

Introduced by: Council Member Wilson

Adopted: February 19, 2018

RESOLUTION NO. 2005-2018

A RESOLUTION OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, AS A PARTICIPANT OF FLORIDA MUNICIPAL POWER AGENCY'S ALL-REQUIREMENTS PROJECT, (I) PROVIDING FOR THE INCORPORATION OF CERTAIN FINDINGS, DEFINED TERMS, AND GENERAL PROVISIONS; (II) APPROVING AMENDMENT NO. 2 TO THE ALL-REQUIREMENTS POWER SUPPLY PROJECT CONTRACT BETWEEN FLORIDA MUNICIPAL POWER AGENCY AND THE CITY OF JACKSONVILLE BEACH; (III) CONSENTING TO THE TRANSFER AND ASSIGNMENT OF POWER SUPPLY ENTITLEMENT SHARES BETWEEN THE CITY OF VERO BEACH AND FLORIDA MUNICIPAL POWER AGENCY; (IV) CONSENTING TO THE WAIVER OF CERTAIN REQUIREMENTS OF THE ALL-REQUIREMENTS POWER SUPPLY PROJECT CONTRACT BETWEEN FLORIDA MUNICIPAL POWER AGENCY AND THE CITY OF VERO BEACH, AND WAIVING CERTAIN RIGHTS OF THE CITY OF JACKSONVILLE BEACH TO HAVE SUCH WAIVERS FOR THE CITY OF VERO BEACH MADE APPLICABLE TO THE CITY OF JACKSONVILLE BEACH'S ALL-REQUIREMENTS POWER SUPPLY PROJECT CONTRACT; (V) PROVIDING FOR THE MUTUAL RELEASE BY THE CITY OF JACKSONVILLE BEACH AND THE CITY OF VERO BEACH, FLORIDA, FOR OBLIGATIONS AND CLAIMS RELATED TO FLORIDA MUNICIPAL POWER AGENCY; (VI) PROVIDING FOR THE MUTUAL WAIVER AND RELEASE OF THE CITY OF VERO BEACH FROM OBLIGATIONS AND CLAIMS RELATED TO THE POWER SUPPLY PROJECTS; (VII) PROVIDING FOR THE ASSIGNMENT OF CERTAIN RIGHTS AND OBLIGATIONS UNDER THE VERO BEACH CONTRACTS TO BE ASSIGNED TO THE BOND TRUSTEE FOR THE ALL-REQUIREMENTS POWER SUPPLY PROJECT FOR THE ENFORCEMENT OF SUCH CONTRACTS; (VIII) AUTHORIZING THE CITY OF JACKSONVILLE BEACH TO PROVIDE A CERTIFIED COPY OF THIS RESOLUTION TO FLORIDA MUNICIPAL POWER AGENCY; (IX) DESIGNATING AUTHORIZED OFFICERS OF THE CITY OF JACKSONVILLE BEACH; (X) TAKING CERTAIN OTHER ACTIONS; AND (XI) PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF JACKSONVILLE BEACH, FLORIDA THAT:

SECTION 1. INCORPORATION OF CERTAIN FINDINGS, DEFINED TERMS, AND GENERAL PROVISIONS. Except as otherwise specifically provided herein, the Master Annex, substantially in the form attached hereto as Exhibit A (the “**Master Annex**”), constitutes an integral part of this Resolution, is incorporated by reference herein, and has the same force and effect as if set forth in this Resolution; *provided, that*, the Authorized Officers of the City of Jacksonville Beach, as a participant of the All Requirements Power Supply Project, consent, at their sole discretion, to such subsequent changes or modifications thereto.

SECTION 2. APPROVAL OF AMENDMENTS TO THE ALL-REQUIREMENTS POWER SUPPLY PROJECT CONTRACT BETWEEN FLORIDA MUNICIPAL POWER AGENCY AND THE CITY OF JACKSONVILLE BEACH. Amendment No. 2 to the All-Requirements Power Supply Project Contract, by and between Florida Municipal Power Agency and the City of Jacksonville Beach (the “**ARP Amendment No. 2**”), substantially in the form attached hereto as Exhibit B, is approved. The Authorized Officers of the City of Jacksonville Beach are authorized to execute and deliver the ARP Amendment No. 2, subject to and with such changes or modifications thereto as such Authorized Officers of the City of Jacksonville Beach may deem necessary or desirable, at their sole discretion, prior to the execution thereof, such approval to be evidenced conclusively by the execution of such ARP Amendment No. 2 by the Authorized Officers of the City of Jacksonville Beach.

SECTION 3. CONSENT TO THE TRANSFER AND ASSIGNMENT BETWEEN THE CITY OF VERO BEACH AND FLORIDA MUNICIPAL POWER AGENCY, WITH RESPECT TO THE ALL-REQUIREMENTS POWER SUPPLY PROJECT, OF (A) A 32.521% POWER ENTITLEMENT SHARE IN THE STANTON PROJECT, (B) A 16.4887% POWER ENTITLEMENT SHARE IN THE STANTON II PROJECT AND (C) A 15.202% POWER ENTITLEMENT SHARE IN THE ST. LUCIE PROJECT. The Authorized Officers of the City of Jacksonville Beach consent to the transfer and assignment to Florida Municipal Power Agency of (a) the Vero Beach Stanton Project Entitlements, (b) the Vero Beach Stanton II Project Entitlements, and (c) the Vero Beach St. Lucie Project Entitlements, with respect to the All-Requirements Project, as provided for in the Transfer Agreements, including the other instruments, agreements, or documents and the overall transaction contemplated thereby, and in consideration of the benefits to be received by the All-Requirements Project and the All-Requirements Project Participants, including the City of Jacksonville Beach, subject to the satisfaction of all conditions required for the Closing (as defined in the Transfer Agreements) to occur, as set forth in the Transfer Agreements, including as provided in Section 1.10 of the Master Annex hereto.

SECTION 4. CONSENT TO THE WAIVER OF CERTAIN REQUIREMENTS OF THE VERO BEACH/ARP CONTRACT, AND, FURTHER, THE WAIVER OF CERTAIN RIGHTS TO HAVE SUCH WAIVERS FOR THE CITY OF VERO BEACH MADE APPLICABLE TO THE ALL-REQUIREMENTS

POWER SUPPLY PROJECT CONTRACT BETWEEN FLORIDA MUNICIPAL POWER AGENCY AND THE CITY OF JACKSONVILLE BEACH.

4.01 The Consent and Waiver (All-Requirements Project), of the City of Jacksonville Beach (the “**ARP Consent and Waiver**”), substantially in the form attached hereto as Exhibit C, which, generally, (i) consents to the terms of ARP Amendment No. 2 between Florida Municipal Power Agency and the City of Vero Beach, Florida; (ii) waives certain terms of the Vero Beach/All Requirements Project Contract; (iii) consents to the full release of the City of Vero Beach from any and all obligations under the Vero Beach/ARP Contract; and (iv) waives the rights of the City of Jacksonville Beach to have the amendments or waivers, or both, in the Vero Beach/ARP Contract applicable to its original All Requirements Project Contract, is approved, such approval to be evidenced conclusively by the execution of such ARP Consent and Waiver by the Authorized Officers of the City of Jacksonville Beach and Florida Municipal Power Agency. The Authorized Officers are authorized to execute and deliver the respective ARP Consent and Waiver, subject to and with such changes or modifications thereto, prior to the execution of the ARP Consent and Waiver, as such Authorized Officers of the City of Jacksonville Beach and Florida Municipal Power Agency agree are necessary or desirable.

4.02 The City of Jacksonville Beach: (a) acknowledges that it has received notice and a copy of the Vero Beach Waivers; (b) consents to the Vero Beach Waivers; (c) acknowledges that the City of Vero Beach owes the City of Jacksonville Beach no obligation whatsoever related to the City of Jacksonville Beach’s or the City of Vero Beach’s participation in the All Requirements Project and, as of the Closing (as defined in the Transfer Agreements) will owe Florida Municipal Power Agency no obligation whatsoever related to the City of Vero Beach’s participation in the All Requirements Project; and (d) consents to the terms and conditions of the Transfer Agreements, substantially in the form attached hereto as Exhibits D-1, D-2, and D-3; *provided, that*, the Authorized Officers of the City of Jacksonville Beach consent to such subsequent changes or modifications to such Transfer Agreements at their sole discretion.

SECTION 5. MUTUAL RELEASE BY THE CITY OF JACKSONVILLE BEACH AND THE CITY OF VERO BEACH FOR OBLIGATIONS AND CLAIMS RELATED TO FLORIDA MUNICIPAL POWER AGENCY. The All Requirements Project Mutual Release Agreement by and between the City of Jacksonville Beach and the City of Vero Beach (the “**ARP Mutual Release Agreement**”), substantially in the form attached hereto as Exhibit E, is approved. The Authorized Officers of the City of Jacksonville Beach are authorized to execute and deliver the ARP Mutual Release Agreement (such approval to be evidenced conclusively by the execution of such ARP Mutual Release Agreement by said Authorized Officers) subject to and with such changes or modifications thereto, prior to the execution thereof, as such Authorized Officers of the City of Jacksonville Beach deem necessary or desirable.

SECTION 6. MUTUAL WAIVER AND RELEASE OF THE CITY OF VERO BEACH FROM OBLIGATIONS RELATED TO ITS PARTICIPATION IN THE ALL-REQUIREMENTS , STANTON, STANTON II, AND ST. LUCIE

PROJECTS. The Authorized Officers of the City of Jacksonville Beach consent to the Waiver and Release Agreement, by and between the City of Vero Beach and Florida Municipal Power Agency (the “**Waiver and Release Agreement**”), substantially in the form attached hereto as Exhibit F; *provided, further, that* the Authorized Officers of the City of Jacksonville Beach consent to such subsequent changes or modifications thereto.

SECTION 7. ASSIGNMENT OF CERTAIN RIGHTS AND OBLIGATIONS UNDER THE VERO BEACH CONTRACTS TO THE BOND TRUSTEE FOR THE ALL REQUIREMENTS PROJECT TO ENFORCE SUCH CONTRACTS. The Authorized Officers of the City of Jacksonville Beach consent to the Assignment to Bond Trustee (All-Requirements Project), between Florida Municipal Power Agency and the All Requirements Project Bond Trustee (“**ARP Trustee Assignment**”), substantially in the form attached hereto as Exhibits G-1, G-2, and G-3, which provide for certain rights and obligations of Florida Municipal Power Agency, acting with respect to the All Requirements Project, to be assigned to the Trustee, who shall have the right and obligation to enforce certain provisions of the Vero Beach Contracts, after transfer and assignment of such Vero Beach Contracts to the All Requirements Project, against Florida Municipal Power Agency, acting with respect to the Stanton Project, the Stanton II Project, and the St. Lucie Project; *provided, that*, the Authorized Officers of the City of Jacksonville Beach consent to such subsequent changes or modifications thereto at their sole discretion.

SECTION 8. CERTIFIED COPY PROVISION. The Authorized Officers of the City of Jacksonville Beach are authorized to provide a certified copy of this Resolution to Florida Municipal Power Agency to provide evidence hereof.

SECTION 9. DESIGNATION OF AUTHORIZED OFFICERS. The Mayor and the City Manager of the City of Jacksonville Beach are each designated as an “**Authorized Officer**” for the purposes of executing and delivering the Waiver and Consent and taking all other actions authorized by this Resolution.

SECTION 10. FURTHER ACTIONS.

10.01 The Authorized Officers designated hereunder, and the City of Jacksonville Beach’s legal counsel are authorized and empowered to take all further actions as the City of Jacksonville Beach deems necessary or desirable in carrying out the terms and provisions of this Resolution and each of the documents referred to herein, and in effecting the City of Jacksonville Beach’s coordination with Florida Municipal Power Agency and the furtherance of the transfer and assignment to Florida Municipal Power Agency of the Vero Beach Stanton Project Entitlements, the Vero Beach Stanton II Project Entitlements, and the Vero Beach St. Lucie Project Entitlements with respect to the All Requirements Project; *provided, however, that* for the purposes of approving subsequent changes or modifications to the documents or instruments substantially in the form of the Exhibits attached hereto each Authorized Officer of the City of Jacksonville Beach may only act on or pursuant to the grants of authority under this Resolution if in the exercise of such authority the Authorized Officer determines that such subsequent changes or modifications do not present a material adverse change from the substantial form of such documents and instruments

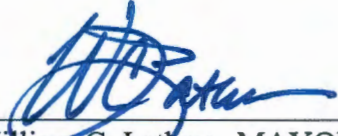
attached hereto; *provided, further, that* Florida Municipal Power Agency shall not agree to subsequent changes or modifications to the documents or instruments substantially in the form of the Exhibits attached hereto that constitute a material adverse change. For purposes of the foregoing, “**material adverse change**” means any material adverse change in the terms and conditions of a document or instrument to which the City of Jacksonville Beach is a signatory, and which imposes on the City of Jacksonville Beach some additional, material risk of financial loss, indemnity obligation, covenant, warranty, or restriction of its legal rights in a manner that is not already contemplated in the documents substantially in the form of the Exhibits attached hereto.

10.02 The Authorized Officers of the City of Jacksonville Beach are authorized to decline to execute any of the attached exhibits should the Florida Legislature’s Office of Program Policy Analysis and Government Accountability proceed with a study to evaluate the feasibility of the dissolution and liquidation of Florida Municipal Power Agency or if any other similar or related efforts are launched to politically undermine the standing and effectiveness of Florida Municipal Power Agency or the City of Jacksonville Beach, dba Beaches Energy Services.

10.03 If the Authorized Officers of the City of Jacksonville Beach deem that any clause or provision of the Exhibits attached hereto is in conflict with any clause or provision of this Resolution, this Resolution shall prevail.

SECTION 11. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

AUTHENTICATED this 19th day of February, 2018.



William C. Latham, MAYOR



Laurie Scott, CITY CLERK