

**MEMORANDUM OF UNDERSTANDING  
BETWEEN**

**DUKE ENERGY BUSINESS SERVICES LLC AND CITY OF ORLANDO, FLORIDA**

**1. General**

This Memorandum of Understanding (“**Memorandum**”) is executed on December , 2018 by and between Duke Energy Florida, Inc. (hereinafter referred to as “**Duke Energy**”) and City of Orlando, Florida (“**Orlando**”). Duke Energy and Orlando are herein collectively referred to as “**Parties**” and individually as a “**Party.**”

**2. Purpose**

This Memorandum sets forth the mutual desire of the Parties to form a cooperative relationship and engage in a dialogue regarding the potential development of a utility scale solar and energy storage project on portions of land owned by Orlando in Seminole County, Florida. This project will consist of Duke Energy and Orlando working cooperatively to identify suitable sites for solar and energy storage development on the Orlando-owned Iron Bridge Water Reclamation Facility site. Once suitable sites are identified, Orlando and Duke will work cooperatively to develop mutually acceptable lease terms for the land that will allow for Duke to develop, build, own and operate utility-scale solar power plant and energy storage facility. The Parties agree that Duke Energy may file any necessary interconnection requests to support the development of these solar project(s) while lease negotiations are ongoing.

**3. Meetings and other Communications**

For the above purpose, the Parties agree to exchange information through meetings, the date, times and frequencies of which are mutually agreed upon by the Parties. The attendees and the location for any meeting shall be determined by discussion between the Parties. Such meetings may take place in person or via conference call.

The following units or individuals shall be responsible for organizing and coordinating any such meeting:

**Duke Energy:**

Stephen Barkaszi  
Adam Nygaard  
Larry Watson

**City of Orlando:**

David Bass  
Richard Howard  
Chris Castro  
Ian Lahiff

#### **4. Information Exchange**

In addition to the meetings described above, the Parties may exchange information in any manner in which the Parties may mutually agree, including via email, secure data room access, first class mail, overnight mail, hand delivery or facsimile.

#### **5. Restrictions on the Provision of Information**

Any and all information provided by a Party pursuant to this Memorandum shall be provided in such Party's sole discretion. Neither Party is obligated to disclose any information pursuant to this Memorandum. In addition, the Parties recognize that information in their possession related to certain topics may be the property of third parties and subject to confidentiality and disclosure restrictions. As a result, such Party may not have the right to disclose or discuss third party confidential information or information derived from such third party confidential information without the express written consent of the third party. Furthermore, the Parties note that a Party may be restricted from disclosing certain information if such disclosure is prohibited by current laws and regulations.

#### **6. Confidentiality**

Each party agrees (a) to protect the Confidential Information of the other with at least the same degree of care used to protect its own most confidential information; (b) except as otherwise set forth herein, not to use (except for the purpose described herein), publish or disclose to third parties such Confidential Information except as required to be disclosed by any federal, state, or local court or agency having jurisdiction; and (c) except as otherwise required by any federal, state or local governmental entity or law, rule or regulation thereof, upon the request of the other Party, to promptly deliver to the other party all written copies of its Confidential Information. For purposes of this Memorandum, "Confidential Information" shall mean information that (i) is marked "Confidential" or "Proprietary" by the disclosing party at the time of delivery or disclosure to the receiving party, and (ii) which is legally confidential or exempt from disclosure under applicable state or federal laws.

#### **7. Expenses**

Each Party shall be responsible for its own costs and expenses in connection with this Memorandum and the activities to be completed hereunder or pursuant hereto.

#### **8. Nature of Memorandum**

Except for the obligations set forth in Section 6 and 11 (the "**Binding Provisions**"), this Memorandum constitutes only a non-binding statement of the Parties' intentions and neither constitutes nor should be construed as evidence of any form of offer, acceptance or binding contract or the basis for agreement by estoppel or otherwise. Except for the Binding Provisions, this Memorandum does not create a legally enforceable agreement, any rights, duties, obligations or liabilities whatsoever. Except for the Binding Provisions, any such legally enforceable agreement will only arise upon the negotiation, execution and delivery of a mutually satisfactory final definitive agreement or agreements and the satisfaction of the conditions set forth therein, including the approval of such agreements and the matters to which they relate by the appropriate authorized persons within each Party, which approval shall be in the sole subjective discretion of such persons. This Memorandum shall not serve to grant or convey any right or license to use any idea, invention, trade secret, patent, copyright or other intellectual property

rights belonging to either Party or any third party.

This Memorandum shall not be constructed as creating a partnership, trust or any agency relationship.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ITS REPRESENTATIVES FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY TYPE, INCLUDING LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY OR BUSINESS INTERRUPTIONS, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE, WHETHER SOLE, JOINT OR CONCURRENT OR STRICT LIABILITY) OR OTHERWISE, ARISING OUT OF THIS MEMORANDUM.

**9. Assignability**

Neither Party may assign this Memorandum or any of its rights under this Memorandum without the prior written consent of the other Party.

**10. Mutual Consultation**

Any matter not specifically provided for in this Memorandum will be decided through mutual consultation between the Parties.

**11. Applicable Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of Florida, without regard to the principles of conflicts of laws thereof.

**12. Duration**

Unless earlier terminated pursuant to Section 14, this Memorandum shall be valid for a term of one (1) year from the date of execution.

**13. Amendments**

This Memorandum may be amended at any time by mutual written agreement of Parties.

**14. Termination**

This Memorandum may be terminated at any time and for any reason by either Party without obligation or liability by providing notice to the other party. Notwithstanding the foregoing, the confidentiality provisions contained in the Confidentiality Agreement shall survive after the termination of this Memorandum.

In witness whereof, the Parties have hereto subscribed their names as of the day and year first written above.

**DUKE ENERGY BUSINESS SERVICES, LLC**

By: 

Name: Melisa Johns

Title: Vice President, DET Business & Product Development

**CITY OF ORLANDO**

By:

Name:

Title: