

MUTUAL AID AGREEMENT FOR LEASED EMPLOYEE SERVICES

This Mutual Aid Agreement for Leased Employee Services is entered into as of _____, (the “Effective Date”) by and between **Florida Municipal Power Agency** (“FMPA”) and the **City of Ocala** (“Member”). FMPA and Member may also be referred to in this Agreement individual as a “Party” or collectively as the “Parties”

WHEREAS, FMPA is a municipal electric joint action agency formed pursuant to section 163.01, Florida Statutes, and exercises powers pursuant to section 163.01 and chapter 361, part II, Florida Statutes;

WHEREAS, Member is a municipal electric utility and a member of FMPA;

WHEREAS, FMPA members desire and have authorized FMPA to retain one or more professionals with experience in Florida municipal electric utility industry matters (hereinafter “Leased Employee”) to support or assist FMPA members from time to time with various member projects or issues (the “Services”);

WHEREAS, FMPA has, or will use reasonable efforts to, employ such Leased Employee(s) to facilitate FMPA members’ engagement of Lease Employees to provide the Services; and

WHEREAS, FMPA and Member desire to establish the terms and conditions of Member’s engagement of Leased Employees to perform Services, and to define the Parties’ respective responsibilities and obligations with respect thereto.

WHEREAS, the Services contemplated by this Agreement may include, but shall not be limited to, support or assistance on projects for which Federal Emergency Management Agency (“FEMA”) Public Assistance Program funding may be available to Member, and as such, the Parties intend this Agreement to serve as a mutual aid agreement eligible for reimbursement thereunder;

NOW THEREFORE, for and in consideration of the premises and mutual covenants made herein, the parties agree as follows:

Section 1. Term/Termination

1.1 *Term.* This Agreement shall take effect as of the Effective Date and, unless earlier terminated in accordance with this Agreement, shall continue in effect for one year thereafter (the “Initial Term”). This Agreement shall thereafter be eligible for successive one-year additional terms (each a “Renewal Term”) upon mutual agreement between the Parties.

1.2 *Termination.* Either Party may terminate this Agreement at any time upon written Notice to the other Party; provided, however, that Member shall remain responsible for all costs incurred for Services up to the effective date of such Notice, and the payment terms and obligations of this Agreement shall survive such termination until Member has made final payment to FMPA for all Services incurred up to FMPA’s receipt of such notice of termination.

1.3 *Cessation of Services.* (a) Notwithstanding anything in this Agreement to the contrary, Member may cease receiving Services from any Leased Employee at any time upon verbal or written notice to such Leased Employee and FMPA. If such notice is given verbally, Member shall provide written Notice to FMPA as promptly as practicable thereafter. FMPA shall direct Leased Employee to cease performing the Services.

(b) Notwithstanding Member's cessation of Services, or the reasons therefore, Member shall remain liable to FMPA for all costs incurred for Services provided up to and including the date of such cessation of Services.

(c) Unless Member also provides Notice of termination of this Agreement pursuant to Section 1.2, this Agreement shall thereafter remain in effect, and Member may continue to utilize Services from Leased Employee(s) in the future in accordance with the terms of this Agreement.

Section 2. Member Engagement of Professional Services

2.1 (a) *Leased Employees.* FMPA shall maintain a list of Leased Employee(s), along with their relevant qualifications and past work experience, as well as estimated hourly rates for each Lease Employee. Upon request, FMPA shall provide Member with written qualifications, experience, and contact information for all Leased Employees.

(b) *Initial Engagement of Lease Employee(s).* If during the term of this Agreement Member desires to engage a Leased Employee to perform Services for Member, Member shall first notify FMPA and identify the general project scope and the Leased Employee(s) that Member wishes to engage. FMPA will provide Leased Employee(s) contact information so that Member and the Leased Employee can begin discussing the project scope.

(c) *Developing the Scope of Services.* Once selected, Member shall work directly with its selected Leased Employee to establish a scope of services for Member's project. Attached hereto as Attachment A is a template form for use by Member to assist with developing a scope of services, which may include an estimated project timeline, not-to-exceed amount, and other relevant issues to be negotiated and agreed to by Member and Leased Employee (the "Scope of Services").

(d) *FMPA Approval of Scope of Services.* Once complete, Member shall provide the draft Scope of Services to FMPA for review and approval. Once approved, FMPA shall direct the Leased Employee to perform the Services for Member in accordance with the Scope of Services. Member shall not begin receiving Services without FMPA's prior approval of the Scope of Services.

2.2 *Changes to Scope of Services.* If Member desires at any time to change the Scope of Services, Member shall so notify FMPA. Member and Leased Employee shall first discuss any desired changes to the Scope of Services, and provide a draft amended Scope of Services to FMPA. Upon review and approval, FMPA shall then direct Leased Employee to implement in accordance with the revised Scope of Services.

2.3 *Background Checks.* Prior to engaging in any work for the Member, every Leased Employee shall be subject to a background check and verification of experience by the City of Ocala's Human Resources Department.

Section 3. Billing & Payment

3.1 *FMPA Payment to Leased Employees.* Leased Employees shall be hourly employees of FMPA. As such, FMPA will pay the Leased Employees directly through FMPA's payroll, with all applicable taxes deducted. Leased Employees shall not be entitled to FMPA benefits; however, Leased Employee's travel expenses shall be reimbursable in accordance with the then-current FMPA travel reimbursement policy.

3.2 *Invoicing Member for Services; Payment.* (a) FMPA shall invoice Member each month for the total cost of Services provided by a Leased Employee to Member during the preceding month. The invoice shall include the total cost for hours worked by the Leased Employee during the preceding month, which shall include the Leased Employee's hourly rate as well as applicable taxes paid by FMPA, as well as any reimbursable per diem, travel, lodging, or other expenses that were reimbursed to Leased Employee by FMPA during the preceding month.

(b) Upon request by Member, FMPA will provide Member a copy of Leased Employee's payroll information and documentation evidencing Leased Employee's reimbursed expenses for Member's review. Member must promptly notify FMPA of any disputed amounts.

(c) Member shall pay all invoices from FMPA within thirty (30) days of receipt. Member agrees to pay FMPA disputed bills during the pendency of any dispute.

3.3 *Invoicing ARP Participants.* If Member is an FMPA All-Requirements Power Supply Project Participant, then Member hereby agrees that any amounts owed under this Agreement constitute a Revenue Requirement, as defined in the All-Requirements Power Supply Contract between FMPA and Member, and, as such, may be added to Member's monthly All-Requirement Power Supply Project bill.

Section 4. FMPA Responsibilities

4.1 *FMPA Responsibilities.* During the term of this Agreement, FMPA shall:

- (a) Use reasonable efforts to employ one or more qualified Leased Employee(s) to provide the professional services contemplated herein.
- (b) Acquire from Leased Employee written qualifications and experience, and hourly pricing information necessary to assist Member in selecting a Leased Employee for professional services.
- (c) Facilitate Member's and Leased Employee engagement by providing Member with Leased Employees contact information and directing Leased Employee(s) to engage with Member to perform the Services in accordance with the Scope of Services.
- (d) Assist Member, if so requested by Member, in developing the Scope of Services.

(e) Provide Member with payroll information and documentation evidencing reimbursed expenses to support FMPA's monthly invoices.

(f) As requested by Member, review deliverables, and otherwise provide project support in consultation with Member.

Section 5. Member Responsibilities

5.1 *Member Responsibilities.* During the term of this Agreement, Member shall:

- (a) Engage directly with Leased Employee to develop and execute the Scope of Services.
- (b) Direct and monitor, and have final approval authority and responsibility for, Leased Employee's work.
- (c) Review and implement, in its sole discretion, any deliverables, services or recommendations of Leased Employee.
- (d) Keep FMPA regularly informed of Leased Employee's performance, progress of the Scope of Services, and any other information reasonably requested by FMPA that FMPA deems necessary.
- (e) Provide FMPA with feedback, suggested changes, or other information regarding the Leased Employee program to assist FMPA with identifying best practices, improvements, and benefits to the program.

Section 6. Limitation of Liability

6.1 *Limitation of Liability.* FMPA and Member acknowledge and agree that FMPA has employed, and is making available to Member, Leased Employee(s) as a member service to Member. As such, Member acknowledges and agrees that its utilization of Leased Employee and any Services rendered by Leased Employee under this Agreement shall be at Member's own risk and liability. FMPA shall not be liable, and Member agrees to hold FMPA harmless, from any damage to Member's property or system or harm to Member or any third parties, that result from Member's use of Leased Employee's Services, including, without limitation, Members use of or reliance upon any of Leased Employee's deliverables, services or recommendations.

Section 7. Insurance

7.1 *Workers Compensation Insurance.* Leased Employee shall be covered under FMPA's workers compensation insurance while employed by FMPA.

7.2 No other Insurance. Member acknowledges that neither FMPA nor Leased Employee shall be required to carry any general liability or professional liability insurance coverage for the benefit of Member for any damage or harm caused to Member property or system that result from Member taking Services from Leased Employee(s) under this Agreement.

Section 8. Notices

8.1 *Notices.* All notices requests, consents, and other communications that are required to be in writing hereunder (“Notices”) shall be deemed to have been validly served, or given after deposit in the United States mails, postage prepaid, by certified mail with return receipt requested, delivery to an overnight courier, or if transmitted by email, addressed to the Party to be notified as follows:

If to Member at: Chief of Staff
City of Ocala
Attn: Christopher J. Watt, Esq.
110 SE Watula Avenue, 2nd Floor
Ocala, Florida 34471
Telephone No. (352) 401-3994
Email: cwatt@ocalafl.gov

With a copy to: City Attorney
City of Ocala
Attn: William E. Sexton, Esq.
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Telephone No. (352) 401-3972
Email: cityattorney@ocalafl.gov

Except as otherwise provided in this Agreement, any Notices shall be deemed received only upon actual delivery at the address set forth above. Email Notices shall be deemed delivered upon receipt by the receiving party's email server. Notices delivered after 5:00 p.m. (local time and at the place of delivery) or on a non-business day shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and holidays recognized by FMPA shall not be regarded as business days. Counsel for FMPA and counsel for Member may deliver Notice on behalf of FMPA and Member. Any Party or other person to whom Notices are to be sent or copied may notify the other Parties and addresses of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the Parties and addresses set forth in this Agreement.

Section 9. General Terms and Conditions

9.1 *Assignment.* This Agreement shall not be assigned in whole or in part except as may be approved in writing by FMPA and Member.

9.2 *No Waiver.* No term of this Agreement shall be deemed waived, and no breach of this Agreement excused, unless the waiver or consent is in writing signed by the other party granting such waiver or consent. The failure or delay of any Party at any time to require performance by another Party of any provision of this Agreement, even if known, shall not affect the continuing right of such Party to require performance of that provision or to exercise any right, power, or remedy hereunder.

9.3 *Amendments.* No amendment to this Agreement (including any amendment to this Section 9.3) shall be effective unless agreed to in writing by both of the Parties to this Agreement.

9.4 *Enforceability.* If any provision of this Agreement is determined to be illegal or unenforceable, such term or provision shall be deemed stricken, and all other terms and provisions shall remain in full force and effect.

9.5 *Governing Law.* This Agreement shall be governed by the laws of the State of Florida. All controversies, claims or disputes arising out of this Agreement shall be brought exclusively in appropriate court in Leon County, Florida.

9.6 *No Presumption Against Drafter.* This Agreement reflects the negotiated agreement of the Parties. Accordingly, this Agreement shall be construed as if both Parties jointly prepared it, and no presumption against one Party or the other shall govern the interpretation or construction of any of the provisions of this Agreement.

9.7 *Authority to Execute.* The execution of this Agreement has been duly authorized by the appropriate body or official of FMPA and Member, and both FMPA and Member have full power and authority to comply with the terms and provisions of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first stated in the introductory paragraph.

**FLORIDA MUNICIPAL POWER
AGENCY**

Angel B. Jacobs
City Clerk

CITY OF OCALA

Janice Mitchell
Chief Financial Officer

Approved as to form and legality:

William E. Sexton, Esq.
City Attorney

SCOPE OF WORK – PRIMARY JOB FUNCTIONS

To provide the Electric utilities with skilled/professional support to assist with short-term or project based workforce needs.

Based on availability, FMPA will facilitate the leasing of employees from municipalities in the following capacities:

1. Special Projects: The Utilities can request Leased Employees for defined projects such as infrastructure upgrades and maintenance, system reliability improvements, regulatory compliance initiatives, and Storm Restoration.
2. Temporary Staffing: FMPA will provide personnel to cover employee absences, seasonal workload increases, or interim positions during the hiring process.
3. Technical Expertise: Leased employees may include Directors, Engineers, Lineworkers, System Operators, Administrative and support roles, regulatory compliance specialists, and all other essential utility personnel.
4. Leased Employee must maintain, required certifications, training, and testing requirements.

LEASED EMPLOYEES AND EQUIPMENT

1. The Leased Employee shall always provide a valid telephone number to the Project Manager. The telephone must be answered during normal working hours or voicemail must be available to take a message.
2. The Leased Employee must wear suitable work clothes and/or personal protective equipment as defined by City Policy or OSHA. Employees shall be clean and in as good appearance as the job conditions permit.
3. The Leased Employee will operate as an independent contractor and not as an agent, representative, partner or employee of the City of Ocala.
4. No smoking is allowed on City property or projects.

CITY OF OCALA RESPONSIBILITIES

1. The City of Ocala will furnish the following services/data to the Leased Employee for the performance of services:
 - A. Access to City buildings and facilities to perform the work.
 - B. Provide access to drawings, specifications, schedules, reports, and other information prepared by/for the City of Ocala pertinent to the Contractor's responsibilities.

LEASED EMPLOYEE RESPONSIBILITIES

1. The Leased Employee shall complete all work performed under this solicitation in accordance with policies and procedures of the City of Ocala and all applicable State and Federal laws, policies, procedures, and guidelines.
2. If the Leased Employee is advised to leave a property by the property owner or their representative, the Leased Employee shall leave at once without altercation. Leased Employee shall then contact the Project Manager immediately and advise of the reason for not completing the assigned project.

3. Data collected by the Leased Employee shall be in a format compatible with, or easily converted to City's databases.

SAFETY

1. In no event shall the City be responsible for any damages to any of the Leased Employee's equipment, materials, property, or clothing lost, damaged, destroyed or stolen.
2. Storage and adequate protection of all personal items and equipment will be the Leased Employee's responsibility.