

SOLAR ENERGY AGREEMENT

THIS SOLAR ENERGY AGREEMENT (“**Agreement**”) is made this ____ day of _____, 2017 (“**Effective Date**”), by and between the City of Pompano Beach, a municipal corporation under the laws of the State of Florida (“**CITY**”) and Florida Power & Light Company, a Florida corporation (“**FPL**”). CITY and FPL are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties**.”

WITNESSETH:

WHEREAS, CITY is the fee simple owner of that certain real property located in Broward County, Florida, as more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (“**Property**”);

WHEREAS, the Property includes approximately 8,500 +/- square feet of parking lot as more particularly depicted on **Exhibit B** attached hereto and incorporated herein by this reference (“**Solar Site**”), and CITY desires to permit FPL to utilize the Solar Site upon the terms and conditions set forth in this Agreement;

WHEREAS, FPL desires to utilize certain CITY real property, and CITY desires to allow use of designated portions of its real property for the installation of certain renewable energy generating equipment, including, without limitation, solar panels, solar canopy structures, electrical power inverters, interconnection equipment, electrical wiring, underground conduit, collection lines, wire management systems, charging stations, electric meters, metering and switch cabinets, power distribution boxes and racking systems (individually and collectively, the “**Equipment**”) upon the terms and conditions set forth herein; and

WHEREAS, the City Commission of the City of Pompano Beach finds that the generating of solar energy on CITY Property utilizing FPL’s Equipment, provides a benefit to the CITY and its residents, and serves a valid public purpose.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Solar Site.** CITY hereby authorizes use of its designated Solar Site to FPL and FPL hereby agrees to utilize the Solar Site upon the terms, covenants and conditions set forth in this Agreement.

2. **Use.** The Solar Site may be used by FPL for the purposes of constructing, installing, operating, inspecting, maintaining, repairing, enlarging, modifying, removing, testing and replacing the Equipment and any additional equipment required to generate, measure, and transmit solar power, together with the following rights:

(a) **Access.** The right of ingress and egress to and from the Solar Site over the Property necessary to access the Solar Site.

(b) **Signage.** The right, at FPL's sole cost and expense, to install signage on and around the Equipment and on, over, under, through and across the Solar Site at the point of access to the Equipment (to the extent allowed by applicable law) for any and/or all of the following purposes: (i) identifying FPL's ownership of the Equipment and prominently displaying FPL's corporate name, trade name(s), trademark(s), and logo(s) on the Equipment and all structures supporting the Equipment; (ii) describing the Equipment and its purpose and operation to interested parties accessing the Solar Site (i.e. telling the distributed solar generation story); (iii) instructing parties accessing the Solar Site to use caution so as not to damage the Equipment; and (iv) provide all necessary safety and hazard warnings. The location, design and content of such signage shall be subject to the prior approval of CITY, which approval shall not be unreasonably withheld, conditioned or delayed. Such signage shall be removed by FPL upon the final removal of the Equipment from the Solar Site in accordance with the terms of this Agreement. Subject to Section 6(a) below, CITY shall have the right, at CITY's sole cost and expense to co-brand on FPL's signage, provided that CITY first obtains FPL's prior written consent, which FPL may approve or withhold such consent in its absolute and sole discretion.

3. **Term.**

(a) **Construction Term.** The construction term of this Agreement shall commence on the Effective Date and continue for twelve (12) months ("**Construction Term**"). The Construction Term shall end twelve (12) months after the Effective Date unless before that date FPL notifies CITY that FPL elects to terminate this Agreement or that the Commercial Operations Date has occurred. For purposes of this Agreement, "**Commercial Operations Date**" shall mean the date on which the Equipment becomes operational as determined by FPL. For the purposes of this section, "**operational**" means the date on which FPL has (i) received any and all approvals, licenses, and permits necessary to operate the Equipment, (ii) the Equipment is installed on the Solar Site and is connected to the electric transformer, and (iii) the Equipment is generating solar power

(b) **Operating Term.** The "**Operating Term**" of this Agreement shall commence on the day immediately following the last day of the Construction Term, and continue for a term ending on the fifteenth (15th) anniversary of the Commercial Operations Date. The Operating Term and the Construction Term are collectively referred to herein as the "**Term**," and may be renewed by approval of the parties for an additional five (5) year term.

4. **Installation and Location of Equipment.** From and after the Effective Date, FPL, as well as any permitting, licensing, regulating or approving entity, agency or authority, any utility intending to purchase electricity generated by the Equipment, and the agents, employees, contractors, subcontractors, consultants and representatives of each (collectively, the "**FPL Parties**"), have ingress, egress and access to the Solar Site at all times during the Term, twenty-four (24) hours-a-day, seven (7) days-a-week, for and including to inspect, construct, install, maintain, repair, enlarge, modify, remove, replace, test and operate the Equipment. FPL Parties will use commercially reasonable efforts to minimize any interference with CITY's use and operations on the Property. CITY shall cooperate as necessary with FPL (at no cost to CITY) in FPL's efforts to obtain all permits, licenses and approvals necessary for the installation and

operation of the Equipment. Except as otherwise expressly set forth herein, FPL shall have no right to access or utilize any other portion of CITY's Property other than the Solar Site. FPL may locate and install the Equipment on the Solar Site as is reasonably necessary in order to achieve optimal solar power generation. Installation of the Equipment shall be in compliance with all applicable laws and ordinances and shall not result in the imposition or creation of a lien against any portion of the Solar Site.

Upon completion of the installation of the Equipment by FPL, FPL shall provide CITY with an "as-built" survey of the Equipment installed on the Solar Site, which shall serve as a replacement **Exhibit B**.

5. **Location Fee.** FPL shall pay a fee to CITY annually, in advance, on or before July 15th of each year during the Term the amount set forth on the attached **Exhibit C**, which exhibit is incorporated herein by this reference ("**Location Fee**"). In the event the Term commences on a date other than July 15th, FPL shall pay CITY upon commencement of the Term an amount equal to the pro-rata portion of the applicable Location Fee for such partial annual period. The Location Fee shall be payable to CITY electronically per the attached **Exhibit D**, which exhibit is incorporated herein by this reference. In the event this Agreement expires or is terminated at a time other than on the last day of an annual period, then Rent shall be pro-rated as of the date of this Agreement's expiration or earlier termination for any reason (other than an uncured and continuing default by FPL) and all prepaid Location Fees that has not yet accrued shall be immediately refunded to FPL.

6. **Interference.** During the Term, CITY shall not directly or indirectly interfere, or cause or permit to be caused any Interference, with the Equipment. For purposes of this Agreement "**Interfere**" and "**Interference**" shall mean interference with FPL's use, operation, access, maintenance or repair of the Equipment on a sustained basis as a result of CITY's direct or indirect actions, including without limitation the following:

(a) Placement of any equipment, sign, logo, structure, or improvements on, across, under or over any portion of the Equipment without the prior written consent of FPL, which FPL may approve or withhold such consent in its absolute and sole discretion;

(b) Placement of any equipment, sign, structure or improvement in a location that interferes with any portion of the Equipment's exposure to sunlight, as determined by FPL in its sole discretion;

(c) Interference in any way with any portion of the Equipment's ability to generate solar power, as determined by FPL in its sole discretion;

(d) Any portion of the Equipment to become subject to any lien, mortgage, deed of trust, security agreement, mechanics lien or other such encumbrance not caused by FPL, unless the holder of such lien, mortgage, deed of trust, security agreement or other such encumbrance provides FPL with a subordination and non-disturbance agreement or a non-disturbance agreement, in form and substance acceptable to FPL, within thirty (30) days following FPL's request for same;

(e) Any portion of the Solar Site to be maintained, altered, modified, repaired, replaced or compromised in such a way that it can no longer support the Equipment or any portion of the Equipment or the use of any portion the Equipment is impaired, as determined by FPL in its sole discretion;

(f) Disruption with FPL's access to any portion of the Solar Site; and/or

(g) Sale, transfer, assignment, lease, or sub-lease any portion of the Solar Site, other than subject to CITY's obligations under this Agreement.

In the event of that CITY Interferes or causes Interference, FPL will provide CITY with a written summary documenting such Interference ("**Interference Notice**"). In the event CITY is in violation of any of the above-listed items in this section, and such violation continues for fifteen (15) days or more following FPL's delivery of an Interference Notice, then in addition to the rights granted FPL under Section 18 below, FPL may elect to terminate this Agreement immediately upon delivering written notice to CITY.

7. **Mechanics' Liens.**

(a) **FPL's Actions.** Installation of the Equipment shall not result in the imposition or creation of a lien against any portion of the Property. If any mechanic's, contractor's or material supplier's lien is asserted against all or any part of the Property in connection with FPL's installation, construction or operation of the Equipment or any related activities, FPL shall indemnify CITY against any loss, claim, damage or expense, including attorneys' fees, that CITY may incur in connection with such assertion of such lien, and, if any notice or statement of lien is filed or recorded in any public office in connection with FPL's installation, construction or operation of the Equipment or any related activities, FPL shall cause such notice or statement of lien to be released or bonded off, within thirty (30) days from the date CITY gives written notice of such lien. FPL's obligations under this section shall survive the expiration or earlier termination of this Agreement.

(b) **CITY's Actions.** If any mechanic's, contractor's or material supplier's lien is asserted against all or any part of the Solar Site or Property by anyone having provided labor, services, material or equipment at the request of CITY, and if FPL is made a party to any action or proceeding to foreclose any such asserted lien, CITY shall indemnify FPL and hold it harmless against any loss, claim, damage or expense, including attorneys' fees, that FPL may incur in connection with such action or proceeding, including paying any judgment that may be entered therein.

8. **Maintenance; Repair; Replacement; Reinstallation.**

(a) During the Term, FPL shall, at FPL's sole cost and expense, operate and maintain the Equipment in good working order and in a safe, clean manner.

(b) In the event the Equipment or any portion thereof is damaged or destroyed at any time during the Term, FPL shall have the right, but not the obligation, to repair, replace or reinstall the Equipment or any portion thereof within the Solar Site.

(c) CITY shall conduct, or cause to be conducted, all routine and necessary maintenance of the Solar Site and shall ensure that the Solar Site shall remain able to support the Equipment for the duration of the Term. If CITY has to replace or engage in widespread repair of the paving or other improvements located on or near the Solar Site during the Term, then CITY shall provide FPL with at least ninety (90) days prior written notice and FPL will coordinate protection of the Equipment with CITY as appropriate in order to accommodate CITY's construction schedule.

(d) If the Solar Site are substantially destroyed by fire or other casualty, FPL may by written notice, given not later than thirty (30) days after the date of such destruction, terminate this Agreement, in which event the Location Fee paid for the period beyond the date of destruction shall be refunded to FPL, together with an insurance proceeds received by CITY in connection therewith. If the Demised Premises are not substantially destroyed but FPL cannot reasonably operate the Equipment during repairs, the Location Fee shall abate until such time as FPL may recommence operating the Equipment.

(e) FPL shall have the right, at FPL's sole cost and expense, to repair, replace or reinstall any affected Equipment on the Solar Site following complete or partial destruction of CITY's improvements to the Solar Site and/or FPL's Equipment thereon. Following complete destruction of CITY's improvements to the Solar Site, CITY may provide FPL with a mutually acceptable alternative location on or off the Property approved by FPL on which FPL may install the Equipment. If, however, CITY is unable to provide an alternative location for the Equipment that meets such standard, and FPL does not approve such alternate site, FPL shall have the right, upon written notice to CITY, to terminate this Agreement, and receive an immediate return from CITY of its prorated portion of the Location Fee paid. If such new location is acceptable to FPL, **Exhibit B** (and, if necessary, other exhibits) to this Agreement will be amended to reflect the new location of the Solar Site.

(f) FPL shall have the right, in its sole discretion, to remove all or a portion of the Equipment at any time during the Term, and such removal shall not constitute a default or be deemed a termination under this Agreement. Following the removal of any Equipment the Location Fee shall be proportionally adjusted.

9. **Taxes.** CITY shall submit a copy of the annual statement for real property taxes for the Property to FPL within ten (10) business days after the date that CITY receives such statement from the taxing authority. CITY shall pay when due all real property taxes for the Property. In the event that CITY fails to pay any such real property taxes or other fees and assessments, FPL shall have the right, but not the obligation, to pay such owed amounts and recover the amount so paid from CITY, including by offsetting such amount from any Location Fee due to CITY or otherwise CITY. Notwithstanding the foregoing, FPL shall pay any personal property tax, which is attributable to the Equipment or the Equipment's installation or placement on or within the Solar Site. CITY hereby grants to FPL the right to challenge, whether in a court,

administrative proceeding, or other venue, on behalf of CITY and/or FPL, any personal property or other tax assessments that may affect the Solar Site as a result of the Equipment. If CITY receives notice of any personal property or other property tax assessment against the CITY which may affect FPL or the Equipment and is attributable, in whole or in part, to the Equipment, CITY shall provide timely notice of such assessment to FPL sufficient to allow FPL to consent to or challenge such assessment if a right to challenge the assessment is then available under applicable law. Further, CITY will provide to FPL any and all documentation in the possession of CITY that is associated with such assessment and will execute any and all documents reasonably necessary to effectuate the intent of this section, provided that CITY shall not be required to incur any expense or any risk of material liability.

10. **Insurance.** FPL will maintain at all times during the Term, the insurance designated in this section in accordance with the terms and conditions required by this section. Such policy or policies shall be issued by companies authorized to do business in the State of Florida with a minimum A.M. Best financial rating of “A– VII”.

(a) Commercial General Liability Insurance with limits of Three Million Dollars (\$3,000,000) per occurrence combined single limit for bodily injury and property damage.

(b) Business Automobile Liability Insurance with limits of Two Million Dollars (\$2,000,000) for bodily injury and property damage.

(c) Workers’ Compensation Insurance in compliance with Florida Statutes.

FPL has the right to meet the insurance designated in this section through any combination of self-insurance, primary or excess coverage. Should FPL self-insure, then prior to accessing the Solar Site, FPL will provide CITY with a letter of such self-insurance, which will include a reference to publicly available financial statements and annual reports.

CITY and FPL, for themselves and their respective insurers, waive any right to assert any claim against the other Party, to the extent such claim is covered by the waiving party’s insurance. Each Party shall waive all rights of subrogation of their respective insurers.

11. **Indemnification.** FPL shall indemnify CITY, its officials and agents from and against all losses, claims, damages or expenses, including attorneys’ fees, incurred by CITY in connection with any third party claims for personal injury or death to persons and damage to CITY’s personal property arising during the Term, to the extent arising from the negligence or willful misconduct of FPL, its agents, employees, representatives, contractors, or sub-contractors up to Two Million Dollars (\$2,000,000). CITY shall indemnify FPL from and against all losses, claims, damages or expenses, including attorneys’ fees, incurred by FPL in connection with any third party claims for personal injury or death to persons and damage to FPL’s personal property arising during the Term, to the extent arising from the negligence or willful misconduct of CITY, its agents, employees, representatives, contractors, or sub-contractors up to Two Million Dollars (\$2,000,000). In no event shall CITY or FPL be liable to the other for consequential, special, exemplary, punitive, indirect or incidental losses or damages, nor shall any parent, subsidiary, affiliate or employee of CITY or FPL have any liability under this Agreement. Neither CITY nor FPL, nor their respective insurer, shall, without the prior written consent of the other Party, which

consent will not be unreasonably withheld, enter into the settlement or compromise of any claim brought against the indemnified Party which is the subject of indemnification under this Agreement. Notwithstanding the foregoing, this paragraph shall not be construed or interpreted as a waiver of the CITY's sovereign immunity and the limits established in Section 768.28, Florida Statutes. This section shall survive the expiration or earlier termination of this Agreement.

12. **Equipment to Remain Personal Property of FPL.** The Equipment is and will remain the property of FPL, its successors or assigns, regardless of its use or manner of attachment to the Solar Site. CITY agrees to execute such further documentation as is reasonably necessary to ensure that the Equipment does not constitute, and is not deemed to be, a fixture attached to the Solar Site. Except as expressly set forth in this Agreement, CITY will have no right, title, or interest in the Equipment, and no right to purchase or otherwise acquire title to or ownership of the Equipment and CITY hereby expressly disclaims any right, title or interest in or to the Equipment, whether arising by lien, by operation of law, or otherwise.

13. **Subordination.** CITY warrants that the Property is not, as of the Effective Date, subject to any mortgage or other monetary lien, other than liens for taxes and assessments imposed by law. If CITY hereafter determines to mortgage all or any part of the Property and the proposed mortgage document does not acknowledge the priority of this Agreement, then prior to execution of such mortgage CITY will secure a subordination and non-disturbance agreement or non-disturbance agreement in commercially reasonable form from the mortgagee, which provides that such mortgagee or lienholder will not disturb FPL's possession or rights under this Agreement, or terminate this Agreement so long as CITY is not entitled to terminate this Agreement or FPL's interest in the Solar Site.

14. **Quiet Enjoyment.** CITY represents and warrants to and covenants with FPL that: (a) CITY has full right, power and authority to execute this Agreement; (b) CITY has good and unencumbered title to the Solar Site free and clear of any liens, mortgages or other encumbrances; (c) CITY's execution and performance of this Agreement will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on CITY; (d) there are no agreements with any third parties that may adversely affect the Equipment or the Equipment's exposure to sunlight, (e) during the Term, CITY will not enter into any agreements with any third parties that may adversely affect the Equipment or the Equipment's exposure to sunlight, and (f) all times during the Term, FPL's quiet enjoyment of the Solar Site or any part thereof shall not be disturbed.

15. **Default by FPL.** The happening of any one or more of the following events, upon the expiration of any applicable notice and cure period, shall be events of default under this Agreement:

(a) The failure of FPL to pay any installment of the Location Fee or other charge or money obligation herein required to be paid by FPL within thirty (30) calendar days after written notice of such default from CITY to FPL; or

(b) The failure of FPL to fully perform any other of its covenants under this Agreement within one hundred twenty days (120) calendar days after FPL receives written notice

of such default from CITY; provided, however, if such non-monetary default cannot reasonably be cured within such one hundred twenty (120) day time period, FPL shall not be deemed in default hereunder if FPL has commenced to cure such default within said one hundred twenty (120) day time period and thereafter continues with diligence to complete the cure of such default.

16. **CITY's Remedies.** CITY's exclusive remedies for events of default by FPL shall be limited to the following:

(a) Upon an event of default for non-payment of the Location Fee as set forth in Section 15(a) above, and after the expiration of the applicable notice and cure period, CITY may recover from FPL the amount in default, with interest on the unpaid amount at the annual rate of six percent (6%).

(b) Upon an event of default as set forth in Section 15(b) above, and after the expiration of the applicable notice and cure period, CITY may perform, or cause to be performed, on behalf and at the expense of FPL, any or all of the undertakings or obligations as to which FPL remains in default, in which event FPL will reimburse CITY for such actual reasonable costs and expenses, within forty-five (45) days following FPL's receipt of CITY's invoice and supporting documentation. Notwithstanding the preceding sentence, CITY may not perform any obligation of FPL under Section 8(a) or take any other action that relocates or physically alters any of the Equipment that at the time is in operable condition.

(c) CITY may exercise any other remedy available at law or in equity including, but not limited to, ejectment, termination or rescission of this Agreement; provided, however, in no event shall FPL be liable for consequential, special, exemplary, punitive or indirect losses or damages.

In any action or proceeding to enforce any of FPL's obligations under this Agreement, CITY may recover all costs and expenses, including reasonable attorneys' fees, incurred by CITY in connection with such action or proceeding or any appeal therefrom or review thereof.

17. **Default by CITY.** The failure of CITY to fully perform any term, provision, or covenant of this Agreement within sixty (60) calendar days following written notice of such default from FPL; provided, however, that if such default cannot reasonably be cured within such sixty (60) day time period, CITY shall not be deemed in default hereunder if CITY has commenced to cure such default within said sixty (60) day time period and thereafter continues with diligence to complete the cure of such default.

18. **FPL's Remedies.** Upon an event of default by CITY as set forth in Section 17 above, and after the expiration of the applicable notice and cure period, in addition to and not by way of limitation of the exercise by FPL of any and all rights and remedies FPL may have at law or in equity, FPL may: (a) cure the default and be reimbursed by CITY within thirty (30) days following CITY's receipt of FPL's invoice and supporting documentation of costs and expenses associated with curing the default; (b) terminate this Agreement; and/or (c) exercise any remedy FPL may have at law or in equity. In the event that CITY fails to timely make such reimbursement payments to FPL as set forth in subsection (b) above, FPL may deduct such amounts owed by CITY to FPL from the Location Fee due. In any action or proceeding to enforce any of CITY's

obligations under this Agreement, FPL may recover all costs and expenses, including reasonable attorneys' fees, incurred by FPL in connection with such action or proceeding or any appeal therefrom or review thereof.

Notwithstanding the foregoing, in the event that CITY Interferes or causes Interference with the Equipment of this Agreement, and such Interference is not cured within the fifteen (15) day time period set forth in Section 6 above, in addition to the remedies set forth in this Section 18, CITY shall also be required to reimburse FPL any and all costs incurred or expended by FPL in connection with the removal of the Equipment from the Solar Site, together with any and all costs incurred or expended by FPL in connection with either, at FPL's sole option, (i) the disposal of the Equipment, or (ii) the relocation of the Equipment to another part of the Solar Site, Property or other real property, as applicable, whether or not such replacement real property is owned by CITY.

19. This paragraph is intentionally deleted.

20. **Removal.** Upon the expiration or earlier termination of the Term by through no fault of CITY for defaulting under the terms of this Agreement, FPL, FPL shall continue to have the right of reasonable access to the Solar Site in order to remove the Equipment, and repair and restore the affected portions of the Solar Site to substantially the same condition as practical as existed immediately prior to FPL's installation of the Equipment, at FPL's sole cost and expense; provided, however, in the event that CITY causes FPL to terminate this Agreement (including Sections 6 and 18 above) prior the expiration of the Term, the removal and disposal or relocation costs of the Equipment, and repair and restoration of the Solar Site, shall be at CITY's sole cost and expense.

21. **Tax Credits, Financial Incentives, Sale of Energy.** Installation and operation of the Equipment on the Solar Site may result in the availability of federal and/or state tax credits, and other financial incentives (collectively hereinafter "**Incentives**"). FPL is and shall be the sole recipient and beneficiary of any and all such Incentives, which shall be distributed, disbursed and/or assigned in FPL's sole discretion. CITY shall have no right to any Incentives, except as otherwise agreed to in writing by FPL. Furthermore, any and all solar power electricity produced by or relating to the Equipment ("**Energy**"), and the right to utilize same, shall be for the sole benefit of CITY. CITY shall have no right to sell the Energy, or to engage in any "net metering" involving the Energy. As consideration for entering into this Agreement, CITY shall be billed for the solar power generated by the Equipment on the Solar Site at the CITY's existing rate rather than a higher rate for solar-generated power. Furthermore, the cost of the solar equipment is valued at \$750,000, and installation of same shall be covered by FPL and not the CITY, as provided herein.

22. **Assignment; Financing.**

(a) Except as permitted by Section 22(b) below, FPL shall not assign this Agreement or any interest herein without the prior written consent of CITY. CITY shall not assign its interest in this Agreement to anyone other than a purchaser or FPL of the Solar Site without the prior written consent of FPL. Neither Party will unreasonably withhold condition or delay its

consent to an assignment by the other Party. The terms and conditions of this Agreement will bind and benefit the respective successors and permitted assigns of the Parties. Following any permitted assignment or transfer by operation of law, the terms "CITY" and "FPL" shall be deemed to refer to the relevant transferee or successor, unless the context clearly indicates that the term refers only to the original Party so identified.

(b) CITY acknowledges that FPL's interests under this Agreement and in the Equipment are and will be encumbered by FPL's existing mortgage. Additionally, FPL may, upon notice to CITY, mortgage or grant a security interest in this Agreement and the Equipment, and may assign this Agreement and the Equipment to any of FPL's future mortgagees or holders of security interests, including their successors or assigns (FPL's existing mortgagee and any future FPL mortgagees or security interest holders are collectively referred to herein as the "**Mortgagees**"), and such Mortgagees shall have the right, but not the obligation, to assume FPL's rights and obligations under this Agreement. In such event, CITY shall execute such consent to any such financing as may reasonably be required by Mortgagees. CITY agrees to notify FPL and FPL's Mortgagees simultaneously of any default by FPL and to give Mortgagees the same right to cure any default as FPL, except that the cure period for any Mortgagees shall not be less than thirty (30) calendar days after receipt of the default notice, as provided in Section 15 above. All such notices to Mortgagees shall be sent to Mortgagees at the address specified by FPL. Failure by CITY to give Mortgagees such notice shall not diminish CITY's rights against FPL, but shall preserve all rights of Mortgagees to cure any default as provided in Section 15 above. It is agreed and understood that no such Mortgage may encumber CITY Property.

23. **Condemnation.** In the event of condemnation of some or all of the Solar Site, CITY and FPL shall each be entitled to pursue their own separate awards with respect to such taking, as their respective interests appear. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation for purposes of this Agreement.

24. **Notices.** All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to this Agreement shall be in writing, signed by the notifying Party, or officer, agent or attorney of the notifying Party, and shall be deemed to have been effective upon delivery if served personally, including but not limited to delivery by messenger, overnight courier service or by overnight express mail, or on the third (3rd) business day after posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To CITY:	City of Pompano Beach 100 W. Atlantic Boulevard Pompano Beach, Florida 33060 Attn: City Manager
To FPL:	Florida Power & Light Company 700 Universe Boulevard, CEA/JB Juno Beach, Florida 33408 Attn: Vice President of Corporate Real Estate

With copy to: Florida Power & Light Company
700 Universe Boulevard, LAW/JB
Juno Beach, Florida 33408
Attn: General Counsel

The address to which any notice, demand, or other writing may be delivered to any Party as above provided may be changed by written notice given by such Party.

25. **Memorandum of Agreement.** It is specifically understood and agreed by both Parties hereto that a Memorandum of Agreement (“**Memorandum**”) in substantially the form of the attached **Exhibit E** will be executed by the Parties and recorded in the Public Records of the county in which the Solar Site is located, indexed in the land records of that office in the names of both Parties hereto and will be a matter of public record. Upon completion of the installation of the Equipment by FPL, FPL shall provide CITY with an “as-built” survey of the Equipment installed on the Solar Site, which shall serve as a replacement to the exhibit attached to the Memorandum, and CITY hereby authorizes FPL to execute and record an amendment to the Memorandum without the CITY’s signature effectuating such change.

26. **Miscellaneous.**

(a) **Entire Agreement; Modification; Waiver.** All of the representations and obligations of the Parties are contained herein and no modification, waiver or amendment of this Agreement or of any of its conditions or provisions shall be binding upon a Party unless in writing, signed by that Party or a duly authorized agent of that Party empowered by a written authority signed by that Party. The waiver by either Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision by the same Party, or of any other provision or condition of this Agreement. No waiver shall be implied by delay or any other act or omission of either Party.

(b) **Governing Law; Waiver of Jury Trial.** This Agreement shall be subject to and governed by the laws of the State of Florida, without regard to its conflict of laws principles. The Parties agree that any action or proceeding arising out of or related in any way to this Agreement shall be brought solely in a court of competent jurisdiction in Broward County, Florida. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

(c) **Attorney’s Fees.** In the event of any litigation arising between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees and paralegals’ fees and court costs at all trial and appellate levels. This paragraph shall survive expiration or termination of this Agreement coextensively with other surviving provisions of this Agreement.

(d) **Severability.** Should any provision of this Agreement be held, in a final and un-appealable decision by a court of competent jurisdiction, to be either invalid, void or

unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, and the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling.

(e) **Headings and Gender.** All headings in this Agreement are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. In construing this Agreement, the singular shall be held to include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders.

(f) **Authority.** Each Party represents to the other that it has complete authority to enter into this transaction.

(g) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, upon execution of a substantively identical counterpart by each Party, shall be deemed an original, but all of which together shall constitute a single instrument. A facsimile or similar electronic transmission of a counterpart signed by a Party hereto shall be regarded as an original signed by such Party for all purposes.

(h) **Binding Effect.** This Agreement shall bind and benefit the Parties and their respective successors and assigns.

(i) **Publicity; Tours.** The Parties acknowledge that each of them has a legitimate business interest in receiving public recognition of their participation in the transaction contemplated by this Agreement. In order to coordinate the timing, tone and content of any publicity, however, each Party agrees that neither of them shall issue any press release or otherwise publicize the existence or the terms of this Agreement without the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed, provided that general advertising that refers to a “partnering” (or other terminology of similar import) of either Party with the other Party for the purposes of any of the transactions contemplated hereby, but does not expressly reference this Agreement or disclose any of the terms hereof, shall not be subject to the provisions of this subsection. No filing that FPL is required by applicable law to make with any regulatory authority shall, by itself, be deemed to violate the preceding sentence. FPL shall have the right to give site tours of the Equipment on the Solar Site for visitors and other interested parties.

(j) **Construction.** This Agreement shall not be construed more strictly against one Party than against the other, merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that both CITY and FPL have contributed substantially and materially in the negotiation and preparation of this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits, schedules, addendums or amendments hereto.

(k) **Headings.** All headings in this Agreement are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. In construing this Agreement, the singular shall be held to

include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders.

(l) **Force Majeure.** CITY and FPL (except with respect to the payment of any monetary obligation) shall be excused for the period of any delay in the performance of any obligation hereunder when such delay is occasioned by causes beyond its control, including but not limited to work stoppages, boycotts, slowdowns or strikes; shortages of materials, equipment, labor or energy; unusual weather conditions; or acts or omissions of governmental or political bodies.

(m) **Exhibits.** All of the schedules and exhibits attached to this Agreement (or attached from time to time after the Effective Date) are incorporated in, and made a part of, this Agreement.

(n) **Successors and Assigns.** This Agreement shall be binding upon the Parties hereto and their respective successors and assigns.

(o) **Amendments.** This Agreement may not be changed, altered or modified except by an instrument in writing duly signed by both Parties.

(p) **Calculation of Time Periods.** The Effective Date of this Agreement shall be when it has been signed by the last party to sign same and when it has thereupon been mutually delivered. For purposes of this Agreement, any time period that falls on a Saturday, Sunday or legal holiday under laws of the State in which the Property is located, will be extended to the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time where the Property is located.

[Remainder of page intentionally blank; Signature pages follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

CITY:

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND
CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2017 by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

Witness:

Print Name: _____

Print Name: _____

FPL:

Florida Power & Light Company,
a Florida corporation

Timothy Oliver,
Vice President of Corporate Real Estate

EXHIBIT A

Description of the Property

EXHIBIT B

Depiction of Solar Site

EXHIBIT C

Location Fee

LOCATION FEE FORMULA

The Location Fee shall be calculated based on the actual capacity of kilowatts of solar power installed by FPL under this Agreement (“**Capacity**”) multiplied by Eighteen and No/100 Dollars (\$18.00) per kilowatt; the resulting Capacity will be utilized for calculating the annual Location Fee for each year during the Term (or the pro-rated portion thereof in accordance with Section 5 of this Agreement).

EXHIBIT D

Wire Transfer Form and Direct Deposit Form

Financial Electronic Data Interchange Agreement



FINANCIAL ELECTRONIC DATA INTERCHANGE AGREEMENT [“FEDI Agreement”]

SECTION A: INFORMATION FOR COMPANIES DOING BUSINESS WITH FPL

- This FEDI Agreement is for purposes of facilitating electronic payments to your Company’s account at a specified Financial Institution (“Bank”) in lieu of payment by check transmitted by U.S. Mail to Company’s address.
- Company must fill in Section B **COMPLETELY**. The signature by your representative authorizes FPL to satisfy payment obligations by initiating funds transfers resulting in a deposit into your specified Bank and account.
- Company is solely responsible for the accuracy and completeness of all information provided in Section B, below, and FPL is authorized and directed to rely on such information. FPL is under no duty to detect any inaccurate, inconsistent or incomplete information provided to FPL by Company in connection with any service or materials provided to FPL. If necessary to give effect to instructions for any service or materials provided to it, FPL may change the information provided to it, including names and account numbers.
- Remittance information will be sent to the Company's Bank in CTX format via an FEDI transaction set 820. How the remittance information is communicated to the Company, as well as any costs associated with this communication, is between the Company and its Bank.
- Payments will be processed by our respective Financial Institutions in accordance with the rules of the National Automated Clearing House Association (NACHA).
- Payments will be made in accordance with the payment terms of applicable contracts.
- Any subsequent changes to the Bank Identification Number (ABA) or Company’s Account Number listed below will require fifteen (15) days’ advance notice and transmittal of a revised FEDI Agreement to your business contact at FPL and/or transmittal by mail to:
 - NextEra Energy
 - Attention: Accounting - Vendor Maintenance
 - P. O. Box 88888
 - North Palm Beach, FL 33408 -or- email to: AP-vendor-maintenance-nextera-energy@nexteraenergy.com

SECTION B: COMPANY INFORMATION & AUTHORIZATION									
Company Name:									
Company Address:									

Federal Tax ID Number:									
Company Accounting Contact Person									
Name:					Title:				
Phone #:			Fax #:		Email:				
Bank Information (Contact Financial Institution to obtain this information)									
Bank Name:					Branch:				
City:							State:		
<div style="display: flex; justify-content: space-between;"> <div>[ABA...Must be 9 digits]</div> <div> <div style="border-left: 1px dashed black; border-right: 1px dashed black; height: 300px;"></div> <div style="border-left: 1px dashed black; border-right: 1px dashed black; height: 300px;"></div> <div style="border-left: 1px dashed black; border-right: 1px dashed black; height: 300px;"></div> <div style="border-left: 1px dashed black; border-right: 1px dashed black; height: 300px;"></div> <div style="border-left: 1px dashed black; border-right: 1px dashed black; height: 300px;"></div> <div style="border-left: 1px dashed black; border-right: 1px dashed black; height: 300px;"></div> <div style="border-left: 1px dashed black; border-right: 1px dashed black; height: 300px;"></div> <div style="border-left: 1px dashed black; border-right: 1px dashed black; height: 300px;"></div> <div style="border-left: 1px dashed black; border-right: 1px dashed black; height: 300px;"></div> <div style="border-left: 1px dashed black; border-right: 1px dashed black; height: 300px;"></div> </div> </div>									
Company's Account Number:							Checking: <input type="checkbox"/> Savings: <input type="checkbox"/>		
Bank Contact Person:							Phone:		
Company Authorization Signature									
Authorized By:							Date:		
Print Name:					Title:				
SECTION C: FOR FPL INTERNAL USE ONLY									
Vendor #:			Entered By:				Date:		

EXHIBIT E

Form Memorandum of Agreement

This Instrument has been prepared by or under the supervision of (and after recording return to):

Seth S. Sheitelman, Esq.
Florida Power & Light Company (LAW/JB)
700 Universe Boulevard
Juno Beach, Florida 33408

MEMORANDUM OF SOLAR ENERGY AGREEMENT

This Memorandum of Solar Energy Agreement (“**Memorandum**”) is executed and effective this ____ day of _____, 2017 by and between the City of Pompano Beach, a municipal corporation under the State of Florida (“**CITY**”) and Florida Power & Light Company, a Florida corporation (“**FPL**”).

RECITALS

WHEREAS, on event date herewith, CITY and FPL entered into a written Solar Energy Agreement (“**Agreement**”) related to certain property situated in Broward County, Florida more particularly described in Exhibit A attached hereto and made a part hereof (“**Property**”); and

WHEREAS, CITY and FPL desire to provide record notice of the Agreement pursuant to this Memorandum.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CITY and FPL hereby give record notice of the following:

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein by reference.
2. **Solar Site.** In accordance with the terms and conditions of the Agreement, CITY has authorized use of that certain portion of the Property to FPL more particularly described in Exhibit B attached hereto and made a part hereof (“**Solar Site**”) for the purpose of constructing, installing, operating, inspecting, maintaining, repairing, testing, enlarging, modifying, removing, and replacing the solar Equipment (as defined in the Agreement).
3. **Term.** The term of the Agreement commenced on the effective date of the Agreement and continues for a term ending on the fifteenth (15th) anniversary of the effective date of the Agreement and may be renewed by approval of the parties for an additional five (5) year term.

4. **Notice.** This Memorandum is being executed by the parties solely to give public notice of the interest of FPL in the Solar Site and is not intended to modify, amend or alter in any respect whatsoever, the terms, covenants and agreements contained in the Agreement.

5. **Counterparts.** This Memorandum may be executed in one or more counterparts, each of which is an original, but all of which together shall constitute one and the same instrument.

[Signatures and Acknowledgements Appear on Following Pages]

IN WITNESS WHEREOF, CITY and FPL have executed this Memorandum on the date hereinabove written.

CITY:

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND
CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2017 by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

Executed in the presence of:

FPL:

Florida Power & Light Company,
a Florida corporation

Name: _____

By: _____
Name: Timothy Oliver
Title: Vice President of Corporate Real Estate

Name: _____

ACKNOWLEDGEMENT

STATE OF FLORIDA)
)ss:
COUNTY OF PALM BEACH)

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared Timothy Oliver, as Vice President of Corporate Real Estate of Florida Power & Light Company, a Florida corporation, personally known to me to be the person who subscribed to the foregoing instrument or who has produced _____, as identification, and acknowledged that he executed the same on behalf of said corporation and that he was duly authorized so to do.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY PUBLIC, STATE OF FLORIDA

EXHIBIT A
To Memorandum

Description of the Property

EXHIBIT B
To Memorandum

Depiction of Solar Site