

**TERMINATION AND SETTLEMENT AGREEMENT  
BY AND BETWEEN  
ORLANDO UTILITIES COMMISSION  
AND  
CITY OF VERO BEACH, FLORIDA**

This Termination and Settlement Agreement (the “**Agreement**”) dated \_\_\_\_\_, 2017 (the “**Effective Date**”) is between CITY OF VERO BEACH, a municipal corporation organized under the laws of the State of Florida (“**COVB**”) and ORLANDO UTILITIES COMMISSION, a statutory municipal utility organized under the laws of the State of Florida (“**OUC**”). COVB and OUC are referred to individually as a “**Party**,” and together as the “**Parties**.”

WHEREAS, OUC and COVB are parties to that certain Agreement for the Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management Services, dated April 21, 2008, as amended and restated by a First Amended and Restated Agreement for Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management Services, dated October 20, 2015 (the “**OUC-COVB PPA**”);

WHEREAS, COVB and Florida Power and Light Company (“**FPL**”) are negotiating an Asset Purchase Agreement under which COVB would sell, and FPL would purchase, certain electric utility assets, and FPL would assume certain associated liabilities (such purchase and sale agreement, upon execution by COVB and FPL, the “**COVB Electric Utility Purchase and Sale Agreement**”);

WHEREAS, closing under the COVB Electric Utility Purchase and Sale Agreement (the “**COVB Electric Utility Closing**”) will be conditioned upon (among other conditions) termination of the OUC-COVB PPA;

WHEREAS, OUC and COVB desire to avoid potential litigation and have reached agreement on the terms of settlement and termination of the OUC-COVB PPA as set forth in this Agreement;

WHEREAS, OUC has informed COVB that signature of this Agreement by OUC is contingent upon the prior or contemporaneous execution and delivery of a mutually agreed native load firm day-ahead call option on capacity and energy agreement between OUC and FPL; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency

of which are hereby acknowledged, the Parties do hereby agree as follows:

1. **Effective Date.** This Agreement is effective as of the Effective Date, but the termination of the OUC-COV B PPA and release and waiver of claims by the Parties set forth in Section 6 below (the “***Termination and Waiver***”) shall become effective only if and when the all of the conditions precedent set forth in Section 4 below have been satisfied or waived in writing by OUC (the “***Termination and Waiver Date***”).

2. **Termination of OUC-COV B PPA.** OUC and COV B hereby agree that on the Termination and Waiver Date, the OUC-COV B PPA shall terminate in accordance with the terms of this Agreement and neither Party shall have any further duty or obligation to each other thereunder except for any duty or obligation for payment that has accrued prior to the Termination and Waiver Date.

3. **Payment of Termination Damages and Transfer Payment.** COV B shall pay to OUC the amount of Twenty Million Dollars (\$20,000,000) as liquidated damages under the OUC-COV B PPA (the “***Termination Amount***”) by electronic transfer (wire or Automated Clearing House) of U.S. dollars prior to 4:00 p.m. Eastern Prevailing Time, on the Termination and Waiver Date, to the following OUC account:

Bank of America  
Account Name: Orlando Utilities Commission  
Wire: #026009593 ACH: #063100277  
Acct: #898027342681

4. **Conditions Precedent.** The following are the conditions precedent to the Termination and Waiver Date: (i) the COV B Electric Utility Closing shall have occurred on or after October 1, 2018; and (ii) payment of the Termination Amount shall have occurred in accordance with the terms of Section 3 above.

5. **Settlement Authority.** Each of the Parties hereby expressly represents and warrants that it possesses full and complete approval and authority necessary to execute this Agreement and to enter into the obligations set forth in this Agreement, and that the person executing this Agreement on behalf of such Party has all necessary and appropriate authority to do so and to bind such Party to the obligations set forth in this Agreement.

6. **Release and Waiver.**

A. In consideration of the agreements of the Parties as set forth in this Agreement, effective as of the Termination and Waiver Date, and except as provided in Section 6.D., COV B hereby fully, wholly, absolutely and unconditionally releases and

forever waives, releases, relinquishes, gives up and discharges OUC and its commissioners, officers and employees, (collectively “**OUC Releasees**”) from any and all actions, manner of actions, omissions, allegations, claims, demands, damages, debts, liabilities, accounts, obligations, costs, expenses, liens or causes of action of any kind or nature whatever, in law or in equity, whether based on tort, contract or any other theory of recovery, that COVB may have against the OUC Releasees, as of the Termination and Waiver Date, known or unknown, that arise out of or are in any way connected with the OUC-COV B PPA.

B. In consideration of the agreements of the Parties as set forth in this Agreement, effective as of the Termination and Waiver Date, and except as provided in Section 6.D., OUC hereby fully, wholly, absolutely and unconditionally releases and forever waives, releases, relinquishes, gives up and discharges COVB and its elected officials, officers and employees, (collectively “**COVB Releasees**”) from any and all actions, manner of actions, omissions, allegations, claims, demands, damages, debts, liabilities, accounts, obligations, costs, expenses, liens or causes of action of any kind or nature whatever, in law or in equity, whether based on tort, contract or any other theory of recovery, that OUC may have against the COVB Releasees, as of the Termination and Waiver Date, known or unknown, that arise out of or are in any way connected with the OUC-COV B PPA.

C. The Parties acknowledge that, after executing this Agreement, they may discover claims in addition to or different from those which they now have or believe to exist with respect to the claims released under the OUC-COV B PPA, but that it is their intention hereby to fully settle and release, effective as of the Termination and Waiver Date, all of their claims and disputes known or unknown, which now exist, may exist, may have existed or may in the future exist against the OUC Releasees or COVB Releasees, as the case may be, arising out of or in any way connected with the OUC-COV B PPA. In furtherance of this intention, the release herein given shall be and will remain in effect as a full and complete release with respect to the claims released under this Agreement, notwithstanding the discovery or existence of any such additional or different claim or fact.

D. Notwithstanding Sections 6.A. – 6.C above, neither Party is released from any duty obligation to make payment to the other that has accrued prior to the Termination and Waiver Date.

**7. Transition of Service.** OUC’s obligation to provide services to COVB under the OUC-COV B PPA shall end at 11:59 p.m., Eastern Prevailing Time, on the Termination and Waiver Date (the “**Cut-Off Time**”).<sup>1</sup> COVB hereby acknowledges that

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<sup>1</sup> NTD: The Cut-Off Time needs to be coordinated with FPL. It is presently contemplated that the transaction between COVB and FPL would be effective at 12:00:01 a.m. on the Closing Date.

OUC shall have no obligation to furnish to COVB energy, capacity or ancillary services following the Cut-Off Time.

**8. General Provisions.**

(a) The descriptive headings in this Agreement are for convenience only and shall neither control nor affect the meaning or construction of any of the provisions of this Agreement. No amendment to this Agreement (including, without limitation, any amendment to this section) shall have any effect, legal or otherwise, or be construed to have any such effect, unless agreed to in writing by the Parties.

(b) This Agreement shall constitute the final complete expression of the agreement between the Parties relating to the subject matter of this Agreement.

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

(d) This Agreement reflects the negotiated agreement of the Parties. Accordingly, this Agreement shall be construed as if the Parties jointly prepared it, and no presumption against one Party or the other shall govern the interpretation or construction of any of the provisions of this Agreement.

(e) The failure or delay of either Party at any time to require performance by the other Party of any provision of this Agreement, even if known, does not affect the continuing right of that Party to require performance of that provision or to exercise any right, power or remedy granted by this Agreement. No waiver shall be effective unless in writing and signed by the Party granting the waiver. Any waiver shall be limited to the express terms of such waiver.

(f) The validity and interpretation of this Agreement and the right and obligations of the Parties hereunder shall be governed and construed in accordance with the laws of the State of Florida without regard for any conflicts of law provisions that might cause the law of other jurisdictions to apply. All controversies, claims or disputes arising out of or related to this Agreement or any agreement, instrument, or document contemplated hereby, shall be brought exclusively in the courts located in Florida.

(g) A default by either Party under this Agreement shall entitle the other Party to all remedies available at law or in equity. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON.

(h) This Agreement may be executed in any number of counterparts, and each counterpart shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument, it being understood that both Parties need not sign the same counterpart. The signature page of any counterpart may be appended to any other counterpart and when so appended constitute an original.

*[Signatures on Next Page]*

