

Introduced By: Council Member Wilson

Adopted: February 19, 2018

RESOLUTION NO. 2006-2018

A RESOLUTION OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, AS A PARTICIPANT OF FLORIDA MUNICIPAL POWER AGENCY'S ST. LUCIE PROJECT, (I) PROVIDING FOR THE INCORPORATION OF CERTAIN FINDINGS, DEFINED TERMS, AND GENERAL PROVISIONS; (II) APPROVING AMENDMENTS TO THE ST. LUCIE POWER SALES CONTRACT AND PROJECT SUPPORT 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 AMENDMENTS OF THE ST. LUCIE POWER SALES CONTRACT AND PROJECT SUPPORT CONTRACT BETWEEN FLORIDA MUNICIPAL POWER AGENCY AND THE CITY OF VERO BEACH, AND WAIVING CERTAIN RIGHTS TO HAVE SUCH AMENDMENTS INCLUDED IN THE CITY OF JACKSONVILLE BEACH'S ST. LUCIE POWER SALES CONTRACT AND PROJECT SUPPORT 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 RELATED TO THE ST. LUCIE PROJECT; (VII) PROVIDING FOR THE ASSIGNMENT OF CERTAIN RIGHTS AND OBLIGATIONS UNDER THE VERO BEACH ST. LUCIE CONTRACTS TO THE ST. LUCIE BOND TRUSTEE TO ENFORCE 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 St. Lucie Power Supply Project, consent, at their sole discretion, to such subsequent changes or modifications thereto. Any capitalized term used herein and not defined herein shall have the meaning given to such term in the Master Annex.

SECTION 2. APPROVAL OF AMENDMENTS TO THE ST. LUCIE POWER SALES CONTRACT AND PROJECT SUPPORT CONTRACT BETWEEN FLORIDA MUNICIPAL POWER AGENCY AND THE CITY OF JACKSONVILLE BEACH.

2.01 The terms and conditions of Amendment No. 3 to the St. Lucie Power Sales Contract, by and between Florida Municipal Power Agency, with respect to the St. Lucie Project, and the City of Jacksonville Beach (the “**PSC Amendment**”), substantially in the form attached hereto as Exhibit B-1, is approved. The Authorized Officers of the City of Jacksonville Beach are authorized to execute and deliver the PSC Amendment, subject to and with such changes or modifications thereto as the Authorized Officers of the City of Jacksonville Beach may deem necessary or desirable, prior to the execution thereof, such approval to be evidenced conclusively by the execution of such PSC Amendment by the Authorized Officers of the City of Jacksonville Beach.

2.02 The terms and conditions of Amendment No. 3 to the St. Lucie Project Support Contract, by and between Florida Municipal Power Agency, with respect to the St. Lucie Project, and the City of Jacksonville Beach (the “**Support Contract Amendment**”), substantially in the form attached hereto as Exhibit B-2, is approved. The Authorized Officers of the City of Jacksonville Beach are authorized to execute and deliver the Support Contract Amendment, subject to and with such changes or modifications thereto as the Authorized Officers of the City of Jacksonville Beach may deem necessary or desirable, prior to the execution thereof, such approval to be evidenced conclusively by the execution of such Support Contract Amendment 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 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, with respect to the All-Requirements Project, of the Vero Beach St. Lucie Project Entitlements, as provided for in the St. Lucie Transfer Agreement, including the other instruments, agreements, or documents and the overall transaction contemplated thereby, and in consideration of the benefits to be received by the St. Lucie Project Participants, including the City of

Jacksonville Beach, subject to the satisfaction of all conditions required for the Closing (as defined in the St. Lucie Transfer Agreement) to occur, as set forth in the St. Lucie Transfer Agreement, including as provided in Section 1.10 of the Master Annex hereto.

SECTION 4. CONSENT TO AMENDMENTS OF THE ST. LUCIE POWER SALES CONTRACT AND PROJECT SUPPORT CONTRACT BETWEEN FLORIDA MUNICIPAL POWER AGENCY AND THE CITY OF VERO BEACH, AND WAIVER OF CERTAIN RIGHTS TO HAVE SUCH AMENDMENTS FOR THE CITY OF VERO BEACH INCLUDED IN THE CITY OF JACKSONVILLE BEACH'S ST. LUCIE POWER SALES CONTRACT AND PROJECT SUPPORT CONTRACT.

4.01 The Consent and Waiver (St. Lucie Project), of the City of Jacksonville Beach (the "**St. Lucie Consent and Waiver**"), substantially in the form attached hereto as Exhibit C, pursuant to Section 29(d) of the Power Sales Contract and Section 14(b) of the Project Support Contract, (i) consents to certain amendments to the Vero Beach St. Lucie Contracts and waives the rights of the City of Jacksonville Beach to have similar amendments made to its St. Lucie Power Sales Contract and Project Support Contract, and (ii) consents to the full release of the City of Vero Beach from any and all obligations under the Vero Beach St. Lucie Contracts, is approved, such approval to be evidenced conclusively by the execution of such St. Lucie 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 St. Lucie Consent and Waiver, subject to and with such changes or modifications thereto, prior to the execution of the St. Lucie 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 St. Lucie Amendments; (b) consents to the terms and conditions of the Vero Beach St. Lucie Amendments; and (c) consents to the terms and conditions of the St. Lucie Transfer Agreement, substantially in the form attached hereto as Exhibit D; *provided, that*, the Authorized Officers of the City of Jacksonville Beach consent to such subsequent changes or modifications to such St. Lucie Transfer Agreement as the Authorized Officers of the City of Jacksonville Beach deem appropriate or necessary.

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 St. Lucie Mutual Release Agreement by and between the City of Jacksonville Beach and the City of Vero Beach (the "**St. Lucie 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 St. Lucie Mutual Release Agreement (such approval to be evidenced conclusively by the execution of such St. Lucie 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 and Florida Municipal Power Agency agree are necessary or desirable.

SECTION 6. MUTUAL WAIVER AND RELEASE OF THE CITY OF VERO BEACH FROM OBLIGATIONS RELATED TO THE ST. LUCIE PROJECT. The Authorized Officers of the City of Jacksonville Beach consent to the terms and conditions of 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, which provides for certain waivers and releases of the terms and conditions of the St. Lucie Power Sales Contract and Project Support Contract, including the full release and discharge of the City of Vero Beach from any and all future obligations under the Vero Beach St. Lucie Contracts, on and as of the Assignment Effective Date (as defined in the Waiver and Release Agreement); *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 ST. LUCIE CONTRACTS TO THE ST. LUCIE BOND TRUSTEE TO ENFORCE SUCH CONTRACTS. The Authorized Officers of the City of Jacksonville Beach consent to the terms and conditions of the St. Lucie Trustee Assignment, between Florida Municipal Power Agency, with respect to the St. Lucie Project, and the St. Lucie Project Bond Trustee (“**St. Lucie Trustee Assignment**”), substantially in the form attached hereto as Exhibit G, which provides for certain rights and obligations of Florida Municipal Power Agency, acting with respect to the St. Lucie Project, to be assigned to the St. Lucie Bond Trustee, who shall have the right and obligation to enforce certain provisions of the Vero Beach St. Lucie Contracts, after transfer and assignment of such Vero Beach St. Lucie Contracts to the All Requirements Project, against Florida Municipal Power Agency, acting with respect to the All Requirements Project; *provided, that*, the Authorized Officers of the City of Jacksonville Beach consent to such subsequent changes or modifications thereto.

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 St. Lucie Consent and Waiver 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 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