

Solar Energy Exchange Agreement

This Solar Energy Exchange Agreement (“Agreement”), dated as of _____, is made by and between Florida Municipal Power Agency (All-Requirements Power Supply Project) (“FMPA-ARP”) and the City of Lake Worth Beach, Florida (“LWB”). FMPA-ARP and LWB may be individually referred to in this Agreement as a “Party” or collectively the “Parties”.

WHEREAS, the FMPA Board of Directors has developed the FMPA Solar III Project, which Project has entered into the Solar Power Purchase Agreement between Origis Energy, LLC, (“Developer”) and FMPA-Solar III Project dated [Date], as amended or assigned (the “Solar III Project PPA”) pursuant to which FMPA-Solar III Project will purchase and receive delivery of solar energy from a portion of solar energy projects developed and owned by Developer (“FMPA-Solar III Project’s Solar Energy”) and directly interconnected to Duke Energy Florida’s (“DEF’s”) transmission system; and

WHEREAS, LWB has entered into the FMPA Solar III Project Power Sales Contract between FMPA-Solar III Project and LWB, pursuant to which LWB receives a Solar Entitlement Share of the Solar III Project PPA;

WHEREAS, LWB is not directly interconnected to DEF’s transmission system; and

WHEREAS, as of the Effective Date of this Agreement, LWB’s electric load is included as part of the Florida Municipal Power Pool (“FMPP”) Balancing Authority;

WHEREAS, in order to more efficiently utilize transmission capability in delivering FMPA-Solar III Project’s Solar Energy to LWB, LWB desires to exchange LWB’s Solar Energy for a like amount of energy from FMPA-ARP, as set forth in this Agreement; and

WHEREAS, FMPA and LWB may realize mutual benefit by exchanging LWB’s Solar Energy for a like amount of energy from FMPA-ARP as set forth in this Agreement.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

“Commencement Date” means the date and time upon which the solar energy exchange contemplated by this Agreement shall commence, which shall be the same time and date when FMPA-Solar III Project starts to receive Solar III Project Solar Energy pursuant to the Solar III Project PPA.

“LWB Solar Energy” means all energy LWB is entitled to receive as part of its Solar Power Entitlement Share pursuant to the Solar III Project Power Sales Contract.

“Solar III Project’s Solar Energy” is defined in the recitals and means all energy to which FMPA-Solar III Project is entitled to under the Solar III Project PPA, but excluding any renewable, facility

environmental other attributes of that energy to which FMPA-Solar III Project is entitled under the Solar III Project PPA with, for example and without limitation, Renewable Energy Credits (RECs).

ARTICLE 2

TERM & TERMINATION

2.1 Effective Date. This Agreement shall take effect upon the date set forth in the introductory paragraph of this Agreement (the “Effective Date”).

2.2 Term. This Agreement shall take effect on the Effective Date and shall remain in effect until it is terminated in accordance with Section 2.3 of this Agreement (the “Term”).

2.3 Termination. (a) LWB may terminate this Agreement by either:

(i) providing not less than thirty (30) days advance written notice to FMPA-ARP;
or

(ii) upon written notice to FMPA-ARP after receipt of written notice from FMPA-ARP that FMPA-ARP reasonably forecasts that its resources will be insufficient to enable an energy exchange contemplated by this Agreement without FMPA-ARP incurring additional costs beyond that which FMPA-ARP would have incurred but for the energy exchange contemplated by this Agreement, and LWB does not agree to reimburse FMPA-ARP such additional costs.

(b) FMPA may terminate this Agreement in accordance with Sections 3.2(b)ii. of this Agreement.

(c) Unless otherwise earlier terminated in accordance with the terms of this Agreement, this Agreement shall automatically terminate on the termination date of the FMPA-Solar III Project PPA.

(d) The provisions of this Agreement regarding billing and payment and dispute resolution shall survive termination of this Agreement to the extent necessary to effectuate obligations arising prior to termination.

2.4 Termination Time. This Agreement shall terminate at 2400 hours on the day specified for such termination in Section 2.3 of this Agreement.

ARTICLE 3

ENERGY EXCHANGE

3.1 Energy Exchange. (a) Beginning on the Commencement Date, FMPA-ARP will take receipt and possession of LWB’s Solar Energy that is delivered at the delivery point as defined in the Solar III Project PPA.

(b) Beginning on the Commencement Date, FMPA-ARP will deliver to, and LWB will take receipt and possession of, an amount of energy equal to LWB’s Solar Energy (the “Exchange Energy”) to the Florida Power & Light transmission system (the “Exchange Point(s) of Delivery”).

3.2 Scheduling, Curtailment; Nature of Service. (a) LWB's Solar Energy to be delivered to and received by FMPA pursuant to this Agreement shall be delivered to the point(s) of delivery defined in, and pursuant to the terms and conditions of, the Solar III Project PPA. The Exchange Energy to be delivered to and received by LWB pursuant to this Agreement shall be firm, subject to curtailment (without penalty) by FMPA-ARP only in accordance with the terms of this Agreement, or if required to serve FMPA-ARP native load for reliability purposes.

(b) i. FMPA and LWB shall develop mutually agreeable operating procedures that detail the scheduling of Exchange Energy, which shall address, without limitation, energy true-ups for differences between LWB's Solar Energy and the Exchange Energy, accounting for difference in price between LWB Solar III Energy and Exchange Energy, changed circumstances in the event LWB is no longer part of the FMPP Balancing Authority, and other scheduling, transmission, balancing, or cost issues.

ii. If FMPA and LWB cannot come to terms on such mutually agreement operating procedures, then either Party may terminate this Agreement upon thirty (30) days Notice to the other Party.

(c) Notwithstanding anything in this Agreement to the contrary, but subject to Section 5.1(c), FMPA-ARP shall not be obligated to receive LWB's Solar Energy during any hour in which FMPA-ARP's non-curtailable scheduled energy exceeds FMPA-ARP's load located on the DEF transmission system. In such event, FMPA-ARP shall provide LWB with as much Notice as reasonably possible prior to such hour so that LWB can make arrangements, at its sole expense, for point-to-point transmission service across DEF's transmission system, or other arrangements to receive LWB's Solar Energy. If other transmission arrangements cannot be made, FMPA may, without limitation, curtail delivery of LWB's Solar Energy in accordance with the Solar III Project PPA, and LWB shall be solely responsible for any costs incurred by FMPA-ARP under the Solar III Project PPA that are directly attributable to such curtailment.

3.3 No Effect on FMPA's PPA. Although FMPA-ARP will utilize and receive LWB's Solar Energy in exchange for the Exchange Energy delivered to LWB at the Exchange Point(s) of Delivery pursuant to this Agreement, the Parties agree that for purposes of the FMPA-Solar III Project PPA, LWB's Solar Energy shall be deemed to have been utilized and received by LWB, and FMPA-ARP shall have no rights or interests in, to or under the FMPA-Solar III Project PPA. LWB shall in good faith and in accordance with good utility practice carry out its obligations, and enforce its rights, under the FMPA-Solar III Project PPA and the Solar III Project Power Sales Contract. Each Party recognizes that the other Party's ability to benefit from this energy exchange transaction will depend upon such contract compliance and enforcement.

ARTICLE 4

TRANSMISSION

4.1 Transmission.

(a) LWB shall bear all responsibility for and costs associated with delivery of the Exchange Energy it receives hereunder from and beyond the Exchange Point(s) of Delivery to LWB's

system. Upon termination of this Agreement, LWB shall bear all responsibility and costs associated with the delivery of LWB's Solar Energy from the delivery point as defined in the FMPA-Solar III Project PPA to LWB's system.

(b) FMPA-ARP shall bear all responsibility for and costs associated with delivery of LWB's Solar Energy it receives hereunder from the delivery point as defined in the FMPA-Solar III Project PPA.

ARTICLE 5 BALANCING

5.1 Balancing. (a) It is the Parties' intent that over the course of any calendar month during the Term after the Commencement Date, the quantity of LWB Solar Energy received by FMPA-ARP at the point of delivery pursuant to the FMPA-Solar III Project PPA shall be equivalent to the quantity of Exchange Energy delivered to LWB at the Exchange Point(s) of Delivery.

(b) Notwithstanding anything in this Agreement to the contrary, subject to Section 5.1(c), FMPA-ARP shall not be obligated to utilize its generating resources out of its ordinary economic dispatch for the purpose of fulfilling its obligations under this Agreement to provide Exchange Energy, unless LWB has agreed to reimburse FMPA-ARP for the incremental increase in cost for such uneconomic dispatch pursuant to Section 6.2 of this Agreement.

(c) If, FMPA-ARP cannot deliver or LWB cannot receive the Exchange Energy during an hour in which it would otherwise be delivered and received, the Parties will establish a plan whereby FMPA-ARP will provide the Exchange Energy to LWB as soon as commercially reasonably possible.

ARTICLE 6 ADDITIONAL COSTS

6.1 No Additional FMPA-ARP Costs. LWB shall be responsible to make all required payments for LWB Solar Energy to FMPA-Solar III Project under the Solar III Project Power Sales Contract as though LWB had received all of the energy to which it was entitled under the Solar III Project Power Sales Contract but which was received by FMPA-ARP pursuant to this Agreement. FMPA-ARP shall not be responsible for any additional capacity or energy charge, or other costs related to LWB's Solar Energy.

6.2 LWB Energy Exchange Costs. (a) It is the Parties intent to facilitate the energy exchange contemplated by this Agreement without significant cost or administrative burden on either Party; provided, however, that LWB agrees to reimburse FMPA for any incremental increased cost incurred by FMPA as a result of this energy exchange that cannot be reasonably avoided by FMPA. Such costs may include, without limitation, differences in cost between LWB Solar Energy and the Exchange Energy, increased FMPA-ARP increased dispatch costs that are necessary to facilitate the energy exchange, incremental costs associated with any charges incurred

from the Florida Municipal Power Pool, or successor scheduling agent, for the incremental costs associated with implementing this Agreement, or other such incremental increased costs incurred by FMPA.

(b) FMPA and LWB shall further detail the potential for such costs and the responsible Party in the operating procedures described in Section 3.2(b)i. of this Agreement.

(c) In the event that FMPA anticipates or incurs such incremental increased costs described in this Section 6.2 during the Term of this Agreement, FMPA shall provide Notice to LWB of such costs. If LWB does not agree to such costs, it may terminate this Agreement in accordance with Section 2.3(a)ii. Notwithstanding the preceding sentence, LWB shall be responsible for such costs up to the effective date of LWB's termination.

ARTICLE 7

GENERAL PROVISIONS

7.1 Headings for Convenience Only. The descriptive headings in this Agreement are for convenience only and shall neither control nor affect the meaning or construction of any of the provisions of this Agreement.

7.2 Waiver and Amendment. This Agreement may not be amended, modified or changed except by a written instrument signed by an authorized representative of each Party. The failure or delay of any Party at any time to require performance by another Party of any provision of this Agreement, even if known, shall not affect the continuing right of such Party to require performance of that provision or to exercise any right, power, or remedy provided for in this Agreement. Any waiver by any Party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power, or remedy under this Agreement. No Notice to or demand on any Party in any circumstance shall, of itself, entitle such Party to any other or further Notice or demand in similar or other circumstances. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving Party.

7.3 Limit of Liability. Neither Party, nor its directors, officers, employees, or agents, shall be liable to the other Party for any loss, damage, claim, cost, charge, or expense, whether direct, indirect, or consequential, or whether arising in tort, contract or other theory of law or equity, arising from the Party's performance or nonperformance under this Agreement, except as specified in this Agreement.

7.4 Assignment. It is understood and agreed that neither Party may transfer, sell, mortgage, pledge, hypothecate, convey, delegate, or otherwise assign this Agreement, or any interest in this Agreement or any rights or obligations under this Agreement, in whole or in part, either voluntarily or by operation of law, (including, without limitation, 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 Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

7.5 Entire Agreement. This instrument shall constitute the final complete expression of the agreement between FMPA-ARP and LWB relating to the subject matter of this Agreement.

7.6 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement. In the event any provision of this Agreement is held by any tribunal of competent jurisdiction to be contrary to applicable law, the remaining provisions of this Agreement shall remain in full force and effect.

7.7 Good Faith Dealings. The Parties agree to cooperate in good faith with each other in their respective performance hereunder and in carrying out and giving effect to the provisions of this Agreement. Each Party agrees to execute and deliver documents and take actions as reasonably requested by the other Party to implement the transactions contemplated by this Agreement.

7.8 Relationship of the Parties. Neither this Agreement nor any grant, lease, license, permit or other instrument related hereto, shall create a new entity nor be construed to create a new entity, such as a partnership, association or joint venture. The parties shall not be liable as partners. No Party shall be under the control of or be deemed to control the other Party and no Party shall have the right or power to bind the other Party except as expressly set forth herein.

7.9 Notices. All notices, notifications, demands or requests required or permitted under this Agreement (collectively, “Notices”) must be in writing, signed by a duly authorized representative of the Party giving such Notice and will be deemed given when received (charges prepaid) by (i) personal delivery, (ii) recognized express courier, (iii) facsimile followed by telephone confirmation with the addressee confirming receipt to the other Party or (iv) electronic mail with electronic confirmation of the addressee opening the electronic mail message (i.e., read receipt) at the address(es) designated below:

If to FMPA at:

Florida Municipal Power Agency
Attn: Chief Executive Officer
8553 Commodity Circle
Orlando, FL 32819
Phone: (321) 239-1052
Email: Jacob.Williams@fmpa.com

If to LWB at:

City of Lake Worth Beach
Attn: Electric Utility Director
1900 2nd Avenue North
Lake Worth Beach, FL 33461
Phone: (561) 586-1670
Email: eliberty@lakeworthbeachfl.gov

With a required copy to:

General Counsel
Florida Municipal Power Agency
2061-2 Delta Way (32303)
Post Office Box 3209

With a required copy to:

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

Tallahassee, Florida 32315-3209
T. 850-297-2011
F. 850-297-2014
Email:
jody.lamar.finklea@fmpa.com
dan.ohagan@fmpa.com

Except as otherwise provided in this Agreement, any Notices shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 PM (local time and at the place of delivery) or on a non-business day shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and holidays recognized by FMPA or LWB shall not be regarded as business days. Counsel for FMPA and counsel for LWB may deliver Notice on behalf of FMPA and LWB, respectively. Any Party or other person to whom Notices are to be sent or copied may notify the other Party(ies) and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written Notice to the Party(ies) and addresses set forth in this Agreement.

7.10 Governing Law. The validity and interpretation of this Agreement and the right and obligations of the parties hereunder 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. All controversies, claims or disputes arising out of or related to this Agreement or any agreement, instrument, or document relating to transactions contemplated hereby, shall be brought exclusively in the state or federal courts located in Orange County, Florida, as appropriate.

7.11 Counterparts. This Agreement may be executed in any number of counterparts, and signature pages exchanged by facsimile or electronic mail, and each counterpart shall be regarded for all purposes as an original, and such counterparts shall constitute, but one and the same instrument, it being understood that both parties need not sign the same counterpart. The signature page of any counterpart, and facsimiles and photocopies thereof, may be appended to any other counterpart and when so appended shall constitute an original. In the event that any signature is delivered by facsimile or electronic mail, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) the Agreement with the same force and effect as if such facsimile signature page were an original.

7.12 ARP Project Responsibility. This Agreement is a liability and obligation of the All-Requirements Power Supply Project only. No liability or obligation under this Agreement shall inure to or bind any of the funds, accounts, monies, property, instruments, or rights of the Florida Municipal Power Agency generally or any of any other “project” of FMPA as that term is defined in FMPA’s Interlocal Agreement.

7.13 Dispute Resolution. (a) The parties expressly agree that they will first engage in good faith negotiations to resolve any dispute arising out of or related to this Agreement. Good faith negotiations include without limitation the following:

- (1) Any dispute will be first reviewed by the appropriate staff of each Party who shall endeavor to define the issues underlying the dispute and prepare a joint recommendation for resolution.
- (2) If at any time staff of either Party is unwilling or unable to accept resolution as proposed by the other Party, then the dispute and underlying issues shall be presented to the General Manager and CEO of FMPA and to the General Manager and CEO (or differently titled chief executive) of LWB for resolution (collectively, the "Executives").

(b) If either Party determines 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 provide Notice thereof to the other Party in writing stating with particularity the issues or points believed to be the basis of the impasse.

(c) Nothing in this section 7.13 limits the rights of a Party to any remedy available at law or in equity. To the extent FMPA or LWB prevails against the other Party in any court action (including proceedings at all levels of trial and appellate courts and any settlement proceedings after the filing of court action), reasonable costs and expenses including attorney fees and other charges (including an allocation for the costs and expenses of in-house legal counsel) and court costs and other expenses shall be paid by the non-prevailing Party.

7.14 No Other Amendment. Nothing in this Agreement modifies nor amends, nor shall be construed to modify or amend, any other agreement between the Parties or to which they are parties unless expressly delineated herein.

7.15 No Presumption. This Agreement shall 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 Agreement for purposes of interpreting or construing any of the provisions of this Agreement or otherwise.

7.16 Public Records. It is understood and agreed that FMPA, a separate legal entity and public agency (as that term is defined in the Interlocal Cooperation Act of 1969), and LWB, as a municipal corporation, may each be subject to Chapter 119, Florida Statutes, and Chapter 286, Florida Statutes (collectively, the "Sunshine Law"). In recognition of the Sunshine Law's requirements, it is agreed and understood that the Party authoring, creating, or otherwise originating any and all documents, instruments, information, or materials (including, but not limited to, data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, or memoranda) created under or pursuant to this Agreement or created for or on behalf of any work or activity related to this Agreement (collectively, "Records"), shall be responsible for keeping and maintaining originals and/or copies of such Records. Each Party may use and rely on any and all Records provided by the other Party; provided, however, no Party shall be liable or otherwise responsible for any third party's use or reliance upon any such

Records for any purpose, unless otherwise stated in writing by the Party authoring, creating, or otherwise originating the Records.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

APPROVED FOR FINANCIAL
SUFFICIENCY:

By: _____
Yannick Ngendahayo, Financial Services Director