

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF WINTER
PARK, FLORIDA AND THE CITY OF GAINESVILLE, FLORIDA
d/b/a GAINESVILLE REGIONAL UTILITIES**

THIS AGREEMENT, made and entered into this 24th day of February, 2014, by and between the **CITY OF WINTER PARK, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as "PURCHASER," and the **CITY OF GAINESVILLE, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, d/b/a **GAINESVILLE REGIONAL UTILITIES**, hereinafter referred to as "SELLER" or "GRU." Throughout this Agreement, both Purchaser and Seller may be referred to individually as "Party" or collectively as "Parties."

WITNESSETH:

WHEREAS, it is the purpose and intent of the Parties to enter into this Agreement formed in reliance upon and under their respective powers and under the authority of the Florida Interlocal Cooperation Act of 1969, as amended, Section 163.01, Florida Statutes; and

WHEREAS, the Parties are authorized by Section 163.01, Florida Statutes, to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, the Parties are authorized by Section 163.01, Florida Statutes, to cooperatively and efficiently use their respective powers to provide public services that will advance the general health, safety and welfare of their citizens;

NOW, THEREFORE, in consideration of the mutual benefits, promises and covenants contained herein, the Parties hereto mutually agree as follows:

1. **Purpose.** This Agreement provides for the purchase and sale of wholesale electric service.
2. **Term.** This Agreement shall be effective on January 1, 2015, and shall continue in effect for an initial term of four (4) years, through calendar year 2018.
3. **Availability.** Capacity supplied by Seller to Purchaser shall be supplied from Seller's system which includes all generating assets owned by Seller and any firm capacity purchased by Seller during the term of this Agreement. Under this Agreement, wholesale electric services shall be provided at the Delivery Point identified as either of Seller's interconnections with Duke Energy Florida ("Duke"). The scheduling of and payment for transmission services from the Delivery Point to Purchaser's interconnection(s) with Duke shall be the sole responsibility of Purchaser.
4. **Obligation to Supply and Obligation to Receive.** Subject to the terms of this Agreement, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, Capacity and Energy for Purchaser's use and resale.
5. **Quantities of Capacity and Energy.** Seller will provide to Purchaser a quantity of 10 MW of Capacity and the associated Energy. Pursuant to the terms of this Agreement, the Capacity and associated Energy will be provided by Seller and purchased by Purchaser on a 7 day/24 hour ("7x24") must-take basis, except that Purchaser may designate up to 500 hours a year during which the must-take quantity will be 5 MW. Purchaser must declare the hours to be taken at 5 MW the day before such Energy is to be taken. In addition, Seller will provide Purchaser an additional 10 MW of Energy and Capacity during calendar year 2015 on a 7 day/24 hour ("7x24") must-take basis. Purchaser may opt-out of the obligation to purchase an additional 10 MW in 2015 by informing Seller of its intention to do so in writing prior to July 11, 2014.
6. **Characteristics of Supply.** Seller shall furnish electrical Energy to either of Seller's delivery points from Seller's transmission system with the following characteristics:

- A. Nominal one hundred thirty-eight thousand (138,000) volts, sixty (60) hertz frequency, three (3) phase solidly grounded wye, alternating current.
- B. The firmness of Capacity and Energy will be provided on a basis equal to that provided by Seller to its native load customers.

7. **Rates for Electric Power and Energy Delivered.** The monthly energy shall be the energy delivered by Seller. Purchaser shall pay Seller for all electric power and energy delivered hereunder at the following monthly rates:

7.1. Capacity Charge

Calendar Year	Total Demand Charge \$/MW-Month into Duke Transmission System
2015	\$5,500.00
2016	\$6,500.00
2017	\$8,000.00
2018	\$9,500.00

The billing demand shall be determined below pursuant to Section 7.3 of this Agreement.

7.2. Fuel Energy Charge.

Calendar Year	Levelized Fuel Energy Rate \$/MWh
2015	\$42.50
2016	\$43.00
2017	\$44.00
2018	\$45.00

7.3. Total Billed:

The total bill will be calculated as follows:

Capacity in MW (as described above in Section 5) multiplied by total Capacity Charge/MW-Month (as described above in Section 7.1)

Plus: Delivered Energy in MW-h (as described above in Section 5) multiplied by Fuel Energy Charge/MW-h (as described above in Section 7.2).

Other than as described above in this subsection, no additional customer charges or fuel charges will apply.

8. **Rate Changes for Electric Capacity and Energy.** Rates and charges herein shall remain fixed through the initial term of this Agreement.

9. **Measurement of Demand and Energy.**

9.1 All electric Energy furnished hereunder by Seller shall be measured at a nominal One Hundred Thirty-Eight Thousand (138,000) volts by Seller through existing meters owned by Seller at either of Seller's interconnections with Duke.

9.2 In the event any meter fails to register or registers incorrectly, the Parties shall agree upon the length of time such meter failed to register or registered incorrectly and the quantity of electric energy so delivered during such time. An appropriate adjustment based thereon shall be made to Purchaser's bill for such time. An adjustment shall be made for any one (1) month period only if the meter has been tested by Seller of its own volition or at the written request of Purchaser within 60 days from the date upon which the bill for such month had been rendered to Purchaser. Any meter which complies with ANSI C-12 standards for revenue meters shall be deemed correct. No device or connection shall be installed or maintained by Purchaser at the service location that will prevent any meter from registering correctly the energy or demand used or to be used.

9.3 Seller, at its expense, shall periodically inspect and test the meter(s) installed at least once per calendar year during the term of this Agreement. Pursuant to the written request of Purchaser, Seller shall make additional tests of such meter(s) in the presence of representatives of Purchaser. The cost of such additional tests shall be borne by Purchaser if the percentage of deviation is found to be in compliance accordance with ANSI C-12 standards for revenue meters.

10. Payment.

10.1 Payment for all services rendered hereunder to GRU/Duke Interconnections, and any additional Point-of-Service which shall hereafter be added, shall be made monthly upon submission of a single combined invoice by Seller. Payment shall be made to Seller within thirty (30) days from the date the invoice is postmarked.

10.2 Invoices not paid within 30 days after the due date shall be deemed delinquent and shall then accrue one percent (1%) per month of the unpaid balance pursuant to Section 218.41(4), Florida Statutes.

10.3 In the event any portion of any invoice is disputed, the invoiced amount shall be payable when due and payment shall be accompanied by a written description of the dispute. The Parties shall then cooperate to resolve the dispute. Upon resolution of the disputed amount, a true-up calculation shall be applied to the next invoice as full resolution of the prior disputed amount between the Parties.

11. **Continuity of Service.** Seller shall exercise due care and diligence to supply electric services hereunder free from interruption; provided, however, that Seller shall not be responsible for any failure to supply electric services, nor for interruption, reversal or abnormal voltage of the supply, if such failure, interruption, reversal or abnormal voltage is without Seller's negligence. Whenever the integrity of Seller's system or the supply of electricity is threatened by conditions on its system or on the systems with which it is directly or indirectly interconnected, or whenever it is necessary or desirable to aid in the restoration of service, Seller may, in conformance with prudent operation and engineering practices and with the application of standards no more interruptive than applied in service to its retail customers in like circumstances, curtail or interrupt electric service or reduce voltage to some or all of its customers and such curtailment, interruption or reduction shall not constitute willful default by Seller. In case of impaired or defective service, Purchaser shall immediately give notice to Seller's Scheduling Agent (GRU Generation Dispatcher) by telephone, confirming such notice in writing as soon thereafter as practicable. Written notice may be provided via facsimile, as set forth below in Section 15 of this Agreement.

12. **Indemnification.** Without waiving its sovereign immunity and subject to the limitations set forth in Section 768.28, Florida Statutes, both Parties shall be responsible for its negligent or wrongful acts or omissions and the negligent or wrongful acts or omissions of its employees arising out of this Agreement, provided that such acts or omissions are within the scope of their employment. Nothing herein shall be construed as consent by either Party to be sued by third parties in any matter arising out of this Agreement or a waiver of sovereign immunity by any party to which sovereign immunity applies.

13. **Force Majeure.** In case either Party hereto shall be delayed, or prevented from performing any of the covenants or obligations made by and imposed upon said Party under this Agreement, by reason of or through strike, stoppage of labor, failure of contractors or suppliers of materials, riot, fire, flood, named storm, hurricane, ice, invasion, civil war, commotion, insurrection, military or usurped power, order of any court granted in any bona fide adverse legal proceedings or action, order of any civil or military authority, federal or state regulatory agency, either de facto or de jure, explosion, act of God or the public enemies or any cause

reasonably beyond its control and not attributable to its neglect, then and in such case or cases, both Parties shall be relieved of performance under this Agreement and shall not be liable to the other Party for, or on account of any loss, damage, injury, or expense resulting from or arising out of such delay or prevention; provided, however, that the Party suffering such delay or prevention shall use due and practical diligence to remove the cause or causes thereof, and provided, further, that neither Party shall be required by the foregoing provisions to settle a strike except when, according to its own best judgment, such a settlement seems advisable.

14. **Notices.** Except as otherwise provided in this Agreement, any notice, default, or termination from either Party must be sent in writing by certified mail with a return receipt requested, or by personal delivery with receipt. For purposes of all notices, Purchaser's and Seller's representatives are as identified below:

Purchaser:

City of Winter Park Electric Utility Department
Jerry Warren or his Successor
Director of Electric Utility Department
401 South Park Avenue
Winter Park, FL 32789
Jwarren@cityofwinterpark.org

Seller:

Gainesville Regional Utilities
John Stanton or his Successor
Assistant General Manager for Energy Supply
P.O. Box 147117
Gainesville, FL 32614
stantonjw@gru.com

15. **Severability.** If any word, phrase, sentence, part, subsection, section, or other portion of this Agreement, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not having been declared void, unconstitutional, or invalid shall remain in full force and effect. In the event any provision of this Agreement is found unlawful or otherwise unenforceable, all other provisions shall remain in full force and effect unless the parties agree to the contrary in writing.

16. **Procedure for Achieving Assignment; Effect of Not Following Procedure.** In light of the scope and rationale for this Agreement, neither the Seller nor the Purchaser may assign, transfer, and/or sell any of the rights noted in this Agreement, or associated with this Agreement, without the express written approval of the other party.

17. **Confidentiality.** To the extent permitted by Florida law, each Party agrees to keep confidential, and shall not disseminate to any third party (other than such Party's Affiliates) or use for any purpose other than the performance, administration, management and enforcement of this Agreement (except with the written authorization of the other Party), any information received from the other that is properly designated as a trade-secret, or otherwise exempt from disclosure unless such disclosure is pursuant to deposition, inquiry, request for documents, subpoena, civil investigative demand or similar process, by order of a court or tribunal of competent jurisdiction, in order to comply with applicable rules or requirements of any stock exchange, government department or agency or other regulatory authority, by requirements of any securities law or regulation or other legal requirement, or as necessary to enforce the terms of this Agreement. This Section 17 shall survive the termination of this Agreement for a period of two (2) years. If any Party is compelled to disclose any confidential information of the other Party that is not exempt from disclosure such Party shall provide the other Party with prompt notice of the requirement to disclose confidential information in order to enable the other Party, at their own expense, to seek an appropriate protective order or other remedy.

18. **Creditworthiness.** Both Parties shall at all times maintain acceptable creditworthiness. To maintain "Acceptable Creditworthiness" each Party must not be in default of its obligations as set out in this

Agreement and each Party must maintain an underlying or unenhanced rating of at least Baa3 (Moody's), BBB- (Standard and Poors), or BBB+ (Fitch) or its equivalent. If either Party subsequently fails to maintain Acceptable Creditworthiness, such Party shall notify the other Party within five (5) business days of the date on which it no longer meets the Acceptable Creditworthiness standards described herein. Upon receipt of such notice or upon independently learning that a Party has failed to maintain Acceptable Creditworthiness, the other Party may give written notice within 30 days terminating this Agreement. Following termination, neither Party will have further obligations under this Agreement, other than those obligations described above in Section 17.

19. Default

19.1 Events of Default. Each of the following shall be considered an "Event of Default":

- (a) A default shall occur in the performance of any material covenant or condition to be performed by either Party hereunder including failure to pay any amounts to be paid when due.
- (b) A custodian, receiver, liquidator or trustee of either Party, is appointed or takes possession of all or substantially all of the property of either and such appointment or possession remains uncontested or in effect for more than sixty (60) days; or either Party makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they mature; or either Party is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code against either Party; or all or substantially all of the material property of either is sequestered by court order and the order remains in effect for more than sixty (60) days; or a petition is filed against either Party under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect, and is not stayed or dismissed within sixty (60) days after filing.
- (c) Either Party files a petition in voluntary bankruptcy or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect.

19.2. Remedies. The Parties shall have the following remedies available to them with respect to the occurrence of an Event of Default with respect to the other Party hereunder:

- (a) Upon the occurrence of an Event of Default by either Party hereunder, the non-defaulting Party shall have the right to (i) invoice and collect all amounts then due to it from the defaulting Party hereunder (subject to any applicable limitation of liability or cap on damages), and (ii) terminate this Agreement at any time during the continuation of such Event of Default upon written notice to the defaulting Party. Notwithstanding any other provision of this Agreement, after the occurrence of an Event of Default and for so long as the Event of Default is continuing and has not been cured, the non-defaulting Party shall have the right, upon written notice to the defaulting Party, to suspend all performance under this Agreement until such Event of Default has been cured.
- (b) If either Party terminates this Agreement as a result of the occurrence of an Event of Default, then the non-defaulting Party shall thereafter have no further obligations hereunder and shall have all rights and remedies available to it under applicable law, including the right to recover damages.
- (c) The remedies provided for in this Agreement shall be without prejudice and in addition to any other right to which either Party is otherwise entitled (whether by operation of law, contract or otherwise).

20. Condition Precedent. Winter Park shall receive approval for firm transmission service from Duke Energy Florida for the capacity and energy contemplated in this contract.

21. **Limitation of Liability.** Unless expressly herein provided, neither Party, or their respective officers, directors, or employees shall be liable for any consequential, incidental, punitive, exemplary or indirect damages, including without limitation, lost profits, lost revenues, cost of capital; loss of use, loss of goodwill, replacement power, claims of customers, or any other business interruption, by statute, in tort or contract, under indemnity provision or otherwise.

22. **Non-Waiver.** Any failure or refusal of either Party to enforce any term or condition hereto shall not be considered a waiver thereof, or any waiver of any right to enforce any term or condition in the future.

23. **Entire Agreement.** This Agreement captures and contains the full and complete intention of the Parties hereto and no modifications or amendments to this Agreement shall be of any force or effect unless they are agreed to by both Parties in writing.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and executed this Agreement for the uses expressed herein the day and year first above written.

CITY OF WINTER PARK, FLORIDA

Kenneth W. Bradley
Kenneth W. Bradley
Mayor

CITY OF GAINESVILLE, FLORIDA, d/b/a
GAINESVILLE REGIONAL UTILITIES

Kathy E. Viehe 2/27/14
Kathy E. Viehe
Interim General Manager of Utilities

Approved as to form and legality:

By: W. D. Brown
City Attorney

Approved as to form and legality:

By: Almerville 2/27/14