

RESOLUTION NO. 12-2023 – A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, PALM BEACH COUNTY, FLORIDA, (I) PROVIDING FOR AUTHORITY; (II) PROVIDING FOR THE INCORPORATION OF CERTAIN FINDINGS, DEFINED TERMS, AND GENERAL PROVISIONS; (III) APPROVING AND AUTHORIZING THE EXECUTION OF A SUBSTITUTE POWER SALES CONTRACT BETWEEN FLORIDA MUNICIPAL POWER AGENCY (SOLAR PROJECT) AND THE CITY OF LAKE WORTH BEACH, PROVIDING FOR THE MAKING OF PAYMENTS PURSUANT TO SUCH SUBSTITUTE POWER SALES CONTRACT, AND MAKING CERTAIN COVENANTS IN CONJUNCTION WITH SUCH PAYMENTS; (IV) REQUESTING A NUMBER OF MEGAWATTS OF CAPACITY AND ENERGY FROM THE SOLAR III PROJECT WHICH WILL SERVE AS THE BASIS FOR THE CALCULATION OF EACH PROJECT PARTICIPANT'S SOLAR ENTITLEMENT SHARE AND AUTHORIZING THE AUTHORIZED OFFICER OF THE CITY OF LAKE WORTH BEACH TO APPROVE A FINAL SOLAR ENTITLEMENT SHARE; (V) AUTHORIZING THE INCLUSION OF SUCH FINAL SOLAR ENTITLEMENT SHARE IN THE RENEWABLE ENERGY POWER PURCHASE AGREEMENT BETWEEN FLORIDA MUNICIPAL POWER AGENCY (SOLAR III PROJECT) AND THE SELLER; (VI) PROVIDING FOR SECURITY FOR PAYMENT BY THE CITY OF LAKE WORTH BEACH PURSUANT TO THE SUBSTITUTE POWER SALES CONTRACT; (VII) PROVIDING FOR THE NATURE OF THE OBLIGATIONS UNDERTAKEN BY THE CITY OF LAKE WORTH BEACH PURSUANT TO THE SUBSTITUTE POWER SALES CONTRACT; (VIII) ESTABLISHING A RATE COVENANT; (IX) PROVIDING FOR THIS RESOLUTION TO CONSTITUTE A CONTRACT; (X) DESIGNATING AUTHORIZED OFFICERS OF THE CITY OF LAKE WORTH BEACH, DESIGNATING AUTHORITY OF AUTHORIZED OFFICERS, AND PROVIDING FOR FURTHER ACTIONS; (XI) TAKING OF OTHER ACTIONS; (XII) PROVIDING FOR SEVERABILITY; AND (XIII) PROVIDING AN EFFECTIVE DATE

Whereas, on March 21, 2018, the Florida Municipal Power Agency (“**FMPA**”) Board of Directors adopted Resolution 2018-B5, which approved and established the Solar Project, and designated the Solar Project as a project under the Interlocal Agreement (as hereinafter defined), with the following members of FMPA being the “**Project Participants**,” with the Power Entitlement Share ascribed to each as shown below:

Project Participant	Power Entitlement Share	
	MW	Percentage
City of Alachua	9.0	15.789%
City of Bartow	13.0	22.807%
City of Homestead, doing business as Homestead Public Utilities	10.0	17.544%
City of Lake Worth Beach	10.0	17.544%
City of Wauchula	5.0	8.772%
City of Winter Park	10.0	17.544%

The Solar Project’s generating resource consisted of the Solar Project PPA (as defined in Resolution 2018-B5), pursuant to which FMPA provided for the purchase of all of the capacity and energy output associated with a 57 MW undivided share of a 74.5 MW renewable solar generation facility that would be constructed and was anticipated to reach commercial operation by June 30, 2020, on behalf of the Project Participants.

Whereas, the City of Lake Worth Beach, Florida, and the other Project Participants in the Solar Project each have entered into a Power Sales Contract with FMPA to purchase the capacity and energy associated with its Power Entitlement Share of the Solar Project. The City of Lake Worth Beach, Florida], approved its Power Sales Contract for the Solar Project on **[INSERT DATE]**.

Whereas, on January 16, 2020, the FMPA Board of Directors approved an amendment to the Solar Project PPA that amended the guaranteed commercial operation date of the renewable solar generation facility from June 30, 2020 to June 30, 2023.

Whereas, Florida Municipal Power Agency (“**FMPA**”), on January 14, 2022, issued its Request for Proposals for Renewable Solar Generation Phase III, to solicit opportunities for FMPA, on behalf of the City of Lake Worth Beach, Florida and other members of FMPA, to acquire additional capacity and energy from one or more renewable solar generation projects in the State (collectively, the “**RFP**”).

Whereas, in May 2022, Poinsett Solar LLC, an affiliate of Florida Renewable Partners, LLC (an affiliate of NextEra Energy, Inc.) and FMPA’s contract counterparty to the Solar PPA (“**FRP**”), notified FMPA of substantial cost, equipment shortages, and other issues FRP was facing in prosecuting the engineering, procurement, and construction activities for the renewable solar generation facility to achieve the amended June 30, 2023 guaranteed commercial operation date.

Whereas, FMPA received a number of proposals in response to the RFP and evaluated and ranked those proposals for discussion with the City of Lake Worth Beach, Florida and other FMPA member utilities that may have an interest in participating in an additional renewable solar generation project, including the City of Lake Worth Beach, Florida, and the other Project Participants in the Solar Project.

Whereas, over the summer and fall of 2022 FMPA staff engaged in significant discussions with the City of Lake Worth Beach, Florida, and the other Project Participants in the Solar Project, and FRP, and reached unanimous consent among the Project Participants, and mutual consent between FMPA and FRP, to terminate the Solar PPA. The City of Lake Worth Beach, Florida, gave its approval and consent for terminating the Solar PPA on **[INSERT DATE]**.

Whereas, on December 8, 2022, the FMPA Board of Directors approved entering into a termination and release agreement with FRP to terminate the Solar PPA and provide for the payment of certain termination funds to FMPA, which were received by FMPA and used to pay initial costs of the Solar Project, and the remainder amount was distributed to the Project Participants as directed by the FMPA Board of Directors action on February 16, 2023.

Whereas, the Power sales Contact between FMPA and each of the Project Participants in the Solar Project was terminated, by its terms, upon the termination of the Solar PPA.

Whereas, FMPA has now chosen a winning proposal from the responsive submissions to the RFP and entered into negotiations of contracts to provide for FMPA's purchase of capacity and energy from one or more renewable solar generation facilities to be constructed, owned, and operated by Origis Development, LLC or its subsidiary or affiliated companies (collectively, "**Origis**").

Whereas, the staff of FMPA has kept the City of Lake Worth Beach, Florida and the other Project Participants in the Solar Project informed of the status of its discussions with Origis which have, now, progressed to the point of FMPA requesting a commitment from the City of Lake Worth Beach, Florida as to its desire to participate in a new renewable solar generation facility, and its request for up to a certain number of megawatts of capacity and energy from such new renewable solar generation facility, pursuant to the terms of this Resolution, so that FMPA may finalize and enter into the necessary contractual arrangements with Origis to provide such capacity and energy from such a new renewable solar generation facility to the City of Lake Worth Beach, Florida and the other Project Participants in the Solar Project, who likewise commit to participation in the new renewable solar generation facility, as a replacement to the Solar PPA.

Whereas, upon FMPA receiving the appropriate commitments from all Project Participants—including Project Participants that formerly executed and delivered Solar Project Power Sales Contracts to FMPA ("**Former Solar Project Participants**")—it is the intent of FMPA staff to request that the Board of Directors of FMPA create a power supply project, as provided for in the Interlocal Agreement Creating Florida Municipal Power Agency, for the acquisition and delivery to the Project Participants of renewable solar capacity and energy, to be known as the "**Solar III Project**."

Whereas, upon FMPA receiving the appropriate commitments from all would-be Project Participants for the Solar III Project (including the Former Solar Project Participants), it is the intent of FMPA staff to request that the Board of Directors of FMPA

approve a new Solar Power Purchase Agreement (“**Phase III Solar PPA**”) for the City of Lake Worth Beach, Florida, and the other Former Solar Project Participants in the Solar III Project, which will replace (i) the Former Solar Project Participants’ participation in the Solar Project with participation in the Solar III Project, and (ii) the Solar PPA with the Phase III Solar PPA as the generating resource for the Solar III Project.

Whereas, the City of Lake Worth Beach, Florida, hereby expresses its desire to continue to be a Project Participant in the Solar III Project and wishes to provide for the execution and delivery of a Substitute Power Sales Contract with FMPA pursuant to the provisions of this Resolution.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA THAT:

SECTION I. **Authority for this Resolution.** This Resolution is adopted pursuant to applicable provisions of Florida law, including Part II, Chapter 361, Florida Statutes, as amended; Section 163.01, Florida Statutes, as amended; and Part II, Chapter 166, Florida Statutes, as amended (collectively, the “**Act**”).

SECTION II. **Incorporation of Certain Findings, Defined Terms, and General Provisions.**

(A) The recitals set forth in the “whereas” clauses above are hereby incorporated into and are a material part of this Resolution. Any capitalized term used in this Resolution and not defined herein shall have the meaning given to such term in the form of the Substitute Power Sales Contract [as defined in Section III (--)], and attached to this Resolution in substantial form as Exhibit A. The Project Participant hereby approves, ratifies, and confirms all actions taken by it and FMPA, as set forth in the “whereas” clauses above and otherwise, to bring the opportunity for the Project Participant to execute and deliver the Substitute Power Sales Contract for its participation in the Solar III Project. All previously adopted resolutions and actions of the Project Participant, to the extent in conflict with this Resolution, including all documents attached as exhibits hereto, are hereby declared to be and are void. References in this Resolution and in the Substitute Power Sales Contract to “**MW**” or “**MWh**” are megawatts or megawatt hours, respectively (associated with the capacity or energy of the renewable solar generation project), as measured after conversion from direct current into alternating current by the renewable solar generation project invertors.

(B) It is hereby found, determined, and declared as follows:

- (i) The Project Participant has heretofore entered into the Interlocal Agreement Creating the Florida Municipal Power Agency, as amended (the “**Interlocal Agreement**”) pursuant to the Act.
- (ii) The Project Participant is authorized by terms of the Act and other applicable provisions of law to plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend or otherwise participate jointly in any electric project.

- (iii) It is necessary and desirable and in the best interests of the Project Participant and the residents of the State to whom the Project Participant furnishes, supplies, or distributes electrical energy that the Project Participant, together with the other Project Participants, share in the costs of the Solar III Project in the manner and under the terms and conditions provided in the Substitute Power Sales Contract.
- (iv) The Project Participant now owns an electric or integrated utility system for the production or distribution, or both, of electric energy within its boundaries and service area.
- (v) The payments required to be made by the Project Participant pursuant to the Substitute Power Sales Contract shall constitute an obligation of the Project Participant payable as an operating expense of the Project Participant's electric or integrated utility system solely from the revenues and other available funds of the Project Participant's electric or integrated utility system, and such payments shall not be subject to any reduction, whether by offset, counterclaim, or otherwise, and shall not be conditioned upon the performance of FMPA or Origis under the Phase III Solar PPA or the performance of FMPA under the Substitute Power Sales Contract or any other agreement or instrument or the validity or enforceability of any other Substitute Power Sales Contract or any other agreement between FMPA and any other Project Participant.
- (vi) The Project Participant shall not be required to make such payments from taxes or revenues other than the revenues of the Project Participant's electric or integrated utility system. The obligations of the Project Participant to make payments under the Substitute Power Sales Contract shall not constitute a debt of the Project Participant within the meaning of any constitutional or statutory provision or limitation or a general obligation of or pledge of the full faith and credit of the Project Participant. The Project Participant shall never be required under the Substitute Power Sales Contract to levy ad valorem taxes on any real property to make such payments, and the obligations of the Project Participant thereunder shall not give rise to or constitute a lien upon any properties owned by or any property located within the boundaries or the service area of the Project Participant, but shall be payable solely from the aforementioned revenues. No obligee under the Substitute Power Sales Contract shall ever have the power to require or compel the levy of ad valorem taxes upon any property of the Project Participant or any property located within its boundaries or service area to make any of the payments required to be made under the Substitute Power Sales Contract.
- (vii) The estimated revenues to be derived by the Project Participant from the operation of its electric or integrated utility system shall be sufficient to make the payments, if any, required to be made by the Project Participant pursuant to the Substitute Power Sales Contract, to make all payments of principal and interest on its outstanding debt obligations, and to make other payments

required by the resolutions which authorized the issuance of the Project Participant's outstanding debt obligations, as the same shall become due.

(C) The Substitute Power Sales Contract referenced in this Resolution shall be substantially similar in all terms and conditions to each Solar III Project Power Sales Contract between FMPA (Solar III Project) and every other Project Participant in the Solar III Project that is not a Former Solar Project Participant, howsoever denominated in this or any other resolution.

SECTION III. Approval and Authorization to Execute a Substitute Power Sales Contract Between Florida Municipal Power Agency (Solar III Project) and the City of Lake Worth Beach, Florida, Providing for the Making of Payments Pursuant to such Substitute Power Sales Contract, and Making Certain Covenants in conjunction with such Payments. Subject to Sections IV and V, the terms of the Substitute Power Sales Contract authorized and attached hereto as Exhibit A are expressly approved and the Authorized Officers (as hereinafter defined) of the Project Participant are hereby authorized, on behalf of the Project Participant, to execute the Substitute Power Sales Contract and deliver the same to FMPA with such changes therein as the Authorized Officers of the Project Participant may approve as necessary or desirable, such approval to be evidenced conclusively by execution and delivery of the Substitute Power Sales Contract. The (i) payment obligations of the Project Participant as set forth in the Substitute Power Sales Contract and the (ii) covenants of the Project Participant in conjunction with such payments, as also provided for therein, are hereby ratified, confirmed, and approved.

SECTION IV. Requesting a Number of Megawatts of Capacity and Energy from the Solar III Project which will serve as the Basis for the Calculation of Each Project Participant's Solar Entitlement Share, and Authorizing the Authorized Officer of the City of Lake Worth Beach, Florida to Approve a Final Solar Entitlement Share.

- (A) The Project Participant hereby requests to be assigned a Solar Entitlement Share in the Solar III Project which will be equivalent to approximately MW.
- (B) After the execution of the Substitute Power Sales Contract and delivery thereof to FMPA, Schedule 1 to each of such Substitute or other Power Sales Contracts shall be completed by FMPA to set forth the names and addresses of each Project Participant and the Solar Entitlement Shares of the Project Participants (which shall aggregate to 100%), and which in the case of the Project Participant shall be that percentage (rounded to the nearest one-thousandth percentage point) equivalent to approximately MW. Such Solar Entitlement Shares shall be determined by FMPA by assigning to each Project Participant a Solar Entitlement Share equal to the percentage (rounded to the nearest one-thousandth percentage point) determined by (i) dividing the number of MW or capacity and energy requested by each Project Participant by the aggregate number of MW of capacity and energy requested by all Project Participants and (ii) multiplying the result by 100, with the Solar Entitlement Shares of all Project Participants adjusted (as nearly as possible on a pro rata basis) as necessary so that the aggregate of all Solar Entitlement Shares equals 100%. The

Project Participant hereby approves such method of calculation of its Solar Entitlement Share and those of all other Project Participants.

(C) The Solar Entitlement Shares expressed as percentages and the corresponding capacity and energy expressed in MW set forth above will be based upon an assumed capacity and energy of up to [five] 74.9 MW renewable solar generation projects of Origis to be associated with the Solar III Project, as determined by the FMPA Board of Directors. The Project Participant hereby approves such method of calculation of the total capacity and energy of the Solar III Project.

SECTION V. Authorizing the Inclusion of such Final Solar Entitlement Share in the Renewable Energy Power Purchase Agreement between Florida Municipal Power Agency (Solar III Project) and Seller.

(A) The Project Participant hereby (i) accepts and approves its Solar Entitlement Share in the Solar III Project as computed in accordance with Section IV(B) and (ii) approves the method of computation as set forth in Section IV(C) of the total capacity and energy of the Solar III Project.

(B) After execution of the Substitute Power Sales Contract and delivery thereof to FMPA, the blanks (if any) in such contract for the total capacity and energy of the Solar III Project shall be completed by FMPA by insertions of the MW of total capacity and energy as determined pursuant to Section IV(C), and the blanks in each of such Substitute or other Power Sales Contracts for all Project Participants for the Solar Entitlement Shares and the total capacity and energy of the Solar III Project shall be completed by FMPA inserting the appropriate values as set forth in this Resolution.

SECTION VI. Providing for Security for Payment by [the City of _____, Florida] Pursuant to the Solar III Project Substitute Power Sales Contract.

(A) The payments required to be made by the Project Participant pursuant to the Substitute Power Sales Contract shall constitute an obligation of the Project Participant payable as an operating expense of the Project Participant's electric or integrated utility system solely from the revenues or other available funds of the Project Participant's electric or integrated utility system.

(B) The Project Participant shall not be required to make payments under the Substitute Power Sales Contract from taxes or revenues other than revenues of the Project Participant's electric or integrated utility system. The obligations of the Project Participant to make payments under the Substitute Power Sales Contract do not constitute a debt of the Project Participant within the meaning of any constitutional or statutory provision or limitation or a general obligation of or pledge of the full faith and credit of the Project Participant. The Project Participant shall never be required under the Substitute Power Sales Contract to levy ad valorem taxes on any real property to make such payments, and the obligations of the Project Participant thereunder shall not give rise to or constitute a lien upon any properties owned by or any property located within the boundaries or the service area of the Project Participant, but shall constitute a lien only upon the aforementioned revenues. No obligee under the Substitute Power Sales Contract shall ever have the power to require or compel the levy of ad valorem taxes upon

any property of the Project Participant or any property located within its boundaries or service area to make any of the payments required to be made under the Substitute Power Sales Contract.

SECTION VII. Providing for the Nature of the Obligations Undertaken by the City of Lake Worth Beach, Florida Pursuant to the Solar III Project Substitute Project Power Sales Contract.

(A) The obligation of the Project Participant to make payments required by the terms of the Substitute Power Sales Contract is conditioned only as provided in the Substitute Power Sales Contract and is not subject to any reduction, whether by offset, counterclaim, or otherwise, and is not otherwise conditioned upon the performance of FMPA or Origis under the Phase III Solar PPA or the performance of FMPA under the Substitute Power Sales Contract or any other agreement or instrument or the validity or enforceability of any other Substitute Power Sales Contract, or any other agreement between FMPA and any other Project Participant.

(B) The Project Participant will not fail or refuse to make any payments under the Substitute Power Sales Contract and, except as provided therein, will not terminate the Substitute Power Sales Contract for any cause whatsoever, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute a failure of consideration, or commercial frustration of purpose, or any event which constitutes *force majeure*, or any bankruptcy, insolvency, receivership, or similar proceeding, whether voluntary or involuntary, with respect to or affecting FMPA, including any disaffirmance, rejection, or postponement in any such proceeding of any of FMPA's obligations under the Phase III Solar PPA, or any change in the laws of the United States, or any State or political subdivision thereof, or any failure of FMPA to perform and observe its agreements under the Substitute Power Sales Contract or to discharge any duty or obligation arising out of or connected with the Substitute Power Sales Contract or any other circumstance or condition, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge or defenses of the Project Participant (whether or not the Project Participant shall have any knowledge or notice thereof).

SECTION VIII. Establishing a Rate Covenant in Favor of the Solar Project. The Project Participant hereby confirms its agreement under the Substitute Power Sales Contract that it will establish, levy, and collect rents, rates, and other charges for the products and services provided by its electric or integrated utility system which rents, rates, and other charges shall be at least sufficient to (i) meet the operation and maintenance expenses of such electric or integrated utility system; (ii) to comply with all covenants pertaining thereto contained in, and all other provisions of, any resolution, trust indenture, or other security agreement relating to any bonds of other evidences of indebtedness issues or to be issued by the Project Participant; (iii) to generate funds sufficient to fulfill the terms of all other contracts or agreements made by the Project Participant, including, without limitation, the Substitute Power Sales Contract, and (iv) to pay all other amounts payable from or constituting a lien or charge on the revenues of its electric or integrated utility system.

SECTION IX. **This Resolution shall Constitute a Contract.** This Resolution shall be deemed to be and shall constitute a contract between the Project Participant and FMPA, with respect to the Solar III Project. The covenants and agreements herein set forth to be performed by the Project Participant shall be solely for the benefit, protection, and security of FMPA.

SECTION X. **Designating Authorized Officers of the City of Lake Worth Beach, Florida; Designating the Authority of Such Authorized Officers, and providing for Further Actions.**

(A) The **City Manager** and the **Director of the Electric Utility** of the Project Participant are each hereby designated as an “**Authorized Officer**” for the purposes of executing and delivering the Substitute Power Sales Contract and other documents or instruments requested by FMPA related to the Solar III Project, and taking all other actions authorized by this Resolution. Each Authorized Officer may act individually in exercising the authority given to them pursuant to this Resolution, it hereby being expressly intended that both Authorized Officers need not act or execute a contract, document, or instrument to bind the Project Participant as authorized pursuant hereto.

(B) In addition to the authority provided in Section X(A) of this Resolution, each Authorized Officer of the Project Participant is hereby authorized and empowered to execute and deliver, in the name of and on behalf of the Project Participant, such other documents, certificates, and papers, not specifically referred to in this Resolution, as are required or contemplated by the provisions of the Substitute Power Sales Contract and take all such further action as may be necessary or desirable in carrying out the terms and provisions of the Substitute Power Sales Contract.

SECTION XI. **Certain Other Actions.** Each Authorized Officer designated hereunder is hereby authorized and empowered, individually, to take all further actions as may be necessary or desirable, or as otherwise requested by FMPA, in carrying out the terms and provisions of this Resolution and each of the documents and instruments referred to herein, and in effecting the Project Participant’s coordination with FMPA for the Project Participants’ participation in the Solar III Project, including approving changes or modifications to the substantial form of documents or instruments referred to, or attached in substantial form as Exhibits to, this Resolution; *provided, however, that* for the purposes of approving subsequent changes or modifications to the documents or instruments substantially in the form of the Exhibits attached hereto each Authorized Officer may only act (1) on or pursuant to the grants of authority under this Resolution, and (2) if in the exercise of such authority the Authorized Officer determines that such subsequent changes or modifications do not present a material adverse change from the substantial form of such documents and instruments attached hereto. For purposes of the foregoing sentence, “**material adverse change**” means any material adverse change in the terms and conditions of a document or instrument to which the Project Participant would become a signatory, and which imposes on the Project Participant some additional, material risk of financial loss, indemnity obligation, covenant, warranty, or restriction of its legal rights in a manner that is not already contemplated, referenced, or within the scope of the documents substantially in the form of the Exhibits attached hereto.

SECTION XII. **Severability.** If one or more provisions of this Resolution should be determined by a court of competent jurisdiction to be contrary to law, such provisions shall be deemed to be severable from the remaining provisions hereof, and shall in no way affect the validity or enforceability of such remaining provisions.

SECTION XIII. **Effective Date.** This Resolution shall take effect immediately upon its adoption.

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

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

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

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk