generating facilities and resources, electric business, financial condition, results of operations or prospects of either FMPA or the City have occurred and are continuing or with the passage of time, the giving of notice, or both, are reasonably likely to occur which have a material adverse impact on the ability of affected party to perform its obligations under this contract;
- (2) no Claims, actions, suits, investigations, grievances, arbitrations, or other proceedings are pending nor threatened against FMPA or the City with respect to the transactions contemplated under this contract or the adverse outcome of which would have a material adverse impact on the ability of affected party to perform its obligations under this contract;
- (3) no new law is pending nor has been passed which would cause FMPA to become subject to the rate regulation or other increased regulation of the PSC, FERC, or another Governmental Authority by virtue of its obligations under this contract or increase the cost to FMPA of providing non-fuel capacity and energy to the City;
- (4) FMPA has secured the requisite firm network transmission service from PEF to perform its obligations under this contract no later than January 1, 2011, and the terms and conditions of such service are (A) reasonably acceptable to FMPA or (B) are established on a temporary basis under an un-executed PEF agreement and which are afterwards determined to be acceptable to FMPA; and
- (5) the City shall have caused the Line of Credit to be put in place by January 1, 2011, in a form acceptable to FMPA, and shall maintain the Line of Credit in full force and effect, in a minimum principal amount of not less than \$1,000,000, at all times throughout the Term of this contract.

Article 18
DEFINED TERMS

18.1 **Definitions.** In addition to the initially capitalized terms and phrases defined in this contract, the following capitalized terms used herein and not otherwise defined, whether singular or plural, shall have the following respective meanings:

“Acceptable Credit Bank” means a bank, the long term senior debt obligations of which are rated "A+" or better by S&P or "A1" or better by Moody's or whose obligations are guaranteed, insured or otherwise credit enhanced by a bank or financial institution the long term senior unsecured debt obligations of which are so rated.

“Acceptable Rating” means, (1) (A) an issuer rating (and senior unsecured rating if also available) of at or above Baa2 (or future equivalent) by Moody's, or (B) an issuer credit rating (and senior unsecured rating if also available) of at or above BBB (or future equivalent) by S&P; and (2) with respect only to the City, the Required Ratios.

“Affected Party” means a party that does not have Acceptable Creditworthiness.

“All-Requirements Contract” means the All-Requirements Power Supply Project Contract between FMPA and each of the Project Participants, as amended, in which FMPA has agreed among other things to sell and deliver to the Project Participants and the Project Participants have agreed among other things to purchase and receive from FMPA all of their wholesale power supply capacity and energy needs above certain excluded resources.

“Business Day” means any Day other than a Saturday, Sunday or any holiday on which the official offices of either of the parties are closed.

“CAIR” means the Clean Air Interstate Rule promulgated on May 12, 2005 (Fed Reg. 15,162), including any rules, regulations or other actions of any Governmental Authority(ies) to comply with or implement such rule.

“CAMR” means the Clean Air Mercury Rule promulgated on May 18, 2005 (70 Fed Reg. 28,606), including any rules, regulations or other actions of any Governmental Authority(ies) to comply with or implement such rule.

“Cash Security” means cash security, free and clear of any adverse lien or interest, pursuant to a pledge agreement in form and substance reasonably acceptable to the party(ies) to which such security is being provided.

“City’s System” means the integrated transmission or distribution systems, or both, of the City, as such system may be modified or expanded from time-to-time, as well as any successor transmission or distribution system(s), or both.

“Claims” means any and all claims, liabilities, actions, demands, judgments, losses, costs, expenses (including reasonable attorney’s fees and costs).

“Coverage Ratio” means, with respect to the City, the average of the ratio of the City’s annual total Utility System revenues minus operating and maintenance expenses for the relevant fiscal year to the City’s principal, interest and other payments paid, due or to become due on all debts, bonds, notes and borrowings related to the Utility System during the relevant fiscal year for the 2 of the 3 then most recently ended fiscal years in which such ratio is lowest.

“Day” means a calendar day; provided, however, for purposes of this contract, a Day shall begin and end at the applicable Operating Time.

“Delivered Energy” means, for a given hour, all energy (expressed in kWh) scheduled by FMPA to the City under this contract at the Delivery Point, which energy shall be determined from the forecasted load at the Meter Point(s), then reduced by multiplying the SEPA Adjustment Factor, and, then, increased for transmission and other losses from the Delivery Point to the Meter Point(s) (such transmission losses on the Transmission System to be determined pursuant to the then-current transmission tariff (or other arrangement governing transmission on the Transmission System) applicable to transmission service on the Transmission System, as amended from time to time).

“Delivery Point” means that point(s) of interface where FMPA has scheduled capacity and energy to be delivered to the Transmission System, including the Delivery Point location(s) provided in schedule A (Delivery Point).

“Eligible Collateral” means an Eligible Letter of Credit, an Eligible Guaranty, or Cash Security.

“Eligible Guaranty” means a continuing guaranty in form and substance reasonably acceptable to the receiving party issued by an entity who has and maintains an Acceptable Rating.

“Eligible Letter of Credit” means an irrevocable, unconditional standby letter of credit issued by an Acceptable Credit Bank to which FMPA is the beneficiary (1) having a stated expiration date of not earlier than three hundred sixty-four (364) Days (or such longer term as may be commercially available) after the date of the original issuance or any renewal thereof; (2) that automatically renews or permits FMPA, on the signature of an authorized representative, to draw on sight all or any portion of the stated amount if not

renewed on or prior to the 30th Day prior to stated expiration date; (3) that is payable or negotiable at an office of such Acceptable Credit Bank (or a correspondent bank thereof) in [New York City] or such other place as the parties may agree; (4) that is payable in U.S. dollars in immediately available funds; and (5) that is governed by the International Standby Practices 1998, and any amendments or revisions thereto, and, to the extent not governed thereby, the laws of the State of Florida or the State of New York; and (6) that is drawable upon issuance of a drawing certificate signed by an authorized representative of FMPA stating that FMPA is entitled to be paid under the Full Requirements Power Sales Contract between Florida Municipal Power Agency (All-Requirements Power Supply Project) and the City of Quincy, Florida.

“FERC” means the Federal Energy Regulatory Commission or any Governmental Authority succeeding to the powers and functions thereof under the Federal Power Act, 16 U.S.C. §§ 791a-828c.

“Federal Funds Target Rate” means the rate established as such from time to time by the Federal Open Market Committee of the Federal Reserve System.

“Firm Full-Requirements Member” means each Project Participant on whose behalf FMPA, pursuant to the All-Requirements Contract, has undertaken the obligation to construct and operate the System to reliably meet the electric loads of such Project Participants, plus all other electric utilities, if any, that FMPA has agreed by contract to serve at the same priority as the Project Participants.

“FMPP” means the contractual arrangement among FMPA, the City of Lakeland, Florida, and OUC pursuant to the Florida Municipal Power Pool Agreement, dated May 27, 1998, as amended and supplemented, to pool the generation resources of the three participating utilities to serve their combined electric load on an economic basis.

“FMPP Control Area” means the combined electric systems of FMPP bounded by interconnection (tie line) metering and telemetry that directly controls FMPP generation resources to continuously balance its actual interchange and scheduled interchange.

“FRCC” means the Florida Reliability Coordinating Council serving in its role as the regional entity, with delegated authority from NERC, for the purpose of proposing and enforcing reliability standards within the FRCC region.

“Governmental Authority” means any federal, state, local, territorial or municipal government and any department, commission, board, court, bureau, agency, instrumentality, judicial or administrative body thereof and includes, FERC, NERC, and FRCC.

“Guarantor” means, with respect to a party, an entity that guarantees such party's obligations under this contract, including through an Eligible Guaranty.

“Interest Rate” means a 10.9% annual percentage rate, calculated at the periodic rate of 0.029863% per Day.

“kW” means kilowatt (or 1,000 watts).

“kWh” means kilowatt hour.

“Law” means any act; statute; law; requirement; ordinance; order; ruling or rule; regulation; standards or criteria, or both, contained in any permit, license or other approval; legislative or administrative action; or a decree, judgment or order of any Governmental Authority imposed, whether in effect now or at any time in the future.

“Meter Point” means each of the points of interconnection between the City's System and the Transmission System as set forth in schedule B.

“Moody's” means Moody's Investors Service or its successor, provided that, if Moody's ceases to exist or publish ratings, Moody's shall mean a nationally recognized rating agency mutually agreed upon by the parties, which agreement will not be unreasonably withheld or delayed.

“NERC” means the North American Electric Reliability Council, including the regional reliability organization(s) to which FMPA is subject, and any successor organization(s).

“Non-Affected Party” means a party that has Acceptable Creditworthiness, but the other party is an Affected Party.

“OATT” means the PEF Open Access Transmission Tariff governing transmission service on the Transmission System, as such tariff is filed at FERC and as such tariff may be revised or amended from time to time.

“Off-Peak Period” means (1) from 12:00 a.m. to 6:00 a.m. and (2) from 10:00 p.m. to 12:00 a.m. on Monday through Friday and all hours on Saturday, Sunday, and all NERC-designated holidays. The parties shall, at the request of the City, engage in negotiation, to the extent feasible and practicable, to the “Off-Peak Period,” which may be necessary to the City's operation of its utility and/or its contractual obligations to meet Federal Department of Energy and Florida Public Service Commission requirements related to the City's smart grid grant. The City is responsible for FMPA's incremental costs associated with making any future change to the “Off-Peak Period.”

"On-Peak Period" means from 6:00 a.m. to 10:00 p.m. on Monday through Friday, excluding NERC-designated holidays. The parties shall, at the request of the City, engage in negotiation, to the extent feasible and practicable, to the "On-Peak Period," which may be necessary to the City's operation of its utility and/or its contractual obligations to meet Federal Department of Energy and Florida Public Service Commission requirements related to the City's smart grid grant. The City is responsible for FMPA's incremental costs associated with making any future change to the "On-Peak Period."

"Operating Time" means the time standard used to dispatch, schedule and control generation in the FMPP Control Area (currently, eastern prevailing time).

"PEF" means Florida Power Corporation doing business as Progress Energy Florida, Inc.

"Person" means any individual, corporation, limited liability corporation, partnership, joint venture, trust, unincorporated organization, Governmental Authority, municipal, city, or other entity, except the parties.

"Project Participant" means each of the FMPA electric utility members contracting with FMPA to participate in the All-Requirements Power Supply Project and purchasing capacity and energy, as All-Requirements Services (as defined in the All-Requirements Contract), from FMPA.

"Prudent Utility Practices" means, at a particular time, any of the practices, methods and acts engaged in or approved by a significant portion of the municipal electric utility industry prior to such time, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts, having due regard for, among other things, manufacturers' warranties and the requirements of Governmental Authorities of competent jurisdiction and the requirements of this contract.

"PSC" means the Florida Public Service Commission, or any Governmental Authority succeeding to the powers or the functions thereof.

"Ratio of General Fund Balance to Total Revenues" means, with respect to the City, the ratio of the City's unrestricted general fund balance to the City's total annual revenues, tested annually as of the end of each fiscal year.

"Required City Collateral Amount" is equal to an estimate of three months of Capacity Charges, Non-Fuel Energy Charges, Fuel Charges, and Transmission Fees, during the

calendar Year, when the City's electrical demand is expected to be the highest, as determined by FMPA.

"Required Ratios" means a Ratio of General Fund Balance to Total Revenues of at least 0.20 (20%) and a Coverage Ratio of at least 1.50.

"S&P" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., or its successor, provided that, if S&P ceases to exist or publish ratings, S&P shall mean a nationally recognized rating agency mutually agreed upon by the parties, which agreement will not be unreasonably withheld or delayed.

"SEPA Adjustment Factor" means the percentage that reduces the City's total energy at the Metering Points to only the values provided to the City by FMPA pursuant to the this contract, which is calculated by subtracting the ratio of the SEPA Capacity to the FMPA monthly forecasted peak demand of the City (kW) from one (1.00), for each month of the Service Term. As an equation, the SEPA Adjustment Factor is expressed as follows:

$$1.00 - \frac{\text{SEPA Capacity}}{\text{FMPA Forecast Monthly Peak}}$$

"SEPA Capacity" means the electric capacity purchased by the City from SEPA as identified in the contract between the City and SEPA, as it may be modified from time to time, which is 8,400 kW as of the Effective Date.

"System" has the meaning ascribed to in the All-Requirements Contract.

"Transmission Force Majeure Event" means the occurrence of a circumstance where: (1) a Force Majeure Event causes physical damage to transmission facilities, including the Transmission System; (2) firm transmission service or network integration transmission service has been procured under the OATT with respect to the energy to be supplied by FMPA under this contract; and (3) as a result of such physical damage to transmission facilities, such procured firm or network integration transmission service, or both, cannot be utilized to deliver such energy from the Delivery Point(s) to the Meter Point(s).

"Transmission System" means the integrated electric transmission system of PEF, as such system may be modified or expanded from time-to-time, as well as any successor transmission system(s).

"Utility System" means the City's System and all other utility systems of the City to the extent integrated operationally, financially, or physically with the City's System, and operated by the City and includes all revenues derived from sales of any electric or other utility service offered to the public by the City.

[SIGNATURE PAGE FOLLOWS]

The parties are signing this full requirements power sales contract as of the date stated in the introductory paragraph.

FLORIDA MUNICIPAL POWER AGENCY (ALL-REQUIREMENTS POWER SUPPLY PROJECT)

By: Nicholas P. Guarriello
Nicholas P. Guarriello
General Manager and CEO

CITY OF QUINCY, FLORIDA

By: L. Finley Cook
Name: L. Finley Cook
Title: Mayor

Schedule A
DELIVERY POINT

The following locations are included as Delivery Point locations:

- (1) Kissimmee Utility Authority (KUA) interface with the Transmission System between FMPP and PEF
- (2) OUC interface with the Transmission System between FMPP and PEF
- (3) City of Lakeland interface with the Transmission System between FMPP and PEF

Delivery Point locations may be added or deleted during the Service Term upon the mutual written agreement of the parties.

Schedule B
METER POINTS

The following are the agreed-upon Meter Points locations:

- (1) Quincy North Substation Transformer No. 1 (69 kV)
- (2) Quincy North Substation Transformer No. 2 (69 kV)
- (3) Quincy South Substation Transformer (69 kV)

Meter Point locations may be added or deleted during the Service Term upon the mutual written agreement of the parties.

Schedule C
SAMPLE CITY INVOICE

[*FOLLOWS*]

**City of Quincy
Full Requirements Service Provided by FMPA
For the Month Ended
July 31, 2010**

Capacity Charge	Billing Demand Monthly Peak (kw)	Rate (\$/kw)	Total Charge
	22,368	\$ 5.00	\$ 111,840.00
Total Capacity Charge			\$ 111,840.00

Peak hour is the maximum amount scheduled in an hour and based upon FMPA Load Forecast for Quincy

Energy Charges	Billing Energy (kwh)	Rate (\$/kwh)	Total Charge
Fuel Charge	10,935,042	\$ 0.05025	\$ 549,485.86
Non-Fuel Energy Charge			
On Peak	6,148,732	\$ 0.00825	\$ 50,727.04
Off Peak	4,786,310	\$ 0.00400	\$ 19,145.24
Total Non-Fuel Energy Charge			\$ 69,872.28
Total Energy Charges			\$ 619,358.14

Energy Quantity is that amount scheduled hourly to Quincy at PEF interface

Prior Period Adjustments (if applicable)	\$ -
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Other Charges (if any)	\$ -
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Transmission Fee			
Progress Energy Transmission Invoice Total			\$ -
	Net Imbalance Energy	PEF Rate	Total
Imbalance Charges			\$ -
Total Transmission Charges			\$ -

Direct Pass Through From Progress Energy for transmission service. PEF Invoice Detail Attached

Direct Pass Through from PEF. Calculation Detail will be provided as attachment. Invoiced two months in arrears.

Total Charges for Current Month Business	\$ 731,198.14
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Amounts Outstanding	
Unpaid Balance Carry Over	\$ -
Payments Applied to Unpaid Balance	\$ -
Prior Month Service - Unpaid Balance	\$ -
Delinquent Payment Amount (@ 2%)	\$ -
Unpaid Balance - Current Month	\$ -
Accrued Interest (0.029863% per day)	\$ -
Total Amounts due on Unpaid balance	\$ -

The Delinquency Payment Amount will be determined using the higher of either the Federal Funds Target Rate or two percent.

Total Amount Due for July Invoice	\$ 731,198.14
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Total amount due will be electronically debited from Quincy's designated Capital City Bank account ending xxx-xxx on the due date of September 20, 2010.

Supporting information is included in additional sheets, as applicable.

QFD Yearly Activity Report
Jan - Dec 2014

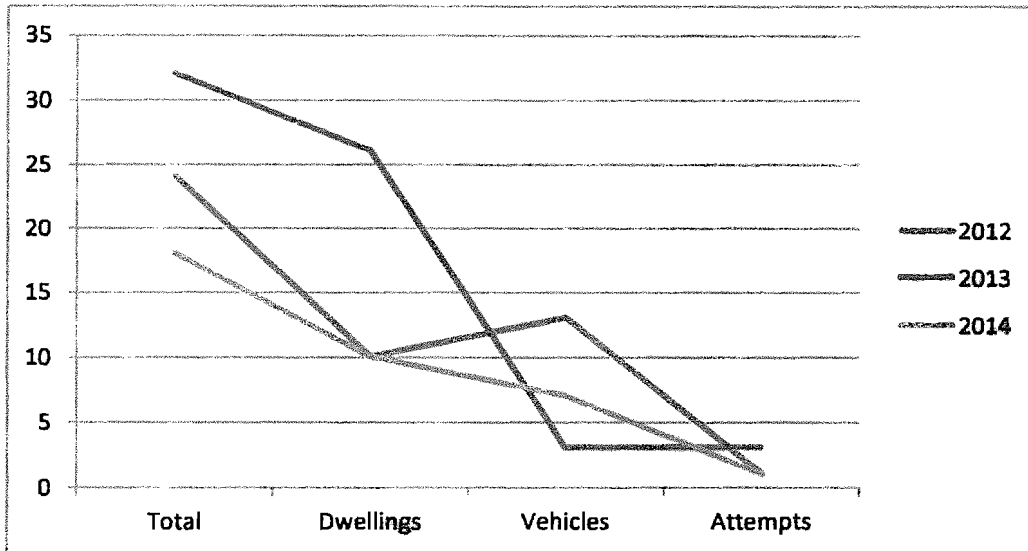
	<u>2014</u>	<u>2013</u>
Total Fire Calls	1267	1257
City	1064	1045
County	203	212
Total Man Hours		
City	1091 hrs 16 mins	1024 hrs 22 mins
County	489 hrs 55 mins	601 hrs 34 mins
	702 hrs 27 mins	425 hrs 58 mins
Type Fire Calls - City		
Structure	7	12
Vehicle	25	27
False Alarm	15	36
Hazard	17	10
Rescue	3	6
Wood & Grass	11	7
Other	101	95
Type Fire Calls - County		
Structure	32	25
Vehicle	54	49
False Alarm	10	8
Hazard	7	9
Rescue	0	4
Woods & Grass	30	32
Other	91	95
Fire Causes		
Accidental	76	65
Undetermined	29	22
Suspicious	6	11
Arson	1	0
Average Response Time		
City	3.51 mins	3.15 mins
County	7.99 mins	7.29 mins
Average Firefighters per Call		
City	3.63	2.72
County	2.86	3.78
Average Time Spent per Call		
City	24.31 mins	16.65 mins
County	42.20 mins	34.55 mins

*QFD Yearly Activity Report
Jan - Dec 2014*

	<u>2014</u>	<u>2013</u>
Responses Out of District	17	18
Mutual Aid Responses *	29	12
Deaths	0	0
Injuries	0	1
Fire Prevention Programs	26	31
Fire Safety Inspection	197	121
Fire Investigation	0	0
Plans Review	18	21
Training Man Hours	2075 hrs	2830 hrs
Hydrants Serviced/Painted	478	482
Utility Turn Ons	859	842
Smoke Detector Installs	164	17

**QUINCY POLICE DEPARTMENT
THREE YEAR DECEMBER BURGLARY REPORT**

	Total	Dwellings	Vehicles	Attempts
2012	24	10	13	1
2013	32	26	3	3
2014	18	10	7	1
3 Year Totals	74	46	23	5



SUMMARY:

As Interim Chief of Police for the Quincy Police Department I am proud of the work our men and women did during the Christmas Holiday month of December to protect our citizens and prevent property crimes and robberies which historically spike due to the increased number of targets such as shoppers and gifts in homes and packages in vehicles.

Through increased patrols and partnerships with our citizens we currently are experiencing a reduction in the overall number of burglaries in our City. As compared to :

2013, we currently have a 44% decrease in overall burglaries/break ins of homes and vehicles.

2012, we currently have a 25% decrease in overall burglaries/break ins of homes and vehicles.

"SERVICE BEFORE SELF"

*report prepared by Chief Glenn Sapp

