



**City Council Agenda Item**  
October 16, 2012

---

**TO:** Mayor Pilar Turner  
Vice Mayor Craig Fletcher  
Councilmember Jay Kramer  
Councilmember Tracy Carroll  
Councilmember Dick Winger

**FROM:** James R. O'Connor, City Manager

**DATE:** October 9, 2012

---

**SUBJECT:** Presentation by John Igoe – Review and Approval of Agreements  
with Orlando Utilities Commission

**REQUESTED BY:** City Manager

---

The following is requested as it relates to the above-referenced agenda item:

- Request Council review and approval of the attached Agreements.
- No action required. (Information only)
-

**TO:** James O'Connor, City Manager of the City of Vero Beach

**FROM:** Richard J. Miller   
Eric T. Grill

**DATE:** October 3, 2012 **CLIENT-MATTER NO.:** 311016-0001

**RE:** City of Vero Beach / Florida Power & Light Transaction – Summary of FMPPA  
Transfer Agreements

The City of Vero Beach (“COVB”), Orlando Utilities Commission (“OUC”) and Florida Power & Light Company (“FPL”) have certain obligations as contemplated by the Memorandum of Understanding executed by COVB, OUC and FPL on September 19, 2012 in connection with the proposed purchase and assumption by FPL, and the sale and assignment by COVB, of certain electric utility assets and certain associated liabilities (the “FPL Transaction”). The COVB’s foremost obligations involve (i) the transfer of the Florida Municipal Power Agency Entitlement Agreements for the Stanton I Project, Stanton II Project and the St. Lucie Project to the Orlando Utilities Commission (“OUC”) and (ii) the termination the Agreement for Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management Services with OUC. Below is a brief synopsis of the documents necessary to satisfy these obligations.

1. **Agreement between the City of Vero Beach and the Orlando Utilities Commission for the Transfer of 100% of the City of Vero Beach’s Power Entitlement Share of the Florida Municipal Power Agency Stanton Project and Florida Municipal Power Agency Stanton II Project (“Stanton Transfer Agreement”)** – The Stanton Transfer Agreement provides for the transfer of COVB’s 32.521% Power Entitlement Share in the Stanton I Project and 23.9521% Power Entitlement Share in the Stanton II Project to OUC, along with COVB’s post-transfer obligations under the (i) Stanton I Project Power Sales Contract, (ii) Stanton I Project Project Support Contract, (iii) Stanton II Project Power Sales Contract and (iv) Stanton II Project Project Support Contract, to OUC in consideration of the payment of Thirty-Four Million Dollars (\$34,000,000) by COVB to OUC payable upon the closing of the FPL Transaction.

The Assignment Agreements (attached as Exhibit B to the Stanton Transfer Agreement) will effectuate the actual transfer contemplated by the Stanton Transfer Agreement (similar to a Bill of Sale). Both the Stanton Transfer Agreement and the attached Assignment Agreements will be signed immediately upon formal approval by COVB and OUC, but will be effective upon the satisfaction of the conditions precedent set forth therein, including, without limitation, the approval of the Florida Municipal Power Agency and the closing of the FPL Transaction.

2. **Agreement between the City of Vero Beach and the Orlando Utilities Commission for the Transfer of 100% of the City of Vero Beach’s Power Entitlement Share of the Florida Municipal Power Agency St. Lucie Project (“St. Lucie Transfer Agreement”)** –

Memo



The St. Lucie Transfer Agreement provides for the transfer of COVB's 15.202% Power Entitlement Share in the St. Lucie Project to OUC, along with COVB's post-transfer obligations under the (i) St. Lucie Project Power Sales Contract and (ii) St. Lucie Project Project Support Contract, to OUC.

The Assignment Agreement (attached as Exhibit B to the St. Lucie Transfer Agreement) will effectuate the actual transfer contemplated by the St. Lucie Transfer Agreement. Both the St. Lucie Transfer Agreement and the attached Assignment Agreements will be signed immediately upon formal approval by COVB and OUC, but will be effective upon the satisfaction of the conditions precedent set forth therein, including, without limitation, the approval of the Florida Municipal Power Agency and the closing of the FPL Transaction. The St. Lucie Transfer Agreement is nearly identical to the Stanton Transfer Agreement, except that, unlike the Stanton Transfer Agreement, there is no consideration paid by COVB to OUC for this assignment.

3. **Termination and Settlement Agreement between the City of Vero Beach and the Orlando Utilities Commission ("Termination Agreement")** – The Termination Agreement voluntarily terminates the Agreement for Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management Services with OUC in consideration of the payment of Twenty Million Dollars (\$20,000,000) by COVB to OUC payable upon the closing of the FPL Transaction. The Termination Agreement will be signed immediately upon formal approval by COVB and OUC, but will be effective upon the satisfaction of the conditions precedent set forth therein, including, without limitation, the closing of the FPL Transaction.

AGREEMENT BETWEEN CITY OF VERO BEACH AND  
ORLANDO UTILITIES COMMISSION FOR TRANSFER OF 100% OF  
CITY OF VERO BEACH'S POWER ENTITLEMENT SHARE OF  
STANTON AND STANTON II PROJECTS

This Agreement between the City of Vero Beach and the Orlando Utilities Commission for the Transfer of 100% of the City of Vero Beach's Power Entitlement Share of the Florida Municipal Power Agency Stanton Project and Florida Municipal Power Agency Stanton II Project (this "Agreement" or this "Transfer Agreement") is hereby entered into by and between the City of Vero Beach ("Vero Beach") and the Orlando Utilities Commission ("OUC" and together with Vero Beach, the "Parties") this \_\_\_ day of October, 2012.

**WITNESSETH:**

**WHEREAS**, Vero Beach, pursuant to the Stanton Project Power Sales Contract between the Florida Municipal Power Agency and City of Vero Beach, Florida dated as of January 16, 1984, as amended ("Stanton I Power Sales Contract") and the Stanton Project Project Support Contract between Florida Municipal Power Agency and City of Vero Beach, Florida dated as of January 16, 1984, as amended ("Stanton I Project Support Contract" and together with the Stanton I Power Sales Contract, the "Stanton I Project Contracts"), acquired a 32.521% Power Entitlement Share in the Stanton I Project;

**WHEREAS**, Vero Beach, pursuant to the Stanton II Project Power Sales Contract between the Florida Municipal Power Agency and City of Vero Beach, Florida dated on or about May 24, 1991, as amended ("Stanton II Power Sales Contract") and the Stanton II Project Project Support Contract between Florida Municipal Power Agency and City of Vero Beach, Florida dated on or about May 24, 1991, as amended ("Stanton II Project Support Contract" and together with the Stanton II Power Sales Contract, the "Stanton II Project Contracts"), acquired a 23.9521% Power Entitlement Share in the Stanton II Project;

**WHEREAS**, OUC and Vero Beach are parties to that certain Agreement for Purchase and Sale of Electric Energy and Capacity and Asset Management Services dated April 21, 2008, as amended (the “OUC-Vero Beach PPA”);

**WHEREAS**, Vero Beach and Florida Power & Light Company (“FPL”) are currently negotiating the purchase and assumption by FPL, and the sale and assignment by Vero Beach, of certain electric utility assets and certain associated liabilities pursuant to terms and conditions as may be agreed upon, and set forth in a purchase and sale agreement (the “Vero Beach Electric Utility Purchase and Sale Agreement”) to be executed, by Vero Beach and FPL (“Vero Beach Electric Utility Transaction”);

**WHEREAS**, in connection with and in anticipation of the closing of the Vero Beach Electric Utility Transaction, Vero Beach desires to assign to OUC all of its Power Entitlement Shares in the Stanton I Project and Stanton II Project;

**WHEREAS**, OUC desires to obtain Vero Beach’s Power Entitlement Shares in the Stanton I Project and Stanton II Project and assume all of Vero Beach’s obligations under the Stanton I Project Contracts and the Stanton II Project Contracts; and

**WHEREAS**, Florida Municipal Power Agency (“FMPPA”) is a party to the Stanton I Project Contracts and Stanton II Project Contracts and has agreed to facilitate this Transfer Agreement.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained and for Ten Dollars (\$10.00) and other mutual and valuable considerations, the receipt of which is hereby acknowledged, the Parties agree as follows:

**SECTION 1. AGREEMENT TO TRANSFER.**

1.1 Subject to Section 2 hereof, the Parties hereby agree that Vero Beach shall

transfer to OUC all of Vero Beach's 32.521% Power Entitlement Share in the Stanton I Project and that OUC will become a Project Participant in the Stanton I Project with a 32.521% Power Entitlement Share and that OUC shall assume all of Vero Beach's post-transfer obligations under the Stanton I Project Contracts.

1.2 The Parties hereby agree that Vero Beach shall transfer to OUC all of Vero Beach's 23.9521% Power Entitlement Share in the Stanton II Project and that OUC will become a Project Participant in the Stanton II Project with a 23.9521% Power Entitlement Share and that OUC shall assume all of Vero Beach's post-transfer obligations under the Stanton II Project Contracts.

1.3 The Parties hereby agree that Vero Beach shall pay Thirty-Four Million Dollars (\$34,000,000) (the "Transfer Payment") to OUC in consideration for OUC's assumption of Vero Beach's 32.521% Power Entitlement Share in the Stanton I Project and 23.9521% Power Entitlement Share in the Stanton II Project and all of Vero Beach's post-transfer obligations to FMPA under the Stanton I Project Contracts and the Stanton II Project Contracts, which Transfer Payment shall be paid on the Vero Beach Electric Utility Closing (as defined below).

## SECTION 2. CONDITIONS OF CONSUMMATION OF THE TRANSFER.

2.1 The Parties agree that Vero Beach's transfer to OUC of all of Vero Beach's 32.521% Power Entitlement Share in the Stanton I Project and 23.9521% Power Entitlement Share in the Stanton II Project and OUC's assumption of all of Vero Beach's post-transfer obligations under the Stanton I and Stanton II Project Contracts be conditioned upon the satisfaction of all of the following conditions:

(a) the closing of the Vero Beach Electric Utility Transaction pursuant to the Vero Beach Electric Utility Purchase and Sale Agreement (the "Vero Beach Electric Utility

Closing”);

(b) the execution by OUC and Vero Beach of the Termination and Settlement Agreement between OUC and Vero Beach for termination of the OUC- Vero Beach PPA (the “OUC-Vero Beach PPA Termination Agreement”) and the satisfaction or waiver of all conditions precedent therein for the termination of the OUC-Vero Beach PPA;

(c) payment of the Transfer Payment by Vero Beach to OUC in consideration for OUC’s assumption of Vero Beach’s 32.521% Power Entitlement Share in the Stanton I Project and 23.9521% Power Entitlement Share in the Stanton II Project and all of Vero Beach’s post-transfer obligations to FMPA under the Stanton I Project Contracts and the Stanton II Project Contracts immediately, and solely, upon the Vero Beach Electric Utility Closing;

(d) the execution by OUC and Vero Beach of the Agreement between the City of Vero Beach and Orlando Utilities Commission for Transfer of 100% of City of Vero Beach’s Power Entitlement Share of St. Lucie Project (the “St. Lucie Project Contracts Transfer Agreement”) and the satisfaction or waiver of all conditions precedent therein for transfer and assignment of Vero Beach’s Power Entitlement Shares in the St. Lucie Project to, and assumption of Vero Beach’s post-transfer obligations under such project by, OUC;

(e) The consent and approval of the appropriate parties, including without limitation, the Trustee for the Bonds (as defined in the Stanton I Project Contracts and Stanton II Project Contracts) and FMPA, as contemplated under the Stanton I Project Contracts and Stanton II Project Contracts to (i) the proposed transfer and assignment by Vero Beach to, and assumption by OUC of all applicable contractual terms of and Vero Beach’s post-transfer obligations under, the Stanton I Project Contracts and Stanton II Project Contracts; and (ii) any amendments required to the Stanton I Project Contracts and Stanton II Project Contracts to

reflect such assignment and assumption and the designation of the OUC point or points of delivery under such Stanton I Project Contracts and Stanton II Project Contracts.

The date on which the last of (a) – (e) occurs shall be deemed the transfer date.

### SECTION 3 ADDITIONAL DOCUMENTS

3.1 Concurrent with execution of this Transfer Agreement, OUC and Vero Beach will execute and enter into Assignments between the City of Vero Beach and the Orlando Utilities Commission, in the forms attached hereto as **Exhibit 2** (the “Assignment Agreements”). The Assignment Agreements shall be effective upon the fulfillment of all conditions precedent set forth in the Assignment Agreements including the Vero Beach Electric Utility Closing.

3.2 Vero Beach and OUC shall cooperate with each other and with FMPA and use their best reasonable efforts in all activities related to this Transfer Agreement.

### SECTION 4. DESIGNATION OF FMPA AS AGENT.

4.1 The Parties hereby designate FMPA as their agent to obtain all consents and approvals necessary under the Stanton I Project Contracts and the Stanton II Project Contracts to accomplish the aforesaid transfer of Vero Beach’s 32.521% Power Entitlement Share in the Stanton I Project and 23.9521% Power Entitlement Share in the Stanton II Project to OUC and OUC’s assumption of all of Vero Beach’s post-transfer obligations under the Stanton I Project Contracts and the Stanton II Project Contracts.

4.2 Vero Beach shall pay to FMPA all of FMPA’s out of pocket costs incurred by FMPA, including legal and accounting fees and related disbursements of FMPA Bond counsel and tax counsel, allocable costs for FMPA staff time, and expenses related to the Bond trustee, insurance company, and municipal rating agency approvals, pursuant to Section 4.1, irrespective of whether or not the transfer of Vero Beach’s 32.521% Power Entitlement Share in the Stanton I

Project and 23.9521% Power Entitlement Share in the Stanton II Project to OUC is finalized. As between the Parties, Vero Beach and OUC shall negotiate the allocation of FMPA costs between Vero Beach and OUC.

SECTION 5. TERMINATION OF TRANSFER AGREEMENT.

5.1 In the event that the Vero Beach Electric Utility Purchase and Sale Agreement is terminated by either Vero Beach or FPL prior to the Vero Beach Electric Utility Closing, then this Transfer Agreement shall automatically terminate on the date that the Vero Beach Electric Utility Purchase and Sale Agreement is terminated.

SECTION 6. LIABILITY FOR COSTS OF STANTON AND STANTON II POWER ENTITLEMENT SHARES.

6.1 Vero Beach shall remain solely liable for, and shall indemnify OUC for, any amounts due or payable or accrued by Vero Beach and relating to Vero Beach's 32.521% Power Entitlement Share in the Stanton I Project or 23.9521% Power Entitlement Share in the Stanton II Project as of the transfer date, and such liabilities arising after the transfer date due to events occurring prior to the transfer date as contemplated in this Transfer Agreement. OUC shall be solely liable for, and shall indemnify Vero Beach for, all amounts due or payable or accrued by OUC after the transfer date and relating to Vero Beach's 32.521% Power Entitlement Share in the Stanton I Project or 23.9521% Power Entitlement Share in the Stanton II Project. Schedule 1 attached hereto and incorporated by this reference lists all currently known Vero Beach liabilities under the Stanton I Project Contracts and Stanton II Project Contracts and the agreed allocation between OUC and Vero Beach.

6.2 The Parties recognize and hereby agree that Vero Beach has pre-paid and may pre-pay certain Stanton I Project and Stanton II Project costs and that upon an accounting to the

Parties by FMPA of these pre-paid costs, FMPA will to the extent required under the terms of the Stanton I Project Contracts and Stanton II Project Contracts reimburse Vero Beach (or to the extent FMPA must make such payments to OUC, then OUC will pass through such payments to Vero Beach) for those pre-paid costs attributable to time periods following the transfer date implementing the transfer of Vero Beach's 32.521% Power Entitlement Share in the Stanton I Project and 23.9521% Power Entitlement Share in the Stanton II Project to OUC pursuant to this Transfer Agreement.

SECTION 7. MISCELLANEOUS.

7.1 Unless otherwise indicated, capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Stanton I Project Contracts and Stanton II Project Contracts, as applicable.

7.2 Any notice, demand, or request required or authorized by this Assignment shall be deemed properly given if mailed certified mail, return receipt requested, to the affected Party at the address as shown on **Exhibit 1** attached hereto.

7.3 The Parties expressly agree that FPL is a third party beneficiary of this Transfer Agreement entitled, in its own name or in the name of either Party, to enforce the provisions hereof against the other Party. No provision of this Transfer Agreement may be amended or waived, and this Transfer Agreement may not be terminated, without the written consent of FPL.

7.4 The descriptive headings in this contract 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 any amendment to this section) shall have any effect, legal or otherwise, nor be construed to have any such effect, unless agreed to in writing by the parties.

7.5 This instrument shall constitute the final complete expression of this Agreement between the parties relating to the subject matter of this Agreement.

7.6 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 remain in full force and effect.

7.7 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.

7.8 The failure or delay of any party at any time to require performance by any 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. The waiver by any party of a breach of any provision of this Agreement cannot be construed as a waiver of a continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power, or remedy under this Agreement. No notice to or demand on a party in any circumstance shall, of itself, entitle the party receiving the notice or demand to any other or further notice or demand in similar or other circumstances.

7.9 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 contract or any agreement, instrument, or document contemplated hereby, shall be brought exclusively in the state or federal courts located in Florida, as appropriate.

7.10 A default by any party under this Agreement shall entitle the other 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.

7.11 This Agreement may be executed in any number of counterparts, and signature pages exchanged by facsimile or email, 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 all parties need not sign the same counterpart. The signature page of any counterpart, and facsimiles and photocopies of that counterpart, may be appended to any other counterpart and when so appended constitute an original. In the event that any signature is delivered by facsimile transmission or by facsimile signature, such signature creates a valid and binding obligation of the party executing (or on whose behalf such signature is executed) the contract with the same force and effect as if such facsimile signature page were an original.

*[Signatures on Next Page]*

IN WITNESS WHEREOF, the Parties have caused this Transfer Agreement to be executed by their proper officers, respectively, being thereunto duly authorized and their corporate seals to be hereto affixed as of this day and year first above written.

ATTEST:

CITY OF VERO BEACH, FLORIDA

\_\_\_\_\_  
Tammy K. Vock, City Clerk

\_\_\_\_\_  
Pilar Turner, Mayor

(City Seal)

Approved as to form and legal  
sufficiency:

Approved as conforming to municipal  
policy:

\_\_\_\_\_  
Wayne R. Coment, City Attorney

\_\_\_\_\_  
James R. O'Connor, City Manager

ATTEST:

**ORLANDO UTILITIES COMMISSION**

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_

Name: Kenneth P. Ksionek

Title: General Manager & CEO

Approved as to form and legality:

**OUC Legal Department**

By: \_\_\_\_\_

Name: \_\_\_\_\_

## SCHEDULE 1

Monthly Power Costs (as defined in the Stanton I Project Contracts and Stanton II Project Contracts) and Monthly Transmission Costs (as defined in the Stanton I Project Contracts and Stanton II Project Contracts) pursuant to the terms and conditions set forth in the Stanton I Project Contracts and Stanton II Project Contracts. Such Monthly Power Costs and Monthly Transmission Costs represent the costs incurred in the ordinary course of business under the Stanton I Project Contracts and Stanton II Project Contracts.

The following chart is an estimate of the short term (“ST”) over/under collections for fiscal year 2012 for the Stanton Project and Stanton II Project as of October 3, 2012 as provided by FMPA:

<b>Project</b>	<b>Estimated Total ST Over (Under) Collection</b>	<b>Vero Beach’s Percentage</b>	<b>Vero Beach’s Estimated ST Over (Under) Collection</b>
Stanton Project	281,000	32.521%	\$99,814
Stanton II Project	(146,000)	16.4887%	(\$24,074)

Vero Beach and OUC shall prepare a closing statement effective upon the Assignment Effective Date (as defined in the Assignment Agreements) setting forth the allocation of the then current liabilities under the Stanton I Project Contracts and Stanton II Project Contracts, including the prepaid expenses and pre- and post-transfer liabilities, as contemplated by the Transfer Agreement.

**EXHIBIT 1**

City of Vero Beach  
1053 20th Place  
P. O. Box 1389  
Vero Beach, Florida 32961-1389  
Attention: James O'Connor, City Manager

Orlando Utilities Commission  
100 West Anderson St.  
P.O. Box 3193  
Orlando, FL 32802  
Attention: Jan Aspuru, Vice President

**EXHIBIT 2**

Assignment Agreements

See Attached

ASSIGNMENT BETWEEN CITY OF VERO BEACH AND  
ORLANDO UTILITIES COMMISSION OF A  
32.521% POWER ENTITLEMENT SHARE IN THE STANTON I PROJECT

This Assignment Agreement (“Assignment Agreement”) is hereby entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Vero Beach (“Vero Beach”) and the Orlando Utilities Commission (“OUC” and together with Vero Beach, the “Parties”).

WITNESSETH:

**WHEREAS**, Vero Beach is a Project Participant in the FMPA Stanton I Project with a 32.521% Power Entitlement Share pursuant to the Stanton I Power Contracts;

**WHEREAS**, Vero Beach and FPL have negotiated or are currently negotiating the purchase and assumption by FPL, and the sale and assignment by Vero Beach, of certain electric utility assets and certain associated liabilities pursuant to terms and conditions as agreed upon or may be agreed upon and set forth in the Vero Beach Electric Utility Purchase and Sale Agreement;

**WHEREAS**, OUC is not a Project Participant in the Stanton I Project, but desires to become a Project Participant and assume and be assigned all of Vero Beach’s 32.521% Power Entitlement Share in the Stanton I Project in connection with the Vero Beach Electric Utility Transaction;

**WHEREAS**, on October \_\_, 2012, Vero Beach and OUC entered into the Transfer Agreement (as defined below).

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained and for Ten Dollars (\$10.00) and other mutual and valuable considerations, the receipt of which is hereby acknowledged, the Parties agree as follows:

Section 1 - Definitions - as used herein

1.1 Assignment - Means the assignment and transfer by Vero Beach to OUC of Vero Beach's 32.521% Power Entitlement Share (currently 20.5 MWs) in the Stanton I Project and the assumption by OUC of the correspondence post-transfer obligations of Vero Beach under the Stanton I Power Contracts pursuant to Section 4.2 hereof.

1.2 FMPA - Means the Florida Municipal Power Agency, a validly created and existing legal entity pursuant to Section 163.01, Florida Statutes (1993).

1.3 FPL – Means Florida Power & Light Company, a corporation organized under the laws of the State of Florida.

1.4 OUC-FPL Stanton I PPA – Means the power purchase and sale agreement executed or to be executed between OUC and FPL relating to the purchase and sale of capacity and energy from the Stanton I project.

1.5 OUC-FPL Stanton II PPA – Means the power purchase and sale agreement executed or to be executed between OUC and FPL relating to the purchase and sale of capacity and energy from the Stanton II project.

1.6 OUC-Vero Beach PPA – Means that certain Agreement for Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management Services dated April 21, 2008, as amended.

1.7 OUC-Vero Beach PPA Termination Agreement – Means an agreement executed or to be executed between OUC and Vero Beach for the termination of the OUC-Vero Beach PPA.

1.8 Participation Agreement – Means the Participation Agreement between OUC and FMPA (Stanton Project) made as of January 16, 1984, as amended, and as may be further amended from time to time.

1.9 Power Entitlement Share - Means Vero Beach's 32.521% of the Project Capability as defined in the Power Sales Contract, as the same may be adjusted from time to time in accordance with the provisions of the Power Sales Contract.

1.10 Power Sales Contract - Means the Stanton Project Power Sales Contract made and entered into as of January 16, 1984, by and between FMPA and Vero Beach, as amended, and as may be further amended from time to time.

1.11 Project Support Contract - Means the Stanton Project Project Support Contract made and entered into as of January 16, 1984, by and between FMPA and Vero Beach, as amended, and as may be further amended from time to time.

1.12 Reliability Call Agreement – Means the reliability call agreement executed or to be executed between OUC and FPL relating to the ability of FPL to purchase gas from OUC and pay OUC for delivery thereof to power plants to be purchased by FPL pursuant to the Vero Beach Electric Utility Closing.

1.13 Stanton I Power Contracts – Means the Power Sales Contract and the Project Support Contract.

1.14 Stanton I Project - Means FMPA's undivided ownership interest in the Curtis H. Stanton Energy Center Unit One and related generation and transmission assets.

1.15 Transfer Agreement - Means the Agreement between the City of Vero Beach and Orlando Utilities Commission for Transfer of 100% of the City of Vero Beach's Power Entitlement Share of Stanton I Project and Stanton II Project providing for the transfer by Vero Beach to OUC of Vero Beach's 32.521% Power Entitlement Share in the Stanton I Project and Vero Beach's 23.9521% Power Entitlement Share in the Stanton II Project.

1.16 Vero Beach Electric Utility Closing – Means the closing of the Vero Beach

Electric Utility Transaction pursuant to the Vero Beach Electric Utility Purchase and Sale Agreement.

1.17 Vero Beach Electric Utility Purchase and Sale Agreement – Means the purchase and sale agreement executed or to be executed between Vero Beach and FPL for the Vero Beach Electric Utility Transaction.

1.18 Vero Beach Electric Utility Transaction – Means the purchase and assumption by FPL, and the sale and assignment by Vero Beach, of certain electric utility assets and certain associated liabilities.

1.19 Construction - In this Assignment Agreement, unless the context otherwise requires:

(i) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms refer to this Assignment Agreement.

(ii) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa.

## Section 2 - Effective Date

2.1 This Assignment Agreement has been approved and duly authorized by the respective governing body of each Party and shall be effective upon the satisfaction or waiver of all conditions precedent to the Assignment set forth in Section 4.1 hereof (the date of satisfaction or waiver of all such conditions precedent shall be the “Assignment Effective Date”).

## Section 3 - Applicable Law

3.1 This Assignment Agreement is made under and shall be governed by the laws of the State of Florida.

#### Section 4 - Assignment

4.1 The following are conditions precedent to the Assignment:

- (a) consent to the Assignment by FMPA;
- (b) Vero Beach Electric Utility Closing;
- (c) payment of Thirty-Four Million Dollars (\$34,000,000) by Vero Beach to OUC as consideration for (i) the assignment and transfer by Vero Beach to OUC of Vero Beach's power entitlement share in the Curtis H. Stanton Energy Center Unit One and (ii) the assignment and transfer by Vero Beach to OUC of Vero Beach's power entitlement share in the Curtis H. Stanton Energy Center Unit Two;
- (d) the execution by OUC and Vero Beach of the OUC-Vero Beach PPA Termination Agreement and the satisfaction or waiver of all conditions precedent therein for the termination of the OUC-Vero Beach PPA;
- (e) the execution by OUC and Vero Beach of the Transfer Agreement and the satisfaction or waiver of all conditions precedent therein;
- (f) the execution by OUC and FPL of the OUC-FPL Stanton I PPA and the satisfaction or waiver of all conditions precedent therein for the commencement of the purchase and sale of capacity and energy thereunder;
- (g) the execution by OUC and FPL of the OUC-FPL Stanton II PPA and the satisfaction or waiver of all conditions precedent therein for the commencement of the purchase and sale of capacity and energy thereunder; and
- (h) the execution by OUC and FPL of the Reliability Call Agreement and the satisfaction or waiver of all conditions precedent therein for the commencement of the right of FPL to purchase gas from OUC and pay OUC for delivery thereof to power plants to be

purchased by FPL pursuant to the Vero Beach Electric Utility Closing.

4.2 Upon the Assignment Effective Date, Vero Beach hereby assigns and transfers to OUC all of its right, title and interest in its 32.521% Power Entitlement Share of the Stanton I Project. Upon the effective date of this Assignment, OUC hereby accepts said assignment and transfer of Vero Beach's 32.521% Power Entitlement Share of the Stanton I Project and agrees to assume all of the corresponding post-transfer obligations of Vero Beach under the Stanton I Power Contracts per the terms of the Transfer Agreement. Except as otherwise may be agreed in writing, this assignment and transfer shall not relieve Vero Beach of any of its obligations under the Stanton I Power Contracts.

#### Section 5 - Hold Harmless and Indemnification

5.1 As of the Assignment Effective Date, Vero Beach agrees to assume and hold harmless and indemnify OUC for any and all pre-transfer liabilities under the Stanton I Power Contracts or Participation Agreement to the extent of the 32.521% Power Entitlement Share being assigned hereto, per the terms of the Transfer Agreement.

5.2 As of the Assignment Effective Date, OUC agrees to assume and hold harmless and indemnify Vero Beach for any and all payments, duties or obligations which Vero Beach has incurred, may incur or would incur pursuant to the Stanton I Power Contracts or Participation Agreement to the extent of the 32.521% Power Entitlement Share being assigned hereto for all periods after the transfer date, per the terms of the Transfer Agreement.

#### Section 6 - Default

6.1 An event of default under this Assignment Agreement shall occur upon failure on the part of either Party to make any payments as required herein or to meet any obligations as required herein.

6.2 The non-defaulting Party shall promptly notify the defaulting Party in writing of any event of default. If such default is not remedied within thirty days of such notice, the non-defaulting Party shall have the right to take any available legal action or remedy to enforce the terms of this Assignment Agreement or to remedy the default.

6.3 An event of default under this Assignment Agreement shall not be construed as a termination of this Assignment Agreement, and all of the duties and obligations of the defaulting Party shall remain in full force and effect as if such default had not occurred.

6.4 An event of default by Vero Beach or OUC under the Stanton I Power Contracts shall not be construed as a termination of this Assignment Agreement.

6.5 In the event of default as specified herein, the defaulting party shall pay all reasonable attorneys' fees and costs incurred in enforcing any rights, remedies or obligations under the terms of this Assignment Agreement.

#### Section 7 - Miscellaneous Provisions

7.1 In the event that any of the terms, covenants, or conditions of this Assignment Agreement or its application shall be held invalid as to any person, corporation, or circumstance by any court having jurisdiction, the remainder of this Assignment Agreement and the application and effects of its terms, covenants, or conditions to such persons, corporation, or circumstance shall not be affected thereby.

7.2 Any notice, demand, or request required or authorized by this Assignment Agreement shall be deemed properly given if mailed certified mail, return receipt requested, to the affected Party at the address as shown on Exhibit 1 attached hereto.

7.3 All the provisions of this Assignment are subject to the rights of FMPA under the Stanton I Power Contracts.

7.4 Unless otherwise indicated, capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Stanton I Power Contracts.

7.5 This Assignment Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which, together, shall constitute one and the same instrument. Counterparts of this Assignment Agreement (or applicable signature pages hereof) that are manually signed and delivered by facsimile or electronic transmission shall be deemed to constitute signed original counterparts hereof and shall bind the parties signing and delivering in such manner.

7.6 The Parties expressly agree that FPL is a third party beneficiary of this Assignment Agreement entitled, in its own name or in the name of either Party, to enforce the provisions hereof against the other Party. No provision of this Assignment Agreement may be amended or waived, and this Assignment Agreement may not be terminated without the written consent of FPL.

*[Signatures on Next Page]*

IN WITNESS WHEREOF, the Parties have caused this Assignment Agreement to be executed by their proper officers, respectively, being thereunto duly authorized and their corporate seals to be hereto affixed as of this day and year first above written.

ATTEST:

CITY OF VERO BEACH, FLORIDA

\_\_\_\_\_  
Tammy K. Vock, City Clerk

\_\_\_\_\_  
Pilar Turner, Mayor

(City Seal)

Approved as to form and legal  
sufficiency:

Approved as conforming to municipal  
policy:

\_\_\_\_\_  
Wayne R. Coment, City Attorney

\_\_\_\_\_  
James R. O'Connor, City Manager

ATTEST:

**ORLANDO UTILITIES COMMISSION**

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_

Name: Kenneth P. Ksionek

Title: General Manager & CEO

Approved as to form and legality:

**OUC Legal Department**

By: \_\_\_\_\_

Name: \_\_\_\_\_

EXHIBIT 1

City of Vero Beach  
1053 20th Place  
P. O. Box 1389  
Vero Beach, Florida 32961-1389  
Attention: James O'Connor, City Manager

Orlando Utilities Commission  
100 West Anderson St.  
P.O. Box 3193  
Orlando, FL 32802  
Attention: Jan Aspuru, Vice President

ASSIGNMENT BETWEEN CITY OF VERO BEACH AND  
ORLANDO UTILITIES COMMISSION OF A  
23.9521% POWER ENTITLEMENT SHARE IN THE STANTON II PROJECT

This Assignment Agreement (“Assignment Agreement”) is hereby entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by and between the City of Vero Beach (“Vero Beach”) and the Orlando Utilities Commission (“OUC” and together with Vero Beach, the “Parties”).

WITNESSETH:

**WHEREAS**, Vero Beach is a Project Participant in the FMPA Stanton II Project with a 23.9521% Power Entitlement Share pursuant to the Stanton II Power Contracts;

**WHEREAS**, Vero Beach and FPL have negotiated or are currently negotiating the purchase and assumption by FPL, and the sale and assignment by Vero Beach, of certain electric utility assets and certain associated liabilities pursuant to terms and conditions as agreed upon or may be agreed upon and set forth in the Vero Beach Electric Utility Purchase and Sale Agreement;

**WHEREAS**, OUC is not a Project Participant in the Stanton II Project, but desires to become a Project Participant and assume and be assigned all of Vero Beach’s 23.9521% Power Entitlement Share in the Stanton II Project in connection with the Vero Beach Electric Utility Transaction;

**WHEREAS**, on October \_\_, 2012, Vero Beach and OUC entered into the Transfer Agreement (as defined below).

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained and for Ten Dollars (\$10.00) and other mutual and valuable considerations, the receipt of which is hereby acknowledged, the Parties agree as follows:

Section 1 - Definitions - as used herein

1.1 Assignment - Means the assignment and transfer by Vero Beach to OUC of Vero Beach's 23.9521% Power Entitlement Share (currently 16.4 MWs) in the Stanton II Project and the assumption by OUC of the correspondence post-transfer obligations of Vero Beach under the Stanton II Power Contracts pursuant to Section 4.2 hereof.

1.2 FMPA - Means the Florida Municipal Power Agency, a validly created and existing legal entity pursuant to Section 163.01, Florida Statutes (1993).

1.3 FPL – Means Florida Power & Light Company, a corporation organized under the laws of the State of Florida.

1.4 OUC-FPL Stanton I PPA – Means the power purchase and sale agreement executed or to be executed between OUC and FPL relating to the purchase and sale of capacity and energy from the Stanton I project.

1.5 OUC-FPL Stanton II PPA – Means the power purchase and sale agreement executed or to be executed between OUC and FPL relating to the purchase and sale of capacity and energy from the Stanton II project.

1.6 OUC-Vero Beach PPA – Means that certain Agreement for Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management Services dated April 21, 2008, as amended.

1.7 OUC-Vero Beach PPA Termination Agreement – Means an agreement executed or to be executed between OUC and Vero Beach for the termination of the OUC-Vero Beach PPA.

1.8 Participation Agreement – Means the Participation Agreement between OUC and FMPA (Stanton Project) made as of June 26, 1991, as amended, and as may be further amended from time to time.

1.9 Power Entitlement Share - Means Vero Beach's 23.9521% of the Project Capability as defined in the Power Sales Contract, as the same may be adjusted from time to time in accordance with the provisions of the Power Sales Contract.

1.10 Power Sales Contract - Means the Stanton II Project Power Sales Contract made and entered into as of May 24, 1991, by and between FMPA and Vero Beach, as amended, and as may be further amended from time to time.

1.11 Project Support Contract - Means the Stanton II Project Support Contract made and entered into as of May 24, 1991, by and between FMPA and Vero Beach, as amended, and as may be further amended from time to time.

1.12 Reliability Call Agreement – Means the reliability call agreement executed or to be executed between OUC and FPL relating to the ability of FPL to purchase gas from OUC and pay OUC for delivery thereof to power plants to be purchased by FPL pursuant to the Vero Beach Electric Utility Closing.

1.13 Stanton II Power Contracts – Means the Power Sales Contract and the Project Support Contract.

1.14 Stanton II Project - Means FMPA's undivided ownership interest in the Curtis H. Stanton Energy Center Unit Two and related generation and transmission assets.

1.15 Transfer Agreement - Means the Agreement between the City of Vero Beach and Orlando Utilities Commission for Transfer of 100% of the City of Vero Beach's Power Entitlement Share of Stanton I Project and Stanton II Project providing for the transfer by Vero Beach to OUC of Vero Beach's 32.521% Power Entitlement Share in the Stanton I Project and Vero Beach's 23.9521% Power Entitlement Share in the Stanton II Project.

1.16 Vero Beach Electric Utility Closing – Means the closing of the Vero Beach

Electric Utility Transaction pursuant to the Vero Beach Electric Utility Purchase and Sale Agreement.

1.17 Vero Beach Electric Utility Purchase and Sale Agreement – Means the purchase and sale agreement executed or to be executed between Vero Beach and FPL for the Vero Beach Electric Utility Transaction.

1.18 Vero Beach Electric Utility Transaction – Means the purchase and assumption by FPL, and the sale and assignment by Vero Beach, of certain electric utility assets and certain associated liabilities.

1.19 Construction - In this Assignment Agreement, unless the context otherwise requires:

(i) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms refer to this Assignment Agreement.

(ii) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa.

#### Section 2 - Effective Date

2.1 This Assignment Agreement has been approved and duly authorized by the respective governing body of each Party and shall be effective upon the satisfaction or waiver of all conditions precedent to the Assignment set forth in Section 4.1 hereof (the date of satisfaction or waiver of all such conditions precedent shall be the “Assignment Effective Date”).

#### Section 3 - Applicable Law

3.1 This Assignment Agreement is made under and shall be governed by the laws of the State of Florida.

#### Section 4 - Assignment

4.1 The following are conditions precedent to the Assignment:

- (a) consent to the Assignment by FMPPA;
- (b) Vero Beach Electric Utility Closing;
- (c) payment of Thirty-Four Million Dollars (\$34,000,000) by Vero Beach to OUC as consideration for (i) the assignment and transfer by Vero Beach to OUC of Vero Beach's power entitlement share in the Curtis H. Stanton Energy Center Unit One and (ii) the assignment and transfer by Vero Beach to OUC of Vero Beach's power entitlement share in the Curtis H. Stanton Energy Center Unit Two;
- (d) the execution by OUC and Vero Beach of the OUC-Vero Beach PPA Termination Agreement and the satisfaction or waiver of all conditions precedent therein for the termination of the OUC-Vero Beach PPA;
- (e) the execution by OUC and Vero Beach of the Transfer Agreement and the satisfaction or waiver of all conditions precedent therein;
- (f) the execution by OUC and FPL of the OUC-FPL Stanton I PPA and the satisfaction or waiver of all conditions precedent therein for the commencement of the purchase and sale of capacity and energy thereunder;
- (g) the execution by OUC and FPL of the OUC-FPL Stanton II PPA and the satisfaction or waiver of all conditions precedent therein for the commencement of the purchase and sale of capacity and energy thereunder; and
- (h) the execution by OUC and FPL of the Reliability Call Agreement and the satisfaction or waiver of all conditions precedent therein for the commencement of the right of FPL to purchase gas from OUC and pay OUC for delivery thereof to power plants to be

purchased by FPL pursuant to the Vero Beach Electric Utility Closing.

4.2 Upon the Assignment Effective Date, Vero Beach hereby assigns and transfers to OUC all of its right, title and interest in its 23.9521% Power Entitlement Share of the Stanton II Project. Upon the effective date of this Assignment, OUC hereby accepts said assignment and transfer of Vero Beach's 23.9521% Power Entitlement Share of the Stanton II Project and agrees to assume all of the corresponding post-transfer obligations of Vero Beach under the Stanton II Power Contracts per the terms of the Transfer Agreement. Except as otherwise may be agreed in writing, this assignment and transfer shall not relieve Vero Beach of any of its obligations under the Stanton II Power Contracts.

#### Section 5 - Hold Harmless and Indemnification

5.1 As of the Assignment Effective Date, Vero Beach agrees to assume and hold harmless and indemnify OUC for any and all pre-transfer liabilities under the Stanton II Power Contracts or Participation Agreement to the extent of the 23.9521% Power Entitlement Share being assigned hereto, per the terms of the Transfer Agreement.

5.2 As of the Assignment Effective Date, OUC agrees to assume and hold harmless and indemnify Vero Beach for any and all payments, duties or obligations which Vero Beach has incurred, may incur or would incur pursuant to the Stanton II Power Contracts or Participation Agreement to the extent of the 23.9521% Power Entitlement Share being assigned hereto for all periods after the transfer date, per the terms of the Transfer Agreement.

#### Section 6 - Default

6.1 An event of default under this Assignment Agreement shall occur upon failure on the part of either Party to make any payments as required herein or to meet any obligations as required herein.

6.2 The non-defaulting Party shall promptly notify the defaulting Party in writing of any event of default. If such default is not remedied within thirty days of such notice, the non-defaulting Party shall have the right to take any available legal action or remedy to enforce the terms of this Assignment Agreement or to remedy the default.

6.3 An event of default under this Assignment Agreement shall not be construed as a termination of this Assignment Agreement, and all of the duties and obligations of the defaulting Party shall remain in full force and effect as if such default had not occurred.

6.4 An event of default by Vero Beach or OUC under the Stanton II Power Contracts shall not be construed as a termination of this Assignment Agreement.

6.5 In the event of default as specified herein, the defaulting party shall pay all reasonable attorneys' fees and costs incurred in enforcing any rights, remedies or obligations under the terms of this Assignment Agreement.

#### Section 7 - Miscellaneous Provisions

7.1 In the event that any of the terms, covenants, or conditions of this Assignment Agreement or its application shall be held invalid as to any person, corporation, or circumstance by any court having jurisdiction, the remainder of this Assignment Agreement and the application and effects of its terms, covenants, or conditions to such persons, corporation, or circumstance shall not be affected thereby.

7.2 Any notice, demand, or request required or authorized by this Assignment Agreement shall be deemed properly given if mailed certified mail, return receipt requested, to the affected Party at the address as shown on Exhibit 1 attached hereto.

7.3 All the provisions of this Assignment are subject to the rights of FMPA under the Stanton II Power Contracts.

7.4 Unless otherwise indicated, capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Stanton II Power Contracts.

7.5 This Assignment Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which, together, shall constitute one and the same instrument. Counterparts of this Assignment Agreement (or applicable signature pages hereof) that are manually signed and delivered by facsimile or electronic transmission shall be deemed to constitute signed original counterparts hereof and shall bind the parties signing and delivering in such manner.

7.6 The Parties expressly agree that FPL is a third party beneficiary of this Assignment Agreement entitled, in its own name or in the name of either Party, to enforce the provisions hereof against the other Party. No provision of this Assignment Agreement may be amended or waived, and this Assignment Agreement may not be terminated without the written consent of FPL.

*[Signatures on Next Page]*

IN WITNESS WHEREOF, the Parties have caused this Assignment Agreement to be executed by their proper officers, respectively, being thereunto duly authorized and their corporate seals to be hereto affixed as of this day and year first above written.

ATTEST:

CITY OF VERO BEACH, FLORIDA

\_\_\_\_\_  
Tammy K. Vock, City Clerk

\_\_\_\_\_  
Pilar Turner, Mayor

(City Seal)

Approved as to form and legal  
sufficiency:

Approved as conforming to municipal  
policy:

\_\_\_\_\_  
Wayne R. Coment, City Attorney

\_\_\_\_\_  
James R. O'Connor, City Manager

ATTEST:

**ORLANDO UTILITIES COMMISSION**

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_

Name: Kenneth P. Ksionek

Title: General Manager & CEO

Approved as to form and legality:

**OUC Legal Department**

By: \_\_\_\_\_

Name: \_\_\_\_\_

EXHIBIT 1

City of Vero Beach  
1053 20th Place  
P. O. Box 1389  
Vero Beach, Florida 32961-1389  
Attention: James O'Connor, City Manager

Orlando Utilities Commission  
100 West Anderson St.  
P.O. Box 3193  
Orlando, FL 32802  
Attention: Jan Aspuru, Vice President

AGREEMENT BETWEEN CITY OF VERO BEACH AND  
ORLANDO UTILITIES COMMISSION FOR TRANSFER OF 100% OF  
CITY OF VERO BEACH'S POWER ENTITLEMENT SHARE OF  
ST. LUCIE PROJECT

This Agreement between the City of Vero Beach and the Orlando Utilities Commission for the Transfer of 100% of the City of Vero Beach's Power Entitlement Share of the Florida Municipal Power Agency St. Lucie Project (this "Agreement" or this "Transfer Agreement") is hereby entered into by and between the City of Vero Beach ("Vero Beach") and the Orlando Utilities Commission ("OUC" and together with Vero Beach, the "Parties") this \_\_\_ day of October, 2012.

**WITNESSETH:**

**WHEREAS**, Vero Beach, pursuant to the St. Lucie Project Power Sales Contract between the Florida Municipal Power Agency and City of Vero Beach, Florida dated as of June 1, 1982, as amended by Amendment No. 1 dated as of January 1, 1983 and Amendment No. 2 dated as of April 1, 1983 ("St. Lucie Power Sales Contract") and the St. Lucie Project Project Support Contract between Florida Municipal Power Agency and City of Vero Beach, Florida dated as of June 1, 1982, as amended by Amendment No. 1 dated as of January 1, 1983 and Amendment No. 2 dated as of April 1, 1983 ("St. Lucie Project Support Contract" and together with the St. Lucie Power Sales Contract, the "St. Lucie Project Contracts") acquired a 15.202% Power Entitlement Share in the St. Lucie Project;

**WHEREAS**, OUC and Vero Beach are parties to that certain Agreement for Purchase and Sale of Electric Energy and Capacity and Asset Management Services dated April 21, 2008, as amended (the "OUC-Vero Beach PPA");

**WHEREAS**, Vero Beach and Florida Power & Light Company ("FPL") are currently

negotiating the purchase and assumption by FPL, and the sale and assignment by Vero Beach, of certain electric utility assets and certain associated liabilities pursuant to terms and conditions as may be agreed upon, and set forth in a purchase and sale agreement (the “Vero Beach Electric Utility Purchase and Sale Agreement”) to be executed, by Vero Beach and FPL (“Vero Beach Electric Utility Transaction”);

**WHEREAS**, in connection with and in anticipation of the closing of the Vero Beach Electric Utility Transaction, Vero Beach desires to assign to OUC all of its Power Entitlement Share in the St. Lucie Project;

**WHEREAS**, OUC desires to obtain Vero Beach’s Power Entitlement Share in the St. Lucie Project and assume all of Vero Beach’s obligations under the St. Lucie Project Contracts; and

**WHEREAS**, Florida Municipal Power Agency (“FMPA”) is a party to the St. Lucie Project Contracts and has agreed to facilitate this Transfer Agreement.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained and for Ten Dollars (\$10.00) and other mutual and valuable considerations, the receipt of which is hereby acknowledged, the Parties agree as follows:

**SECTION 1. AGREEMENT TO TRANSFER.**

1.1 Subject to Section 2 hereof, the Parties hereby agree that Vero Beach shall transfer to OUC all of Vero Beach’s 15.202% Power Entitlement Share in the St. Lucie Project and that OUC will become a Project Participant in the St. Lucie Project with a 15.202% Power Entitlement Share and that OUC shall assume all of Vero Beach’s post-transfer obligations under the St. Lucie Project Contracts.

**SECTION 2. CONDITIONS OF CONSUMMATION OF THE TRANSFER.**

2.1 The Parties agree that Vero Beach's transfer to OUC of all of Vero Beach's 15.202% Power Entitlement Share in the St. Lucie Project and OUC's assumption of all of Vero Beach's post-transfer obligations under the St. Lucie Project Contracts be conditioned upon the satisfaction of all of the following conditions:

(a) the closing of the Vero Beach Electric Utility Transaction pursuant to the Vero Beach Electric Utility Purchase and Sale Agreement (the "Vero Beach Electric Utility Closing");

(b) the execution by OUC and Vero Beach of the Termination and Settlement Agreement between OUC and Vero Beach for termination of the OUC- Vero Beach PPA (the "OUC-Vero Beach PPA Termination Agreement") and the satisfaction or waiver of all conditions precedent therein for the termination of the OUC-Vero Beach PPA;

(c) the execution by OUC and Vero Beach of the Agreement between the City of Vero Beach and Orlando Utilities Commission for Transfer of 100% of City of Vero Beach's Power Entitlement Share of Stanton and Stanton II Projects (the "Stanton I and Stanton II Project Contracts Transfer Agreement") and the satisfaction or waiver of all conditions precedent therein for transfer and assignment of Vero Beach's Power Entitlement Shares in the Stanton I Project and Stanton II Project to, and assumption of Vero Beach's post-transfer obligations under such projects by, OUC; and

(d) The consent and approval of the appropriate parties, including without limitation, the Trustee for the Bonds (as defined in the St. Lucie Project Contracts) and FMPPA, as contemplated under the St. Lucie Project Contracts to (i) the proposed transfer and assignment by Vero Beach to, and assumption by OUC of all applicable contractual terms of and Vero Beach's post-transfer obligations under, the St. Lucie Project Contracts; (ii) any amendments

required to the St. Lucie Project Contracts to reflect such assignment and assumption and the designation of the OUC point or points of delivery under such St. Lucie Project Contracts; and (iii) termination of the network transmission service currently utilized by Vero Beach and the establishment of firm point-to-point transmission service to OUC by FPL for delivery of energy from the St. Lucie project.

The date on which the last of (a) – (d) occurs shall be deemed the transfer date.

2.2 Vero Beach and OUC agree to cooperate with FPL to the extent necessary to meet satisfy the foregoing conditions in a manner to support the occurrence of the Vero Beach Electric Utility Closing on or about January 1, 2014, including but not limited to (i) Vero Beach agrees to terminate its network transmission service used for delivery of energy from the St. Lucie project in such manner, and (ii) by May 1, 2013, OUC shall request from FPL firm point-to-point transmission for delivery of energy from the St. Lucie project in such manner.

### SECTION 3 ADDITIONAL DOCUMENTS

3.1 Concurrent with execution of this Transfer Agreement, OUC and Vero Beach will execute and enter into an Assignment between the City of Vero Beach and the Orlando Utilities Commission, in substantially the form attached hereto as **Exhibit 2** (the “Assignment Agreement”). The Assignment Agreement shall be effective upon the fulfillment of all conditions precedent set forth in the Assignment Agreement including the Vero Beach Electric Utility Closing.

3.2 Vero Beach and OUC shall cooperate with each other and with FMPA and use their best reasonable efforts in all activities related to this Transfer Agreement.

### SECTION 4. DESIGNATION OF FMPA AS AGENT.

4.1 The Parties hereby designate FMPA as their agent to obtain all consents and

approvals necessary under the St. Lucie Project Contracts to accomplish the aforesaid transfer of Vero Beach's 15.202% Power Entitlement Share in the St. Lucie Project to OUC and OUC's assumption of all of Vero Beach's post-transfer obligations under the St. Lucie Project Contracts.

4.2 Vero Beach shall pay to FMPA all of FMPA's out of pocket costs incurred by FMPA, including legal and accounting fees and related disbursements of FMPA Bond counsel and tax counsel, allocable costs for FMPA staff time, and expenses related to the Bond trustee, insurance company, and municipal rating agency approvals, pursuant to Section 4.1, irrespective of whether or not the transfer of Vero Beach's 15.202% Power Entitlement Share in the St. Lucie Project to OUC is finalized. As between the Parties, Vero Beach and OUC shall negotiate the allocation of FMPA costs between Vero Beach and OUC.

#### SECTION 5. TERMINATION OF TRANSFER AGREEMENT.

5.1 In the event that the Vero Beach Electric Utility Purchase and Sale Agreement is terminated by either Vero Beach or FPL prior to the Vero Beach Electric Utility Closing, then this Transfer Agreement shall automatically terminate on the date that the Vero Beach Electric Utility Purchase and Sale Agreement is terminated.

#### SECTION 6. LIABILITY FOR COSTS OF ST. LUCIE POWER ENTITLEMENT SHARES.

6.1 Vero Beach shall remain solely liable for, and shall indemnify OUC for, any amounts due or payable or accrued by Vero Beach and relating to Vero Beach's 15.202% Power Entitlement Share of the St. Lucie Project as of the transfer date, and such liabilities arising after the transfer date due to events occurring prior to the transfer date as contemplated in this Transfer Agreement. OUC shall be solely liable for, and shall indemnify Vero Beach for, all amounts due or payable or accrued by OUC after the transfer date and relating to Vero Beach's

15.202% Power Entitlement Share of the St. Lucie Project. Schedule 1 attached hereto and incorporated by this reference lists all currently known Vero Beach liabilities under the St. Lucie Project Contracts and the agreed allocation between OUC and Vero Beach.

6.2 The Parties recognize and hereby agree that Vero Beach has pre-paid and may pre-pay certain St. Lucie Project costs and that upon an accounting to the Parties by FMPA of these pre-paid costs, FMPA will to the extent required under the terms of the St. Lucie Project Contracts reimburse Vero Beach (or to the extent FMPA must make such payments to OUC, then OUC will pass through such payments to Vero Beach) for those pre-paid costs attributable to time periods following the transfer date implementing the transfer of Vero Beach's 15.202% Power Entitlement Share in the St. Lucie Project to OUC pursuant to this Transfer Agreement.

#### SECTION 7. MISCELLANEOUS.

7.1 Unless otherwise indicated, capitalized terms used herein but not otherwise defined shall have the meanings set forth in the St. Lucie Project Contracts.

7.2 Any notice, demand, or request required or authorized by this Assignment shall be deemed properly given if mailed certified mail, return receipt requested, to the affected Party at the address as shown on **Exhibit 1** attached hereto.

7.3 The Parties expressly agree that FPL is a third party beneficiary of this Transfer Agreement entitled, in its own name or in the name of either Party, to enforce the provisions hereof against the other Party. No provision of this Transfer Agreement may be amended or waived, and this Transfer Agreement may not be terminated, without the written consent of FPL.

7.4 The descriptive headings in this contract 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 any amendment to this section) shall have any

effect, legal or otherwise, nor be construed to have any such effect, unless agreed to in writing by the parties.

7.5 This instrument shall constitute the final complete expression of this Agreement between the parties relating to the subject matter of this Agreement.

7.6 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 remain in full force and effect.

7.7 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.

7.8 The failure or delay of any party at any time to require performance by any 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. The waiver by any party of a breach of any provision of this Agreement cannot be construed as a waiver of a continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power, or remedy under this Agreement. No notice to or demand on a party in any circumstance shall, of itself, entitle the party receiving the notice or demand to any other or further notice or demand in similar or other circumstances.

7.9 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 contract or any agreement, instrument, or document contemplated hereby, shall be brought exclusively in the state or federal courts located in Florida, as appropriate.

7.10 A default by any party under this Agreement shall entitle the other 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.

7.11 This Agreement may be executed in any number of counterparts, and signature pages exchanged by facsimile or email, 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 all parties need not sign the same counterpart. The signature page of any counterpart, and facsimiles and photocopies of that counterpart, may be appended to any other counterpart and when so appended constitute an original. In the event that any signature is delivered by facsimile transmission or by facsimile signature, such signature creates a valid and binding obligation of the party executing (or on whose behalf such signature is executed) the contract with the same force and effect as if such facsimile signature page were an original.

IN WITNESS WHEREOF, the Parties have caused this Transfer Agreement to be executed by their proper officers, respectively, being thereunto duly authorized and their corporate seals to be hereto affixed as of this day and year first above written.

ATTEST:

CITY OF VERO BEACH, FLORIDA

\_\_\_\_\_  
Tammy K. Vock, City Clerk

\_\_\_\_\_  
Pilar Turner, Mayor

(City Seal)

Approved as to form and legal  
sufficiency:

Approved as conforming to municipal  
policy:

\_\_\_\_\_  
Wayne R. Coment, City Attorney

\_\_\_\_\_  
James R. O'Connor, City Manager

ATTEST:

**ORLANDO UTILITIES COMMISSION**

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_

Name: Kenneth P. Ksionek

Title: General Manager & CEO

Approved as to form and legality:

**OUC Legal Department**

By: \_\_\_\_\_

Name: \_\_\_\_\_

## SCHEDULE 1

Monthly Power Costs (as defined in the St. Lucie Project Contracts) and Monthly Transmission Costs (as defined in the St. Lucie Project Contracts) pursuant to the terms and conditions set forth in the St. Lucie Project Contracts. Such Monthly Power Costs and Monthly Transmission Costs represent the costs incurred in the ordinary course of business under the St. Lucie Project Contracts.

The following chart is an estimate of the short term (“ST”) over/under collections for fiscal year 2012 for the St. Lucie Project as of October 3, 2012 as provided by FMPA:

	<b>Estimated Total ST Over (Under) Collection</b>	<b>Vero Beach’s Percentage</b>	<b>Vero Beach’s Estimated ST Over (Under) Collection</b>
St. Lucie Project	(\$10,000)	15.202 %	(\$1,520)

Vero Beach and OUC shall prepare a closing statement effective upon the Assignment Effective Date (as defined in the Assignment Agreement) setting forth the allocation of the then current liabilities under the St. Lucie Project Contracts, including the prepaid expenses and pre- and post-transfer liabilities, as contemplated by the Transfer Agreement.

## EXHIBIT 1

City of Vero Beach  
1053 20th Place  
P. O. Box 1389  
Vero Beach, Florida 32961-1389  
Attention: James O'Connor, City Manager

Orlando Utilities Commission  
100 West Anderson St.  
P.O. Box 3193  
Orlando, FL 32802  
Attention: Jan Aspuru, Vice President

**EXHIBIT 2**

Assignment Agreement

See Attached

ASSIGNMENT BETWEEN CITY OF VERO BEACH AND  
ORLANDO UTILITIES COMMISSION OF A 15.202% POWER ENTITLEMENT SHARE  
IN THE ST. LUCIE NUCLEAR POWER PLANT PROJECT

This Assignment Agreement (“Assignment Agreement”) is hereby entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Vero Beach (“Vero Beach”) and the Orlando Utilities Commission (“OUC” and together with Vero Beach, the “Parties”).

WITNESSETH:

**WHEREAS**, Vero Beach is a Project Participant in the FMPA St. Lucie Project with a 15.202% Power Entitlement Share pursuant to the St. Lucie Power Contracts;

**WHEREAS**, Vero Beach and FPL have negotiated or are currently negotiating the purchase and assumption by FPL, and the sale and assignment by Vero Beach, of certain electric utility assets and certain associated liabilities pursuant to terms and conditions as agreed upon or may be agreed upon and set forth in the Vero Beach Electric Utility Purchase and Sale Agreement;

**WHEREAS**, OUC is not a Project Participant in the St. Lucie Project, but desires to become a Project Participant and assume and be assigned all of Vero Beach’s 15.202% Power Entitlement Share in the St. Lucie Project in connection with the Vero Beach Electric Utility Transaction;

**WHEREAS**, on October \_\_, 2012, Vero Beach and OUC entered into the Transfer Agreement (as defined below).

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained and for Ten Dollars (\$10.00) and other mutual and valuable considerations, the receipt of which is hereby acknowledged, the Parties agree as follows:

Section 1 - Definitions - as used herein

1.1 Assignment - Means the assignment and transfer by Vero Beach to OUC of Vero Beach's 15.202% Power Entitlement Share in the St. Lucie Project and the assumption by OUC of the corresponding post-transfer obligations of Vero Beach under the St. Lucie Power Contracts pursuant to Section 4.2 hereof.

1.2 FMPA - Means the Florida Municipal Power Agency, a validly created and existing legal entity pursuant to Section 163.01, Florida Statutes (1993).

1.3 FPL – Means Florida Power & Light Company, a corporation organized under the laws of the State of Florida.

1.4 OUC-FPL Stanton I PPA - Means the power purchase and sale agreement executed or to be executed between OUC and FPL relating to the purchase and sale of capacity and energy from the Stanton I project.

1.5 OUC-FPL Stanton II PPA - Means the power purchase and sale agreement executed or to be executed between OUC and FPL relating to the purchase and sale of capacity and energy from the Stanton II project.

1.6 OUC-Vero Beach PPA – Means that certain Agreement for Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management Services dated April 21, 2008, as amended.

1.7 OUC-Vero Beach PPA Termination Agreement – Means an agreement executed or to be executed between OUC and Vero Beach for the termination of the OUC-Vero Beach PPA.

1.8 Participation Agreement – Means the Participation Agreement between FPL and FMPA (St. Lucie Unit No. 2) made as of February 11, 1982, as amended, and as may be further amended from time to time.

1.9 Power Entitlement Share - Means Vero Beach's 15.202% of the Project Capability as defined in the Power Sales Contract, as the same may be adjusted from time to time in accordance with the provisions of the Power Sales Contract.

1.10 Power Sales Contract - Means the St. Lucie Project Power Sales Contract made and entered into as of June 1, 1982, by and between FMPA and Vero Beach, as amended by Amendment No. 1 dated as of January 1, 1983 and Amendment No. 2 dated as of April 1, 1983, and as may be further amended from time to time.

1.11 Project Support Contract - Means the St. Lucie Project Project Support Contract made and entered into as of June 1, 1982, by and between FMPA and Vero Beach, as amended by Amendment No. 1 dated as of January 1, 1983 and Amendment No. 2 dated as of April 1, 1983, and as may be further amended from time to time.

1.12 Reliability Call Agreement - Means the reliability call agreement executed or to be executed between OUC and FPL relating to the ability of FPL to purchase gas from OUC and pay OUC for delivery thereof to power plants to be purchased by FPL pursuant to the Vero Beach Electric Utility Closing.

1.13 St. Lucie Power Contracts – Means the Power Sales Contract and the Project Support Contract.

1.14 St. Lucie Project - Means FMPA's undivided ownership interest in the St. Lucie Unit No. 2 and related generation and transmission assets.

1.15 Transfer Agreement - Means the Agreement between the City of Vero Beach and Orlando Utilities Commission for Transfer of 100% of the City of Vero Beach's Power Entitlement Share of St. Lucie Project providing for the transfer by Vero Beach to OUC of Vero Beach's 15.202% Power Entitlement Share in the St. Lucie Project.

1.16 Vero Beach Electric Utility Closing – Means the closing of the Vero Beach Electric Utility Transaction pursuant to the Vero Beach Electric Utility Purchase and Sale Agreement.

1.17 Vero Beach Electric Utility Purchase and Sale Agreement – Means the purchase and sale agreement executed or to be executed between Vero Beach and FPL for the Vero Beach Electric Utility Transaction.

1.18 Vero Beach Electric Utility Transaction – Means the purchase and assumption by FPL, and the sale and assignment by Vero Beach, of certain electric utility assets and certain associated liabilities.

1.19 Construction - In this Assignment Agreement, unless the context otherwise requires:

(i) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms refer to this Assignment Agreement.

(ii) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa.

#### Section 2 - Effective Date

2.1 This Assignment Agreement has been approved and duly authorized by the respective governing body of each Party and shall be effective upon the satisfaction or waiver of all conditions precedent to the Assignment set forth in Section 4.1 hereof (the date of satisfaction or waiver of all such conditions precedent shall be the “Assignment Effective Date”).

#### Section 3 - Applicable Law

3.1 This Assignment Agreement is made under and shall be governed by the laws of

the State of Florida.

Section 4 - Assignment

4.1 The following are conditions precedent to the Assignment:

- (a) consent to the Assignment by FMPA;
- (b) Vero Beach Electric Utility Closing;
- (c) payment of Thirty Four Million Dollars (\$34,000,000) by Vero Beach to OUC as consideration for (i) the assignment and transfer by Vero Beach to OUC of Vero Beach's power entitlement share in the Curtis H. Stanton Energy Center Unit One and (ii) the assignment and transfer by Vero Beach to OUC of Vero Beach's power entitlement share in the Curtis H. Stanton Energy Center Unit Two;
- (d) the execution by OUC and Vero Beach of the OUC-Vero Beach PPA Termination Agreement and the satisfaction or waiver of all conditions precedent therein for the termination of the OUC-Vero Beach PPA;
- (e) the execution by OUC and Vero Beach of the Transfer Agreement and the satisfaction or waiver of all conditions precedent therein;
- (f) the execution by OUC and FPL of the OUC-FPL Stanton I PPA and the satisfaction or waiver of all conditions precedent therein for the commencement of the purchase and sale of capacity and energy thereunder;
- (g) the execution by OUC and FPL of the OUC-FPL Stanton II PPA and the satisfaction or waiver of all conditions precedent therein for the commencement of the purchase and sale of capacity and energy thereunder; and
- (h) the execution by OUC and FPL of the Reliability Call Agreement and the satisfaction or waiver of all conditions precedent therein for the commencement of the right of

FPL to purchase gas from OUC and pay OUC for delivery thereof to power plants to be purchased by FPL pursuant to the Vero Beach Electric Utility Closing.

4.2 Upon the Assignment Effective Date, Vero Beach hereby assigns and transfers to OUC all of its right, title and interest in its 15.202% Power Entitlement Share of the St. Lucie Project. Upon the effective date of this Assignment, OUC hereby accepts said assignment and transfer of Vero Beach's 15.202% Power Entitlement Share of the St. Lucie Project and agrees to assume all of the corresponding post-transfer obligations of Vero Beach under the St. Lucie Power Contracts per the terms of the Transfer Agreement. Except as otherwise may be agreed in writing, this assignment and transfer shall not relieve Vero Beach of any of its obligations under the St. Lucie Power Contracts.

#### Section 5 - Hold Harmless and Indemnification

5.1 As of the Assignment Effective Date, Vero Beach agrees to assume and hold harmless and indemnify OUC for any and all pre-transfer liabilities under the St. Lucie Power Contracts or Participation Agreement to the extent of the 15.202% Power Entitlement Share being assigned hereto, per the terms of the Transfer Agreement.

5.2 As of the Assignment Effective Date, OUC agrees to assume and hold harmless and indemnify Vero Beach for any and all payments, duties or obligations which Vero Beach has incurred, may incur or would incur pursuant to the St. Lucie Power Contracts or Participation Agreement to the extent of the 15.202% Power Entitlement Share being assigned hereto for all periods after the transfer date, per the terms of the Transfer Agreement.

#### Section 6 - Default

6.1 An event of default under this Assignment Agreement shall occur upon failure on the part of either Party to make any payments as required herein or to meet any obligations as

required herein.

6.2 The non-defaulting Party shall promptly notify the defaulting Party in writing of any event of default. If such default is not remedied within thirty days of such notice, the non-defaulting Party shall have the right to take any available legal action or remedy to enforce the terms of this Assignment Agreement or to remedy the default.

6.3 An event of default under this Assignment Agreement shall not be construed as a termination of this Assignment Agreement, and all of the duties and obligations of the defaulting Party shall remain in full force and effect as if such default had not occurred.

6.4 An event of default by Vero Beach or OUC under the St. Lucie Power Contracts shall not be construed as a termination of this Assignment Agreement.

6.5 In the event of default as specified herein, the defaulting party shall pay all reasonable attorneys' fees and costs incurred in enforcing any rights, remedies or obligations under the terms of this Assignment Agreement.

#### Section 7 - Miscellaneous Provisions

7.1 In the event that any of the terms, covenants, or conditions of this Assignment Agreement or its application shall be held invalid as to any person, corporation, or circumstance by any court having jurisdiction, the remainder of this Assignment Agreement and the application and effects of its terms, covenants, or conditions to such persons, corporation, or circumstance shall not be affected thereby.

7.2 Any notice, demand, or request required or authorized by this Assignment Agreement shall be deemed properly given if mailed certified mail, return receipt requested, to the affected Party at the address as shown on Exhibit 1 attached hereto.

7.3 All the provisions of this Assignment Agreement are subject to the rights of

FMPA under the St. Lucie Power Contracts.

7.4 Unless otherwise indicated, capitalized terms used herein but not otherwise defined shall have the meanings set forth in the St. Lucie Power Contracts.

7.5 This Assignment Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which, together, shall constitute one and the same instrument. Counterparts of this Assignment Agreement (or applicable signature pages hereof) that are manually signed and delivered by facsimile or electronic transmission shall be deemed to constitute signed original counterparts hereof and shall bind the parties signing and delivering in such manner.

7.6 The Parties expressly agree that FPL is a third party beneficiary of this Assignment Agreement entitled, in its own name or in the name of either Party, to enforce the provisions hereof against the other Party. No provision of this Assignment Agreement may be amended or waived, and this Assignment Agreement may not be terminated, without the written consent of FPL.

*[Signatures on Next Page]*

IN WITNESS WHEREOF, the Parties have caused this Assignment Agreement to be executed by their proper officers, respectively, being thereunto duly authorized and their corporate seals to be hereto affixed as of this day and year first above written.

ATTEST:

CITY OF VERO BEACH, FLORIDA

\_\_\_\_\_  
Tammy K. Vock, City Clerk

\_\_\_\_\_  
Pilar Turner, Mayor

(City Seal)

Approved as to form and legal  
sufficiency:

Approved as conforming to municipal  
policy:

\_\_\_\_\_  
Wayne R. Coment, City Attorney

\_\_\_\_\_  
James R. O'Connor, City Manager

ATTEST:

**ORLANDO UTILITIES COMMISSION**

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_

Name: Kenneth P. Ksionek

Title: General Manager & CEO

Approved as to form and legality:

**OUC Legal Department**

By: \_\_\_\_\_

Name: \_\_\_\_\_

EXHIBIT 1

City of Vero Beach  
1053 20th Place  
P. O. Box 1389  
Vero Beach, Florida 32961-1389  
Attention: James O'Connor, City Manager

Orlando Utilities Commission  
100 West Anderson St.  
P.O. Box 3193  
Orlando, FL 32802  
Attention: Jan Aspuru, Vice President

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

This Termination and Settlement Agreement (the "**Agreement**") is dated October \_\_, 2012, (the "**Effective Date**") is between THE 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 collectively as the "**Parties**."

WHEREAS, OUC and COVB are parties to that certain Agreement for Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management Services dated April 21, 2008, as amended (the "**OUC-COVB PPA**");

WHEREAS, COVB and Florida Municipal Power Agency ("**FMPA**") are parties to: (a) that certain St. Lucie Project Power Sales Contract dated June 1, 1982, as amended (the "**St. Lucie Power Sales Contract**"); (b) that certain St. Lucie Project Power Support Contract dated June 1, 1982, as amended (the "**St. Lucie Power Support Contract**"); (c) that certain Stanton Power Sales Contract dated January 16, 1984, as amended ("**Stanton I Power Sales Contract**"); (d) that certain Stanton Power Support Contract dated January 16, 1984, as amended ("**Stanton I Power Support Contract**"); (e) that certain Stanton II Power Sales Contract dated on or about May 24, 1991, as amended ("**Stanton II Power Sales Contract**"); and (f) that certain Stanton II Power Support Contract dated on or about May 24, 1991, as amended ("**Stanton II Power Support Contract**") (the contracts described in (a), (b), (c), (d), (e) and (f) being collectively, the "**FMPA Entitlement Agreements**");

WHEREAS, COVB and Florida Power and Light ("**FPL**") are currently negotiating the purchase and assumption by FPL, and the sale and assignment by COVB, of certain electric utility assets and certain associated liabilities pursuant to terms and conditions as may be agreed upon, and set forth in a purchase and sale agreement to be executed, by COVB and FPL (such purchase and sale agreement, upon execution by COVB and FPL, shall be referred to herein as the "**COVB Electric Utility Purchase and Sale Agreement**");

WHEREAS, closing under the COVB Electric Utility Purchase and Sale Agreement ("**COVB Electric Utility Closing**") will be conditioned upon termination of the OUC-COVB PPA and assignment of the FMPA Entitlement Agreements by COVB to OUC;

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 the Memorandum of Understanding approved by COVB on 9/18/2012 and executed by the Parties and FPL on or about September 19, 2012 (the “*MOU*”);

WHEREAS, COVB and OUC desire as part of their proposed settlement that COVB waive its right under the OUC-COVB PPA to have the gas transportation contracts with Florida Gas Transportation permanently released back to the COVB, as further set forth herein;

WHEREAS, COVB and OUC desire as part of their proposed settlement for COVB to assign to OUC, and OUC to assume, the FMPA Entitlement Agreements, as set forth herein;

WHEREAS, COVB and OUC desire as part of their proposed settlement that OUC and FPL enter into power purchase and reliability call agreements, as set forth herein; 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 set forth above, but the termination of the OUC-COVB PPA and waiver of claims by the Parties shall become effective, if at all, upon the last of the Conditions Precedent set forth in Section 5 herein have been satisfied or waived in writing by OUC (the “*Termination and Waiver Date*”).

2. **Termination of OUC-COVB PPA.** OUC and COVB hereby agree that on the Termination and Waiver Date, the OUC-COVB 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 or credit that has accrued prior to the Termination and Waiver Date.

3. **Payment of Termination Damages and Transfer Payment.** COVB shall pay (a) Twenty Million Dollars (\$20,000,000) as liquidated damages under the OUC-COVB PPA (the “*Termination Settlement Payment*”) and (b) the Thirty Four Million Dollars (\$34,000,000) payment required under the terms of the Transfer Agreements for assumption by OUC of the FMPA Entitlement Agreements. Such payments shall be made to OUC by electronic transfer (wire or Automated Clearing House) in U.S. dollars of immediately available funds prior to 3:00 p.m. Eastern Prevailing Time, on the

Termination and Waiver Date, at the OUC account identified below:

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

4. **Release of Gas Transportation Agreement.** On the Termination and Waiver Date, COVB waives and forever releases any and all right it has under the OUC-COVB PPA for re-assignment of those certain Form of Service Agreement Applicable to Agreements Executed After April 1, 2002 Firm Transportation Service – Market Area FTS-2, dated January 1, 2010 and Form of Service Agreement Firm Transportation Service – Market Area FTS-1, dated January 1, 2010 between OUC and Florida Gas Transmission Company (“*FGT*”), as amended (collectively, the “*Gas Transportation Contracts.*”)

5. **Conditions Precedent.** The following are the conditions precedent to the Termination and Waiver Date: (i) the COVB Electric Utility Closing on or after January 1, 2014; (ii) payment of the twenty million dollars (\$20,000,000) Termination Settlement Payment by COVB to OUC as consideration for such termination; (iii) execution and delivery by OUC and FPL of the Reliability Call Agreement (as defined below), (iv) the execution of and satisfaction or waiver of any conditions precedent in the FMPA Entitlement Agreements assignment agreement to be executed by OUC and COVB and consent thereto by FMPA; (v) a payment of thirty four million dollars (\$34,000,000) by COVB to OUC as consideration for assumption of the Entitlement Agreements by OUC; and (vi) the execution of and satisfaction or waiver of any conditions precedent in the OUC-FPL Stanton I and Stanton II PPAs by OUC and FPL. The Parties shall cooperate with each other and use their best reasonable efforts in all activities related to this Agreement, including satisfaction of the foregoing conditions precedent.

6. **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 the party has all necessary and appropriate authority to do so and to bind the party to the obligations set forth in this Agreement.

7. **Release and Waiver.**

A. In consideration of the payments and agreements of the Parties as set forth in this Agreement, COVB, on behalf of itself and its commissioners, officers, employees, successors, assigns, agents, and insurers (collectively “*COVB Releasors*”) hereby fully, wholly, absolutely and unconditionally releases and forever waives, releases,

relinquishes, gives up and discharges OUC and its commissioners, officers, employees, successors, assigns, agents and insurers (collectively "*OUC Releasees*") from any and all manner of actions, 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 Releasors 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 to the OUC-COVB PPA prior to the Termination and Waiver Date (the "*COVB Released Claims*").

B. In consideration of the agreements of the Parties as set forth in this Agreement, OUC, on behalf of itself and its commissioners, officers, employees, successors, assigns, agents, and insurers (collectively "*OUC Releasors*") hereby fully, wholly, absolutely and unconditionally releases and forever waives, releases, relinquishes, gives up and discharges COVB and its officers, employees, successors, affiliates, assigns, agents and insurers (collectively "*COVB Releasees*") from any and all manner of actions, 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 Releasors 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 to the OUC-COVB PPA prior to the Termination and Waiver Date (the "*OUC Released Claims*").

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-COVB PPA, but that it is their intention hereby to fully settle and release all of their claims and disputes known or unknown, which now exist, may exist, or may have existed against the respective Releasees arising out of or in any way connected to the OUC-COVB 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 7A – C above, neither party is released from any duty or obligation to make payment to the other that has accrued prior to the Termination and Waiver Date.

**8. Transition of Service.** OUC's obligation to provide services to COVB under the OUC-COVB PPA shall end at 12:01 a.m. on the day after the Termination and Waiver Date. COVB hereby acknowledges that as 12:01 a.m. on the day after the Termination and Waiver Date, it shall be responsible for providing an alternate supply of energy, capacity and ancillary services that may be required to serve its electric load and reserve requirements.

**9. General Provisions.**

(a) The descriptive headings in this contract 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 any amendment to this section) shall have any effect, legal or otherwise, nor be construed to have any such effect, unless agreed to in writing by the parties.

(b) This instrument shall constitute the final complete expression of this 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 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 any party at any time to require performance by any 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. The waiver by any party of a breach of any provision of this Agreement cannot be construed as a waiver of a continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power, or remedy under this Agreement. No notice to or demand on a party in any circumstance shall, of itself, entitle the party receiving the notice or demand to any other or further notice or demand in similar or other circumstances.

(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 contract or any agreement, instrument, or document contemplated hereby, shall be brought exclusively in the state or federal courts located in Florida, as appropriate.

(g) A default by any party under this Agreement shall entitle the other 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 signature pages exchanged by facsimile or email, 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 all parties need not sign the same counterpart. The signature page of any counterpart, and facsimiles and photocopies of that counterpart, may be appended to any other counterpart and when so appended constitute an original. In the event that any signature is delivered by facsimile transmission or by facsimile signature, such signature creates a valid and binding obligation of the party executing (or on whose behalf such signature is executed) the contract with the same force and effect as if such facsimile signature page were an original.

(i) The Parties expressly agree that FPL is a third party beneficiary of this Agreement entitled, in its own name or in the name of either Party, to enforce the provisions hereof against the other Party. No provision of this Agreement may be amended or waived, and this Agreement may not be terminated, without the written consent of FPL.

*[Signatures on Next Page]*

The parties are signing this Termination and Settlement Agreement as of the date stated in the introductory clause.

ATTEST:

**ORLANDO UTILITIES COMMISSION**

By: \_\_\_\_\_

Name: Kenneth P. Ksionek

Title: General Manager & CEO

\_\_\_\_\_  
Secretary

Approved as to form and legality:

**OUC Legal Department**

By: \_\_\_\_\_

Name: \_\_\_\_\_

ATTEST:

**CITY OF VERO BEACH, FLORIDA**

\_\_\_\_\_  
Tammy K. Vock  
City Clerk

(City Seal)

\_\_\_\_\_  
Pilar Turner  
Mayor

Approved as to form and legal  
sufficiency:

Approved as conforming to municipal  
policy:

\_\_\_\_\_  
Wayne R. Coment  
Acting City Attorney

\_\_\_\_\_  
James R. O'Connor  
City Manager