

## SOLAR PROPERTY USE AGREEMENT

THIS SOLAR PROPERTY USE AGREEMENT (“**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2020 (“**Effective Date**”), by and between City of Pensacola (“**City**”) and Gulf Power, a Florida corporation (“**Gulf Power**”). City and Gulf Power are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties**.”

### WITNESSETH:

WHEREAS, City is the owner of those certain public rights of way and other real property located in Escambia County, Florida, as more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (each individually and collectively, the “**Property**”);

WHEREAS, within and upon each Property, City desires to permit Gulf Power to utilize the areas depicted on **Exhibit B** attached hereto and incorporated herein by this reference (each individually and collectively, the “**Premises**”) upon the terms and conditions set forth in this Agreement; and

WHEREAS, Gulf Power desires to use the Premises, and City desires to allow Gulf Power to use the Premises, for the installation of certain renewable energy generating equipment, including, without limitation, solar panels, solar canopy structures, electrical power inverters, interconnection equipment, electrical wiring, underground conduit, collection lines, wire management systems, charging stations, electric meters, metering and switch cabinets, power distribution boxes and racking systems (individually and collectively, the “**Equipment**”) upon the terms and conditions set forth herein.

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

1. **Premises; and Addition of Property.**

(a) **Premises.** City hereby permits the use of the Premises by Gulf Power, and Gulf Power hereby accepts the use of the Premises from City, upon the terms, covenants and conditions set forth in this Agreement.

(b) **Addition of Property.** Upon the mutual written agreement of each of the Parties, including as to the type of Equipment that will be installed, **Exhibits A and B** may be amended from time to time to include additional Property. In such case, all terms and conditions set forth in this Agreement shall apply to such additional Property; provided however, with respect to such additional Property, the Construction Term and Operating Term (as each are defined hereafter), shall be calculated commencing from the effective date of the amendment adding the specific additional Property, accordingly, and in the case of the Operating Term, an additional six (6) months after such date.

2. **Use.** The Premises may be used by Gulf Power for the purposes of constructing, installing, operating, inspecting, maintaining, repairing, enlarging, modifying, removing, testing and replacing the Equipment and any additional equipment required to generate, measure, and transmit solar power, together with the following rights:

(a) **Access.** The right of ingress and egress to and from the Premises over the Property necessary to access the Premises.

(b) **Signage.** The right, at Gulf Power's sole cost and expense, to install signage on and around the Equipment and on, over, under, through and across the Property at the point of access to the Equipment (to the extent allowed by applicable law). The location, design and content of such signage shall be subject to the prior approval of City, which approval shall not be unreasonably withheld, conditioned or delayed. Such signage shall be removed by Gulf Power upon the final removal of the Equipment from the Property in accordance with the terms of this Agreement. Subject to Section 6(a) below, City shall have the right, at City's sole cost and expense to co-brand on Gulf Power's signage, provided that City first obtains Gulf Power's prior written consent, which consent may not be unreasonably withheld.

(c) **Power Monitoring.** The right to incidental access and use of City's electrical systems for purposes of powering Gulf Power's computer equipment used in monitoring the power generated from the Equipment. Additionally, if, and so long as, City provides an internet access system for use by guests and other visitors to the Property, City will permit Gulf Power to use, at no cost to Gulf Power, such internet access system in connection with Gulf Power's power monitoring system described in the preceding sentence, and City shall provide Gulf Power with the necessary access codes and other necessary information to use such internet access system; provided, however, City does not warrant the stability, security or continuous operation of any such internet access system, and provided, further, that Gulf Power shall adhere to all of the applicable City and County rules, regulations and requirements pertaining to the system security and use protocols.

3. **Term.**

(a) **Construction Term.** The construction term of this Agreement shall commence on the Effective Date and continue for six (6) months ("**Construction Term**"). The Construction Term shall end six (6) months after the Effective Date unless before that date Gulf Power notifies City that Gulf Power elects to terminate this Agreement or that the Commercial Operations Date has occurred. For purposes of this Agreement, "**Commercial Operations Date**" shall mean the date on which the Equipment becomes operational as determined by Gulf Power.

(b) **Operating Term.** The "**Operating Term**" of this Agreement shall commence on the day immediately following the last day of the Construction Term, and continue for a term ending on the tenth year (10th) anniversary of the Commercial Operations Date. The Operating Term and the Construction Term are collectively referred to herein as the "**Term.**" Gulf Power shall have the right to request renewal of this Agreement for up to three (3) additional five (5) year consecutive terms upon delivering written request to City prior to the expiration of the then current Term. The City may grant renewal or decline renewal, in its sole discretion. In the

event the Term expires on any day other than the last day of the calendar year, the Term shall be automatically extended to expire on December 31 of the final year of the Term.

4. **Installation and Location of Equipment.** From and after the Effective Date, Gulf Power, as well as any permitting, licensing, regulating or approving entity, agency or authority, any utility intending to purchase electricity generated by the Equipment, and the agents, employees, contractors, subcontractors, consultants and representatives of each (collectively, “**Gulf Power Parties**”), have ingress, egress and access to the Premises at all times during the Term, twenty-four (24) hours-a-day, seven (7) days-a-week, for and including to inspect, construct, install, maintain, repair, enlarge, modify, remove, replace, test and operate the Equipment. Gulf Power Parties will use commercially reasonable efforts to minimize any interference with City’s use and operations on the Property. City shall cooperate as necessary with Gulf Power (at no cost to City) in Gulf Power’s efforts to obtain all permits, licenses and approvals necessary for the installation and operation of the Equipment. Except as otherwise expressly set forth herein, Gulf Power shall have no right to access or utilize any other portion of City’s Property other than the Premises. Gulf Power may locate and install the Equipment on the Property as is reasonably necessary in order to achieve optimal solar power generation. Installation of the Equipment shall be in compliance with all applicable laws and ordinances.

5. **Rent.** Gulf Power shall not be charged any rent under this Agreement.

6. **Interference.** During the Term, City shall not directly or indirectly Interfere, or cause or permit to be caused any Interference, with the Equipment. For purposes of this Agreement “**Interfere**” and “**Interference**” shall mean interference with Gulf Power’s use, operation, access, maintenance or repair of the Equipment, or portion thereof, for more than five (5) consecutive days as a result of City’s direct or indirect actions, including without limitation the following:

(a) Placement of any equipment, sign, logo, structure, or improvements on, across, under or over any portion of the Equipment without the prior written consent of Gulf Power, or in a location that interferes with any portion of the Equipment’s exposure to sunlight, as determined by Gulf Power in its sole discretion, which Gulf Power may approve or withhold such consent in its sole and absolute discretion;

(b) Interference in any way with any portion of the Equipment’s ability to generate solar power, as determined by Gulf Power in its sole discretion;

(c) Any portion of the Equipment to become subject to any lien, mortgage, deed of trust, security agreement, mechanics lien or other such encumbrance not caused by Gulf Power, unless the holder of such lien, mortgage, deed of trust, security agreement or other such encumbrance provides Gulf Power with a subordination and non-disturbance agreement or a non-disturbance agreement, in form and substance acceptable to Gulf Power, within thirty (30) days following Gulf Power’s request for same;

(d) Any portion of the Premises to be maintained, altered, modified, repaired, replaced or compromised in such a way that it can no longer support the Equipment or any portion

of the Equipment or the use of any portion the Equipment is impaired, as determined by Gulf Power in its sole discretion;

(e) Disruption with Gulf Power's access to any portion of the Premises; and/or

(f) Sale, transfer, assignment, lease or sublease any portion of the Premises, other than subject to City's obligations under this Agreement.

In the event of that City Interferes or causes Interference, Gulf Power will provide City with a written summary documenting such Interference ("**Interference Notice**"). In the event City is in violation of any of the above-listed items in this section, and such violation continues for fifteen (15) days or more following Gulf Power's delivery of an Interference Notice, then in addition to the rights granted Gulf Power under Section 18 below, Gulf Power may elect to terminate this Agreement immediately upon delivering written notice to City

7. **Intentionally Deleted.**

8. **Maintenance; Repair; Replacement; Reinstallation.**

(a) During the Term, Gulf Power shall, at Gulf Power's sole cost and expense, operate and maintain the Equipment in good working order and in a safe, clean manner.

(b) In the event the Equipment, Premises, or any portion thereof is substantially damaged or destroyed at any time during the Term, Gulf Power (i) shall have the right, but not the obligation, to repair, replace or reinstall the Equipment or any portion thereof, or (ii) may upon written notice given not later than thirty (30) days after the date of such damage or destruction, terminate this Agreement, in which event, any insurance proceeds received by City which have not been used to repair any related damage to the City's Property, shall be paid to Gulf Power.

(c) City shall conduct, or cause to be conducted, all routine and necessary maintenance of the Property and shall ensure that the Property shall remain able to support the Equipment for the duration of the Term. If City has to replace or engage in widespread repair of the paving or other improvements located on or near the Property during the Term, then City shall provide Gulf Power with at least ninety (90) days prior written notice and Gulf Power will coordinate protection of the Equipment with City as appropriate in order to accommodate City's construction schedule.

(d) Gulf Power shall have the right, at Gulf Power's sole cost and expense, to repair, replace or reinstall any affected Equipment on the Property following complete or partial destruction of City's improvements to the Property and/or Gulf Power's Equipment thereon. Following complete destruction of City's improvements to the Premises, City may provide Gulf Power with a mutually acceptable alternative location on or off the Property approved by Gulf Power on which Gulf Power may install the Equipment. If, however, City is unable to provide an alternative location for the Equipment that meets such standard, and Gulf Power does not approve such alternate site, Gulf Power shall have the right, upon written notice to City, to terminate this Agreement. If such new location is acceptable to Gulf Power, **Exhibit B** (and, if necessary, other exhibits) to this Agreement will be amended to reflect the new location of the Property.

(e) Gulf Power shall have the right, in its sole discretion, to remove all or a portion of the Equipment at any time during the Term, and such removal shall not constitute a default or be deemed a termination under this Agreement; provided, however, that Gulf Power, at its own expense, shall restore the Premises into substantially the same condition as the Premises existed prior to the installation of its Equipment.

9. **Taxes.** Gulf Power shall be responsible for the payment of any taxes assessed against its use of the Property.

10. **Insurance.** Gulf Power will maintain at all times during the Term, the insurance designated in this section in accordance with the terms and conditions required by this section. Such policy or policies shall be issued by companies authorized to do business in the State of Florida with a minimum A.M. Best financial rating of "A- VII".

(a) Commercial General Liability Insurance with limits of Three Million Dollars (\$3,000,000) per occurrence combined single limit for bodily injury and property damage.

(b) Business Automobile Liability Insurance with limits of Two Million Dollars (\$2,000,000) for bodily injury and property damage.

(c) Workers' Compensation Insurance in compliance with Florida Statutes.

Gulf Power has the right to meet the insurance designated in this section through any combination of self-insurance, primary or excess coverage. Should Gulf Power self-insure, then prior to accessing the Property, Gulf Power will provide City with a letter of such self-insurance which will include a reference to publicly available financial statements and annual reports.

City and Gulf Power, for themselves and their respective insurers, waive any right to assert any claim against the other Party, to the extent such claim is covered by the waiving Party's insurance. Each Party shall waive all rights of subrogation of their respective insurers.

11. **Indemnification.** Gulf Power shall indemnify City from and against all losses, claims, damages or expenses, including attorneys' fees, incurred by City in connection with any third party claims for personal injury or death to persons and damage to City's personal property arising during the Term, to the extent arising from the negligence or willful misconduct of Gulf Power, its agents, employees, representatives, contractors, or sub-contractors up to One Million Dollars (\$1,000,000). City shall indemnify Gulf Power from and against all losses, claims, damages or expenses, including attorneys' fees, incurred by Gulf Power in connection with any third party claims for personal injury or death to persons and damage to Gulf Power's personal property arising during the Term, to the extent arising from the negligence or willful misconduct of City, its agents, employees, representatives, contractors, or sub-contractors up to up to the statutory limits provided by Section 768.28, Florida Statutes, if applicable, otherwise up to One Million Dollars (\$1,000,000) if Section 768.28, Florida Statutes is not applicable. In no event shall City or Gulf Power be liable to the other for consequential, special, exemplary, punitive, indirect or incidental losses or damages, nor shall any parent, subsidiary, affiliate or employee of City or Gulf Power have any liability under this Agreement. Neither City nor Gulf Power, nor their

respective insurer, shall, without the prior written consent of the other Party, which consent will not be unreasonably withheld, enter into the settlement or compromise of any claim brought against the indemnified Party which is the subject of indemnification under this Agreement. Notwithstanding the foregoing, this paragraph shall not be construed or interpreted as a waiver of the City's sovereign immunity and the limits established in Section 768.28, Florida Statutes. This section shall survive the expiration or earlier termination of this Agreement.

12. **Equipment to Remain Personal Property of Gulf Power.** The Equipment is and will remain the property of Gulf Power, its successors or assigns, regardless of its use or manner of attachment to the Property. City agrees to execute such further documentation as is reasonably necessary to ensure that the Equipment does not constitute, and is not deemed to be, a fixture attached to the Property. Except as expressly set forth in this Agreement, City will have no right, title, or interest in the Equipment, and no right to purchase or otherwise acquire title to or ownership of the Equipment, and City hereby expressly disclaims any right, title or interest in or to the Equipment, whether arising by lien, by operation of law, or otherwise; subject to the City's right to provide for the public health and welfare through exercise of its municipal police power in accordance with Section 166.021 and Section 166.401, Florida Statutes.

13. **Subordination.** City represents and warrants that the City is prohibited from encumbering the Premises with a mortgage lien on the Property.

14. **Quiet Enjoyment.** City represents and warrants to and covenants with Gulf Power that: (a) City has full right, power and authority to execute this Agreement; (b) City has good and unencumbered title or right of use to the Property free and clear of any liens, mortgages or other encumbrances; (c) City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on City; and (d) all times during the Term, Gulf Power's quiet enjoyment of the Property or any part thereof shall not be disturbed.

15. **Default by Gulf Power.** The happening of any one or more of the following events, upon the expiration of any applicable notice and cure period, shall be events of default under this Agreement: The happening of any one or more of the following events, upon the expiration of any applicable notice and cure period, shall be events of default under this Agreement: the failure of Gulf Power to fully perform any of its covenants under this Agreement within sixty (60) calendar days after Gulf Power receives written notice of such default from City; provided, however, if such default cannot reasonably be cured within such sixty (60) day time period, Gulf Power shall not be deemed in default hereunder if Gulf Power has commenced to cure such default within said sixty (60) day time period and thereafter continues with diligence to complete the cure of such default

16. **City's Remedies.** City's exclusive remedies for events of default by Gulf Power shall be limited to the following:

(a) Upon an event of default as set forth in Section 15(a) above, and after the expiration of the applicable notice and cure period, City may perform, or cause to be performed, on behalf and at the expense of Gulf Power, any or all of the undertakings or obligations as to

which Gulf Power remains in default, in which event Gulf Power will reimburse City for such actual reasonable costs and expenses, within forty-five (45) days following Gulf Power's receipt of City's invoice and supporting documentation. Notwithstanding the preceding sentence, City may not perform any obligation of Gulf Power under Section 8(a) or take any other action that relocates or physically alters any of the Equipment that at the time is in operable condition.

(b) City may exercise any other remedy available at law or in equity except for ejection, termination or rescission of this Agreement, all of which are expressly excluded.

In any action or proceeding to enforce any of Gulf Power's obligations under this Agreement, City may recover all costs and expenses, including reasonable attorneys' fees, incurred by City in connection with such action or proceeding or any appeal therefrom or review thereof.

17. **Default by City.** The failure of City to fully perform any term, provision, or covenant of this Agreement within sixty (60) calendar days following written notice of such default from Gulf Power; provided, however, that if such default cannot reasonably be cured within such sixty (60) day time period, City shall not be deemed in default hereunder if City has commenced to cure such default within said sixty (60) day time period and thereafter continues with diligence to complete the cure of such default.

18. **Gulf Power's Remedies.** Upon an event of default by City as set forth in Section 17 above, and after the expiration of the applicable notice and cure period, in addition to and not by way of limitation of the exercise by Gulf Power of any and all rights and remedies Gulf Power may have at law or in equity, Gulf Power may: (a) cure the default and be reimbursed by City within thirty (30) days following City's receipt of Gulf Power's invoice and supporting documentation of costs and expenses associated with curing the default; (b) terminate this Agreement; and/or (c) exercise any remedy Gulf Power may have at law or in equity. In any action or proceeding to enforce any of City's obligations under this Agreement, Gulf Power may recover all costs and expenses, including reasonable attorneys' fees, incurred by Gulf Power in connection with such action or proceeding or any appeal therefrom or review thereof.

Notwithstanding the foregoing, in the event that City Interferes or causes Interference with the Equipment of this Agreement, and such Interference is not cured within the fifteen (15) day time period set forth in Section 6 above, in addition to the remedies set forth in this Section 18, City shall also be required to reimburse Gulf Power any and all costs incurred or expended by Gulf Power in connection with the removal of the Equipment from the Premises, together with any and all costs incurred or expended by Gulf Power in connection with either, at Gulf Power's sole option, (i) the disposal of the Equipment, or (ii) the relocation of the Equipment to another part of the Premises, Property or other real property, as applicable, whether or not such replacement real property is owned by City.

19. **Removal.** Upon the expiration or earlier termination of the Term by Gulf Power, Gulf Power shall continue to have the right of reasonable access to the Property in order to remove the Equipment, and repair and restore the affected portions of the Property to substantially the same condition as practical as existed immediately prior to Gulf Power's installation of the Equipment, normal wear and tear excepted, at Gulf Power's sole cost and expense; except as expressly set forth otherwise in Sections 6 and 18 above, where the removal and disposal or

relocation costs of the Equipment, and repair and restoration of the Premises, shall be at City's sole cost and expense.

20. **Tax Credits, Financial Incentives, Sale of Energy.** Installation and operation of the Equipment on the Premises may result in the availability of federal and/or state tax credits, and other financial incentives (collectively hereinafter "**Incentives**"). Gulf Power is and shall be the sole recipient and beneficiary of any and all such Incentives, which shall be distributed, disbursed and/or assigned in Gulf Power's sole discretion. City shall have no right to any Incentives, except as otherwise agreed to in writing by Gulf Power. Furthermore, any and all solar power electricity produced by or relating to the Equipment ("**Energy**"), and the right to utilize same, shall be for the sole benefit of City. Any Energy consumed by City shall not impact City's retail electric bill from Gulf Power. City shall have no right to sell the Energy, or to engage in any "net metering" involving the Energy. In consideration for entering into this Agreement, City shall be billed for the solar power generated by the Equipment on the Premises at the customer's existing rate for the sole and exclusive use of the City at the applicable Premises and is not to be sold or used by any other party or for any other use whatsoever.

21. **Assignment; Leasehold Financing.**

(a) Except as permitted by Section 21(b) below, Gulf Power shall not assign this Agreement or any interest herein without the prior written consent of City. Neither Party will unreasonably withhold, condition or delay its consent to an assignment by the other Party. The terms and conditions of this Agreement will bind and benefit the respective successors and permitted assigns of the Parties. Following any permitted assignment or transfer by operation of law, the terms "City" and "Gulf Power" shall be deemed to refer to the relevant transferee or successor, unless the context clearly indicates that the term refers only to the original Party so identified.

(b) City acknowledges that Gulf Power's interests under this Agreement and in the Equipment are and will be encumbered by Gulf Power's existing mortgage. Additionally, Gulf Power may, upon notice to City, mortgage or grant a security interest in this Agreement and the Equipment, and may assign this Agreement and the Equipment to any of Gulf Power's future mortgagees or holders of security interests, including their successors or assigns (Gulf Power's existing mortgagee and any future Gulf Power mortgagees or security interest holders are collectively referred to herein as the "**Mortgagees**"), and such Mortgagees shall have the right, but not the obligation, to assume Gulf Power's rights and obligations under this Agreement. In such event, City shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. City agrees to notify Gulf Power and Gulf Power's Mortgagees simultaneously of any default by Gulf Power and to give Mortgagees the same right to cure any default as Gulf Power, except that the cure period for any Mortgagees shall not be less than thirty (30) calendar days after receipt of the default notice, as provided in Section 15 above. All such notices to Mortgagees shall be sent to Mortgagees at the address specified by Gulf Power.

22. **Intentionally Deleted.**

23. **Notices.** All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to this Agreement shall be in writing, signed by the



notifying Party, or officer, agent or attorney of the notifying Party, and shall be deemed to have been effective upon delivery if served personally, including but not limited to delivery by messenger, overnight courier service or by overnight express mail, or on the third (3<sup>rd</sup>) business day after posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To City: City Administrator  
City of Pensacola  
222 W. Main Street  
Pensacola, Fl. 32502

To Gulf Power: Gulf Power  
700 Universe Boulevard, CEA/JB  
Juno Beach, Florida 33408  
Attn: Vice President of Corporate Real Estate

With copy to: Gulf Power  
700 Universe Boulevard, LAW/JB  
Juno Beach, Florida 33408  
Attn: General Counsel

The address to which any notice, demand, or other writing may be delivered to any Party as above provided may be changed by written notice given by such Party.

24. **Miscellaneous.**

(a) **Entire Agreement; Modification; Waiver.** All of the representations and obligations of the Parties are contained herein and no modification, waiver or amendment of this Agreement or of any of its conditions or provisions shall be binding upon a Party unless in writing, signed by that Party or a duly authorized agent of that Party empowered by a written authority signed by that Party. The waiver by either Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision by the same Party, or of any other provision or condition of this Agreement. No waiver shall be implied by delay or any other act or omission of either Party.

(b) **Governing Law.** This Agreement shall be subject to and governed by the laws of the State of Florida, without regard to its conflict of laws principles. The Parties agree that any action or proceeding arising out of or related in any way to this Agreement shall be brought solely in a court of competent jurisdiction in the State of Florida. Venue shall lie in Escambia County, Florida.

(c) **Severability.** Should any provision of this Agreement be held, in a final and un-appealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, and the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling.

(d) **Headings and Gender.** All headings in this Agreement are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. In construing this Agreement, the singular shall be held to include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders.

(e) **Authority.** Each Party represents to the other that it has complete authority to enter into this transaction.

(f) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, upon execution of a substantively identical counterpart by each Party, shall be deemed an original, but all of which together shall constitute a single instrument. A facsimile or similar electronic transmission of a counterpart signed by a Party hereto shall be regarded as an original signed by such Party for all purposes.

(g) **Binding Effect.** This Agreement shall bind and benefit the Parties and their respective successors and assigns.

(h) **Publicity; Tours.** The Parties acknowledge that each of them has a legitimate business interest in receiving public recognition of their participation in the transaction contemplated by this Agreement. In order to coordinate the timing, tone and content of any publicity, however, each Party agrees that neither of them shall issue any press release or otherwise publicize the existence or the terms of this Agreement without the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed, provided that general advertising that refers to a “partnering” (or other terminology of similar import) of either Party with the other Party for the purposes of any of the transactions contemplated hereby, but does not expressly reference this Agreement or disclose any of the terms hereof, shall not be subject to the provisions of this subsection. The Parties acknowledge that the City is obligated to comply with the provisions of the Florida Public Records Act, Ch. 119, Florida Statutes, and the Sunshine Law, Ch. 286, Florida Statutes. No filing that Gulf Power is required by applicable law to make with any regulatory authority shall, by itself, be deemed to violate the preceding sentence. Gulf Power shall have the right to give site tours of the Equipment on the Premises for visitors and other interested parties.

(i) **Construction.** This Agreement shall not be construed more strictly against one Party than against the other, merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that both City and Gulf Power have contributed substantially and materially in the negotiation and preparation of this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits, schedules, addendums or amendments hereto.

(j) **Force Majeure.** City and Gulf Power (except with respect to the payment of any monetary obligation) shall be excused for the period of any delay in the performance of any obligation hereunder when such delay is occasioned by causes beyond its control, including but not limited to work stoppages, boycotts, slowdowns or strikes; shortages of materials, equipment,

labor or energy; unusual weather conditions; or acts or omissions of governmental or political bodies.

(k) **Exhibits**. All of the schedules and exhibits attached to this Agreement (or attached from time to time after the Effective Date) are incorporated in, and made a part of, this Agreement.

(l) **Amendments**. This Agreement may not be changed, altered or modified except by an instrument in writing duly signed by both Parties.

(m) **Calculation of Time Periods**. The Effective Date of this Agreement shall be when it has been signed by the last party to sign same and when it has thereupon been mutually delivered. For purposes of this Agreement, any time period that falls on a Saturday, Sunday or legal holiday under laws of the State in which the Property is located, will be extended to the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time where the Property is located.

[Remainder of page intentionally blank; Signature pages follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

**CITY:**  
City of Pensacola

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

Approved As To Content:

\_\_\_\_\_  
Department Head

Legal In Form And Execution:

\_\_\_\_\_  
City Attorney

Witness:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**GULF POWER:**

Gulf Power Company,  
a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**Description of the Property**

**EXHIBIT B**

**Description of the Premises**