

**Exclusivity Agreement
Between
City of Flagstaff
and
NextEra Energy Resources Development, LLC**

This Exclusivity Agreement (the “**Agreement**”), effective as of the last day of signature below (the “**Effective Date**”), is being entered into by and between NextEra Energy Resources Development, LLC, a Delaware limited liability company (“**NextEra Development**”), which is an indirect, wholly-owned subsidiary of NextEra Energy Resources, LLC, a Delaware limited liability company (“**NextEra**”), and The City of Flagstaff, a municipal corporation organized and existing under the laws of the state of Arizona (the “**City**”). NextEra Development and the City are sometimes referred to individually as “**Party**” and collectively as the “**Parties.**”

WHEREAS, the City desires to procure up to 50,000MWhrs of renewable energy, sourced locally to offset their current and future energy purchases; and

WHEREAS, NextEra Development (or its affiliate) intends to develop, install, operate and maintain an approximately 18.25 MW_{AC} photovoltaic system (the “**PV System**”), along with an approximately 12 MW 2 hour (24 MWhr) battery energy storage system (the “**BESS System**” and with the PV System, the “**Project**”), on land controlled by the Hopi Tribe located at 21724 Resort Blvd., Flagstaff, AZ 86004 (the “**Premises**”); and

WHEREAS, the City has determined, through an RFP selection process, that NextEra Development is uniquely qualified to carry out the development, installation, operation and maintenance of the Project; and

WHEREAS, the Parties must work with Arizona Public Service Company (“**APS**”) and Arizona Corporation Commission (“**ACC**”) to determine an acceptable structure for the contemplated transaction herein; and

WHEREAS, once the Project is installed and operational, the City desires to purchase the solar energy from the Project through a Power Purchase Agreement with NextEra Development (or its affiliate) due to the financial and environmental benefits to the City; and

WHEREAS, the City recognizes that further discussions with APS, ACC and the Hopi Tribe will be required to finalize the agreements for the Project and thus would like to establish an Exclusivity Period for negotiation of a Power Purchase Agreement related to the sale of solar energy and environmental attributes by NextEra Development (or its affiliate) to the City.

In consideration of the rights and obligations of the Parties hereunder, and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged by the Parties, the Parties hereby agree as follows:

**ARTICLE 1
THE POWER PURCHASE AGREEMENT**

1.1 Power Purchase. The Parties intend to negotiate an agreement under which NextEra Development, through an indirect, wholly-owned subsidiary of NextEra, would install the Project at the Premises and sell the energy generated by the Project, as well as the environmental attributes (which includes but is not limited to renewable energy credits or certificates, emissions reduction credits, emissions

allowances, green tags, and tradeable renewable credits with respect to the Project) associated therewith, to the City pursuant to such terms and conditions as are mutually acceptable to the Parties, which the Parties intend to be substantially in accordance with the terms set forth in Exhibit A (such agreement, the “**Power Purchase Agreement**”). For the avoidance of doubt, this Agreement does not bind the City to enter into a Power Purchase Agreement with NextEra Development (or its affiliate).

- 1.2 Due Diligence Requirements; Approval. In order to pursue the potential Power Purchase Agreement, NextEra Development will require completion of customary due diligence review which may include, but not be limited to: discussions with APS, transmission authority, ACC, technical and legal diligence regarding the Premises and general due diligence of the City, including financing and credit review, permitting information, environmental documentation, tax abatement agreements, interconnection agreements or queue position documentation and associated deposits, and other relevant information. Consummation of the Power Purchase Agreement will be subject to NextEra Development (or its applicable affiliate) obtaining any necessary internal, investor or other applicable approvals.

ARTICLE 2 **EXCLUSIVITY PERIOD**

- 2.1 Exclusivity. Each Party agrees that, for a period of three hundred and sixty five (365) days following the Effective Date, or such longer period as mutually agreed by the Parties in writing (the “**Exclusivity Period**”), it shall not, directly or indirectly, through any officer, director, employee, agent, affiliate or any other representative, solicit, initiate, entertain, discuss or encourage submission of any proposal or offer from any person, group or entity relating to the installation of any system or the sale of solar energy at or near the Premises (a “**Competing Transaction**”), participate in negotiations regarding a Competing Transaction or furnish to any other person any information with respect to a Competing Transaction. Each Party represents that neither it nor any of its affiliates have entered into any other similar, currently enforceable exclusivity arrangement with any other person that is not an affiliate in connection with a Competing Transaction. Each Party shall immediately cease and cause to be terminated all existing discussions and negotiations, if any, in connection with any Competing Transaction. In the event that either Party (or any officer, director, employee, agent, affiliate or any other representative of such Party) receives any proposal for, or inquiry respecting, any possible Competing Transaction or any request for non-public information in connection with a Competing Transaction, such Party shall notify the other Party in writing immediately after the notifying Party’s receipt of such proposal, inquiry, or request. Each Party further agrees that during the term of the Exclusivity Period, it shall promptly notify the other Party in writing if it becomes aware of an occurrence of material adverse developments affecting the Premises or the ability to generate and sell solar energy at the Premises. Each Party agrees that during the Exclusivity Period, it shall promptly notify the other Party of any event that would impede or make impossible the consummation of the Power Purchase Agreement.

- 2.2 Confidentiality.

- 2.2.1 If either Party provides confidential information, including records, reports, analyses, notes, memoranda, documentation, data specifications, diagrams, statistics, systems or software, manuals, business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, or technical information regarding the design, operation, and maintenance of the Project or of such Party’s business, whether or not patented, patentable or reduced to practice, customer lists, contractual arrangements with, and information about, a Party’s suppliers, distributors

and customers, or other information that are based on, contain or reflect any such confidential information, regardless of whether such information is marked proprietary or confidential and regardless of whether such information is provided before or after the Effective Date (“**Confidentiality Information**”) to the other Party, the receiving Party shall: (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, but in any event not less than a commercially reasonable degree of care; and (b) refrain from using such Confidential Information, except in the negotiation of the Power Purchase Agreement. For the avoidance of doubt, NextEra Development’s Confidential Information specifically includes, without limitation, data disclosed by or through NextEra Development, NextEra Energy, Inc., its affiliates, or their respective owners, officers, employees, members, or representatives.

- 2.2.2 Notwithstanding any other provision in this Agreement, neither Party will be required to hold confidential any information that: (a) becomes publicly available other than through the receiving Party; (b) is required to be disclosed by a governmental authority under applicable law or pursuant to a validly issued subpoena, subject at all times to the terms and conditions set forth in Section 2.2.4 below; (c) becomes available to the receiving Party from a source which is not known to the receiving Party to be prohibited from disclosing such information pursuant to a legal, contractual or fiduciary obligation to the disclosing Party; (d) the receiving Party can demonstrate was legally in its possession prior to disclosure by the disclosing Party; or (e) is developed by or for the receiving Party independently of the disclosing Party’s Confidential Information.
- 2.2.3 Confidential Information shall not be used for any purpose other than to analyze, evaluate, negotiate or consummate the Power Purchase Agreement. Confidential Information shall be held in strict confidence by the receiving Party and shall not be disclosed without prior written consent of the disclosing Party, except to those advisors, affiliates, agents, assigns, potential financing parties, attorneys, employees, directors, officers, and/or members (“**Agents**”) with a need to know the Confidential Information for the purposes of analyzing, evaluating, negotiating, or consummating the Power Purchase Agreement. The receiving Party shall be responsible for any breach of this Section 2.2 by the receiving Party or its Agents.
- 2.2.4 If the receiving Party is required or required by legal or regulatory authority to disclose any Confidential Information, the receiving Party shall promptly notify the disclosing Party of such request or requirement prior to disclosure, if permitted by applicable law, so that the disclosing Party may seek an appropriate protective order. If a protective order or other remedy is not obtained, the receiving Party may furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information. For the avoidance of doubt, NextEra Development understands that (i) the City must comply with the Arizona Public Records Law (§39-121), (ii) that any Confidential Information requested through a public records request that the City cannot withhold from production under the Arizona Public Records Law will be disclosed, and (iii) such disclosure will not be deemed to be a breach of this Agreement. The City agrees to inform NextEra Development of all such requests and consult with NextEra Development prior to any production of responsive information.

- 2.2.5 The obligations set forth in this Section 2.2 shall terminate upon the earlier of (a) the full execution of the Power Purchase Agreement, and (b) the expiration of the applicable survival period set forth in Section 2.10.
- 2.2.6 It is understood that nothing contained in this Section 2.2 shall be construed as granting or conferring rights by license or otherwise in any Confidential Information disclosed to the receiving Party. Nothing in this Agreement is intended to prevent either Party from using its own Confidential Information which it furnished hereunder for dealings with third parties for any purpose.
- 2.2.7 Each Party acknowledges that the disclosing Party provides the Confidential Information on an “as is” basis and without warranty of any kind. THE DISCLOSING PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES PERTAINING TO THE CONFIDENTIAL INFORMATION, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 2.3 Entire Agreement. This Agreement constitutes the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior discussions, agreements or understandings, whether oral or written, relating to such subject matter. There are no other written or oral agreements or understandings between the Parties or their affiliates. Any amendment of this Agreement must be written and signed by both Parties.
- 2.4 Governing Law. This Agreement will be governed by and construed under the laws of the State of Arizona without giving effect to any conflict or choice of law provision that would result in the application of another state’s laws. TO THE EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS LETTER OF INTENT.
- 2.5 Non-Inclusive; Non-Binding. This Agreement does not contain all matters upon which agreement must be reached in order for the Power Purchase Agreement to be completed. This Agreement does not create and is not intended to create a binding and enforceable contract between the Parties, or any affiliate of a Party, with respect to the future negotiation of a Power Purchase Agreement between the Parties. The provisions set forth in Exhibit A shall not be relied upon by a Party or any affiliate of a Party as the basis for a contract by estoppel or otherwise for the completion of the Power Purchase Agreement. A binding commitment with respect to the matters contemplated herein can only result from the execution and delivery of the Power Purchase Agreement.
- 2.6 Relationship of Parties. The Parties shall not be deemed in a relationship of partners or joint venturers by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.
- 2.7 Costs. Each Party shall assume its own counsel costs, fees and expenses incurred in the preparation and negotiation of this Agreement and the Power Purchase Agreement, and the Parties shall not have the right to claim any compensation and/or damages in connection therewith.
- 2.8 Remedies. In the event of a violation of the Exclusivity Period, the aggrieved Party may apply to a court of competent jurisdiction to restrain further violation and to obtain any relief that may be

appropriate or available under the circumstances, including injunctive or other equitable relief without posting a bond therefor. This Section 2.8 is not intended to and shall not restrict the rights or remedies of either Party otherwise available under applicable law or in equity in respect of any such violation. NOTWITHSTANDING ANYTHING CONTAINED IN THIS LETTER OF INTENT, EACH PARTY'S LIABILITY TO THE OTHER PARTY IN CONNECTION WITH THIS LETTER OF INTENT AND ANY ACTIVITIES UNDERTAKEN IN CONNECTION WITH THE EVALUATION OF THE POWER PURCHASE AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL EXCLUDE ANY OTHER LIABILITY, INCLUDING WITHOUT LIMITATION LIABILITY FOR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY OR OTHERWISE.

- 2.9 Termination. This Agreement shall remain effective until the earlier of the full execution of a Power Purchase Agreement, or the termination or expiration of the Exclusivity Period, at which time this Letter of Intent shall expire unless extended in writing by the Parties.
- 2.10 Survivability. In the event of termination of this Agreement, Sections 2.2 through 2.10 of this Article 2 shall survive for a period of two (2) years from the effective date of this Agreement.
- 2.11 Assignment. This Agreement shall not be assigned or transferred in any manner by either Party without the express prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed.
- 2.12 Miscellaneous. This Agreement may be executed in counterparts, and all such counterparts together shall constitute but one agreement. Signature in .pdf form delivered by email transmission shall be binding upon the Parties.

[Signature page follows.]

IN WITNESS WHEREOF, Seller and Proposed Purchaser have executed this Agreement effective as of the Effective Date.

**NEXTERA ENERGY RESOURCES
DEVELOPMENT, LLC**

By: _____
Name: Matt Handel
Title: Vice-President
Date: _____

CITY OF FLAGSTAF

By: _____
Name: Coral Evans
Title: Mayor
Date: _____

Attest:

City Clerk

Approved as to Form

City Attorney

EXHIBIT A
POWER PURCHASE AGREEMENT TERMS

Capitalized terms used and not defined in this Exhibit A have the meaning ascribed to such terms in the Letter of Intent.

Power Purchase Agreement Overview	
(a) Seller	A Delaware limited liability company that will be an indirect, wholly-owned subsidiary of NextEra (such limited liability company, the “ Seller ”)
(b) Buyer	The City of Flagstaff
(c) PV System Description	Approximately 18.25 MW _{AC} (24 MW _{DC}) single axis tracking, ground-mount solar photovoltaic system, to be located at the Premises
(d) Point of Delivery	69kV bus at the Twin Arrows Substation in accordance with the APS System Impact Study received on October 1st, 2018.
(e) BESS System Description	Approximately 12MW / 24 MWh Energy Storage System to be co-located with the PV system. Dispatched daily to shift solar production towards peak time periods.
(f) Term of PV Agreement	Twenty-Five (25) years from the commercial operation date, which may be extended as agreed by the Parties (the “ Term ”).
(g) PV Contract Price:	
(h) Term of BESS Agreement	Twenty (20) years from the commercial operation date, which may be extended as agreed by the Parties (the “ Term ”)
(i) BESS Contract Price	
(j) Energy	All Energy produced from the Generating Facility during the Delivery Term as measured in MWh at the revenue meter of the Generating Facility and in accordance with the APS system impact study, which shall include any applicable adjustments for power factor and Electrical Losses associated with transmission to the Point of Delivery.
(k) Energy Storage	During the Delivery Term, Buyer is permitted one full charge/discharge cycle per each twenty-four (24) period. Buyer must discharge the Energy Storage system to 50% or lower within twenty-four (24) hours of completing the charge cycle. Buyer and Seller will jointly develop operating procedures for Energy Storage in connection with the PPA. For the first five years and 90 days of the Delivery Term, the Energy Storage may be charged exclusively from solar and not from the grid. Seller shall design the system to provide for no less than 85% round trip efficiency from a charge/discharge cycle during the Delivery Term.

(l) Contract Quantity for Energy	100% of the Energy made available by Seller at the Point of Delivery during the Delivery Term. The estimated Year 1 Energy generation for the Generating Facility is 49,136 MWh/yr. A schedule for the expected Energy generation during each Contract Year for the Delivery Term (“ Expected Energy ”) shall be provided in the PPA.
(m) Product and Environmental Attributes	Buyer will purchase: <ol style="list-style-type: none"> 1. one hundred percent (100%) of the net electric output delivered by the PV System and BESS payments based on the BESS Contract Price multiplied by the total kW during the Term of the Power Purchase Agreement (the “Product”); and 2. one hundred percent (100%) of the environmental attributes, offsets and other non-electric products related to the PV System or the Product (“Environmental Attributes”).
(n) Credit Support	No credit support needed from Buyer or Seller.
(o) Ownership; No Liens	Seller, or a Financing Party (as defined below), will be the legal owner of the PV System. The PV System will be personal property and will not attach to the Premises.
(p) Production Guarantee	Seller will provide an eighty-five percent (85%) weather and degradation-adjusted production guarantee, measured over three (3) years and subject to further adjustment to account for certain outages, actions or omissions by the local electric utility, force majeure events, sunlight interference, and relevant breaches by Buyer. Shortfalls are credited in subsequent invoices.
(q) PV System Maintenance	Seller will maintain the PV System in accordance with (1) applicable law and (2) prudent industry practices.
(r) Permits	Seller will be responsible for obtaining all permits necessary for the construction, commissioning, and operation of the PV System. Buyer will cooperate with Seller as necessary to secure such permits.
(s) Assignability	Seller will be free to assign the Power Purchase Agreement (i) to an affiliate of Seller, (ii) through merger, consolidation, or similar event, (iii) to one or more third party investors and/or lenders (each a “ Financing Party ”), including collateral assignment or the pledge of Seller’s interests in the Power Purchase Agreement and/or the PV System, or (iv) to a third party of comparable experience and financial capability.
(t) Purchase Option	Buyer will have the option to purchase the PV System on the end of the Term (the “ Purchase Option ”). The option price will be a dollar amount equal to the greater of (i) the fair market value of the PV System and (ii) the Termination Payment (as defined below). The Power Purchase Agreement will set forth the methodology for determining the fair market value of the PV System

<p>(u) End of Term; Early Termination; Termination Payment</p>	<p>At the Power Purchase Agreement’s expiration or termination (other than a termination arising from a Buyer default), unless Buyer exercises its Purchase Option, Seller will, at its expense, remove the PV System from the Premises.</p> <p>In the event of early termination by Buyer, Buyer will pay to Seller a termination payment to be calculated as follows (the “Termination Payment”):</p> <p>Termination Payment = (Settlement Amount) + (any other amount owed by Buyer to Seller) – (any amount owed by Seller to Buyer), where:</p> <ol style="list-style-type: none"> 1. Settlement Amount = Losses - Gains + Costs 2. Losses = the present value of Seller’s economic loss resulting from the termination (<i>i.e.</i>, future cash flows), as determined by Seller in a commercially reasonable manner 3. Gains = the present value of Seller’s economic benefit resulting from the termination, as determined by Seller in a commercially reasonable manner 4. Costs = certain costs incurred by Seller in connection with the termination of the Power Purchase Agreement.
<p>(v) Financing Accommodations:</p>	<p>Buyer acknowledges that Seller may finance the acquisition and installation of the PV System by entering into financing accommodations with one or more Financing Parties, and Buyer agrees (i) to execute any related consents to assignment or acknowledgements; and (ii) to provide such opinions of counsel as may be reasonably requested by Seller or the Financing Party in connection with the financing or sale of the PV System, in each case at Seller’s expense.</p>
<p>(w) Anticipated Commercial Operation Date:</p>	<p>The anticipated date on which the PV System will be ready for commercial operation will be 12/31/2022 as such date may be extended as the result of force majeure events or other excusable events, including permitting delays, interconnection delays, and site access issues.</p>
<p>(x) Governing Law:</p>	<p>Arizona</p>