

THE CITY OF VERO BEACH ELECTRIC UTILITY

ASSET PURCHASE AND SALE AGREEMENT

BY AND BETWEEN

**CITY OF VERO BEACH, FLORIDA,
AS SELLER**

AND

**FLORIDA POWER & LIGHT COMPANY,
AS BUYER**

DATED AS OF { _____ }, FEBRUARY 19, 2013

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	1
Section 1.1 Definitions.....	1
Section 1.2 Certain Interpretive Matters.....	25
ARTICLE II PURCHASE AND SALE	26
Section 2.1 Acquired Assets.....	26
Section 2.2 Excluded Assets.....	28
Section 2.3 Assumed Liabilities.....	29
Section 2.4 Excluded Liabilities.....	29 <u>30</u>
Section 2.5 Capital Leases.....	31
Section 2.6 Airport Warehouse Lease Agreement Option.....	31
ARTICLE III THE CLOSING	31 <u>32</u>
Section 3.1 Closing.....	31 <u>32</u>
Section 3.2 Purchase Price.....	32
Section 3.3 Adjustment to Purchase Price.....	32
Section 3.4 Payment of Purchase Price.....	33 <u>34</u>
Section 3.5 Allocation of Purchase Price.....	34
Section 3.6 Prorations.....	34 <u>35</u>
Section 3.7 Deliveries by Seller.....	35 <u>36</u>
Section 3.8 Deliveries by Buyer.....	37 <u>38</u>
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER	38
Section 4.1 Organization.....	38 <u>39</u>
Section 4.2 Authority Relative to this Agreement.....	38 <u>39</u>
Section 4.3 Consents and Approvals; No Violation.....	39
Section 4.4 Reports.....	39 <u>40</u>
Section 4.5 Undisclosed Liabilities.....	39 <u>40</u>
Section 4.6 Absence of Material Adverse Effect.....	40
Section 4.7 Real Property, Title and Related Matters.....	40
Section 4.8 Operability; Condition of the Vero Beach Electric Utility; Sufficiency of Real Property Interests.....	44
Section 4.9 Insurance.....	44 <u>45</u>
Section 4.10 Environmental, Licensing and Governmental Approval Matters.....	45
Section 4.11 Labor Matters.....	48
Section 4.12 ERISA; Benefit Plans.....	48 <u>49</u>
Section 4.13 Location of Acquired Assets.....	49
Section 4.14 Contracts.....	49
Section 4.15 Legal Proceedings, etc.....	50 <u>51</u>
Section 4.16 Non-Environmental Permits; Compliance with Law.....	51
Section 4.17 Regulation as a Utility.....	51 <u>52</u>
Section 4.18 Tax Matters.....	51 <u>52</u>
Section 4.19 Intellectual Property.....	51 <u>52</u>

Section 4.20	[Reserved].....	<u>5253</u>
Section 4.21	Service Territory.....	<u>5253</u>
ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER.....		<u>5253</u>
Section 5.1	Organization; Qualification.....	<u>5253</u>
Section 5.2	Authority Relative to This Agreement.....	<u>5253</u>
Section 5.3	Consents and Approvals; No Violation.....	<u>5354</u>
Section 5.4	Availability of Funds.....	<u>5354</u>
Section 5.5	Legal Proceedings.....	<u>54</u>
Section 5.6	Certain Agreements.....	<u>54</u>
ARTICLE VI COVENANTS OF THE PARTIES.....		<u>5455</u>
Section 6.1	Conduct of Business Relating to the Acquired Assets.....	<u>5455</u>
Section 6.2	Access to Information; Reporting.....	<u>5657</u>
Section 6.3	Expenses.....	<u>57</u>
Section 6.4	Further Assurances; Cooperation.....	<u>5758</u>
Section 6.5	Public Statements.....	<u>5960</u>
Section 6.6	Consents; Approvals.....	<u>6061</u>
Section 6.7	Brokerage Fees and Commissions.....	<u>6263</u>
Section 6.8	Tax Matters.....	<u>6263</u>
Section 6.9	Updating Disclosure Schedules.....	<u>6465</u>
Section 6.10	Employees.....	<u>6465</u>
Section 6.11	Risk of Loss; Insurance.....	<u>6667</u>
Section 6.12	Assumed Contracts; Ancillary Agreements.....	<u>6768</u>
Section 6.13	OUC Agreements and FMPA Entitlements.....	<u>6869</u>
Section 6.14	Separation of Seller Assets.....	<u>6970</u>
Section 6.15	Franchise Ordinance.....	<u>6970</u>
Section 6.16	Capital Expenditure and Maintenance Plan.....	<u>6970</u>
Section 6.17	Customer Data Conversion.....	<u>6970</u>
Section 6.18	Seller as Customer.....	<u>7071</u>
Section 6.19	Vero Beach Electric Utility Bonds and Other Indebtedness.....	<u>7071</u>
Section 6.20	[Reserved].....	<u>70Sale of Real Properties.71</u>
Section 6.21	Exclusivity.....	<u>7172</u>
Section 6.22	No Seller Changes in Law.....	<u>7172</u>
Section 6.23	Vero Beach Power Plant; Certain Environmental Liabilities.....	<u>7172</u>
Section 6.24	Customer Consumption Allocation.....	<u>7273</u>
Section 6.25	Seller's Responsibility for Environmental Liabilities.....	<u>7374</u>
ARTICLE VII CONDITIONS PRECEDENT.....		<u>7374</u>
Section 7.1	Conditions Precedent to Obligations of Buyer.....	<u>7374</u>
Section 7.2	Conditions Precedent to Obligations of Seller.....	<u>7577</u>
ARTICLE VIII INDEMNIFICATION AND PAYMENT FOR LOSSES.....		<u>7778</u>
Section 8.1	Indemnification and Payment for Losses.....	<u>7778</u>
Section 8.2	Defense of Claims.....	<u>8081</u>
Section 8.3	Offset.....	<u>8182</u>

ARTICLE IX TERMINATION.....	8283
Section 9.1 Termination.....	8283
Section 9.2 Effect of Termination.....	8586
 ARTICLE X MISCELLANEOUS PROVISIONS.....	 8687
Section 10.1 Amendment and Modification.....	8687
Section 10.2 Waiver of Compliance; Consents.....	8687
Section 10.3 Third Party Beneficiaries.....	8688
Section 10.4 Notices.....	8788
Section 10.5 Assignment.....	8889
Section 10.6 Governing Law.....	8889
Section 10.7 Counterparts.....	8890
Section 10.8 Schedules and Exhibits.....	8890
Section 10.9 Entire Agreement.....	8890
Section 10.10 No Joint Venture.....	8990
Section 10.11 Change in Law.....	8990
Section 10.12 Specific Performance.....	8990
Section 10.13 Severability.....	8991

ASSET PURCHASE AND SALE AGREEMENT

This ASSET PURCHASE AND SALE AGREEMENT (the "*Agreement*"), dated as of February 19, 2013 ("*Effective Date*"), is made and entered into by and between the CITY OF VERO BEACH, FLORIDA, a municipal corporation organized under the laws of the State of Florida ("*Seller*"), and FLORIDA POWER & LIGHT COMPANY, a corporation organized under the laws of the State of Florida ("*Buyer*"). Seller and Buyer are referred to individually as a "*Party*," and collectively as the "*Parties*."

WITNESSETH:

WHEREAS, Seller owns and operates an electric utility in Indian River County, Florida, and wishes to exit the electric utility business;

WHEREAS, Buyer desires to purchase and assume, and Seller desires to sell and assign, certain electric utility assets and certain associated liabilities, upon the terms and conditions hereinafter set forth in this Agreement (the "*Transaction*") as part of Seller's exit strategy from the electric utility business;

WHEREAS, Buyer and Seller desire for Buyer to provide retail electric service to Seller's electric utility customers, commencing on the day that Buyer purchases from Seller such electric utility assets upon the terms and conditions hereinafter set forth in this Agreement;

WHEREAS, Seller agrees to lease to Buyer and Buyer agrees to lease from Seller the site of Seller's electric utility plant to allow Buyer to temporarily operate Seller's electric utility plant for a period of time before such electric utility plant is decommissioned and dismantled as hereinafter provided, and Buyer will then provide electric power to Seller's service area entirely through Buyer's own, broader electric utility system; and

WHEREAS, Buyer and Seller desire for the rates for retail electric service to be provided to Seller's electric utility customers to be the same as the rates for retail electric service charged by Buyer to its retail electric service customers;

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions.

As used in this Agreement, the following terms have the meanings specified in this Section 1.1.

- (1) "*Acquired Assets*" has the meaning set forth in Section 2.1.

(187) ***“Seller Benefit Plans”*** has the meaning set forth in Section 4.12(a).

(188) ***“Seller Collective Bargaining Agreements”*** means the Contract between Seller and Teamsters Local Union No. 769, dated October 1, 2010 and any other Contract between Seller and any trade union, labor organization, collective bargaining representative or employee representative of any Transferred Employees concerning terms and conditions with respect to employment with Seller, as well as all modifications of, or amendments to, any such agreements.

(189) ***“Seller Contracts”*** means all Contracts (other than Excluded Contracts) relating to the Acquired Assets or the Business of the Vero Beach Electric Utility (i) that are in favor, or for the benefit, of Seller or (ii) to which Seller is a Party or by which any of its assets may be bound, including (A) the Real Property Interest Instruments, the Assumed Contracts and the Intellectual Property Licenses, (B) Contracts associated with the forecasting, modeling, management and operation of the Acquired Assets, (C) Contracts associated with emergency or wind storm preparedness and (D) Contracts leasing, or providing the right to use, to attach to or of access to, any portion of the Acquired Assets, including the Attachment Agreements.

(190) ***“Seller Defined Benefit Plan”*** means the City of Vero Beach General Employee Retirement Plan in effect on the Effective Date.

(191) ***“Seller Employee”*** means an hourly-paid or salaried employee of Seller, who receives an Internal Revenue Service Form W-2 from Seller, who is employed by Seller as of the Closing Date, and whose work responsibilities involve principally the Vero Beach Electric Utility, which employees are set forth in Schedule 6.10(a) by position.

(192) ***“Seller Executed Ancillary Agreements”*** means the OUC Termination Agreement, the OUC Assignment Agreements and the OUC Transfer Agreements.

(193) ***“Seller Fundamental Representations”*** means the representations and warranties made in Sections 4.1, 4.2, 4.3(i), 4.7(c) and 6.7.

(194) ***“Seller Indemnitee”*** has the meaning set forth in Section 8.1(a).

(195) ***“Seller Pole and Antenna Attachment Termination Agreements”*** means the agreements to be negotiated and executed by Seller and each Person (other than Buyer) that attaches or uses poles of Seller, including but not limited to AT&T, Comcast and ~~BellSouth~~ BellSouth, regarding the termination of such Person’s rights relating to poles of Seller.

(196) ***“Seller’s Agent(s)”*** has the meaning set forth in Section 6.1(b).

(197) ***“Seller’s Past Practices”*** means the recent historical operation, maintenance and repair practices, methods and actions performed prior to the Effective Date by, or on behalf of, Seller with respect to the Acquired Assets, but in each case shall require such practices, methods and actions to be performed in a manner complying with applicable Law.

(198) ***“Service Territory”*** means the area described as Seller’s service territory in the map attached hereto as Schedule 1.1(198).

applicable government requirements or standards to perform the duties and responsibilities of their current job assignment.

Section 4.12 ERISA; Benefit Plans.

(a) Schedule 4.12(a) lists (as of the date of this Agreement) all Benefit Plans covering any Seller Employee, or maintained, administered or with respect to which contributions are made by Seller in respect of Seller Employees ("***Seller Benefit Plans***"). True, correct, and complete copies of all Seller Benefit Plans, including all amendments thereto have been provided to Buyer.

(b) All Seller Benefit Plans are governmental plans as defined in Section 3(32) of ERISA and Seller Benefits Plans are not subject to ERISA.

(c) Seller has no ERISA Affiliates.

(d) All Seller Benefit Plans are in material compliance with all applicable Laws.

(e) Seller has materially fulfilled its obligations under the funding requirements and filing requirements of all applicable Laws with respect to Seller Benefit Plans as of the Closing Date. No Seller Benefit Plan is a "multiemployer plan" as defined in Section 3(37) of ERISA and Seller has never participated in or made contributions to a multiemployer plan with respect to which any liability remains unsatisfied.

(f) Seller has not made any commitment and will not take any action to establish any new Benefit Plan or modify or amend any Seller Benefit Plan (except as required under applicable Laws), nor has any intention to do so been communicated to any Seller Employees, except with respect to potential(i) the adoption by Seller of new Benefit Plans (including a defined contribution plan) or (ii) modifications or amendments of Seller Benefit Plan, that in the case of (i) and (ii) do not in the aggregate increase the Total Compensation to Transferred Employees above the Total Compensation of Transferred Employees on the Effective Date.

Section 4.13 Location of Acquired Assets.

Except as set forth on Schedule 4.13, all of the physical Acquired Assets are located on the Real Property.

Section 4.14 Contracts.

(a) Excluding the Excluded Contracts, Schedule 4.14 sets forth a complete list of the following Seller Contracts (the "***Material Seller Contracts***"):

(i) Contracts for the future purchase, exchange or sale of natural gas, fuel oil or other fuel;

West Palm Beach, FL 33401
Attention: John G. Igoe, P.A.

(b) if to Buyer, to:

Florida Power & Light Company
700 Universe Boulevard EMT/JB
Juno Beach, FL 33408
Attention: EMT Contracts Department

with a copy to:

Florida Power & Light Company
700 Universe Boulevard JB/Law
Juno Beach, FL 33408
Attention: General Counsel

Section 10.5 Assignment.

Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Party, except that, from and after the Closing, Buyer may (without the consent of any other Party) assign this Agreement or all or any portion of Buyer's rights, interests or obligations hereunder to any Affiliate of Buyer or any Person providing financing to Buyer or any of its their Affiliates, but no such assignment shall release Buyer of its obligations under this Agreement. Subject to this Section 10.5, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

Section 10.6 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without giving effect to conflict of law principles) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies. THE PARTIES HERETO AGREE THAT VENUE IN ANY AND ALL ACTIONS AND PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE IN THE COURT OF THE STATE OF FLORIDA IN ~~VOLUSIA~~INDIAN RIVER COUNTY, FLORIDA, WHICH COURT SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE AND THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING. SERVICE OF PROCESS MAY BE MADE IN ANY MANNER RECOGNIZED BY SUCH COURT. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT, AND SHALL SURVIVE THE CLOSING OR TERMINATION OF THIS AGREEMENT.