

NATURAL GAS SALES AGREEMENT



Natural Gas Sales Agreement

October 24, 2016

Rev. 09/01/14

Buyer: City of Pompano Beach DBA City of Pompano Beach Service Address: SEE ATTACHMENT Attn: Phone: Fax: Email:		Seller: FPL Energy Services, Inc. 6001 Village Blvd. West Palm Beach, FL 33407 Attn: James Gill Phone: (877) 859-4879 Fax: (800) 692-3089 Email: james_ci_gill@fpl.com	
Delivery Point: TECO Peoples Gas System (PGS) City Gates Estimated Annual Volume: 4,350 Therms/Year Federal Tax ID Number: 59-6000411		LDC: TECO Peoples Gas System (PGS) LDC Account #'s: SEE ATTACHMENT Contract Date: December 1, 2016 Date of first gas supply: first day of transportation service	
Sale Price: A "Monthly Index Price" plus <u>all pass thru charges plus</u> <u>\$0.0700 per therm transportation Adder.</u> The Monthly Index Price will be taken from the first publication of the month of <u>Platts Inside F.E.R.C.'s Gas Market Report</u> . "Prices of Spot Gas Delivered to Pipelines" section for Florida Gas Transmission Co., weighted average of Zones 1,2,&3 Index where seller shall seek to obtain the the most cost effective combination of Zones 1,2,& 3. Florida Sales Tax Exempt: _____ No <u>X</u> Yes			
Term: The initial term of this Natural Gas Sales Agreement ("Agreement") shall be _____ one (1) year from the above Contract Date.			
Conditions: 1. This offer can only be accepted in writing and will expire on 12/15/16 unless rescinded sooner. 2. Customer deposit amount: \$ _____ 0 If Yes. Buyer must secure a mutually agreed upon credit enhancement such as a surety bond, cash deposit (non-interest bearing account), or letter of credit equal to a total of \$ _____. 3. The monthly Customer Service Fee is \$5.00 per LDC account number. 4. Buyer is responsible to provide the Seller its current contact information as included in Buyer section of this agreement. If Buyer's contact information should change, notification shall be made to Seller at the name and location shown in Seller section. 5. This Agreement shall automatically renew for a like term unless cancelled by either Party upon 60 days notice prior to expiration. 6. This Agreement is subject to the Terms and Conditions set forth in Exhibit A to this Agreement which is incorporated herein by reference.			
Buyer: City of Pompano Beach City of Pompano Beach Attn: Billing Address: P.O. Box 1300 City, ST, Zip: Pompano B FL 33061 Signature: <u>Attached</u> Name: _____ Title: _____ Date: _____		Seller: FPL Energy Services, Inc. By: <u>Attached</u> Name: James Gill Title: Director of Operations Date: _____ TPI Representative: Chris Longtine Phone #'s: 813-263-0703 E-mail: crlongtine@tecoenergy.com	

Exhibit A -Terms and Conditions

1. **Buyers Obligations:** Buyer is obligated to: i) purchase from Seller its full requirements of natural gas for the LDC Account(s) listed on page 1 of this Agreement; ii) designate Seller as Buyer's agent to allow Seller to perform its obligations under this Agreement; iii) release historical gas usage and billing information for the LDC Account(s) to Seller; iv) provide expected gas usage for each LDC Account if requested by Seller; v) promptly notify Seller of any Material Change in expected gas usage for each LDC Account, and vi) complete all agreements deemed necessary by the local distribution company (LDC).
2. **Seller's Obligations:** Seller is obligated to: i) deliver Buyer's full requirements of gas for each LDC Account; ii) act as Buyer's agent providing nominations and balancing services under the applicable LDC tariff.
3. **Measurement and Heating Value:** Natural gas sold and delivered hereunder shall meet the quality and heat content requirements set forth by the applicable LDC tariff. Measurement of gas quantities hereunder shall be in accordance with the applicable LDC tariff.
- 4.

Title and Warranty: Seller warrants that it will transfer good and merchantable title to all gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances and claims. Title and right of possession to all gas sold and delivered hereunder shall pass from Seller to Buyer at the Delivery Point. To the extent permitted by Florida law, each party shall be responsible for all losses, liabilities or claims, including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said gas which attach when title to the gas is held by such party.

5. **Force Majeure:** If either Party due to a condition of Force Majeure is unable to perform any obligation or condition of this Agreement, with the exception of a Party's obligation to make payments, such obligation shall be suspended during the continuance of the inability. As used herein, Force Majeure means any cause which is beyond the reasonable control of the Party claiming a Force Majeure condition. Force Majeure shall include, without limitations, acts of God, failure of any pipeline or utility to accept or transport gas, strikes, lockouts, or labor disputes, fire, flood, storms, hurricanes or other natural occurrences. In the event that no supply is available because of a Force majeure condition, Seller shall notify the Buyer and if Buyer chooses to continue using gas, Buyer shall be responsible for any penalties levied on Seller by the LDC or the pipeline.
6. **Notice:** In the event of Force Majeure or other interruptions of gas supply and if administratively practical to give such notice, Seller shall notify the customer using one of the following means: fax, personal or automated phone contact, or email. Seller shall attempt to obtain replacement supplies as per section 7, unless otherwise notified by Buyer.

Exhibit A - Terms and Conditions

7. **Curtailment and Interruptions:** In no event shall Seller be liable to Buyer for Seller's failure to deliver some or all of Buyer's gas requirements under this Agreement if such failure is due to the interruption and/or curtailment of pipeline transportation normally used by Seller or Seller's gas supplier(s) to supply gas to Buyer under this Agreement, whether attributable to Force Majeure or otherwise. Seller shall provide notice of interruption or curtailment to Buyer as per Section 6. If available to Seller, Seller may offer replacement gas supplies to Buyer at current market pricing but Seller shall be under no obligation to make such an offer to Buyer nor shall Seller be under any obligation to keep Buyer whole with respect to any additional costs associated with the replacement gas supplies. In the event of failure of gas supply due to Force Majeure and/or the interruption and/or curtailment of pipeline transportation normally used by Seller or Seller's gas supplier(s) to supply gas to Buyer under this Agreement, whether attributable to Force Majeure or pipeline curtailments, Buyer agrees to purchase replacement gas supplies, if available, at current market prices.
8. **Credit:** If Seller has a reasonable concern about Buyer's creditworthiness, Seller may require Buyer to provide a prepayment, cash deposit, letter of credit, parental guaranty or some other security, in a form acceptable to Seller in Seller's sole discretion, in an amount of two months average customer billing. Buyer hereby agrees and consents to Seller obtaining credit and LDC information, provided however that Buyer reserves the right to rescind this authorization at any time. In the event of such rescission Seller may terminate this Agreement without any further liability or obligation of Seller to Buyer.
9. **Defaults and Remedies:** In the event that either Buyer shall: i) make an assignment or any general arrangement for the benefit of creditors; ii) default in the payment obligation to the Seller, iii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it, iv) otherwise become insolvent; or v) be unable to pay its debts as they fall due, then Seller shall have the right, at its sole election, to withhold and/or suspend deliveries or payment, or terminate this Agreement without prior notice and without any further liability or obligation of Seller to Buyer. Seller may immediately suspend deliveries to Buyer and terminate this Agreement without any further liability or obligation of Seller to Buyer in the event Buyer has not paid any amount due Seller hereunder on or before the fifth day following the date such payment is due.
10. **Limitations:** Seller's liability in connection with this Agreement shall in no event exceed the lower of (i) the difference between the price of replacing undelivered gas and the price that would have been paid under this Agreement and (ii) the amount that has actually been paid by the Buyer under this Agreement. Notwithstanding anything else contained in this Agreement, Seller shall not be liable for any special, indirect, consequential or punitive damages.
11. **Taxes and Fees:** Seller shall be responsible for any and all taxes and fees levied upon or attributed to the gas purchased before title has passed from the Seller to the Buyer. Buyer shall be responsible for any and all taxes and fees levied upon or attributed to the gas purchased after title has passed from the Seller to the Buyer, including but not limited to franchise fees, municipal utility tax, gross receipts tax,



Exhibit A -Terms and Conditions

consumption and use taxes, discretionary surtax or local option taxes. Seller shall collect State of Florida sales and use tax, gross receipts tax, and municipal tax as appropriate, unless proper exemption documentation is presented by Buyer.

12. **Balancing:** Seller will be responsible for gas imbalance and retainage charges on the LDC system. Any credits for over-delivery or additional charges for under-delivery shall be the responsibility of Seller and, if included on Buyer's LDC invoice, shall be reversed on Seller's monthly invoice. Seller shall be made financially whole for any prior metering adjusts for previous billing periods made by the LDC.
13. **Assignments:** Without prior written consent from the Seller, Buyer shall not assign its rights in or delegate its duties under this Agreement. Seller may assign its rights in or delegate its duties under this Agreement and shall notify the Buyer in writing 30 days prior to such event.
14. **Early Termination Fee:** Buyer will be assessed an Early Termination Fee if you terminate service during the initial term or any subsequent renewal term. Termination of service may include, but is not limited to, switching to another natural gas marketer or voluntarily disconnecting LDC service. The Early Termination Fee shall be \$150 per month for the remaining months in the initial term or any subsequent renewal term.
15. **Invoicing/Payment Terms:** Buyer is responsible solely for the amount of gas used during the billing cycle, charged at the prices set forth on page 1 of this Agreement. Seller shall render an invoice to Buyer for volumes and services delivered within 10 days of Seller's receipt of Buyer's burnertip usage from the LDC. Invoices shall be payable 21 calendar days from the date the invoice is rendered. Charges for services due and rendered which are unpaid as of the past due date are subject to a late payment charge of 1.5% applied to any past due unpaid balance of all accounts.
16. **Governing Law:** This Agreement shall be governed by the laws of the state of Florida. This Agreement is based upon the gas pipeline tariffs and federal, state and local tax laws in effect as of the Contract Date of this Agreement. Should the gas pipeline tariffs and/or tax laws change during the term of this Agreement, the effects of these changes will be reflected in the monthly invoice.
17. **WAIVER: EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THIS AGREEMENT.**
18. **Miscellaneous:** This Agreement supersedes all prior negotiations, representations, contracts, or agreements, either oral or written, regarding the subject hereto.
19. **Approval:** All offers are subject to management approval of Buyer.

20. Public Records.

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law, as amended. Specifically, the Contractor shall:

1. Keep and maintain public records required by the City in order to perform the service.

2. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.

4. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

B. Failure of the Contractor to provide the above described public records to the City within a reasonable time may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, 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 _____, 2016 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** 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

"CORPORATION"

FPL Energy Services, Inc.
(Print name of company)

Witnesses:

[Signature]
Mr. Robert

By: [Signature]

Print Name: Troy W. Rice

Title: VP + GM

STATE OF FLORIDA

COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 7 day of November, 2016, by Troy Rice as VP + GM of FPL Energy Services Inc. A Florida corporation on behalf of the corporation. He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

Patricia Richardson
NOTARY PUBLIC, STATE OF FLORIDA

Patricia Richardson
(Name of Acknowledger Typed, Printed or Stamped)

FF 051983
Commission Number

