

ENERGY MANAGEMENT SERVICES AGREEMENT

by and between

The City of Grand Island

as Customer

and

NextEra Energy Marketing, LLC

as Energy Manager

Dated as of July 26, 2022

## ENERGY MANAGEMENT AGREEMENT

This Energy Management Services Agreement (this "*Agreement*") dated as of July 26, 2022 (the "*Effective Date*") is between The City of Grand Island, a municipality under the laws of the State of Nebraska ("*Customer*"), and NextEra Energy Marketing, LLC, a limited liability company organized under the laws of the State of Delaware ("*Energy Manager*"). Customer and Energy Manager may be referred to each individually as a "*Party*" and collectively as the "*Parties*."

### PRELIMINARY STATEMENT

WHEREAS, Customer is a municipal electric provider which owns and controls generation resources which are described on Exhibit A of this Agreement (the "*Generation Resources*"), receives additional energy pursuant to certain power purchase agreements which are described in Exhibit B of this Agreement ("*PPAs*"), and provides electricity to its municipal customer loads (the "*Load*"), all within the Southwest Power Pool, Inc. region ("*SPP*"); and

WHEREAS, Energy Manager is a marketer of power in North America that trades energy, and other energy-related products, and provides energy management services to various electric generating entities within SPP and other organized markets; and

WHEREAS, Customer desires to engage Energy Manager to assume certain energy management functions in respect of the Generation Resources, PPAs, and Load, subject to the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### ARTICLE I INTERPRETATION AND DEFINITIONS

1.1 Rules of Interpretation. The following rules of contract interpretation shall apply when interpreting this Agreement:

- (a) any reference in this Agreement to an Article, Section or Exhibit shall be deemed to refer to an Article, Section or Exhibit of this Agreement unless expressly provided otherwise;
- (b) the headings appearing in this Agreement are for convenience only, do not constitute any part of this Agreement and shall be disregarded in construing the language contained herein;
- (c) the terms "this Agreement," "herein," "hereby," "hereunder," "hereof" and terms of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited and the term "this Section" refers only to the Section hereof in which such words occur;

- (d) the word “including” (in its various forms) means “including without limitation”;
- (e) any pronoun in masculine, feminine or neuter gender shall be deemed to refer to any other gender;
- (f) unless the context otherwise requires, all defined terms contained herein shall include the singular and plural;
- (g) any reference in this Agreement to a statute, law or other Applicable Law shall be deemed to refer to such statute or law as it may be amended and in effect from time to time;
- (h) any reference in this Agreement to a Person (including a Party) shall be deemed to refer to any successors and assigns of such Person;
- (i) each Exhibit hereto is incorporated into this Agreement by reference as if such Exhibit were set forth in its entirety herein; and
- (j) no term of this Agreement shall be construed in favor of, or against, a Party as a consequence of one Party having had a greater role in the preparation or drafting of this Agreement, but shall be construed as if the language were mutually drafted by both Parties with full assistance of counsel.

1.2 Defined Terms. As used in this Agreement, the following capitalized terms have the meanings set forth below. Defined terms used but not defined herein shall have the meanings set forth in the SPP Rules.

“*Affected Party*” has the meaning set forth in Section 9.1.

“*Affiliate*” means, with respect to any Person, any other Person that, directly or indirectly: (i) Controls or owns the first Person; (ii) is Controlled or owned by the first Person; or (iii) is under common Control or ownership with the first Person, where “own” (including, with correlative meanings, the terms “owned by” and “under common ownership with”) means ownership of fifty percent (50%) or more of the equity interests or rights to distributions on account of equity of the Person.

“*Agreement*” has the meaning set forth in the first paragraph of this Agreement.

“*Ancillary Services*” means voltage support, regulation and frequency response services, automatic generation control, spinning reserve, non-spinning reserve, operating reserve, reactive power and any other services that support the transmission of capacity and energy or the reliable operation of the Transmission Owner’s transmission system, to the extent included as ancillary services in the applicable tariff, and in each case, only to the extent commonly sold or saleable and to the extent that the assets comprising the Generation Resources on the Start Date are eligible to provide such services when required during the Term under normal operating conditions and without additional expense to Seller.

“Annual ARR Allocation Process” shall mean the process by which SPP awards ARR’s that entitles the holder to a share of the auction revenues generated in the applicable TCR Auction(s) and/or entitles the holder to self-convert the ARR’s into TCT’s

“Annual Auction Revenue” shall mean the sum of the credits or charges associated with each path in the nomination portfolio, calculated as the TCR Auction Clearing Price per a given auction at the source minus the TCR auction clearing price per a given auction at the sink (each expressed in \$/MW-period), for the auction year multiplied by the MW volume awarded for the applicable period. A positive calculated amount shall mean a revenue and a negative calculated amount shall mean a charge.

“Annual ARR Allocation Round Three Net Economic Benefit (Annual ARR Rd 3 NEB)” shall mean for any Annual TCR Auction an amount equal to the Annual Auction Revenue received by Customer from SPP in the Annual TCR Auction associated with paths awarded in round three of the Annual RR Allocation Process where such paths were recommended by TPS.

“*Applicable Law*” means any federal, state or local law (including common law and criminal law), code, statute, Permit, directive, ordinance, by-law, regulation, rule, judgment, consent order or agreement with a Governmental Authority, proclamation or delegated or subordinated legislation of any Governmental Authority that is applicable to this Agreement, the Parties or the Generation Resources.

“*Assessments*” means charges, fees or assessments with respect to Customer or a Generation Resource issued or levied by a Governmental Authority or any taxing authority having jurisdiction over Customer or a Generation Resource.

“*Auction Revenue Rights*” or “*ARRs*” means a financial right, awarded during the Annual ARR Allocation Process that entitles the holder to a share of the auction revenues generated in the applicable Transmission Congestion Rights (TCR) Auction(s) and/or entitles the holder to self-convert the ARR’s into TCRs.

“*Bilateral Transaction*” means a transaction entered into by Energy Manager and Customer under the Enabling Agreement (including Capacity Transactions) which is supported by the credit provisions thereof, and evidenced by a confirmation agreement executed by the Parties under the Enabling Agreement[: (i) to fix the price of a Commodity relative to floating price indices (financial swap); or (ii) governing the physical sale of any Commodity by Energy Manager to Customer, or the physical sale of any Commodity by Customer to Energy Manager, as applicable. Billing and payment under any Bilateral Transaction shall be governed by the terms of the Enabling Agreement.

“*Billing Period*” means each calendar month of the Term; *provided, however*, that the last Billing Period shall commence as of the first day of a calendar month and end on the date of termination or expiration of this Agreement.

“*Business Day*” means any day on which Federal Reserve member banks in New York City are open for business.

**“Capacity”** means SPP Firm Capacity as defined in the SPP Rules. Firm Capacity shall be sourced from the Generation Resource, which shall qualify as a Designated Network Resource in accordance with the OATT as provided in the Transaction Contingency provision set forth below. Seller shall be obligated to sell and deliver, and Buyer shall be obligated to purchase and receive, Firm Capacity in an amount equal to the Contract Quantity. Buyer and Seller acknowledge and agree that Firm Capacity shall not include any planning reserves.

**“Capacity Transaction Sleeve Fee”** has the meaning set forth in paragraph (d) of Exhibit C.

**“Capacity Transaction”** means a Capacity transaction between Energy Manager and Customer under the Enabling Agreement as a Bilateral Transaction.

**“Commercially Reasonable Manner”** or **“Commercially Reasonable Efforts”** means efforts that are designed to enable a Party to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by this Agreement and which do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities which are customary and reasonable in nature and amount in the context of the transactions contemplated by this Agreement.

**“Commodity”** means Energy (including, for avoidance of doubt, Generation Resources Energy), Capacity (resource adequacy) (including, for the avoidance of doubt, Generation Resources Capacity), Ancillary Services, RECs, or any energy-related product.

**“Confidential Information”** has the meaning set forth in Section 13.1.

**“Control”** means, with respect to any Person, the possession, directly or indirectly, of the power to exercise or determine the voting of more than fifty percent (50%) of the equity interests having voting rights of a Person or to direct or cause the direction of the management and policies of such Person, whether by contract, voting securities or otherwise.

**“Customer”** has the meaning set forth in the first paragraph of this Agreement.

**“Customer’s Representative”** means the individual designated by Customer to execute Customer’s commercial strategy for the Generation Resources and to exercise all of Customer’s rights and obligations hereunder.

**“Effective Date”** has the meaning set forth in the preamble of this Agreement.

**“Enabling Agreement”** means that certain EEI Master Power Purchase & Sale Agreement between Customer and Energy Manager dated as of the Effective Date, including all schedules, annexes (including without limitation the Collateral Annex), confirmations and transactions thereunder, as the same may be amended from time to time.

**“Energy”** means power produced in the form of electricity, measured in kilowatt hours or in megawatt hours.

**“Energy Manager”** has the meaning set forth in the first paragraph of this Agreement.

“*Energy Sleeve Fee*” has the meaning set forth in Section 4.2(b)(iii).

“*Generation Resources*” has the meaning set forth in the Preliminary Statement to this Agreement and as described in Exhibit A hereto.

“*FERC*” means the Federal Energy Regulatory Commission or its successor(s).

“*Force Majeure*” means, with respect to the Affected Party, any natural phenomena or other event or combination of events that the Affected Party could not reasonably foresee, control or prevent, and the occurrence of which the Affected Party has not caused or contributed to, which event(s) materially impede the Affected Party from performing its obligations under this Agreement, which events shall include the following:

- (a) acts of a public enemy, war or threat of war (declared or undeclared) occurring in or involving the United States, revolution, riot, rebellion, insurrection, military or usurped power, state of siege, declaration of a state of emergency or martial law (or events or circumstances that will or may result in the declaration of a state of emergency or martial law), civil unrest, act of terrorism, vandalism or sabotage (in each case occurring in or involving the United States), embargo or blockade;
- (b) politically motivated or otherwise widespread strikes, suspensions, interruptions, work slow-downs or other labor disruptions;
- (c) chemical or radioactive contamination or radiation;
- (d) air crashes, objects falling from aircraft, pressure waves caused by aircraft or aerial devices traveling at supersonic speed;
- (e) any exercise of sovereign or executive prerogative or similar action by a Governmental Authority, such as exercise of eminent domain;
- (f) any restraint or action or inaction of a Governmental Authority that has the effect of curtailing or otherwise materially restraining the output of the Generation Resources;
- (g) epidemics, explosions, meteorites, fire, lightning, hurricane, earthquake, cyclone, whirlwind, hurricane, storm, drought, flood, or other unusual or extreme adverse weather or environmental condition or action of the elements; or
- (h) equipment malfunction or failure not caused by the Party claiming Force Majeure (including computer hardware or software malfunction); loss or disruption of essential office equipment and services, such as loss or disruption of electric power, telephone service, internet, or satellite communications.

*provided, however*, that Force Majeure shall not include: (i) a failure of performance of any Third Party except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above to which such Third Party is a party; (ii) lack of a market or unfavorable market conditions for any Commodity; (iii) economic hardship; (iv)

failure of a Party to timely apply for, obtain or maintain Permits; or (v) the ability to sell Power or Ancillary Services at a higher or more favorable price.

“**GO**” means a “Generation Owner” as described in the Reliability Standards.

“**Good Industry Practice**” means any of the practices, methods, techniques and standards that, at the time of performance of Energy Manager’s obligations under this Agreement, are commonly used by experienced Persons performing similar tasks or services for natural gas-fired power plants in the United States, and which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, would have been expected to accomplish the desired result; *provided, however*, that Good Industry Practice is not intended to be limited to the optimum practice to the exclusion of all others, but rather to be the practice then generally accepted, having due regard for, among other things, contractual obligations (including this Agreement), requirements of Governmental Authorities, operating rules or procedures of transmission operators, reliability councils, or other existing market conditions.

“**GOP**” means a “Generation Operator” as described in the Reliability Standards.

“**Governmental Authority**” means any foreign, federal, state, local, county, municipal, provincial, multinational government or other governmental or quasi-governmental authority or regulatory body, court, tribunal, arbitrating body, governmental department, commission, board, body, self-regulating authority, bureau, agency, independent system operator, regional transmission organization or reliability council or authority, as well as any other instrumentality or entity designated to act for or on behalf of any of the foregoing.

“**Initial Term**” has the meaning set forth in Article II of this Agreement.

“**Interest Rate**” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by Applicable Law.

“**Load**” means the electricity demands associated with Customer’s Load in SPP.

“**Load Assets**” means any of Customer’s resources (including Power from Generation Resources, and Energy from the PPAs, and Customer purchases under Transactions).

“**Market Participant**” means a “Market Participant” qualified and registered in accordance with the SPP Rules.

“**Market Participant Account**” means the account Customer has established at SPP through which Energy Manager offers or schedules into SPP markets those Products represented by the Generation Resources, Load Assets, and Transactions, and into which SPP credits or debits those charges or payments attributable to the market activity of the Generation Resources.

“**MW**” means megawatt.

“**MWh**” means megawatt-hour, or one million watt-hours of Power per hour.

*“Monthly Management Fee”* has the meaning set forth in paragraph (a) of Exhibit C.

*“Monthly Invoice”* has the meaning set forth in Section 7.3(a).

*“Operator”* means Customer and/or any other Persons retained by Customer to operate the Generation Resources.

*“Party”* and *“Parties”* have the meanings set forth in the first paragraph of this Agreement.

*“Permits”* means all consents, licenses, approvals, registrations, permits or other authorizations granted by any Governmental Authority required in respect of, or in relation to, the Generation Resources or the Services.

*“Person”* means any individual, partnership, corporation, association, business, trust, limited liability company, Governmental Authority or other legal entity.

*“PPA”* means (i) Prairie Breeze III power purchase agreement dated as of June 9, 2015 between Customer and Invenergy; (ii) WAPA Hydro power purchase agreement dated as of January 22, 2013 between Customer and Western Area Power Administration (the “WAPA PPA”); (iii) Nebraska City Unit 2 power purchase agreement dated as of October 14, 2003 between Customer and Omaha Public Power District (the “NC2 PPA”); and (iv) Whelan Energy Center Unit 2 power purchase agreement dated as of November 14, 2006 between Customer and Public Power Generation Agency (“PPGA/Hastings”).

*“Power”* means electric energy as measured in MWh, and/or any other electricity-related products or services available for sale from the Generation Resources (apart from Ancillary Services), but shall not include Capacity.

*“Power Transmission Agreement”* means any agreement between Customer and any Transmission Provider related to the delivery of Commodities from the Generation Resources.

*“Proceeding”* has the meaning set forth in Section 15.1(a).

*“RECs”* means renewable energy certificates or renewable energy credits, and for avoidance of confusion any obligation with respect to RECs remain those of Customer.

*“Recording”* has the meaning set forth in Section 17.16.

*“Reimbursable Expenses”* means the expenses described in Section 7.2.

*“Reliability Standards”* has the meaning set forth in Section 5.6.

*“Renewal Term”* has the meaning set forth in Article 11 of this Agreement.

*“Services”* means those services as set forth in Article IV.

*“Settlement Date”* has the meaning set forth in Section 7.3(b).

*“SPP”* means the Southwest Power Pool, Inc., or its successor(s).



“**SPP Rules**” means the SPP tariff as filed with FERC and any other SPP operating agreements, market rules and business practices, in each case as amended or supplemented from time to time, including without limitation the Operating Procedures, Business Practice Manuals, and Integrated Marketplace Glossary published by SPP.

“**Start Date**” means December 1, 2022.

“**Successor Energy Manager**” has the meaning set forth in Section 17.7.

“**Taxes**” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including Assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest, in each case associated with Customer or a Generation Resource or other Load Assets other than taxes imposed on or measured by net income or doing business taxes imposed on Energy Manager.

“**TCR**” means Transmission Congestion Rights, as defined in the SPP Rules.

“**TCR Auction Clearing Price**” shall mean the prices generated at each source and sink settlement location in each round fo the Annual TCR Auction and monthly TCR Auction based upon the TCR offers and bids submitted.

“**Term**” has the meaning set forth in Article II.

“**Termination Date**” means the date for termination of this Agreement specified in the Termination Notice.

“**Termination Notice**” has the meaning set forth in Section 10.7.

“**Third Party**” means any Person other than Customer or Energy Manager or an Affiliate of either.

“**Third Party Bilateral Transaction**” means an agreement between Energy Manager and a Third Party in support of a back-to-back Bilateral Transaction.

“**Third Party Customer Transaction**” means an agreement between Customer and a Third Party for the purchase or sale of a Commodity.

“**Transactions**” means the Bilateral Transactions, Third Party Bilateral Transactions, and Third Party Customer Transactions.

“**Transmission Provider**” means any Person that provides transmission or distribution services for the delivery of electric energy from a Generation Resource pursuant to any Power Transmission Agreement.

**ARTICLE II**  
**TERM**

2.1 Term. This Agreement will commence as of the Effective Date and shall continue until midnight eastern prevailing time on November 30, 2025 (the “*Initial Term*”) unless otherwise terminated in accordance with Article X of this Agreement. After expiration of the Initial Term, unless either Party has given the other Party written notice, at least sixty (60) days prior to the expiration of the Initial Term, that it does not wish to renew this Agreement at the end of the Initial Term, this Agreement shall automatically renew for successive one year terms ( each a “*Renewal Term*”), *provided that* either Party may elect not to renew this Agreement for any successor Renewal Term by providing the other Party at least sixty (60) days prior written notice of such election. For purposes of clarity, nothing in this Article II shall prevent either Party from terminating this Agreement prior to expiration of the Initial Term or any Renewal Term in accordance with Article X. The Initial Term and each Renewal Term, if any, shall hereinafter be referred to as the “*Term*”.

**ARTICLE III**  
**RELATIONSHIP OF PARTIES**

3.1 Title. Energy Manager shall provide Services solely as Customer’s agent and will not take title to any Commodity, unless otherwise mutually agreed to as provided in Section 3.2.

3.2 Transactions between Customer and Energy Manager. There is no obligation for Customer and Energy Manager to enter into Bilateral Transactions with each other under this Agreement. Customer and Energy Manager may, however, enter into Bilateral Transactions, as mutually agreed to. Any Bilateral Transactions between Customer and Energy Manager will be documented in a separate agreement; the terms and provisions contained therein shall govern the performance of the Parties.

3.3 Energy Manager Access. As of the Start Date, Customer shall have taken all reasonable steps with SPP and the Transmission Owner to designate Energy Manager as Customer’s authorized agent for purposes of communicating and interfacing with SPP and Transmission Owner, as required, and shall have taken all actions necessary to enable Energy Manager to serve as Customer’s authorized agent for purposes of administering this Agreement (including granting access to Customer’s SPP Market Participant account). For the avoidance of doubt, neither Party shall transfer to the other Party legal title to any Commodity under this Agreement.

3.4 Energy Manager as Independent Contractor.

(a) Neither Party shall be a joint venturer or legal representative of the other Party for any purpose whatsoever, and neither Party is authorized to assume or create any obligation, liability, or responsibility, expressed or implied, on behalf of or in the name of any other Party or to bind the other Party to any Third Party in any manner whatsoever; and

(b) The relationship of Customer with Energy Manager in connection with the Services provided pursuant to this Agreement is one of an independent contractor. Any provision

of this Agreement that appears to give Customer a measure of control over the details of the Services shall be deemed to mean that Energy Manager shall follow the provisions hereof in order to accomplish the desires of Customer, but Customer shall look to Energy Manager for results only and shall have no right at any time to direct or supervise Energy Manager's servants or employees in the performance of such work or as to the manner, means and methods by which the Services are performed. No individual employed by Energy Manager or its Affiliates shall be deemed to be an employee, agent or servant of Customer.

3.5 No Fiduciary or Advisory Role. Customer acknowledges that: (i) Energy Manager is not acting as a fiduciary or financial or investment advisor for Customer; (ii) Customer has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent it has deemed necessary, and it has made its own investment, hedging and trading decisions based upon its own judgment and upon any advice from such advisors as it has deemed necessary; and (iii) Customer is entering into this Agreement, with a full understanding of all of the risks thereof (economic and otherwise), and Customer is capable of assuming and willing to assume (financially and otherwise) those risks. Except as expressly stated in this Agreement, neither of the Parties shall have any separate obligations or duties, and shall have no fiduciary duties or implied duties to the other Party. Neither Energy Manager nor its Affiliates shall be responsible for any business opportunities that may not be realized by Customer. Nothing in this Agreement shall be construed to make Energy Manager a financial, investment or trading advisor to Customer, and Customer acknowledges that Energy Manager is not a commodity trading advisor as defined in the U.S. Commodity Exchange Act, as amended. Customer has consulted with its own legal, tax, business, investment, financial and accounting advisors to the extent that it has deemed necessary with regard to this Agreement and has a full understanding of the risks associated therewith and is willing to assume those risks.

3.6 Energy Manager Activities. Nothing in this Agreement shall prohibit Energy Manager and its Affiliates from buying and selling any Commodity products for their own accounts or for the accounts of others. Notwithstanding any other provision of this Agreement, Energy Manager and its Affiliates may engage in whatever activities they choose with respect to any entity other than Customer including trading or selling Commodity products for Energy Manager's own account or for the accounts of others, even in the same geographic region as the Generation Resources. Regardless of any such activities undertaken by Energy Manager, however, Energy Manager shall employ the same skill, expertise and judgment to perform each of the Services that Energy Manager employs and/or would employ on behalf of other electric generating Generation Resources for which it provides services similar to the Services.

3.7 Energy Manager Information. Any information, projections, valuations or models provided by Energy Manager pursuant to this Agreement shall be based on information available to Energy Manager at such time. The providing of such information shall not constitute a guarantee by Energy Manager of any future facts or expected results, or that such information represents the best market alternatives under any circumstances or that any particular results may actually be achieved by the following of any suggestions by Energy Manager.

## ARTICLE IV

## SERVICES

4.1 Load Asset Services. Subject to Section 6.3 and all other limitations provided by this Agreement, Energy Manager will perform the following Services for the Load Assets as of the Start Date:

(a) maintain a SPP operations desk on a twenty-four (24) hour per day basis that is staffed by SPP certified personnel to serve as the primary contact for communication between the Customer and /or Load Assets (as applicable) and SPP;

(b) Scheduling-Related Services. Based on scheduling information as provided in a timely manner by Customer to Energy Manager pursuant to Sections 5.2 and 5.3, Energy Manager shall schedule Load Assets Energy, on a day-ahead or real-time basis as applicable, in the SPP Energy market, and, if permitted under an amendment to this Agreement entered into pursuant to subsection (i) and (ii) below, Generation Resources Capacity or Ancillary Services in the SPP capacity market (if and when either such market exists in the future), in each case in accordance with SPP Rules, as instructed by Customer; *provided that*,

(i) with respect to the scheduling of Generation Resources Capacity, if there exists an SPP market for the sale of capacity in the future, the Parties shall negotiate in good faith to establish standards for trading Generation Resources Capacity and shall amend this Agreement to document such standards, and Energy Manager shall at all times comply with the terms thereof once established; and

(ii) with respect to the scheduling of Ancillary Services, if there exists an opportunity to provide Ancillary Services on an economic basis, the Parties shall negotiate in good faith to establish standards for scheduling Ancillary Services and shall amend this Agreement to document such standards, and Energy Manager shall at all times comply with the terms thereof once established.

(c) OASIS. Energy Manager shall comply with any Open Access Same Time Information Systems (OASIS) tagging, transmission scheduling or similar requirements associated with the scheduling of Generation Resources Energy.

(d) CROW Outages. Subject to Customer's compliance with Section 5.2, Energy Manager will input and manage all Generation Resources outages in SPP's CROW Outage Scheduling System. Customer shall ensure that all data-links and other communication connections with SPP are established directly between each Generation Resource and SPP or Transmission Provider and do not connect to the facilities of Energy Manager.

(e) Meter Data Management. Subject to Customer providing data to Energy Manager in accordance with the provisions of Section 4.3, Energy Manager shall provide Customer and SPP with all required meter data, telemetry, and settlement data according to the SPP Integrated Marketplace protocols and associated operating guides.

(f) SPP Market Information. Energy Manager shall provide Customer publicly-available market intelligence regarding SPP transmission, generation, and general market activities (i.e., transmission outages, transmission upgrades, changes in SPP Rules, new generation, generation outages) impacting the day-ahead and real-time pricing at the Project Node for each Generation Resource, and day-ahead and real-time optimization.

(g) RUC Notifications. Energy Manager shall provide Customer with SPP Reliability Unit Contingent (RUC) notifications.

(h) Telemetry. Energy Manager shall establish a telemetry connection to Customer to facilitate data communication over Energy Manager's ICCP connection with SPP. Any upgrade cost associated with providing this service will be passed through to Customer.

(i) Daily Update. Energy Manager shall provide an update daily by electronic mail to Customer showing hourly LMP pricing forecast for the SPP North Hub and SPP South Hub pursuant to the provisions of Section 4.9; *provided that*, Customer understands and accepts that such forecast is provided as an estimate and shall not be in any way considered a recommendation from Energy Manager to Customers, and further provided that Energy Manager shall not be held liable for decisions made by Customer if Customer uses such forecast in any manner.

4.2 Bilateral Transactions Services. As of the Start Date, Energy Manager shall perform the following Bilateral Transactions Services in support of Customer approved Load Asset management services:

(a) Bilateral Transactions - General. Subject to subsection (d) below, Energy Manager shall use Commercially Reasonable Efforts to assist Customer in optimizing the value of the Generation Resources and Load Assets consistent with Customer's internal risk management policies and available credit under the Enabling Agreement, in the form of Bilateral Transactions as governed by the Enabling Agreement including, but not limited to, the credit provisions thereof. Communications shall be in a mutually acceptable electronic format.

(b) Price Quotes for Energy Products. Customer may request that Energy Manager provide a price quote for a Bilateral Transaction for Energy products for a term of up to five (5) years as follows:

(i) For an Energy product for delivery to any delivery point within SPP at any time during the Term, for all or any portion of the Service Term (an "Indicative Price Quote"). In any such request, Customer shall designate: (i) whether Customer is buying or selling Energy, (ii) the proposed term of the Bilateral Transaction, (iii) the type of Bilateral Transaction (which may be for fixed, variable, blocks), (iv) the proposed Energy quantity for such Bilateral Transaction, if applicable, and (v) only in the event that Customer would like to establish a price ceiling for a fixed block transaction ("Fixed Block Price Transaction"), the maximum fixed block price for the applicable Fixed Block Price Transaction that Customer would be willing

to pay ("Fixed Price Trigger"). For the avoidance of doubt, prior to entry into any type of Bilateral Transaction under subsection (ii) below (Energy Manager Matching Offer) or subsection (iii) below (No Energy Manager Matching Offer), Energy Manager shall "firm up" (subject to the then current market conditions) the Indicative Price Quote ("Firm Quote") and such Firm Quote shall establish the price for the Bilateral Transaction.

Energy Manager shall use Commercially Reasonable Efforts to seek three (3) Indicative Price Quotes from counterparties with which Energy Manager regularly transacts pursuant to its then-current applicable internal corporate and credit policies and procedures, for substantially the same (quantity and term) energy transactions delivered to any designated delivery point in SPP; *provided, however*, Energy Manager does not represent that any Indicative Price Quote will be representative of the lowest price in the market. The Parties acknowledge and agree that Energy Manager (i) shall be under no obligation to make a market for any Energy product and (ii) shall not be required to enter into any transaction with the provider of any Indicative Price Quote in order to establish a Firm Quote. Indicative Price Quote(s) shall be communicated by electronic mail or otherwise verbally on a recorded line. To the extent that Customer has provided a price trigger to Energy Manager as part of a price request, the period of time for Energy Manager to provide Indicative Price Quote(s) to Customer will depend on the evolution of market prices, as determined by Energy Manager.

- (ii) Energy Manager Matching Offer. If Energy Manager is able to match the Indicative Price Quote(s) obtained for and provided to Customer by Energy Manager for a Bilateral Transaction for Energy, Energy Manager shall have the concurrent right to present to Customer a matching Indicative Price Quote ("Matching Offer"), which Matching Offer shall also be communicated by electronic mail or otherwise verbally on a recorded line. If Energy Manager provides a Matching Offer and Customer rejects such Matching Offer, all Indicative Price Quotes provided to Customer for the requested Transaction shall be null and void. Customer acknowledges that Energy Manager may transact, hedge, supply from its own account or otherwise transact for Energy in order to effectuate a Bilateral Transaction.

Customer shall accept or reject (by electronic mail or otherwise verbally on a recorded line) any Matching Offer presented by Energy Manager by the deadline established by Energy Manager; *provided that* any failure to respond by such deadline will be deemed a rejection. If Customer accepts such Matching Offer, the Parties shall be deemed to have entered into a Bilateral Transaction under the Enabling Agreement as of the time Customer accepts such Matching Offer, and the Parties shall use reasonable efforts to enter into a Confirmation under the Enabling Agreement setting forth the agreed upon terms within three (3) Business Days after such acceptance. Notwithstanding the foregoing, any failure by the Parties to execute a Confirmation shall not affect the validity of the associated

Bilateral Transaction. For avoidance of doubt, if Energy Manager and Customer enter into a Bilateral Transaction as a result of Energy Manager presenting, and Customer accepting, a Matching Offer, no Energy Sleeve Fee (as described below) shall apply to such Bilateral Transaction.

- (iii) No Energy Manager Matching Offer. If Energy Manager is not able to match the Indicative Price Quote(s) obtained for and provided to Customer, or if Energy Manager elects not to present a Matching Offer, Energy Manager shall so state in presenting Indicative Price Quote(s) to Customer, and shall, concurrently with providing such Indicative Price Quote(s), include the amount of any separate Energy Sleeve Fee that will apply to any Bilateral Transaction. Customer shall accept or reject (by electronic mail or otherwise verbally on a recorded line) such Indicative Price Quote and any proffered Energy Sleeve Fee, by the deadline established by Energy Manager; *provided that* any failure to respond by such deadline will be deemed a rejection.

If Customer accepts an Indicative Price Quote and any associated Energy Sleeve Fee, the Parties shall use reasonable efforts to enter into a Confirmation under the Enabling Agreement setting forth the agreed upon terms within three (3) Business Days after such acceptance. Notwithstanding the foregoing, any failure by the Parties to execute a Confirmation shall not affect the validity of the associated Bilateral Transaction. For the avoidance of doubt, the Confirmation will be governed by the Enabling Agreement. The supplier that provided the Indicative Price Quote that Customer accepted shall not be a party to the Confirmation and Customer shall be entitled to enforce the obligations of the supplier solely against Energy Manager.

“Energy Sleeve Fee” means a separate fee (\$/MWh), as set forth in Section 7.1(c), that compensates Energy Manager for credit and liquidity costs incurred by Energy Manager in entering into one or more Third Party Bilateral Transactions for the purpose of meeting its obligations to Customer under any Bilateral Transaction entered into under subsection (iii) of this Section 4.2(b).

- (iv) Upon Customer’s request, Energy Manager may provide a quote for a Bilateral Transaction for Energy products for a term of greater than five (5) years, a load following arrangement, or other structured arrangement under the Enabling Agreement.
- (c) Price Quotes for Capacity Products.
- (i) If Customer requests from Energy Manager a quote for a Capacity Transaction, Customer shall state (i) whether Customer is buying or selling Capacity, (ii) the proposed term of the Capacity Transaction, (ii) the

proposed quantity for such Capacity Transaction and (iv) any other applicable parameters.

- (A) Based on the information provided by Customer, Energy Manager shall use Commercially Reasonable efforts to obtain one (1) quote from a counterparty with which Energy Manager regularly transacts pursuant to its then-current applicable internal corporate and credit policies and procedures, *provided, however*, Energy Manager does not represent that any such quote will be representative of the lowest price in the market. Energy Manager shall have the opportunity to provide a matching quote or, if no quote from a Third Party is available, a quote by Energy Manager. The Parties acknowledge and agree that Energy Manager (i) shall be under no obligation to make a market for any Capacity product and (ii) shall not be required to enter into any transaction with the provider of any Capacity quote in order to establish a firm quote.
- (B) If Energy Manager does not provide a matching quote and Customer chooses the Third Party quote, then Energy Manager shall enter into a Capacity Transaction and a corresponding Third Party Bilateral Transaction for Capacity with a counterparty with which Energy Manager regularly transacts pursuant to its then-current applicable internal corporate and credit policies and procedures (including satisfying Energy Manager's credit and risk policies) and a Capacity Sleeve Fee shall apply.
  - (1) For such transactions with terms of up to five (5) years, the Capacity Sleeve Fee set forth in Section 7.1(d) shall apply to the Capacity Transaction.
  - (2) For such transactions with terms in excess of five (5) years, the Capacity Sleeve Fee to be applied to the Capacity Transaction shall be subject to agreement.
  - (3) Customer understands and accepts any and all physical and/or economic risks associated with non-performance by a Third Party under a Third Party Bilateral Transaction for Capacity entered into by Energy Manager in support of Capacity Transactions, including but not limited to payment of replacement capacity or any SPP assessed costs or fines for non-performance. Customer agrees that any costs incurred by Energy Manager associated with any such non-performance shall be passed through by Energy Manager to Customer in a Monthly Invoice.
- (C) If Energy Manager provides a matching quote or, if no quote from a Third Party is available, a quote from Energy Manager, and



Customer accepts Energy Manager's quote, then the Parties shall enter into a Capacity Transaction and, for avoidance of doubt, a Capacity Sleeve Fee shall not apply.

- (ii) If Customer identifies a Third Party buyer or seller of Capacity and requests that Energy Manager facilitates such purchase or sale, Energy Manager may, but shall not be obligated, to facilitate such transaction for a fee, by entering into a Capacity Transaction and a corresponding Third Party Bilateral Transaction for Capacity with a counterparty with which Energy Manager regularly transacts pursuant to its then-current applicable internal corporate and credit policies and procedures.
  - (A) For such transactions with terms of up to five (5) years, the Capacity Sleeve Fee set forth in Section 7.1(d) shall apply to the Capacity Transaction.
  - (B) For such transactions with terms in excess of five (5) years, the Capacity Sleeve Fee to be applied to the Capacity Transaction shall be subject to agreement.
  - (C) Customer understands and accepts any and all physical and/or economic risks associated with non-performance by a Third Party under a Third Party Bilateral Transactions for Capacity entered into by Energy Manager in support of Capacity Transactions, including but not limited to payment of replacement capacity or any SPP assessed costs or fines for non-performance. Customer agrees that any costs incurred by Energy Manager associated with any such non-performance shall be passed through by Energy Manager to Customer in a Monthly Invoice.
- (iii) The Parties shall document the Capacity Transactions by entering into corresponding Confirmations under the Enabling Agreement setting forth the agreed upon terms.
- (iv) In support of each Capacity Transaction and/or Third Party Bilateral Transaction for Capacity and as a precondition to Energy Manager entering into any Capacity Transaction and/or Third Party Bilateral Transaction for Capacity, Customer (or Third Party, if applicable) must submit for and secure firm point-to-point transmission from SPP for the applicable resource. Energy Manager's purchase or sale under a Capacity Transaction and/or Third Party Bilateral Transaction for Capacity shall be at the bus bar/interconnection point for such resource. Energy Manager can, upon Customer's request, assist with Customer's applicable transmission requests to SPP.
- (v) Energy Manager will run annual peak demand forecasts to compare against Customer's existing generation resources and will provide price quotes for

any capacity purchases or sales pursuant to mutually agreed upon plans through additional power purchase agreements or through asset-based or market-based procurements.

(d) No Trading Restriction. Subject to the confidentiality restrictions set forth herein, nothing in this Agreement shall restrict or prevent or be deemed to restrict or prevent Customer or Energy Manager from entering into any Commodity purchase and sale transaction, or any financial swap transaction, with a third party other than Energy Manager or Customer, respectively.

(e) No Fiduciary Status. Notwithstanding any other provision of this Agreement, Customer acknowledges that Energy Manager is not acting as a fiduciary of, or financial, regulatory or business advisor to, Customer, and Customer expressly assumes all risks associated with its hedging, risk management, regulatory and/or asset optimization activities. Customer acknowledges Energy Manager is not registered as a Commodity Trading Advisor under the U.S. Commodity Exchange Act and is not holding itself out as in the business of advising others as to the value or advisability of trading swaps, options, future or cash settled forwards or any other commodity transaction.

4.3 Metering Services. As limited agent to Customer through Customer's SPP MP account, Energy Manager will obtain and upload all Load Asset metering data to SPP, as provided to Energy Manager by Customer on the next Business Day by noon.

4.4 Bilateral Settlement Services for Certain PPAs. As limited agent to Customer through Customer's SPP Market Participant account, Energy Manager shall submit daily Bilateral Settlement Schedules ("BSS") for the NC2 PPA and WAPA PPA to SPP; provided that Customer shall provide such BSS information to Energy Manager at least one (1) Business Day in advance of daily submission.

4.5 ARR and TCR Services. Subject to the fees set forth in Section 7.1(b), Energy Manager shall provide the following ARR and TCR services to Customer, at Customer's request:

- (a) Analysis optimization and submission.
- (b) Annual auction nomination strategy and reporting.
- (c) Monthly auction path analysis.
- (d) Option for marketing agent to cost share/benefit in using ARR paths still available during round three (3) of the annual ARR auction.

4.6 Market Monitor Inquiry Services.

- (a) Energy Manager shall obtain and provide answers and guidance involving the market monitor, SPP Rules, and provide assistance with any new resource registrations.
- (b) Energy Manager shall assist with guidance involving Engineering Data Submission ("EDST") entries.

4.7 Settlement Services. Energy Manager, solely as agent for Owner, shall (a) perform all responsibilities associated with accounting for the Load Assets' participation in the SPP markets under the settlement system administrated by the SPP; (b) reconcile all invoices and other billing information received with respect to the Load Assets against actual metered data (provided that Energy Manager has been afforded access to such metered data), verify SPP charges and revenues are accurate; (c) forward to Customer, promptly upon receipt, any applicable settlement report and any other communications it receives from SPP with respect to the receipt of, accounting for or sale of Energy associated with Load Assets; and (d) review the applicable settlement reports for any errors or omissions, notify Customer of the same and use Commercially Reasonable Efforts to promptly submit disputes to and seek corrections of the same by SPP.

4.8 Additional Services. Energy Manager shall perform such additional services related to and consistent with the Services outlined in this Article IV as Customer and Energy Manager may mutually agree from time to time.

4.9 Reports.

(a) Energy Manager shall provide to Customer a daily report of the following activities; *provided, however*, that if any of the information below is not available at such time, such information will be provided to Customer as soon thereafter as is reasonable possible. Such report shall be in a format and in substance reasonably acceptable to Customer, regarding the status of the Services and Transactions, and any other information reasonably requested by Customer, including:

- (i) Prior day day-ahead and real-time pricing data for SPP hubs and zones, and at the applicable Load Asset pricing node;
- (ii) Forecasted load within SPP, forecasted generation outages within SPP, and forecasted Energy prices within SPP, including daily market prices for on-peak and off-peak Energy (day-ahead, balance of week and balance of month);
- (iii) A listing of all SPP day-ahead awards for Energy;
- (iv) A copy of the daily bid structure for the Generation Resources;
- (v) Additional information reasonably requested by Customer.

(b) Upon obtaining knowledge thereof, each Party shall submit prompt written notice to the other of:

- (i) any litigation or material claims, disputes or actions, threatened or filed, concerning the Services or Transactions;
- (ii) any refusal or threatened refusal to grant, renew or extend, or any action pending or threatened that might affect, the granting, renewal or extension of any Permit relating to the Services;

- (iii) any dispute with any Governmental Authority relating to the Services;
- (iv) all penalties or notices of violation issued by any Governmental Authority relating to the Services;
- (v) any material violation of any Applicable Law, in either case, relating to the Services; and
- (vi) any other event or circumstance that could materially affect the performance of the Services.

(c) Customer's Representative may from time to time specify changes to be made to the format or timing of any report required to be submitted to Customer hereunder and Energy Manager shall use reasonable efforts in complying with any such request. Any such revised format shall be promptly implemented by Energy Manager.

(d) Load Forecasts. Energy Manager shall, [on an annual basis], complete load forecasts to compare Customer's forecasted Load against anticipated Energy to be generated by the Generation Resources and obtained pursuant to the PPAs. In support of such load forecasts, Customer shall provide to Energy Manager (i) historical Generation Resources information in accordance with the provisions of Section 5.2, (ii) historical Load Assets information in accordance with the provisions of Section 5.3, and (iii) historical Load information in accordance with the provisions of Section 5.4.

(e) Regulatory Compliance. Energy Manager shall use Commercially Reasonable Efforts to collect and provide to Customer the data necessary for Customer to meet applicable FERC or NERC reporting requirements (which shall be the sole responsibility of Customer).

(f) Weekly Calls. Energy Manager and Customer shall confer telephonically once per week (or at other mutually agreeable intervals) at times mutually agreeable to Customer and Energy Manager, at which time Energy Manager and Customer shall discuss then-current matters associated with the Services.

## ARTICLE V CUSTOMER'S RIGHTS AND RESPONSIBILITIES

5.1 Customer Rights and Responsibilities – Generation Resources. Customer shall have the sole right and responsibility to:

- (a) perform all activities with respect to operation and dispatch of the Generation Resources;
- (b) determine the amount and characteristics of otherwise non-contracted Commodities available or to be made available from the Generation Resources at any given time;
- (c) enter into, amend or modify any agreements required to support Third Party Customer Transactions and provide such information to Energy Manager;

- (d) execute all agreements or other documentation reasonably necessary for Energy Manager to perform the Services for Generation Resources; and
- (e) serve as the Market Participant for each Generation Resource; and
- (f) maintain all Permits required to own and operate each Generation Resource.

5.2 Generation Resources Information. To the extent applicable to each Generation Resource, Customer shall provide Energy Manager:

- (a) in a timely manner all information in the possession of Customer reasonably necessary and as requested by Energy Manager to enable Energy Manager to comply with the nominating, scheduling, balancing and other requirements of any Generation Resource and to minimize scheduling, balancing, overrun and similar penalties and charges;
- (b) any and all generation parameters;
- (c) fuel and other operating costs.

5.3 PPA Information. Customer will provide Energy Manager with the MWh associated with each PPA and the costs for each such MWh, as well as additional PPA related information as reasonably requested by Energy Manager for provision of PPA related Services.

5.4 Load Information. Customer to provide on a daily basis the hourly forecast for their Load.

5.5 Customer's Representatives. Customer shall designate in writing at least one Customer's Representative. Customer's Representatives shall be authorized and empowered to act for and on behalf of Customer as to all obligations of Customer hereunder. Customer may change Customer's Representatives from time-to-time. Energy Manager shall be entitled to rely upon, and Customer shall be bound by, the oral and written communications, directions, requests and decisions made by Customer's Representatives with regard to this Agreement.

5.6 NERC Reliability Standards.

(a) As between the Parties, Customer shall bear all obligations and responsibilities set forth in the NERC and RFC reliability standards (collectively, the "*Reliability Standards*") pertaining to Customer or the Generation Resources. Customer acknowledges and agrees that: (i) as between the Parties, Customer shall be responsible for registering the Generation Resources on the NERC reliability registry and registering as a GO or GOP with respect to the Generation Resources; and (ii) nothing in this Agreement shall require Energy Manager to register as a GO or a GOP under the Reliability Standards.

(b) If, at any time (including after a termination or expiration of this Agreement), NERC or the RFC conducts an audit for a time period during which Energy Manager provided Services, Energy Manager shall, promptly upon Customer's request: (i) provide any pertinent information and documentation in Energy Manager's possession or control, including information on communications with SPP; and (ii) make appropriate personnel available to Customer to assist in responding to such audit.

5.7 SPP Rules and Applicable Law. The Parties will at all times comply in all material aspects with all Applicable Laws and SPP Rules in the performance of this Agreement, and Customer and Generation Resources will abide by the Applicable Laws and SPP Rules.

**ARTICLE VI**  
**ENERGY MANAGER'S RIGHTS AND RESPONSIBILITIES**

6.1 Services Generally. In performing the Services during the Term, Energy Manager shall:

- (a) comply with, and all Services shall conform to and comply with, the plans, policies, strategies, approvals and decisions of Customer, as described in Article V;
- (b) confer with Customer as often as may be reasonably requested unless otherwise agreed by the Parties;
- (c) maintain all Permits required to perform the Services.

6.2 Standard of Performance of Obligations. Energy Manager shall perform the Services in a good, workmanlike and Commercially Reasonable Manner and in accordance with: (i) Good Industry Practice; (ii) instructions from Customer and Customer's Representative; (iii) the terms of this Agreement; and (iv) Applicable Law.

6.3 Limitation on Authority of Energy Manager.

- (a) Except as may be expressly authorized by this Agreement or in writing or on a recorded telephonic line by Customer's Representative from time-to-time, Energy Manager shall not:
  - (i) enter into any Transactions that are not within the parameters approved by the Customer or that have not been expressly approved in writing by Customer;
  - (ii) pledge the credit of Customer in any way in respect of any agreements entered into between Energy Manager and any Third Party without the express prior written consent of Customer;
  - (iii) make any representation or warranty relating to Customer;
  - (iv) settle, compromise (including agreeing to any penalty for any violation of any Applicable Law or Permit), assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by Customer, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to do the same.
- (b) Energy Manager shall not:

- (i) knowingly violate any Applicable Law with respect to the Generation Resources or the Services;
- (ii) sell or otherwise transfer any assets of Customer, or cause any liens or encumbrances on the Generation Resources or any other assets of Customer, arising as a direct result of the performance by Energy Manager of its obligations under this Agreement;
- (iii) engage in any transaction on behalf of Customer not permitted under this Agreement; or
- (iv) refuse to abide by the reasonable instructions of Customer's Representative regarding the Services.

Customer shall have no liability with respect to any action undertaken or transaction executed by Energy Manager in breach of Section 6.3(a) or Section 6.3(b) and Energy Manager shall indemnify and hold harmless Customer from any claims arising in connection with any such transaction.

## **ARTICLE VII** **COMPENSATION AND BILLING**

### **7.1 Management Fees.**

- (a) Energy Management Service Fee. For each Billing Period, Energy Manager shall be entitled to a fee equal to the amount set forth in paragraph (a) of Exhibit C.
- (b) ARR/TCR Management Service Fee: For each Billing Period, Energy Manager shall be entitled to a fee as set forth in paragraph (b) of Exhibit C.
- (c) Energy Bilateral Transaction Sleeve Fee: The Energy Sleeve Fees set forth in paragraph (c) of Exhibit C shall apply to Bilateral Transactions for Energy products.
- (d) Capacity Transaction Sleeve Fee: The Capacity Sleeve Fees set forth in paragraph (d) of Exhibit C shall apply to Capacity Transactions.

### **7.2 Reimbursable Expenses.**

- (a) Special Provision Regarding Telemetry and Communications Equipment and Costs. The Parties shall cooperate to install any necessary telemetry and communications equipment in the most cost effective manner. Costs reasonably incurred by Energy Manager to purchase, install and maintain such equipment and any costs or fees related to required connectivity or for transmitting telemetered data shall be Reimbursable Expenses, *provided that* Customer has been afforded an opportunity to review estimated amounts.
- (b) In addition to Section 7.2(a), (i) actual direct costs that were necessary to be incurred by or charged to Energy Manager for solely representing the Generation Resources and the associated Transactions, including but not limited to amounts for or related to the submission of bids and/or offers to SPP, scheduling, delivery, settlement and

transmission with SPP, and any other Transactions that are applicable to the Services, and (ii) all Taxes and Assessments, shall be Reimbursable Expenses, *provided that* Customer has been afforded an opportunity to review estimated amounts or a general methodology for estimating the amounts.

### 7.3 Billing and Payment.

(a) No later than the tenth (10th) day after the end of each Billing Period, Energy Manager shall deliver to Customer a statement (the "*Monthly Invoice*"), setting forth in reasonable detail the calculation of the following amounts for such Billing Period: (i) the Monthly Management Fee; and (ii) Reimbursable Expenses.

(b) No later than the twenty-fifth (25th) day after the end of each Billing Period (the "*Settlement Date*"), Customer shall remit by wire transfer to Energy Manager the net amount due as detailed in the Monthly Invoice. All amounts remitted under this Section 7.3 shall be remitted by wire transfer, according to the payment instructions below, and any amounts not remitted by the Settlement Date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

Payments to Energy Manager shall be made by wire transfer to the account set for in paragraph (e) of Exhibit C.

(c) If Customer disputes any Reimbursable Expenses contained in a Monthly Invoice, it shall promptly notify Energy Manager and the Parties shall attempt in good faith to resolve such dispute within ten (10) days of such notice. In the event the Parties are unable to resolve any such dispute within such ten (10) day period, such dispute shall be resolved pursuant to Article XV. Customer may withhold any payment to Energy Manager disputed in good faith.

## **ARTICLE VIII REPORTS, RECORDS AND AUDITS**

8.1 Books and Records. Energy Manager shall maintain in accordance with Good Industry Practice complete, accurate and up-to-date supporting records which are pertinent to the performance of Energy Manager's obligations hereunder, and records of all expenses and costs incurred under this Agreement and payment thereof. Energy Manager shall ensure that such supporting books and records are separately identifiable and distinguishable from books and records concerning Energy Manager's transactions for its own account and other services it provides. Energy Manager shall retain all such books and records for a minimum of four (4) years or, if longer, the relevant period required by Applicable Law or, if related to disputes, appeals, arbitration, litigation or the settlement of claims arising out of the performance of this Agreement or the Services, such records shall be maintained until the resolution of the matter giving rise to such dispute. Energy Manager shall, upon Customer's request, make such records available for inspection and audit (including copies and extracts of records as required).



8.2 Audits. Each Party has the right, at its sole expense and during normal working hours and upon reasonable written notice to the other Party, to examine copies of the relevant portions of the records of the other Party as necessary to verify the accuracy of any invoice, charge, or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and the payments will be promptly made together with interest at the Interest Rate, if applicable, from the original date of payment. No adjustment for any invoice or payment will be made unless objection to its accuracy was made prior to the lapse of one (1) year from the date that the disputed invoice was delivered. No adjustment will be made to invoices or summaries related to SPP settlement statements that SPP has deemed final under the SPP Rules. In addition, adjustments to any invoice may be made up to four (4) years from the date that the particular Services were completed to adjust for Taxes erroneously allocated to Energy Manager. This Section 8.2 shall survive any termination of this Agreement as necessary to effect the provisions of this paragraph.

## **ARTICLE IX** **FORCE MAJEURE**

9.1 Declaration of Force Majeure. A Party (the "*Affected Party*") claiming relief from performance of its obligations under this Agreement due to a Force Majeure event shall give written notice to the other Party of such event as soon as reasonably practicable after becoming aware of such event. Each notice of a Force Majeure event shall describe in reasonable detail the Force Majeure event, the effects thereof and the steps being taken by the Affected Party to mitigate and overcome such effects. Upon a Force Majeure event, the Affected Party shall:

(a) use its Commercially Reasonable Efforts to mitigate the effects of such Force Majeure event and to remedy any inability to perform its obligations hereunder due to such event as promptly as reasonably practicable; *provided, however*, that:

- (i) the Affected Party shall not be obligated to take any steps that would not be in accordance with Good Industry Practice or Applicable Law or that would be beyond its reasonable control; and
- (ii) the Affected Party shall not be required to settle any strikes or other labor disputes on terms that are adverse to the Affected Party and not commercially reasonable.

(b) furnish periodic reports to the other Party regarding its progress in overcoming the adverse effects of the Force Majeure event and containing a good faith estimate of when it will be able to resume performance under this Agreement; and

(c) resume performance under this Agreement as soon as reasonably practicable after the Force Majeure event is remedied or ceases to exist.

9.2 Performance Suspended. During the continuance of any Force Majeure, the obligations of the Affected Party under this Agreement, other than any obligation to pay money when due, shall be suspended to the extent the Affected Party is unable to perform such obligations.

## **ARTICLE X**

## TERMINATION

10.1 Early Termination by Customer for Cause. Customer shall be permitted to terminate this Agreement upon written notice to Energy Manager if any of the following events occurs: (a) a failure by Energy Manager to perform its obligations under this Agreement that results in a written notice to Customer from SPP of a material failure to comply with any SPP Rules, *provided* that Energy Manager has not cured such failure on or prior to (i) the fifteenth (15th) day after receipt of Customer's written notice thereof or (ii) on or before the last day of any cure period granted to Customer by SPP; (b) any other material failure by Energy Manager to perform its obligations under this Agreement, *provided* that Energy Manager has not cured such failure or otherwise made substantial progress (in the reasonable opinion of Customer) towards curing such failure on or prior to the fifteenth (15th) day after receipt of Customer's written notice thereof; (c) a representation made or repeated by Energy Manager proves to have been incorrect or misleading in any material respect when made or repeated, if such error or misrepresentation is not remedied in full, as determined by Customer in its sole discretion, within seven (7) Business Days after written notice to Energy Manager; (d) a Force Majeure event affecting Energy Manager's performance of the Services continues for a period of sixty (60) consecutive days; or (e) Energy Manager goes Bankrupt.

10.2 Early Termination by Energy Manager for Cause. Energy Manager shall be permitted to terminate this Agreement upon written notice to Customer if any of the following events occurs: (a) a failure by Customer to pay undisputed amounts due under this Agreement; *provided* that Customer has not cured such failure on or prior to the fifteenth (15th) day after receipt of Energy Manager's written notice thereof; (b) a material failure by Customer to perform any other obligation under this Agreement, *provided* that Customer has not cured such failure or otherwise made substantial progress (in the reasonable opinion of Energy Manager) towards curing such failure on or prior to the fifteenth (15th) day after receipt of Energy Manager's written notice thereof; (c) a representation made or repeated by Customer proves to have been incorrect or misleading in any material respect when made or repeated, if such error or misrepresentation is not remedied in full, as determined by Energy Manager in its sole discretion, within seven (7) Business Days after written notice to Customer, or (d) Customer goes Bankrupt.

10.4 Early Termination by Customer for Convenience. Upon no less than sixty (60) days' prior written notice to Energy Manager, Customer shall be permitted to terminate this Agreement without cause.

10.5 Early Termination by Energy Manager for Convenience. Energy Manager shall be permitted to terminate this Agreement without cause upon no less than (60) days' prior written notice to Customer.

10.6 Termination Payments. No later than ten (10) Business Days after the effective date of termination, Customer shall tender to Energy Manager (in accordance with Energy Manager's wire transfer instructions) all Monthly Payment Amounts, including any *pro rata* portion thereof, due to Energy Manager up to and including the effective date of termination that remain unpaid as of the effective date of termination. Notwithstanding the foregoing, upon termination of this Agreement by Customer for cause under Section 10.1, any portion of the Energy Management Service Fee due and unpaid as of the effective date of termination shall be cancelled.

10.7 A notice of termination given pursuant to this Article X (a "*Termination Notice*") shall: (i) specify the date of termination (the "*Termination Date*"); and (ii) describe in reasonable detail the circumstances giving rise to the termination.

## **ARTICLE XI INDEMNIFICATION**

11.1 By Energy Manager. Subject to the provisions of Sections 12.1 and 12.3, Energy Manager shall indemnify, defend and hold harmless Customer from and against any and all sanctions, regulatory penalties or fines and reasonable expenses (including attorneys' fees and expenses whether at the trial or appellate level) arising from (i) Energy Manager's failure to comply with SPP Market Rules or (ii) Energy Manager's violation of any Law.

11.2 By Customer. Subject to the provisions of Sections 12.2, Customer shall also indemnify, defend and hold harmless Energy Manager from and against any and all sanctions, regulatory penalties or fines, and reasonable expenses (including attorneys' fees and expenses whether at the trial or appellate level) arising from (i) Customer's failure to comply with SPP Market Rules or respond to operating instructions timely communicated to Customer in accordance with SPP's directions or (ii) Customer's violation of any Law.

11.3 Concurrent Negligence. **NOTWITHSTANDING SECTION 11.1 AND SECTION 11.2, WHEN ANY OBLIGATION FOR INDEMNIFICATION RESULTS FROM JOINT OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR BAD FAITH OF BOTH CUSTOMER AND ENERGY MANAGER, SUCH PARTIES' DUTY OF INDEMNIFICATION SHALL BE IN PROPORTION TO EACH SUCH PARTY'S ALLOCABLE SHARE OF JOINT OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BAD FAITH.**

11.4 Cooperation Regarding Claims. If either Party shall receive notice or have knowledge of any claim that may result in a claim for indemnification by such Indemnified Party against a Party pursuant to this Article IX (an "Indemnified Party"), such Indemnified Party shall, as promptly as possible, give the indemnifying Party notice of such claim, including a reasonably detailed description of the facts and circumstances relating to such claim, and a complete copy of all notices, pleadings and other papers related thereto, and in reasonable detail the basis for its potential claim for indemnification with respect thereto; *provided*, that failure promptly to give such notice or to provide such information and documents shall not relieve the indemnifying party from the obligation hereunder to respond to or to defend the Indemnified Party failing to give such notice against such claim. The Party against whom indemnification is claimed shall, upon its acknowledgment in writing of its obligation to indemnify the Indemnified Party seeking indemnification, be entitled to assume the defense or to represent the interests of the Indemnified Party and to propose, accept or reject offers of settlement, all at its sole cost *provided, however*, that without the Indemnified Party's consent, which consent may not be unreasonably withheld, the indemnifying Party may only consent to entry of a judgment or settlement that does not provide for injunctive or other nonmonetary relief affecting the Indemnified Party.

## **ARTICLE XII LIMITATION OF LIABILITY**

12.1 General Limitations of Liability. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR IN CONTRACT. The Parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability, and limitations on liability expressed herein shall survive termination or expiration of this Agreement, and shall apply at all times, whether in contract, equity, tort or otherwise, regardless of the fault, negligence (in whole or in part), strict liability, breach of contract or breach of warranty of the Party indemnified, released or whose liabilities are limited, and shall extend to the members, shareholders, partners, principals, Affiliates, directors, officers and employees, agents and related or affiliated entities of such Party, and their shareholders, partners, principals, Affiliates, directors, officers and employees..

12.2 Limitation of Customer's Liability. Notwithstanding any other provision of this Agreement, there shall be no personal liability or recourse for the payment of any amounts due hereunder, or the performance of any obligations hereunder against any employee, member, representative, shareholder, partner, officer or director, whether past, present or future, of Customer. Energy Manager shall look solely to the assets of Customer for the satisfaction of each and every remedy of Energy Manager in the event of any breach by Customer.

12.3 Limitation of Energy Manager's Liability. Energy Manager's aggregate maximum liability for any damages incurred by Customer for which Energy Manager is liable under the terms of this Agreement, including any Indemnity Damages under Section 11.1, but not including any amounts received from any Third Party or SPP by Energy Manager that are owed to Customer, shall in no event exceed during any Contract Year ( as defined below) an amount equal to six (6) times the Monthly Management Fee; *provided, however*, that such limitation of liability shall not apply if and to the extent that Energy Manager commits fraud, willful misconduct or gross negligence. For the avoidance of doubt, Energy Manager's maximum liability shall apply on an aggregate basis, and not to each individual event giving rise to damages or any individual year. Notwithstanding anything to the contrary herein, it is specifically understood and agreed that there shall be absolutely no personal liability or recourse for the payment of any amounts due hereunder, or the performance of any obligations hereunder against any employee, member, shareholder, partner, officer or director, whether past, present or future, of Energy Manager, or any direct or indirect parent or any Affiliate thereof, and Facility Owner shall look solely to the assets of Energy Manager for the satisfaction of each and every remedy of Facility Owner in the event of any breach by Energy Manager; *provided, however*, that nothing herein shall relieve any of the foregoing Persons from liability for such Person's fraud, willful misconduct or gross negligence. For the purposes of this provision, "Contract Year" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Start Date and each subsequent Contract Year shall commence on the anniversary of the Start Date.

### **ARTICLE XIII** **CONFIDENTIALITY**

13.1 Non-Disclosure. Each Party agrees to hold in confidence any information imparted to it by the other Party which pertains to Customer's or Energy Manager's business activity and which is not the subject of general public knowledge ("*Confidential Information*"), which Confidential

Information shall include this Agreement, proprietary processes, technical information and know-how, information concerning Customer's or Energy Manager's management policies, economic policies, financial and other data; *provided, however*, that Confidential Information shall not include: (i) information in the public domain; or (ii) information obtained by a Party from a third Person not under an obligation of non-disclosure to Customer or Energy Manager. The obligations set forth in this Section 13.1 shall continue to remain in full force and effect during the Term and for two (2) years after the date of termination or expiration of this Agreement.

### 13.2 Permitted Disclosure.

(a) Notwithstanding Section 13.1, either Party shall have the right to disclose Confidential Information to: (i) any Governmental Authority (in each case, to the extent legally required by any such entity); (ii) its advisors, auditors, legal counsel and insurers; (iii) any Lender, potential Lender, investor, potential investor or other member of the public in connection with the financing of the development, construction and/or operation of the Generation Resources, including in connection with the listing of any shares, stocks, securities, bonds or any other similar financial instrument, but in each case only to the extent required in connection with obtaining and maintaining such financing; *provided, however*, that any such Person receiving any Confidential Information pursuant to clause (iii) of this Section 13.2(a) shall be obligated to maintain the confidentiality of such Confidential Information in accordance with the terms hereof and the disclosing Party shall remain liable for any breach of confidentiality by any such Person; and (iv) potential purchasers of an interest in Customer or the Generation Resources; *provided, however*, that any Person receiving any Confidential Information pursuant to clause (iv) of this Section 13.2(a) shall be required to sign a written confidentiality agreement agreeing to maintain the confidentiality of the Confidential Information consistent with the terms hereof.

(b) Notwithstanding Section 13.2(a), Lenders shall be entitled to disclose Confidential Information to: (i) any Governmental Authority to the extent legally required, provided that reasonable efforts are undertaken to obtain confidential treatment by any such Governmental Authority; and (ii) their advisors, auditors, insurers and supervisory bodies, provided that such advisors, auditors, insurers and supervisory bodies agree to maintain the confidentiality of such Confidential Information in accordance with the terms hereof.

(c) Energy Manager shall be entitled to disclose Confidential Information to its Affiliates solely in connection with providing the Services; *provided, however*, that Energy Manager shall ensure that such Affiliates comply with the confidentiality requirements applicable to Energy Manager as set forth in this Agreement.

(d) A Party that discloses Confidential Information to any Person pursuant to this Article XIII shall be liable for any unauthorized disclosure of such Confidential Information by such Person.

## ARTICLE XIV REPRESENTATIONS AND WARRANTIES

14.1 Energy Manager Representations and Warranties. Energy Manager represents and warrants to Customer as of the Effective Date that:

- (a) Energy Manager is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware;
- (b) this Agreement constitutes the legal, valid and binding obligation of Energy Manager, except as enforceability may be limited by: (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally; and (ii) general principles of equity;
- (c) the execution, delivery and performance of this Agreement by Energy Manager has been duly authorized by all requisite action and will not conflict with any provisions of any Applicable Law, or any material agreement or instrument to which it is a party or by which it, its property or assets may be bound or affected;
- (d) Energy Manager's performance under this Agreement, and the terms of any transactions entered into hereunder, are not subject to the jurisdiction of any state utility or public service commissions;
- (e) Energy Manager has obtained and shall maintain during the Term all Permits required to perform the Services;
- (f) Energy Manager is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to perform its obligations under this Agreement; and
- (g) Energy Manager is not registered as a commodity trading advisor under the U.S. Commodity Exchange Act and is not holding itself out as in the business of advising others as to the value or advisability of trading swaps, options, futures or cash settled forwards or any other commodity transaction. Any oral or written communications by Energy Manager with respect to this Agreement are not intended to be commodity trading advice.

14.2 Customer Representations and Warranties. Customer represents and warrants to Energy Manager as of the Effective Date that:

- (a) Customer is a municipality;
- (b) this Agreement constitutes the legal, valid and binding obligation of Customer, except as enforceability may be limited by: (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally; and (ii) general principles of equity;
- (c) the execution, delivery and performance of this Agreement by Customer has been duly authorized by all requisite action and will not conflict with any provisions of any Applicable Law, or any agreement or instrument to which it is a party or by which it, its property or assets may be bound or affected; and

(d) Customer is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to perform its obligations under this Agreement.

**ARTICLE XV**  
**DISPUTE RESOLUTION**

15.1 Dispute Resolution.

(a) Each Party hereby: (i) irrevocably consents and agrees that any legal action, suit or proceeding against it with respect to its obligations, liabilities or any other matter under or arising out of or in connection with this Agreement (a "*Proceeding*") may be brought in any federal court located in the federal district in which the City of Grand Island is located in the State of Nebraska; (ii) irrevocably accepts and submits to the non-exclusive jurisdiction of any such court with respect to any such Proceeding; (iii) waives any objection which it may have at any time to the laying of venue of any Proceeding brought in any such court, including any claim that any such Proceeding brought in any such court has been brought in an inconvenient forum; and (iv) waives its right to object that any such court does not have any jurisdiction over such Party in any such Proceeding.

(b) Notwithstanding the foregoing, in the event of a dispute regarding this Agreement and in an effort to resolve informally and amicably any dispute or controversy that might arise between the Parties hereunder, either Party may refer any matter in dispute to the other Party for resolution at any time by sending a written notice setting forth the matter which requires resolution. If the Parties are unable to resolve the matter within ten (10) days after its referral, or such longer time period as the Parties may agree, then any Party may seek whatever remedies to which it is entitled under this Agreement and Applicable Law.

(c) EACH PARTY ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 15.1.

15.2 Continued Performance. Subject to each Party's right to terminate under Article X, the Parties shall continue to perform under this Agreement during the pendency of any dispute hereunder.

**ARTICLE XVI**  
**[RESERVED]**

**ARTICLE XVII**  
**GENERAL PROVISIONS**

17.1 Severability. The invalidity, in whole or in part, of any of the foregoing Sections or provisions of this Agreement will not affect the validity of the remainder of such Sections or provisions.

17.2 Entire Agreement. This Agreement contains the complete agreement between Customer and Energy Manager with respect to the subject matter hereof and supersedes all other agreements, whether written or oral, with respect to the matters contained herein.

17.3 Amendment. No modification, amendment, or other change will be binding on any Party unless consented to in writing by both Parties.

17.4 Assignment.

(a) Neither Party may assign this Agreement or such Party's rights or obligations hereunder without the prior written approval of the other Party, except that either Party may, without obtaining the approval of the other Party, assign its rights and obligations hereunder to an Affiliate with creditworthiness equal or superior to the creditworthiness of the assigning Party on the Effective Date, as determined by the non-assigning Party; *provided, however*, that no assignment of this Agreement by either Party shall relieve the assignor of any obligation, duty or liability hereunder except to the extent such Party is expressly released in writing from any such obligation, duty or liability by the other Party.

(b) Notwithstanding Section 17.4(a), for the purpose of a financing or refinancing of the Generation Resources, Customer may: (i) assign its rights and interests in, under or pursuant to this Agreement and/or assign any revenues deriving from any of the rights or assets of Customer hereunder to Lenders; and (ii) create a security interest in this Agreement in favor of Lenders. Energy Manager agrees to cooperate with Customer and Lenders, including by executing any consents or other documentation reasonably requested by any Lender.

17.5 Notices. All notices required or provided for in this Agreement shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, or facsimile transmission as follows:

**If to Energy Manager:**

NextEra Energy Marketing, LLC  
700 Universe Boulevard  
Juno Beach, Florida 33408  
Attention: Scott Loder  
Telephone No.: (561) 625-7002  
Facsimile No.: (561) 625-7312  
e-mail: [Scott.Loder@nec.com](mailto:Scott.Loder@nec.com)

**If to Customer:**

City of Grand Island  
315 N. Jefferson  
Grand Island, NE 68802-1968  
Attention: Ryan Schmitz  
Phone: 308.385.5463 x2132



Email: [rschmitz@giud.com](mailto:rschmitz@giud.com)

With a copy to:

City of Grand Island  
315 N. Jefferson  
Grand Island, NE 68802-1968  
Attention: Keith Pobanz  
Telephone: 308.385.5463 x2136  
Email: [keith.pobanz@giud.com](mailto:keith.pobanz@giud.com)

17.6 Additional Documents and Actions. Each Party agrees to execute and deliver such additional documents, and to take such additional actions, as may be reasonably requested by the other Party to effect the interest of this Agreement.

17.7 Successor to Energy Manager. Upon provision or receipt of a Termination Notice or written notice of election not to renew this Agreement, as the case may be:

(a) Energy Manager shall use all reasonable efforts to facilitate the transfer of duties to any Person appointed by Customer to provide Services in connection with the operation of the Generation Resources (the “*Successor Energy Manager*”) so as not to disrupt the normal operation of the Generation Resources. Energy Manager’s obligations pursuant to this Section 17.7 shall include providing information, data and records (excluding Energy Manager’s proprietary data, reporting formats, templates, formulae, strategies and other documents or information developed by Energy Manager whether or not such information has been shared with Customer) relating to the Generation Resources or the Services to the Successor Energy Manager and its representatives and acceding to all reasonable requests made by it in connection with preparing for taking over the duties and obligations of Energy Manager. Unless this Agreement is being terminated pursuant to Section 10.2 or Section 10.5, at Customer’s request, Energy Manager shall continue to provide Services pursuant to the terms of this Agreement for up to four (4) months after the date as of which this Agreement would otherwise terminate, for which Energy Manager shall be compensated in accordance with the terms of this Agreement.

(b) Promptly after termination, Energy Manager shall deliver to (or, after the termination hereof, hold in trust for the benefit of) Customer or, if requested by Customer, to the Successor Energy Manager, all property owned by Customer which property remains in Energy Manager’s possession or under its control.

17.8 Cooperation. In the event that Customer: (a) delivers a Termination Notice to Energy Manager; or (b) informs Energy Manager of Customer’s intent to deliver a Termination Notice; or (c) written notice of election not to renew this Agreement, Energy Manager shall cooperate with Customer and any Successor Energy Manager and comply with all reasonable requests thereof including, at Customer’s request, executing documents necessary to effectuate the transfer of responsibility to perform the Services from Energy Manager to the Successor Energy Manager; *provided, however*, in the event of a termination pursuant to Section 10.2, Customer shall bear any reasonable costs incurred by Energy Manager relating to such cooperation.

17.9 Remedies Cumulative; Waiver. The rights and remedies of the Parties are cumulative and not alternative. Neither any failure nor any delay by any Party in exercising any right, power or privilege under this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. Neither Party shall be deemed to have waived any right resulting from any failure to perform by the other unless it has made such waiver specifically in writing.

17.10 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein. The headings are inserted for convenience and are to be ignored for the purposes of construction.

17.11 Survival. Notwithstanding any other provision of this Agreement, the obligations set forth in Section 6.3(b)(ii) and Section 17.8 and Article XI, Article XII, Article XIII, Article XV and Article XVII shall survive the expiration or termination of this Agreement for a period of twenty-four (24) months therefrom.

17.12 No Third Party Beneficiary. This Agreement is for the sole and exclusive benefit of the Parties hereto and shall not create a contractual relationship with, or cause of action in favor of, any Third Party.

17.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which may be executed by the signatories thereto and delivered by mail, courier, facsimile or other electronic means and shall be deemed an original, but all of which taken together shall constitute a single agreement.

17.14 Governing Law. THIS AGREEMENT SHALL BE INTERPRETED AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF NEBRASKA, EXCLUSIVE OF ITS CONFLICTS OF LAWS PRINCIPLES.

17.15 Regulatory Approvals. If the execution or delivery by Energy Manager of this Agreement, or the consummation by Energy Manager of any of the transactions contemplated hereby, requires the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of any Governmental Authority, then Energy Manager, after notice to Customer, shall take such required action.

17.16 Recordings. Each Party consents to the recording and retention of any telephone conversations, e-mail or electronic message between the Parties ("**Recording**"), and each Party will obtain any required consents to such recordings from such Party's affected personnel, contractors, or agents. Subject to other applicable rules of evidence, such as the rule of relevance, the contents of such telephone recording, or any email or electronic message transmitted between the Parties concerning this Agreement, may be utilized to determine the intent of the Parties in any dispute arising under this Agreement, and such telephone or electronic record will be deemed a written business record of any information, Confirmation, consent, bid, authorization, instruction, notice or transaction under this Agreement, which may be submitted in evidence in any proceeding or action related to this Agreement. Each Party waives objection to the admission in court of such

recording or electronic message based on the “Best Evidence Rule” or other legal principles. Such telephone recording or electronic message will be the controlling evidence of the Parties’ agreement with respect to any particular information, Confirmation, consent, notice, or transaction in the event a written Confirmation of that information, Confirmation, consent, or other transaction is not fully executed or accepted by both Parties. A fully, executed written Confirmation agreed to by both Parties will prevail over a recording or electronic message of a transaction. Each Party waives any further notice of monitoring or recording and agrees to notify its officers and employees and obtain any required consent to any such monitoring or recording.

17.17 Imaged Agreement. Any original executed Agreement, Confirmation or other related document, or telephonically recorded transaction, or transaction tape may be digitally recorded, photocopied and stored on computer tapes and disks (the “*Imaged Agreement*”). The Imaged Agreement, if introduced as evidence on paper, the Confirmation if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party will object to the admissibility of the Recording, the Confirmation or the Imaged Agreement (or photocopies of the transcription of the recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.

17.18 No Fiduciary Duty. Both Parties recognize the commercial nature of this Agreement and neither Party will owe any fiduciary duty to the other Party or any Third Party with respect to the performance of any of its obligations hereunder. Customer acknowledges and agrees that this Agreement shall not preclude energy Manager from providing services or making sales of a like nature to any other Person, either currently or in the future. Energy Manager may, notwithstanding this Agreement, engage in whatever activities it may choose, including providing the same or similar sales or services in the same geographic region (or other competing activities) for its own account (or for the account of others). Neither this Agreement nor any activity undertaken related to this Agreement will prevent energy Manager from engaging in such activities, or require energy Manager to disclose the same.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**CITY OF GRAND ISLAND**

By: Roger G. Steele  
Name: Roger G. Steele  
Title: Mayor 7/27/2022

Approved as to form:

Stacy R. Nonhof 7/26/22  
Stacy R. Nonhof, Date  
Interim City Attorney

**NEXTERA ENERGY MARKETING, LLC**

By: Michael Toal  
Name: Michael Toal  
Vice President  
Title: Nextera Energy  
Marketing, LLC



**EXHIBIT A**  
**GENERATION RESOURCES**

<b>Generation Resource Name/Type</b>	<b>Resource Type</b>	<b>Contract</b>	<b>Counterparty</b>	<b>Transmission (Y/N)</b>	<b>Nameplate MW</b>
Grand Island Burdick CT1	Gas	Local Physical	N/A	Behind The Meter/Offset	13
Grand Island Burdick CT2	Gas	Local Physical	N/A	Behind The Meter/Offset	34
Grand Island Burdick CT3	Gas	Local Physical	N/A	Behind The Meter/Offset	34
Grand Island Platte Generating Station	Coal	Local Physical	N/A	Behind The Meter/Offset	100

**Exhibit B  
PPAs**

<b>PPA</b>	<b>Resource Type</b>	<b>Contract</b>	<b>Counterparty</b>	<b>Transmission (Y/N)</b>	<b>Nameplate MW</b>
Prairie Breeze III	Wind	PPA	Invenergy	N	35.8
WAPA Hydro	Hydro	PPA	WAPA	Y	9
Nebraska City Unit 2	Coal	PPA	OPPD	Y for 33 MW	34
Whelan Energy Center Unit 2	Coal	PPA	PPGA/Hastings	Y	15

**Exhibit C  
MANAGEMENT FEES**

(a) Energy Management Service Fee. For each Billing Period, Energy Manager shall be entitled to a fee equal to \$20,000 (the “*Monthly Management Fee*”). Commencing at the start of the first Renewal Term (if any), the Monthly Management Fee shall be escalated annually using the United States Department of Labor Consumer Price Index for Urban Wage Earners and Clerical Workers (Midwest region), *provided that* such annual escalation shall not exceed 2.5 percent and shall not be less than 1.5 percent. For any Billing Period less than a complete calendar month, the Monthly Management Fee shall be pro-rated based on the portion of such month included within such Billing.

(b) ARR/TCR Management Service Fee:

(i) For each Billing Period, Customer shall pay to Energy Manager a fee equal to \$5,000 per month.

(ii) Customer shall pay Energy Manager seventy percent (70%) of each of (i) the Annual ARR Rd 3 NEB, and (ii) Monthly Auction Revenue created through the Monthly ARR Allocation Process, in each case associated with paths awarded where such paths were recommended by Energy Manager. Customer shall retain thirty percent (30%) of such incremental revenue. Energy Manager will invoice Customer each month during the auction year for amounts due under this provision in accordance with Section 7.3 of the Agreement. If the net value of the Annual ARR Rd 3 NEB for the auction year is negative, or if participation in the Monthly ARR Allocation Process results in negative Monthly Auction Revenue, in each case in accordance with the Energy Manager strategy, Energy Manager will reimburse for such losses as invoiced to Customer by SPP and verified by Energy Manager.

(c) Energy Bilateral Transaction Sleeve Fee: The following Energy Sleeve Fees shall apply to Bilateral Transactions for Energy products with terms of up to five (5) years in accordance with the provisions of Section 4.2(b):

Delivery Year	Sleeve Fee (\$/MWh)
Transaction Date Year	\$ 0.15
Transaction Date Year + 1	\$ 0.25
Transaction Date Year + 2	\$ 0.45
Transaction Date Year + 3	\$ 0.70
Transaction Date Year + 4	\$ 1.00
Transaction Date Year + 5	\$ 1.35

Bilateral Transactions for Energy in excess of five (5) year terms shall be subject to an agreed upon Sleeve Fee.

(d) Capacity Transaction Sleeve Fee: The following Capacity Sleeve Fees shall apply to Capacity Transactions with terms of up to five (5) years in accordance with the provisions of Section 4.2(c).

<b>Delivery Year</b>	<b>Sleeve Fee (\$/kw-month)</b>
Transaction Date Year	\$ 0.15
Transaction Date Year + 1	\$ 0.20
Transaction Date Year + 2	\$ 0.20
Transaction Date Year + 3	\$ 0.25
Transaction Date Year + 4	\$ 0.25
Transaction Date Year + 5	\$ 0.30

Capacity Transactions in excess of five (5) year terms shall be subject to an agreed upon Sleeve Fee.

(e) Payments to Energy Manager shall be made by wire transfer to the following accounts:

**Wire Transfer Only:**

Pay: Bank of America

For the Account of: NextEra Energy Marketing, LLC

Account No.: CHIPS UID: 3751227650

Fed. ABA No.: 026-00-9593

**ACH Transfer Only:**

Pay: Bank of America

For the Account of: NextEra Energy Marketing, LLC

Account No.: 3751227650