

**SOLAR ENERGY AGREEMENT**

**BETWEEN**

**BROWARD COUNTY**

**AND**

**FLORIDA POWER & LIGHT COMPANY**

**FOR**

**INSTALLATION AND OPERATION OF A SOLAR ENERGY PROJECT  
AT THE YOUNG AT ART MUSEUM AND BROWARD COUNTY LIBRARY**

This Solar Energy Agreement ("**Agreement**") between Broward County, a political subdivision of the State of Florida ("**County**"), and Florida Power & Light Company, a Florida corporation ("**FPL**"), collectively referred to as the "**Parties**," is entered into effective as of the date this Agreement is executed by the County ("**Effective Date**").

**RECITALS**

WHEREAS, County is the fee simple owner of that certain property more commonly known as the Young at Art Museum and Broward County Library, which property is more particularly described on the attached **Exhibit "A"** (the "**Property**"), which exhibit is made a part hereof; and

WHEREAS, the County and FPL, as more particularly described on **Exhibit "B,"** attached hereto and made a part hereof, desire to advance renewable energy and solar energy projects in Broward County, reduce regional greenhouse gas emissions, and expand community participation in energy conservation and renewable energy initiatives through education and outreach (the "**Objectives**") ; and

WHEREAS, in furtherance of such Objectives, County has agreed to that FPL may use a 9,000 square feet portion of the Property, as generally shown on the attached **Exhibit "C"** (the "**Premises**") which exhibits are incorporated herein by reference and made a part hereof, for the purpose of constructing, installing, and operating Equipment (defined below) for a 100kW solar plant to generate, measure, and transmit solar power (the "**Project**"), subject to the terms of this Agreement, and FPL has agreed, at its sole cost and expense, to install and operate the Project on the Premises; and

WHEREAS, FPL has also agreed (1) to install and maintain, at its sole cost and expense, an interactive educational exhibit ("**Educational Exhibit**") within the common areas of the Museum and Library facility on the Property that provides, among other things, real-time information about the solar energy produced by the Project and other interactive environmental education information;

NOW THEREFORE, in consideration of the mutual terms, conditions, and promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. Definitions.**

The terms set forth below, when used in this Agreement, are defined as follows:

- 1.1 Applicable Laws means any and all applicable laws, codes, advisory circulars, rules, regulations, ordinances or resolutions of any governmental or quasi-governmental entity relating to the Project and Premises, or activities at the Premises, that have been, or may hereinafter be adopted, and as may be amended from time to time, including without limitation all applicable federal, state, County, local and any quasi-governmental agency laws, codes, advisory circulars, rules, regulations, ordinances, resolutions, development orders, and grant agreements (true, correct, and complete copies of such resolutions and grant agreements, if any, having been delivered to FPL by County).
- 1.2 Approved Plans means plans and specifications for the Project that have received prior written approval from the Contract Administrator under Article 5 of this Agreement.
- 1.3 Board means the Board of County Commissioners of Broward County, Florida.
- 1.4 Commencement Date means the date on which the Project becomes operational, which shall be the date on which FPL has obtained any and all approvals, licenses and permits necessary to operate the Equipment, and the Equipment has been installed, connected to the Property's electric transformer, and generating solar power.
- 1.5 Connecting Equipment means the cables, electrical wiring, wire management systems, electric meters, power distribution boxes, connecting hardware as necessary to connect the Solar Equipment with the Inverters, and as necessary to connect the Inverters with the electric transformer, and any additional equipment necessary to generate and transmit solar power for the Project.
- 1.6 Contract Administrator means the Director of the Broward County Environmental Planning and Community Resilience Division or some other County employee expressly designated as Contract Administrator in writing by the County Administrator.
- 1.7 Days or "days" means the calendar days of the week, consisting of Sunday through Saturday.
- 1.8 Educational Exhibit means the interactive educational exhibit described in **Exhibit "B"** to be installed on the Property by FPL in a final location to be

jointly determined by the County and YAA at a later date but anticipated to be within or near the "Lobby" of the "Common Area," as more particularly identified on **Exhibit "C-1."**

- 1.9 Equipment collectively means the Solar Equipment, Connecting Equipment, and Inverters for the Project.
- 1.10 Inverters means any inverters necessary to generate and transmit solar power for the Project.
- 1.11 LEED (Leadership in Energy and Environmental Design) means the rating system for green building practices created by the United States Green Building Council (USGBC).
- 1.12 Premises means the portion of the Property upon which the Equipment for the Project shall be installed or placed by FPL, as more particularly identified in **Exhibit "C,"** attached hereto and made a part hereof, subject to easements, rights-of-way of record, and all other property interests of record, including, but not limited to, water distribution, sewage collection, underground electrical, telephone and telecommunications conduits, and above-ground lighting and power poles.
- 1.13 Term and Term of this Agreement or words of similar import means the Term as provided in Article 3 hereof, subject to earlier termination as provided in this Agreement.
- 1.14 Termination Date means the date this Agreement terminates or expires.
- 1.15 Solar Equipment means solar power generating panels and any additional equipment necessary to generate and transmit solar power for the Project.
- 1.16 YAA means Young at Art of Broward, Inc.

## **2. Premises.**

- 2.1 Grant. County hereby grants FPL the right to use the Premises for the purpose of, at FPL's sole cost, expense and risk, installing, operating, inspecting, maintaining, repairing, removing, and replacing the Equipment and Project in accordance with the Approved Plans, together with a right of ingress, egress, and regress over the Property as necessary to enable FPL to have access to the Equipment for the purposes of installation, operation, inspection, maintenance, repair, and replacement thereof.

County also grants FPL the right, license, and privilege, at FPL's sole cost, expense and risk, to install signage on the Premises, in the vicinity of, and at the point of access to, the Project for any or all of the following purposes: (1) identifying FPL's ownership of the Equipment; (2) identifying the existence of the Equipment on the Premises; (3) instructing parties accessing the Premises to use

caution so as not to damage the Equipment; and (4) provide all necessary hazard and safety warnings. The location, design and content of such signage shall be subject to the prior approval of Contract Administrator, which approval shall not be unreasonably withheld, conditioned or delayed. Such signage shall be removed by FPL upon the final removal of the Equipment from the Premises in accordance with the terms of this Agreement.

- 2.2 Educational Exhibit. FPL shall install and maintain the Educational Exhibit, in accordance with the requirements set forth in **Exhibit "B,"** within thirty (30) days after its specific location is jointly determined by the County, YAA and FPL, and County grants FPL the right of ingress, egress, and regress to the Common Areas of the Museum and Library facility, as necessary for the installation and maintenance of the Educational Exhibit and as more particularly described on Exhibit "C-1."
  
- 2.3 Use of Premises. FPL shall use the Premises solely for the purposes described in Section 2.1 and for no other purposes. FPL covenants that during its use and occupation of the Premises, neither FPL nor its employees, agents, or invitees shall engage in any nuisance or hazardous trade or occupation on, in, or upon said Premises, nor shall FPL, its employees, agents, and invitees keep in or about said Premises any item which will increase the risk of any hazard, fire, or catastrophe, other than would normally occur in connection with the Project, and nor shall they commit waste upon or damage the Premises. During the Term, neither FPL, nor its employees, agents, and invitees, shall not use or occupy the Premises in any manner which would violate any Applicable Laws or interfere with or adversely affect the operations or maintenance of the Property. County shall provide written notice to FPL of any action which the County deems appropriate to remove or eliminate any nuisance or hazard caused by FPL from the Premises. FPL shall correct any such nuisance or hazard of its making on the Premises within thirty (30) days following receipt of such written notice from the County. If FPL fails to correct any such nuisance or hazard with thirty (30) days of such written notice, County reserves the right to thereafter take any action necessary to abate such nuisance or hazard, and FPL agrees to reimburse the County for its reasonable costs associated with such abatement incurred within thirty (30) days of its receipt of County's invoice.
  
- 2.4 Condition and Use of the Premises. FPL shall secure all necessary permits for the construction and operation of the Project on the Premises and shall operate the Project in compliance with Applicable Laws. FPL shall conduct its own due diligence investigation of the Premises, and determine in its sole opinion, the suitability of the Premises for FPL's Project. The use of the Premises, and all components thereof, is hereby granted to FPL in "**AS IS CONDITION**" and "**WITH ALL FAULTS.**"

3. **Term.**

- 3.1 **Term.** Subject to and upon the terms and conditions set forth herein, this Agreement shall commence upon the Effective Date, continue for a term ending on the twentieth (20th) annual anniversary of the Commencement Date (hereinafter "**Initial Term**"), and shall automatically renew upon the same terms and conditions set forth herein for up to two (2), additional five (5) year terms (each such period individually or together being the "**Extended Term**"), unless and until such time as either Party delivers written notice to the other party at any time during the then current Term of Lessee's intention to terminate the Agreement. The Initial Term, and any Extended Term, are collectively referred to herein as the "**Term**". "Commencement Date" shall mean the date on which the Equipment becomes operational. For the purposes of this Agreement, "operational" as used in the foregoing sentence shall be the date on which FPL has any and all approvals, licenses, and permits necessary to operate the Equipment, and has the Equipment installed, connected to the Improvements electric transformer, and generating solar power. The Parties agree that the remaining expected life of the Equipment ("Expected Equipment Life") is thirty (30) years after the Commencement Date ("Expected Equipment Life").
- 3.2 **Obligations and Liabilities Remain.** The expiration or termination of this Agreement does not release FPL from any liabilities or obligations hereunder that accrued on or before the Termination Date. Upon the expiration or termination of this Agreement, FPL shall cease all operations upon the Premises, remove its Equipment, and surrender the Premises in accordance with the terms of this Agreement.

4. **Compensation.**

- 4.1 Starting on the Commencement Date and continuing through the Term, FPL shall compensate County annually, in advance of July 15th of each year of the Term, in the amount set forth in **Exhibit "D"** attached hereto and made a part hereof ("**Compensation**"). If the Term commences on a date other than July 15, FPL shall pay County upon commencement of the Term an amount equal to the pro rata portion of the applicable Compensation for such annual period. If this Agreement expires or is terminated at a time other than on the last day of an annual period, the Compensation shall be prorated as of the date of expiration or termination for any reason (other than a default by FPL) and all prepaid Compensation that has not yet accrued shall be refunded to FPL within thirty (30) days. Compensation shall be payable to County and the address specified in Article 23 below.
- 4.2 As additional consideration for FPL's use of the Premises, FPL will provide all Renewable Energy Certificates, green tags, and carbon credits (collectively, "RECs") generated as a result of FPL's installation and operation of the Solar Plant on the Premises to County, as such RECs become available. County will be responsible for any and all costs associated with certifying these RECs.

5. **Installation of Project and Location of Equipment.**

- 5.1 **Obligations Before Project Installation.** Within thirty (30) days after the Effective Date, and before commencing installation of the Project, FPL shall submit to Contract Administrator, for review and written approval, a site plan and complete plans and specifications for installation of the Project. The plans and specification must be certified by an architect or engineer licensed to practice in Florida and must consist of the following: (a) working drawings; (b) technical specifications; (c) construction schedule pre-coordinated with planned special events at the facility; (d) list of Equipment and fixtures; and (e) such other information as may be reasonably required by Contract Administrator.
- 5.2 **Approved Plans.** The plans and specifications for the Project (including any amendments and changes thereto) that have received Contract Administrator's written consent are hereinafter referred to collectively as the "Approved Plans." No work may be performed on the Premises, except pursuant to the Approved Plans. All construction, improvements, and installation of signs, Equipment and landscaping must be performed in accordance with the requirements of this Agreement. All of the plans and specifications must be in sufficient detail to reasonably permit Contract Administrator to determine compliance with this Agreement. No material changes may be made to any Approved Plans without Contract Administrator's prior written approval, which will not be unreasonably withheld or delayed. Any change to the Approved Plans that requires the issuance of a building permit or modifies an existing building permit for the Project is a material change.
- 5.3 **Project to Comply With Applicable Laws.** The installation of the Equipment, must comply with Applicable Laws. Contract Administrator's consent of any plans, specifications, or designs is not a representation or warranty as to such conformity, and the responsibility for Project compliance at all times remains with FPL.
- 5.4 **Installation of Approved Project.** Upon Contract Administrator's approval of plans, specifications and schedules, and FPL's receipt of all necessary permits and approvals for the Project, FPL shall commence installation of the Equipment, as required by this Article 5.
- 5.5 **Inspection and Approval.** During construction of the Project, the Contract Administrator and other County personnel shall have access to the Premises at all times to ascertain the progress and quality of the construction and to determine if the installation of the Equipment is proceeding in accordance with the Approved Plans and this Agreement. All work not conforming to these requirements may be considered defective and rejected by the County. FPL shall, at its sole cost and expense, within thirty (30) days following receipt of written notice from the County advising of such defective work, either correct all defective work or

remove such defective work and replace it with non-defective work. Should FPL fail or refuse to remove or correct any defective work, County may cause the defective work to be removed or corrected at FPL's expense. Any expenses incurred by County in making such removals may be charged against the Performance Bond required under Article 6.

- 5.6 Permitting and Licensing. Upon the Effective Date, FPL, its employees, contractors, agents, invitees, and governmental permitting, licensing, and regulatory entities (collectively, the "**FPL Parties**"), shall have access to the Premises to inspect, construct, install, test, and operate the Equipment. County shall cooperate as necessary with FPL in its efforts to obtain all permits, licenses, and approvals necessary to install and operate the Equipment and to transmit electricity generated thereby. The Equipment shall be installed as shown in the Approved Plans. Except as otherwise set forth herein, FPL shall have no right to access or utilize any other portion of the Property. FPL may relocate, with Contract Administrator's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, the Connecting Equipment and the Inverters as is reasonably necessary to achieve optimal solar power generation. Installation of the Equipment shall be in compliance with all Applicable Laws and shall not result in the imposition or creation of a lien against any property owned by County.
- 5.7 Periodically Scheduled Meetings. If requested by Contract Administrator, FPL and its architect, engineer, or contractor shall meet with the County in periodically scheduled meetings to assess the current status of the Project.
- 5.8 Liens, Claims, and Encumbrances. County acknowledges that FPL's interests in the Equipment and this Agreement are and will be encumbered by FPL's existing mortgage and deed of trust with Deutsche Bank Trust Company Americas (formerly known as Bankers Trust Company), and that except for such encumbrance, the Premises will remain free and clear of all liens, claims, and encumbrances relating to the Project or FPL's operations on the Premises. If any such lien or notice of lien relating to the Equipment or the Project is filed against the Premises in connection with FPL's operations, FPL shall, within thirty (30) days after receipt of notice of the filing thereof, cause the same to be removed of record by payment, deposit, bond, or order of a court of competent jurisdiction.
- 5.9 "As-Built" Plans. At FPL's sole cost and expense, FPL shall provide Contract Administrator with a complete set of CAD and PDF format "as-built" plans and specifications, including printed reproducible "record" drawings, and a DVD containing a complete set of project electronic drawings. Drawing files shall be provided in Autodesk, Inc.'s AutoCAD release 2010 or higher for Windows. FPL, at its sole cost and expense, shall eTransmit all drawing files and their dependencies to the Contract Administrator, including but not limited to xrefs (if not bound), pen settings, CTB, shape, and all other files necessary to properly print, display, revise or reproduce the As-Built drawings, and shall also provide

reference copies of all drawing sheets or other CAD and/or PDF format-produced documents intended for hardcopy plotting or printing in plot (.plt) version. If Autodesk Revit is used in the production of the Project, FPL, at its sole cost and expense, shall provide the Contract Administrator with a complete native Revit (.rvt) file including Revit families, in addition to those formats listed above as well as a full size PDF of each drawing in Adobe PDF professional version X or later. FPL, at its sole cost and expense, shall obtain and submit to the Contract Administrator an updated as-built site survey.

5.10 Contract Administrator's Approval for Alterations. All material additions, alterations, modifications, and replacements of the Project must comply with this Agreement, including without limitation, this Article 5. For the avoidance of doubt, the replacement of a solar panel or other Equipment does not constitute a material replacement or alteration. If any such material addition, alteration, modification, or replacement is made without Contract Administrator's authorization under this Article 5, then, upon notice in writing to do so, FPL shall remove the same or, at the option of Contract Administrator, cause the same to be changed to Contract Administrator's satisfaction. If FPL fails to comply with the notice, Contract Administrator may affect the removal or change and FPL shall pay the cost thereof to the County, within forty-five (45) days following receipt of County's invoice and supporting documentation.

6. **Payment and Performance Bonds.** Before starting any work or construction, FPL shall procure a valid payment bond and a valid performance bond, which bonds must be in an amount not less than the amount covering the full amount of the work being performed. Each bond must guarantee to County the completion of the work being performed as well as full payment of all suppliers, material suppliers, laborers or subcontractors employed in the Project.

7. **Access.**

7.1 Access. During the Term, FPL Parties shall have twenty-four (24) hours-a-day, seven (7) days-a-week access to the Premises, subject to the requirements of Section 5.1 above. Except in cases of emergency, however, the FPL Parties shall, by phone or email, provide the Contract Administrator and YAA with at least twenty-four (24) hours' prior notice of the need to access the Premises and shall use commercially reasonable efforts to minimize any interference with operations at the Property. The phone numbers and emails for such notification are provided in Article 23.

7.2 Right of Entry, Inspection, and Testing. FPL shall permit entry, inspection, and testing, at all reasonable times, by inspectors of any federal, state, or County agency having jurisdiction under any law, rule, regulation, or order, applicable to the Premises or the operations at the Premises.

8. **Unreasonable Interference.** During the Term or any extension thereof, County shall not directly or indirectly cause or allow any of the following:

- 8.1 placement of any equipment, structure, or improvements on or over the Solar Equipment, unless such placement is temporary and necessary under any Applicable Laws or in furtherance of the County's operations at the Property;
- 8.2 placement of any equipment, structure or improvement in a location that unreasonably interferes with the Solar Equipment's exposure to sunlight, unless such placement is temporary and necessary under any Applicable Laws or in furtherance of the County's operations at the Property;
- 8.3 interference in any way with the Equipment's ability to generate solar power, unless such interference is temporary and necessary to comply with any Applicable Laws or to conduct the County's or YAA's business at the Property;
- 8.4 the Equipment to become subject to any lien, mortgage, deed of trust, security agreement, mechanics lien, or other such encumbrance;
- 8.5 the Premises to be maintained, altered, modified, repaired, replaced or compromised in such a way that it can no longer support the Equipment or the use of the Equipment is materially impaired, unless such impairment is temporary and necessary under any Applicable Laws or in furtherance of the County's business at the Property; or
- 8.6 unreasonable interference with FPL's access to the Premises.

FPL may terminate this Agreement in accordance with Article 19 herein if, after thirty (30) days of County's receipt of FPL's written notice that a condition described in this Article 8 constitutes an unreasonable interference with the Project, County has not abated the condition or is continuously and diligently prosecuting such abatement toward completion for within a total of sixty (60) days from County's receipt of such written notice.

9. **Maintenance; Repair; Replacement; Reinstallation.**

- 9.1 During this Agreement, FPL shall operate and maintain the Equipment on the Premises in good working order and in a safe, clean manner. In the event the Equipment is damaged or destroyed at any time during the Agreement, FPL shall have the right, but not the obligation, to repair, replace, or reinstall the Equipment or any portion thereof within the Premises. If FPL elects not to repair, replace or reinstall any damage or destruction that renders the Equipment unusable, or materially impairs the Equipment's ability to generate solar energy, the County, upon written notice to FPL, may terminate this Agreement.
- 9.2 FPL shall provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any Applicable Laws for the Project.

- 9.3 FPL shall repair any damage to the Premises caused by operations or activities of FPL, its agents, employees, or invitees and any others entering upon or using the Premises.
- 9.4 FPL shall conduct, or cause to be conducted, all routine and necessary maintenance of the Project. If County's improvements to the Premises must be replaced or repaired, then FPL, upon receipt of at least sixty (60) days' written notice, shall remove the Equipment from the Premises during the period of time that the Premises is being repaired, renovated or replaced.
- 9.5 If the Premises are totally destroyed by fire or other casualty, FPL or the County may, by written notice given not later than thirty (30) days after the date of such total destruction, terminate this Agreement.
- 9.6 So long as the County repairs or restores the Premises after damage, FPL shall have the right to repair, replace, or reinstall the Equipment on the Premises. If the Premises have not been restored to the condition in which they existed prior to such damage or destruction, and such destruction interferes with FPL's operation of the Project as determined by FPL in its sole discretion, then County may terminate this Agreement upon thirty (30) days' written notice to FPL, or County shall provide FPL with an alternative, suitable location on the Property on which FPL may install the Equipment. If, however, the alternative location proposed by the County is unsuitable to FPL, in its reasonable discretion, FPL shall have the right, upon written notice, to terminate this Agreement.
- 9.7 If any termination of the Agreement occurs pursuant to this Article 9, FPL shall remove the Equipment in accordance with Article 20.

10. **Taxes.** FPL shall pay any personal property tax or any other taxes (other than real property taxes) or fees which are attributable to the Equipment or its installation or placement on or within the Premises. FPL may challenge, whether in a court, administrative proceeding, or other venue, any personal property or other tax assessments that may affect the Premises as a result of the Equipment. If County receives notice of any personal property or other property tax assessment against the Premises which may affect FPL, the Project or the Equipment, and is attributable, in whole or in part, to the Equipment or Project, County shall provide timely notice of such assessment to FPL, and FPL shall decide whether to consent to or challenge such assessment. Further, County shall provide to FPL any and all documentation in the possession of County that is associated with such assessment and County may execute any and all documents reasonably necessary to effectuate the intent of this Article.

11. **Insurance.**

- 11.1 FPL will maintain at all times during the Agreement, the insurance designated in this Article in accordance with the terms and conditions required by this Article.

Such policy or policies shall be issued by companies authorized to do business in the State of Florida with a minimum AM Best financial rating of "A -, VII". FPL shall name Broward County as an additional insured under the General Liability insurance policy.

Commercial General Liability Insurance with coverage of not less than three million dollars (\$3,000,000) per occurrence combined single limit for bodily injury and property damage.

Business Automobile Liability Insurance with minimum limits of two million dollars (\$2,000,000) per occurrence combined single limit for bodily injury and property damage.

Workers' Compensation Insurance in compliance with Florida Statutes, Chapter 440. Coverage shall include Employer's Liability Coverage with minimum limits of one million dollars (\$1,000,000) per accident.

FPL has the right to meet the insurance designated in this Article through any combination of self-insurance, primary or excess coverage. Should FPL self-insure, then prior to accessing the Premises, FPL will provide County with a letter of such self-insurance with reference to publicly available financial statements and annual report and upon request such other publicly available information as County may reasonably request.

For any contractors hired by FPL, FPL shall provide the County with an ACORD or similar certificate of insurance reflecting that the contractor carries Commercial General Liability with minimum limits of one million dollars (\$1,000,000) per occurrence. FPL shall endeavor to require its contractor(s) to include Broward County as an additional insured on such policy.

- 11.2 Insurance coverage is not to cease and is to remain in force (subject to cancellation notice) throughout this Agreement. FPL shall notify County within thirty (30) days of cancellation or restriction of coverage for any policies carried by FPL and required by this Article 11. If any insurance coverages will expire before the termination of this Agreement, FPL shall furnish copies of renewal certificates upon expiration. Any insurance policy providing coverage on a "claims-made" basis must remain in force for two (2) years after the termination of this Agreement.
- 11.3 Notwithstanding anything to the contrary herein, FPL waives any right of recovery against County for any loss or damage to the extent the same is required to be covered by FPL's insurance hereunder.
- 11.4 County and FPL agree that, in the event of loss due to any of the perils for which they have obtained insurance, each party shall look first to its insurance for

recovery. County and FPL hereby grant to each other, on behalf of any insurer providing insurance to either of them, with respect to the Premises or the Property, a waiver of any right of subrogation which any insurer of one party may acquire against the other by virtue of payment of any loss under such insurance, provided that such waiver of the right of subrogation shall not be operative where the effect is to invalidate such insurance coverage.

11.5 FPL self-insurance does not provide additional insured status or offer a waiver of subrogation.

12. **Indemnification.** FPL agrees to indemnify, defend and hold harmless the County from and against all claims, demands, losses, liabilities and expenses (including reasonable attorneys' fees) for personal injury or death to persons and damage to County property arising during the Term of this Agreement, to the extent arising from the intentional, negligent, or willful misconduct of FPL, its employees and/or contractors, or from FPL's breach or default under this Agreement. The selection of counsel to defend the County shall be subject to the prior written approval of County, which approval shall not be unreasonably withheld, conditioned or delayed. To the extent considered necessary by the Director of EPGMD and the County Attorney, any sums due FPL under this Agreement may be retained by County until all of County's claims for indemnification under this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County. The provisions of this Article 12 shall survive the expiration or any other termination of this Agreement.

13. **Equipment to Remain Personal Property of FPL.** The Equipment is and will remain the property of FPL, its successors or assigns. The Equipment is and will remain personal property regardless of its use or manner of attachment to the Premises or the Property, and FPL 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 Premises or the Property. County 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 County hereby expressly disclaims any right, title, or interest in or to the Equipment, whether arising by lien, by operation of law, or otherwise.

14. **Quiet Enjoyment.** County covenants and warrants, to the best of its knowledge and belief, that (i) County has full right, power, and authority to execute this Agreement, (ii) it has good and unencumbered title to the Premises free and clear of any liens or mortgages, except those disclosed to FPL, and (iii) execution and performance of this Agreement will not violate any Applicable Laws, or the provisions of any mortgage, lease, or other agreement binding on County. County represents and warrants, to the best of its knowledge and belief, that there are no agreements with third parties that may materially and adversely affect the Equipment's exposure to sunlight. Subject to all provisions of this Agreement, FPL's nonexclusive, quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as FPL is not in default beyond any applicable grace or cure period.

15. **Default by FPL.** The happening of any one or more of the following events shall be events of default under this Agreement:

- 15.1 the failure of FPL to pay Compensation (as set forth in Article 4), or other charge or money obligation herein required to be paid by FPL within thirty (30) days after written notice from County, or
- 15.2 the failure of FPL to fully perform any other of its covenants under this Agreement within thirty (30) days after written notice from County; provided, however, if such non-monetary failure cannot reasonably be cured within said thirty (30) days from notice and FPL has started to cure such failure within said thirty (30) days and FPL is continuously and diligently prosecuting such cure toward completion, the cure period shall be extended an additional thirty (30) days (for a total of sixty (60) days from such written notice).

16. **County's Remedies.** County's remedies for events of default by FPL shall include the following:

- 16.1 Upon an event of default for non-payment of Compensation under Article 4 above, FPL shall pay to the County interest daily on the unpaid amount at the annual rate of six percent (6%) ("**Interest**").
- 16.2 Upon an event of default as set forth in Section 15.2 above (except for performing any obligation of FPL in Section 9.1), then in addition to and not by way of limitation of the exercise by County of any and all rights and remedies County may have at law or in equity, County shall have the right, at its election, then or at any time thereafter while said default remains uncured, to cure such default or cause such default to be cured, in which event FPL shall reimburse County for any cost and expenses incurred in effecting such cure within thirty (30) days of written demand for payment from County to FPL.
- 16.3 If, after written notice from County, FPL fails to correct an event of default within the applicable cure period, County may terminate this Agreement.

17. **Default by County.** Failure of County to comply with any term, provision, or covenant of this Agreement shall be an event of default where such failure is not cured within thirty (30) days after written notice thereof from FPL to County, or if such failure cannot be cured within thirty (30) days, where County shall have failed to start to cure such failure within thirty (30) days after written notice from FPL and shall not have continued to diligently prosecute such cure to completion.

18. **FPL's Remedies.** If an event of default by County shall have occurred, then in addition to and not by way of limitation of the exercise by FPL of any and all rights and remedies it may have at law or in equity, FPL shall have the right, at its election, then or at any time thereafter while said default remains uncured, to cure such default or cause such default to be cured, in which event County shall reimburse FPL for any reasonable costs and expenses incurred in effecting such cure within thirty (30) days of written demand for payment from FPL to County.

In addition to any other remedies set forth herein, FPL shall have the right to terminate this Agreement without any penalty or further liability as follows:

- 18.1 upon County's violation of Article 8 above for a period greater than thirty (30) days following written notice from FPL. Upon such termination of this Agreement, (a) County shall pay to FPL the Termination Value and (b) FPL may enter onto the Premises and remove the Equipment in accordance with the terms of this Agreement. As used herein, "**Termination Value**" shall mean, on any date of determination, the sum of (i) the unamortized value of the Equipment as of the date of such termination and (ii), and County agrees to pay FPL's reasonable cost of removal of the Equipment in accordance with the terms of this Agreement within thirty (30) days of its receipt of FPL's written demand;
  - 18.2 at the time that title to the Property transfers to a condemning authority pursuant to a taking of all or a portion of the Property sufficient, in FPL's reasonable determination, to render the Premises unsuitable for FPL's use. County and FPL shall each be entitled to pursue their own separate awards with respect to such taking, as their respective interests appear; provided that FPL shall make no claim for the value of the unexpired Term. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation;
  - 18.3 if the Equipment's exposure to sunlight becomes permanently and materially impaired due to the acts or omissions of any third party (e.g., the construction of neighboring structures, growth of trees in adjacent property) and the Parties fail, despite their commercially reasonable efforts, to cause such third party to eliminate such impairment within sixty (60) days of the commencement of the impairment; or
  - 18.4 if, in the event of the sale, transfer, assignment or sublicensing of the Premises, the transferee refuses to assume the obligations of County under this Agreement.
19. **Termination.** FPL may terminate this Agreement at any time, upon thirty (30) days advance written notice to the County.
20. **Removal.** At the end of the Term, or after the Term due to the continued operation of the Equipment with the Parties mutual, written consent, or upon the earlier termination this Agreement, FPL shall remove the Equipment, repair and restore the affected Premises to substantially the same condition as existed immediately prior to installation of the Equipment and continue to have the right to reasonable access to the Premises in order to remove the Equipment, and repair and restore the affected portions of the Premises to substantially the same condition as existed immediately prior to installation of the Equipment, normal wear and tear excepted, at FPL's sole cost and expense; provided, however, that if this Agreement is caused to be terminated prior to the end of the Expected Equipment Life by County's default, removal of the Equipment, and repair and restoration of the Premises, shall be at County's sole cost and expense.

21. **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**"). FPL shall be the sole recipient and beneficiary of any other Incentives, which shall be distributed, disbursed or assigned in FPL's sole discretion. County shall have no right to any Incentives, except as otherwise agreed to in writing by FPL, such as the RECs provided for in Article 4. All solar power electricity produced by or relating to the Equipment ("**Energy**"), and the right to utilize and/or sell the Energy, shall be the sole property and right of FPL. Without FPL's prior written consent, County shall have no right to utilize Energy, to purchase the Energy from FPL, to sell the Energy, or to engage in any "net metering" involving the Energy.

22. **Assignment.** FPL may freely assign its interests in this Agreement to an Affiliate of FPL with notice to the County. For purposes of this Article 22, "Affiliate" shall mean: i) any party controlling, controlled by, or under common control with FPL; ii) any entity in which FPL has management control and owns directly or indirectly at least fifty percent (50%) of the equity interest in such entity; or iii) any party which acquires more than eighty percent (80%) ownership of all of the assets of FPL. County acknowledges that FPL's interests under this Agreement and in the Equipment are and will be encumbered by FPL's existing mortgage. Other than the foregoing, no Party may assign this Agreement without the prior written approval of the other Party, which approval shall not be unreasonably withheld, conditioned or delayed.

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 by e-mail, or personally, including but not limited to delivery by messenger, overnight courier service or by overnight express mail, or upon posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To County: Director, Broward County Environmental Planning and  
Community Resilience Division  
115 S. Andrews Avenue, #329-H  
Fort Lauderdale, Florida 33301  
Phone: 954-519-1464 (office), 954-520-1086 (cell)  
E-mail: [jjurado@broward.org](mailto:jjurado@broward.org)  
with a copy to:

Director, Broward County Real Property Section  
115 S. Andrews Ave., Room 326  
Fort Lauderdale, FL 33301  
Phone: 954-357-6826  
[bbhoghaita@broward.org](mailto:bbhoghaita@broward.org)

Executive Director/CEO, Young at Art Museum  
751 S.W. 121<sup>st</sup> Avenue, Suite 1  
Davie, Florida 33325  
youngatartmuseum.org  
Phone: (954) 424-0085

To FPL: Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408  
Attn: Vice President  
Development and External Affairs, Office of Clean Energy

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.

25. **Recordation.** It is specifically understood and agreed by both Parties hereto that this Agreement will be recorded in the Public Records of Broward County, Florida in the names of both Parties hereto and will be a matter of public record.

26. **Miscellaneous.**

26.1 **Entire Agreement.** 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 others delegated authority to or otherwise authorized to execute same on their behalf. The waiver by 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 the Agreement. No waiver shall be implied by delay or any other act or omission of either Party.

26.2 **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 provisions. The Parties agree that any action or proceeding arising out of or related in any way to this Agreement shall be brought exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this License Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either Party may claim by virtue of its residency or other jurisdictional device. 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 CIVIL LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

- 26.3 Severability. If any term of this Agreement is found to be void or invalid, such finding shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.
- 26.4 Joint Preparation. Each Party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party
- 26.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors and assigns.
- 26.6 Authority. Each Party represents to the other that it has complete authority to enter into this transaction.
- 26.7 Counterparts. This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- 26.8 Publicity. County and FPL shall, following reasonable consultation, develop mutually agreeable messages, template language and graphics for routine press releases and communications. County acknowledges and agrees that FPL shall have the right (i) to issue press releases regarding use of the Equipment on the Structure and to publicize FPL's involvement to FPL's customers and to the public; (ii) to use County's name in FPL's press releases, publicity and advertising; and (iii) to display photographs of the Equipment on the Structure in its advertising and promotional materials. FPL acknowledges that County shall have the right (i) to issue press releases regarding use of the Equipment on the Structure and to publicize County's involvement to County customers and to the public; (ii) to use FPL's name in County press releases, publicity and advertising; and (iii) to display photographs of the Equipment on the Structure in its advertising and promotional materials. Special events and media opportunities departing from routine communications shall involve coordination and approval by both Parties. FPL in its sole discretion reserves the right to review any and all communications.
- 26.9 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in this Agreement shall prevail and be given effect.

- 26.10 Independent Nature of Relationship. FPL's installation of the Project on the Premises is independent in nature pursuant to its rights as tenant under this Agreement, and any services provided by or for FPL in constructing the Project on the Premises are subject to the supervision of FPL. Neither FPL nor its employees, contractors or agents shall act as officers, employees, or agents of County. No partnership, joint venture, or other joint relationship is created hereby. County does not extend to FPL or FPL's agents any authority of any kind to bind County in any respect whatsoever.
- 26.11 Third Party Beneficiaries. Neither County nor FPL intends to directly or substantially benefit a third party by this Agreement. Therefore, there are no third party beneficiaries to this Agreement and no third party shall be entitled to assert a right or claim against either of them
- 26.12 Recitals. The truth and accuracy of each "Whereas" clause contained in the "Recitals" is acknowledged by the Parties.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_ day of \_\_\_\_\_, 2015, and FLORIDA POWER AND LIGHT COMPANY, signing by and through its authorized representative, duly authorized to execute same.

COUNTY

BROWARD COUNTY, by and through its Board of County Commissioners

\_\_\_\_\_  
Witness

By \_\_\_\_\_  
Mayor

\_\_\_\_\_  
Witness

\_\_\_\_ day of \_\_\_\_\_, 2015

Insurance requirements  
approved by Broward County  
Risk Management Division

Approved as to form by  
Joni Armstrong Coffey  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By \_\_\_\_\_  
Signature (Date)

By \_\_\_\_\_  
Michael C. Owens (Date)  
Assistant County Attorney

\_\_\_\_\_  
Print Name and Title above

By \_\_\_\_\_  
Maite Azcoitia (Date)  
Deputy County Attorney

MCO  
02/04/2015  
Solar Energy Project Agreement.doc  
#15-058.06

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_ day of \_\_\_\_\_, 2015, and FLORIDA POWER AND LIGHT COMPANY, signing by and through its authorized representative, duly authorized to execute same.

ATTEST:

FLORIDA POWER & LIGHT COMPANY

\_\_\_\_\_

By \_\_\_\_\_

Printed Name: \_\_\_\_\_

(SEAL)

Title: \_\_\_\_\_

**OR**

\_\_\_\_\_ day of \_\_\_\_\_, 2015.

WITNESSES:

\_\_\_\_\_

Witness 1 Signature

\_\_\_\_\_

Witness 1 Print/Type Name

\_\_\_\_\_

Witness 2 Signature

\_\_\_\_\_

Witness 2 Print/Type Name

**EXHIBIT "A"**  
**Legal Description and Survey of Land**

LEGAL DESCRIPTION : Tract A of ANDREAS-CREME, INC. Plat according to the map or Plat thereof as recorded in Plat Book 159 at page 23 of the Public Records of Broward County, Florida.  
BCPA Folio: 5040-12-47-0010



## **EXHIBIT "B"**

### **Project and Educational Exhibit Objectives**

Broward County (County) and Florida Power & Light Company (FPL) n support renewable energy and solar projects in Broward County, which could reduce regional greenhouse gas emissions, and expand community participation in renewable energy initiatives through education and outreach have entered into the foregoing Solar Energy Agreement (the "Agreement"). In keeping with the foregoing objectives, Broward County and FPL will collaborate in the installation of a solar energy project and companion educational display at the joint Young at Art Museum and Broward County Library in Davie, FL (the "**Project**") as described in the Agreement. The Project is in support of the County's efforts to advance solar as a prominent renewable energy strategy as part of county operations and throughout the community, and FPL's efforts to increase public participation in solar technology through this Voluntary Solar project.

#### ***Background and Justification***

The Broward County Board of County Commissioners (Board) has identified energy conservation, efficiency and diversification as vital to economic vitality, environmental sustainability, and community well-being. The Board has adopted diverse strategies and recommendations to advance programs, investments, and infrastructure needed to support the transition to a clean-energy economy. This includes approval of strategies detailed in the Broward Community-wide Climate Change Action Plan (May, 2010) which recommendations were advanced by the Southeast Florida Regional Climate Change Compact as part of the Regional Climate Action Plan (August, 2012), both of which emphasize renewable energy development, solar technologies, and community engagement as necessary actions.

Specifically, the Board has established a regional greenhouse gas emissions (GHG) reduction goal of 82% below 2003 levels by 2050, committed to improving energy efficiency in agency operations by 20% by 2020, and established a renewable energy goal of 20% for County operations and facilities. To further this latter goal, on October 28, 2014, the Board adopted a Renewable Energy Action Plan which specifically identifies this community solar project as one of the pilot projects intended to expand the County's renewable energy portfolio and encourage future projects through community outreach.

The Board has recognized that a diversity of partnerships and the collective application of resources and expertise will be necessary to achieve our collective success. This includes not only community participation, but federal agency and industry partnerships. The Project compliments current activities involving collaborations with the U.S. Department of Energy (DOE) as part of Florida Go Solar project, focused on the specific advancement of rooftop solar, and the recent designation of the region as a Climate Action Champion by the White House, designed to support the County's achievement of a 2% per year reduction in GHG emissions.

### ***Solar Project Description***

FPL has initiated a new program of community-based solar projects. The Environmental Planning and Community Resilience Division contacted FPL program managers to explore the potential for Broward County properties to serve as locations for one or more installations. The solar projects are intended to spur individual support in similar community-based solar projects through voluntary contributions toward solar projects. This solar Project will be constructed by FPL with the goal of generating community support for similarly-scaled projects elsewhere in the Broward community and throughout the FPL service area.

Based on the County's regional leadership on diverse climate and energy initiatives, and as a regional provider of services, Broward County is uniquely positioned as a site for this initial pilot opportunity. Broward County staff was encouraged to propose sites for a potential pilot location, with consideration for public visibility and opportunities for education messaging. While a variety of sites were evaluated, ultimately the Young at Art (YAA) Museum/Broward Library in Davie, FL ultimately identified as a premier location. YAA is just one of eight (8) major cultural institutions in Broward County serving a broad demographic and geographic area with imaginative, learning-based exhibits and arts education. With YAA serving 100,000 young people and families each year, the educational opportunities associated with this Project are extensive. Existing YAA exhibits provide lessons on recycling, waste and other environmental issues, with opportunities for expanding exhibits and programs to integrate renewable energy and conservation messaging and details of energy production and offset associated with the on-site solar project. Coordination with YAA early in the Project proposal process established joint interest in this collaboration and will offer a unique opportunity to maximize both environmental and educational aspects of the Project.

### ***Project Elements***

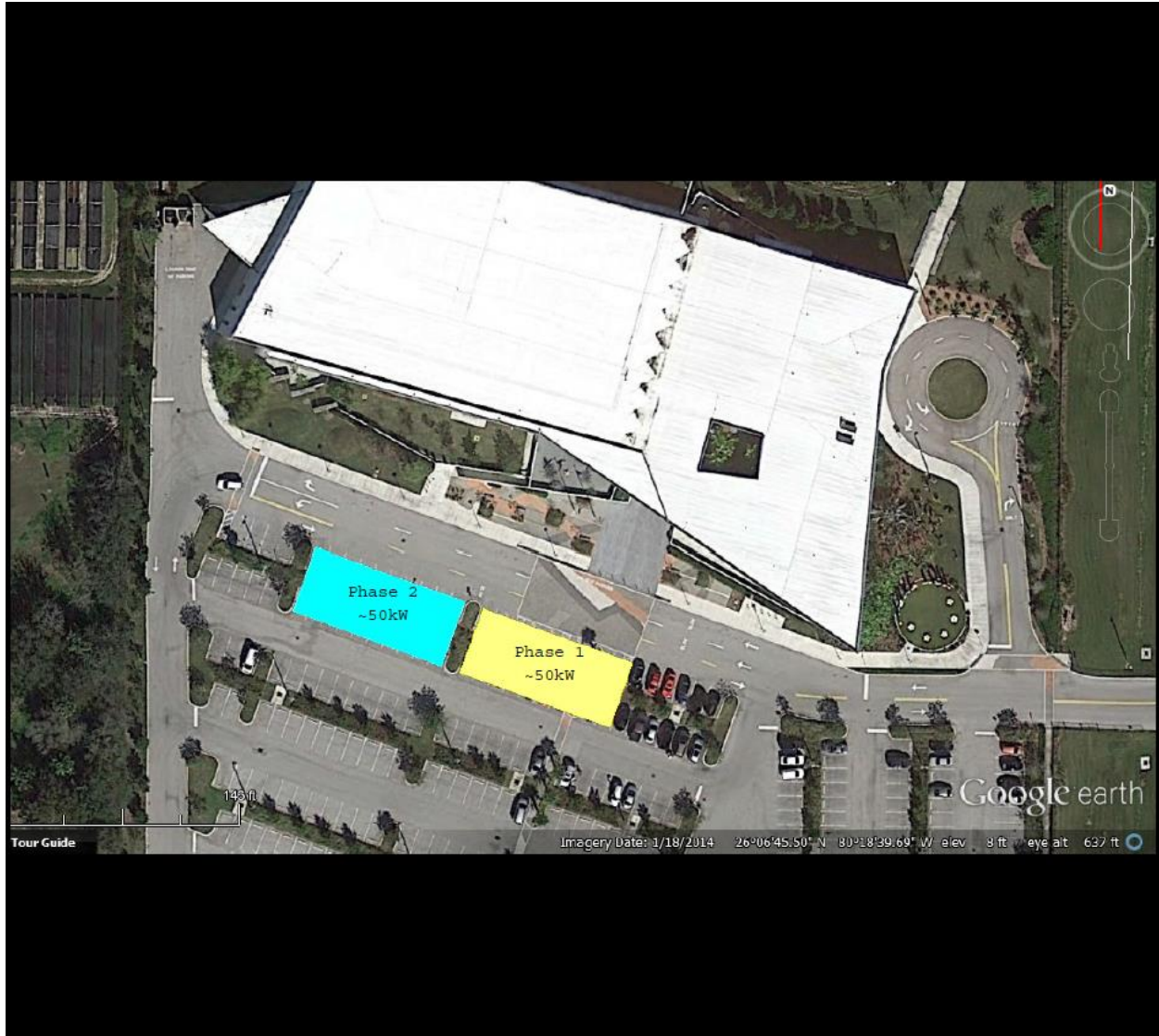
The Project will be sized up to 100 kW of installed capacity. The Project will consist of a series of solar parking canopies installed in the parking area similar to the placement shown on **Exhibit "C."** The specific placement of the solar canopies (including footings) and any pertinent signage will be determined in coordination with Broward County staff pursuant to the Approved Plans. Project design will maintain parking capacity in full compliance with ADA requirements. The final design and Project construction will be subject to approval by Broward County.

The Project design, permitting and construction shall be at the full expense of FPL pursuant to the Florida Public Service Commission approved program. FPL shall be solely responsible for the maintenance of the Project for the project duration (an expected 20 to 30 years). It is acknowledged that energy produced by the Project will be returned directly to the power grid that is owned, maintained, and operated by FPL but that the County will be provided Compensation for County property used to site the Project, in accordance with this Agreement.

FPL will coordinate with the Contract Administrator and YAA to develop and install an interactive educational exhibit within the common areas of the Young at Art Museum and Broward County Library. The Exhibit shall include, at a minimum, an electronic display with a wired or wireless connection to the solar project that provides real-time information on energy produced by the Project, energy equivalents and offsets, and additional environmental messaging developed in conjunction with and approved by Contract Administrator and YAA. The Exhibit

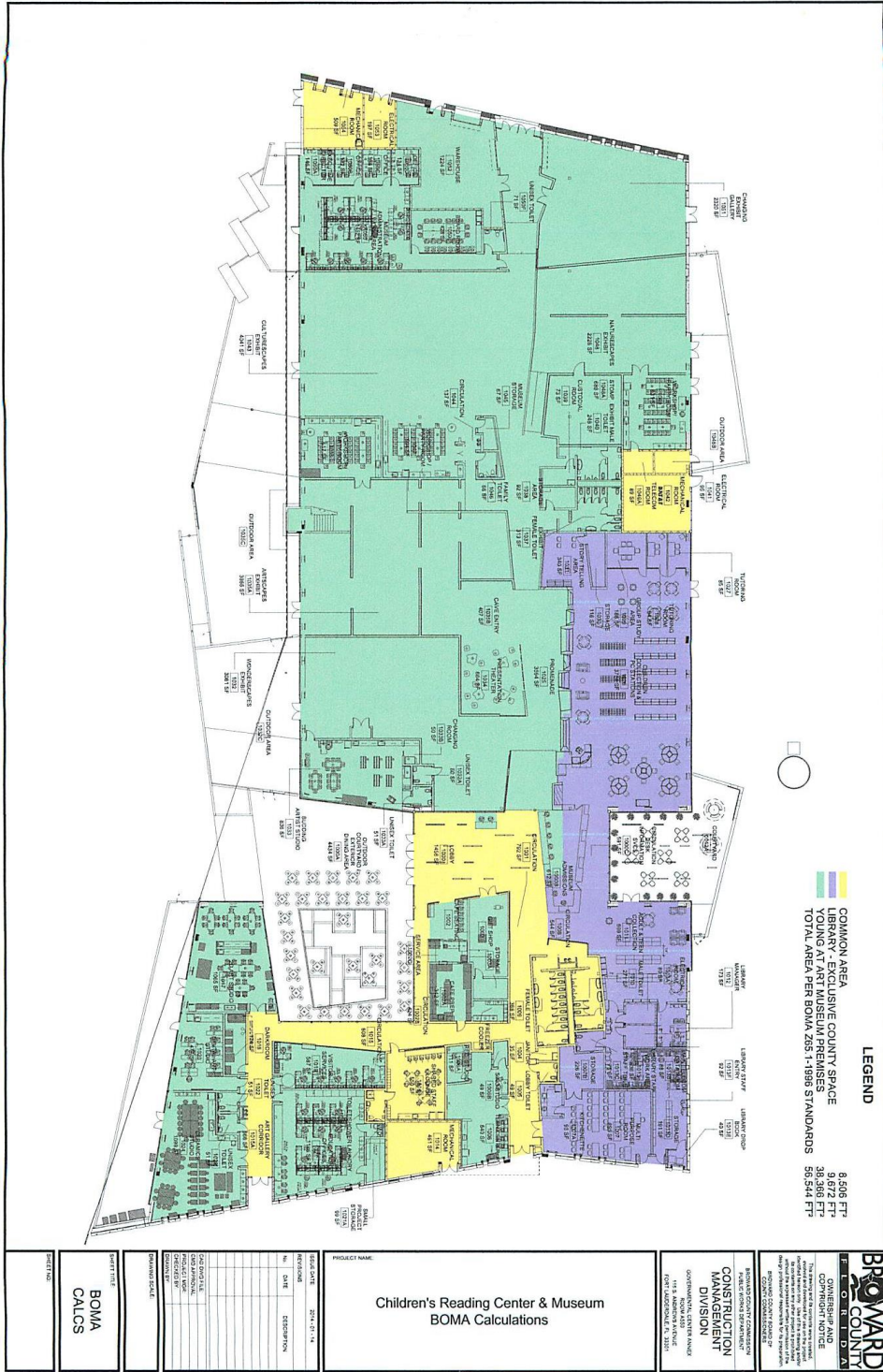
will be designed to encourage active learning and engagement by the user.

**EXHIBIT "C"**  
**Plan of Solar Energy Project Location**



# EXHIBIT "C-1"

## YAA Museum Broward County Library Site Plan Showing Common Areas



**EXHIBIT "D"**

**Compensation Summary**

<u>Term</u>	<u>Annual Compensation</u>
Years 01-20	\$25.00 per KW of installed capacity
<u>Term Extensions</u>	
Years 21-25	\$25.00 per KW of installed capacity
Years 26-30	\$25.00 per KW of installed capacity