COMPANY AGREEMENT

First Meter Site _____, LLC

THE MEMBERSHIP INTERESTS DESCRIBED IN THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE, AND ARE OFFERED IN RELIANCE ON EXEMPTIONS FROM REGISTRATION. THEY MAY NOT BE SOLD, TRANSFERRED OR PLEDGED EXCEPT AS PERMITTED BY THIS AGREEMENT AND APPLICABLE SECURITIES LAWS. AN INVESTMENT IN THE COMPANY IS SPECULATIVE, ILLIQUID, CONCENTRATED IN A SINGLE SITE AND SUITABLE ONLY FOR PERSONS WHO CAN BEAR THE LOSS OF THEIR ENTIRE INVESTMENT.

This Company Agreement (this "Agreement") of First Meter Site _____, LLC (the "**Company**") is entered into as of _____ by First Meter Partners GP, LLC, a Texas limited liability company, as manager and a member (the "**Manager**"), and the persons admitted as investor members under this Agreement (each an "**Investor Member**" and, with the Manager, the "Members").

ARTICLE 1. DEFINITIONS

1.1 "**Affiliate**" of a person means any person that directly or indirectly controls, is controlled by, or is under common control with that person. The Affiliated Developer is an Affiliate of the Manager.

1.2 "**Affiliated Developer**" means the Texas development company controlled by the Key Person and identified in the Site Offering Notice, which sourced the Site and provides development services to the Company under the Development Agreement.

1.3 "**Budget**" means the Manager's written estimate of the costs of the Site, the Management Fee, the Development Fee and Company Expenses, as stated in the Site Offering Notice and updated with each Capital Call.

1.4 "**Capital Call**" means a written notice from the Manager requiring Capital Contributions under Section 3.3.

1.5 "**Capital Commitment**" means, for each Member, the total amount that Member has agreed to contribute to the Company, as stated on Schedule A. "Total Commitments" means the Capital Commitments of all Members.

1.6 "**Capital Contribution**" means the cash actually contributed by a Member to the Company.

1.7 "**Cause**" means, as to the Manager: (a) fraud, willful misconduct or gross negligence in the performance of its duties that is materially adverse to the Company; (b) a conviction of, or plea of no contest to, a felony by the Manager or the Key Person; (c) a material breach of this Agreement that is not cured within thirty (30) days after written notice from a Majority in Interest; or (d) the bankruptcy of the Manager.

1.8 "**Close Gate**" means the point at which the utility has confirmed capacity for the Site in writing and title, survey and zoning are satisfactory, so that the Company is ready to close on, assign or otherwise dispose of its right to acquire the Site, as described in Section 6.3.

1.9 "**Closing Date**" means the date on which the Manager first admits Investor Members to the Company.

1.10 "**Confirmed Capacity**" means the electric capacity for the Site, in megawatts, confirmed in writing by the utility.

1.11 "**Develop-Yourselves Price**" means the price per megawatt of Confirmed Capacity stated in the Site Offering Notice.

1.12 "**Development Agreement**" and "**Development Fee**" have the meanings given in Section 7.4.

1.13 "**Disposition**" means the sale, lease, assignment of the purchase contract, Develop-Yourselves Purchase or other disposition of all or substantially all of the Company's interest in the Site.

1.14 "**Initial Contribution**" has the meaning given in Section 3.2.

1.15 "**Key Person**" means the individual identified in the Site Offering Notice as the manager of the Manager.

1.16 "**Majority in Interest**" means Investor Members (other than the Manager, its Affiliates and any Defaulting Member) holding more than fifty percent (50%) of the Capital Commitments of all such Investor Members.

1.17 "**Management Agreement**" and "**Management Fee**" have the meanings given in Section 7.2.

1.18 "**Net Proceeds**" means cash received by the Company from a Disposition or any other source, less Company Expenses, Management Fees and Development Fees then due, debt repaid, and reasonable reserves established by the Manager.

1.19 "**Percentage Interest**" means, for each Member, its Capital Commitment divided by the Total Commitments.

1.20 "**Preferred Return**" means an amount equal to eight percent (8%) per annum, compounded annually, on each Member's Unreturned Capital, calculated from the date each Capital Contribution is made until the date it is returned. No Preferred Return accrues on any uncalled Capital Commitment.

1.21 "**Site**" means the tract of land described in the Site Offering Notice, and the related options, purchase contracts, leases, easements, interconnection requests, utility agreements and other rights held by the Company.

1.22 "**Site Offering Notice**" means the written offering notice for the Site delivered to each Investor Member before its admission, as supplemented under Section 6.2.

1.23 "**Unreturned Capital**" means, for each Member, its total Capital Contributions less all distributions to it under Section 5.3(a).

ARTICLE 2. FORMATION, NAME, PURPOSE AND TERM

2.1 **Formation.** The Company is a limited liability company formed under Title 3, Chapter 101 of the Texas Business Organizations Code (the "**Act**") by the filing of a certificate of formation with the Texas Secretary of State. Except as this Agreement provides otherwise, the rights and duties of the Members are governed by the Act.

2.2 **Name and office.** The Company's name is First Meter Site _____, LLC. Its principal office is _____, or any other place the Manager designates by notice to the Members. Its registered agent and registered office are as stated in its certificate of formation.

2.3 **Single-site purpose.** The Company's purpose is limited to the Site: (a) to acquire and hold options and other control rights over the Site; (b) to confirm utility capacity and pursue interconnection and electric service for the Site; (c) to acquire, entitle, design and improve the Site; (d) to dispose of the Site as powered land or a powered shell; and (e) to do anything

necessary or incidental to those purposes that is lawful for a limited liability company. The Company shall not acquire any other site without the consent of each Investor Member.

2.4 **Term.** The Company continues until it is dissolved under Article 11. Unless the Site has been disposed of earlier, the Manager shall use commercially reasonable efforts to complete a Disposition by the third (3rd) anniversary of the Closing Date. The Manager may extend that date by one (1) year in its discretion, and further with the consent of a Majority in Interest.

2.5 **Tax classification.** The Members intend the Company to be treated as a partnership for federal and state income tax purposes. The Company shall not elect to be classified as an association taxable as a corporation.

2.6 **Management by manager.** The Company is managed by the Manager, and its certificate of formation so states.

ARTICLE 3. CAPITAL

3.1 **Capital Commitments.** Each Member shall make Capital Contributions up to its Capital Commitment when called under this Article 3. The Total Commitments are stated in the Site Offering Notice and on Schedule A. The Manager or its Affiliates shall make a Capital Commitment equal to ten percent (10%) of the Total Commitments, on the same terms as the Investor Members, including its pro rata share of the Management Fee and Company Expenses, except that no Promote is charged on it.

3.2 **Initial Contribution.** On or before the Closing Date, each Member shall contribute its Percentage Interest of one hundred thousand dollars ($100,000), or of any larger amount stated in the Site Offering Notice (the "**Initial Contribution**"). The Initial Contribution is intended to fund formation and offering costs, the option fee or earnest money, the capacity screen, utility studies, survey, title and legal costs through the Close Gate, and the Management Fee for the first months after the Closing Date. The Manager shall not hold the closing unless the Capital Commitments admitted at it are sufficient to fund the Initial Contribution and the Budget through the Close Gate.

3.3 **Later Capital Calls.** The Manager may call further Capital Contributions from time to time, pro rata to the Members' Capital Commitments, by delivering a Capital Call stating: (a) the amount called from that Member; (b) the due date, which is not less than ten (10) business days after the notice is given; (c) the purpose of the call and the stage of the Site; (d) any change from the Budget; and (e) wire instructions. Each Member shall fund the amount called by the due date.

3.4 **Limits on calls.** Capital may be called only for the Site and only for the purposes described in the Site Offering Notice, including a larger option or extension payment, equity for the acquisition of the Site, the design and permitting of a powered shell under Section 6.4, the Management Fee, the Development Fee, Company Expenses and debt service. No Member is required to contribute more than its unfunded Capital Commitment. No capital may be called after a Disposition except to satisfy Company obligations incurred before it.

3.5 **Additional closings.** The Manager may admit additional Investor Members, or accept increased Capital Commitments, at one or more closings held within ninety (90) days after the Closing Date, up to the Total Commitments stated in the Site Offering Notice. Each such Member shall contribute, at its closing, the amount it would have contributed had it been admitted on the Closing Date, plus an amount equal to eight percent (8%) per annum on that amount from the dates the earlier contributions were made. The additional amount is not a Capital Contribution and is distributed to the Members admitted earlier, pro rata to their Capital Contributions, and the

earlier Members' Capital Contributions are adjusted so that all Members have contributed the same percentage of their Capital Commitments.

3.6 **Defaulting Members.** If a Member fails to fund any amount when due and does not cure within five (5) business days after written notice from the Manager (a "**Defaulting Member**"), the Manager may, in addition to any other remedy, take any one or more of the following actions:

(a) charge interest on the unpaid amount at twelve percent (12%) per annum, or the maximum lawful rate if lower, until paid;

(b) call the shortfall from the other Members, pro rata, up to their unfunded Capital Commitments;

(c) suspend the Defaulting Member's right to receive distributions and to vote, and apply any distributions otherwise payable to it against the unpaid amount;

(d) reduce the Defaulting Member's capital account by fifty percent (50%), with the amount of the reduction reallocated to the other Members pro rata;

(e) cancel the Defaulting Member's unfunded Capital Commitment;

(f) cause the Defaulting Member to sell its interest to one or more other Members or third parties at a price equal to fifty percent (50%) of its capital account, payable without interest when the Company would otherwise have distributed to it; and

(g) bring an action to collect the unpaid amount and all costs of collection, including reasonable attorneys' fees.

The Members agree that the damages from a default are difficult to measure and that the remedies in this Section are reasonable.

3.7 **No other contributions or loans.** No Member is required to contribute capital except as stated in this Article 3, to lend money to the Company, or to guarantee any Company obligation. With the approval of a Majority in Interest, any Member may lend to the Company on terms no less favorable to the Company than it could obtain from an unrelated lender.

3.8 **No withdrawal or interest.** No Member may withdraw capital or receive interest on its Capital Contributions except as this Agreement provides.

3.9 **Limited liability.** No Member is personally liable for any debt or obligation of the Company beyond its Capital Commitment and its share of Company assets, except as required by the Act.

3.10 **Uninvested cash.** Pending use, the Manager may hold Company cash in bank deposits, money market funds and United States government obligations maturing within one (1) year. Company funds shall be held in accounts in the Company's name and shall not be commingled with the funds of any other person, including any other company managed by the Manager.

ARTICLE 4. BORROWING

4.1 **Site debt.** The Company may borrow to acquire or improve the Site, secured by the Site, provided that the principal amount borrowed at acquisition does not exceed seventy percent (70%) of the purchase price of the Site. No Investor Member shall be required to sign or guarantee any loan.

4.2 **No cross-collateral.** The Company shall not guarantee, secure or otherwise support the obligations of any other company managed by the Manager or its Affiliates.

ARTICLE 5. CAPITAL ACCOUNTS, ALLOCATIONS AND DISTRIBUTIONS

5.1 **Capital accounts.** A separate capital account is maintained for each Member in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv). It is credited with the Member's Capital Contributions and allocations of income and gain, and debited with distributions to the Member and allocations of loss and deduction.

5.2 **Allocations.** Profits and losses for each fiscal year are allocated among the Members so that, as nearly as possible, each Member's capital account balance equals the amount it would receive if the Company sold its assets for their book value, paid its debts and distributed the remaining cash under Section 5.3. The Manager may make such regulatory, curative and other allocations as are required by the Internal Revenue Code of 1986, as amended (the "**Code**"), and the Treasury Regulations, including qualified income offset and minimum gain chargeback provisions, which are incorporated by reference.

5.3 **Distributions of Net Proceeds.** The Manager shall distribute Net Proceeds from a Disposition within sixty (60) days after receipt, and may distribute other Net Proceeds at any time. Each distribution is first apportioned among the Members pro rata to their Capital Contributions. The amount apportioned to the Manager and its Affiliates for their own Capital Contributions is distributed to them. The amount apportioned to each Investor Member is distributed between that Investor Member and the Manager, on a cumulative basis taking account of all prior distributions, in the following order:

(a) first, 100% to the Investor Member until it has received an amount equal to its total Capital Contributions;

(b) second, 100% to the Investor Member until it has received its Preferred Return;

(c) third, 80% to the Investor Member and 20% to the Manager until the Investor Member has received total distributions under this Section 5.3 equal to two (2.0) times its total Capital Contributions;

(d) fourth, 70% to the Investor Member and 30% to the Manager until the Investor Member has received total distributions under this Section 5.3 equal to three (3.0) times its total Capital Contributions; and

(e) thereafter, 60% to the Investor Member and 40% to the Manager.

Amounts distributed to the Manager under clauses (c) through (e) are the "Promote". There is no catch-up to the Manager. The Promote is calculated for the Company alone and is not netted against the results of any other company managed by the Manager.

5.4 **Tax distributions.** To the extent cash is available, the Manager may distribute to each Member an amount intended to cover its estimated tax on Company income allocated to it, at an assumed combined rate set by the Manager. Tax distributions are advances against, and reduce, the next distributions otherwise payable to that Member under Section 5.3.

5.5 **Manager giveback.** On the dissolution of the Company, if the Manager has received Promote in excess of the amount it would have received had all distributions been made at one time at the end of the Company's life, the Manager shall return the excess to the Company for distribution to the Investor Members, but never more than the Promote it received less the income taxes paid or payable on it by the Manager and its members.

5.6 **Distributions in kind.** Except under Section 6.5, the Company shall not distribute property other than cash before its dissolution without the consent of the recipient.

5.7 **Withholding.** Amounts withheld under any tax law with respect to a Member are treated as distributed to that Member.

5.8 **Limits.** No distribution shall be made that would violate the Act or render the Company insolvent.

ARTICLE 6. THE SITE AND EXIT ELECTION

6.1 **Development stages.** The Manager shall develop the Site through the stages described in the Site Offering Notice: control (sourcing, capacity screen and contract), confirm (utility capacity, survey, title and zoning, utility design and route), close (financing, closing or assignment, and exit election), design (engineering, permits and utility agreements, for a powered shell only) and energize.

6.2 **Site Offering Notice.** The Site Offering Notice states: the location and acreage of the Site; the utility and substation from which capacity is expected; the capacity sought; the terms of the Company's option or purchase contract; the Total Commitments and the Initial Contribution; the Budget through the Close Gate and for a powered shell; the target sale price per megawatt for a powered land exit and a powered shell exit; the Develop-Yourselves Price; the Management Fee and Development Fee; and the target timetable. The Manager shall supplement the notice by written notice to the Members if any of that information changes materially. The Develop-Yourselves Price may not be changed without the consent of a Majority in Interest.

6.3 **Exit election at the Close Gate.** When the Site reaches the Close Gate, the Manager shall deliver to the Members a recommendation that the Company either (a) dispose of the Site as powered land, including by assigning the Company's contract to acquire the Site before closing (a "**Powered Land Exit**"), or (b) acquire the Site, fund the design, engineering and permitting of a powered shell on it and dispose of it after that work (a "**Powered Shell Exit**"), together with the estimated additional capital, timing and target pricing for each. A Majority in Interest may, by written notice delivered within fifteen (15) business days after the recommendation, elect the exit not recommended. If no such notice is delivered, the Manager's recommendation is the election. If the capital needed for a Powered Shell Exit exceeds the unfunded Capital Commitments, that exit may be elected only if Members holding the additional commitments agree to fund them.

6.4 **Powered Shell Exit.** If a Powered Shell Exit is elected, the Manager may call the additional capital stated in its recommendation, cause the Company to acquire the Site, and enter into design, engineering and utility agreements for the Site.

6.5 **Develop-Yourselves right.** When it delivers a recommendation under Section 6.3, the Manager shall offer each Investor Member the right to purchase the Site, or to take an assignment of the Company's contract to acquire it, at the Develop-Yourselves Price multiplied by the Confirmed Capacity (a "**Develop-Yourselves Purchase**"). An Investor Member exercises the right by written notice within fifteen (15) business days. If more than one Investor Member exercises, the Manager shall invite sealed offers from those Investor Members at not less than the Develop-Yourselves Price and accept the highest offer. The purchasing Investor Member shall close within sixty (60) days after its election on the Company's customary terms, may pay the portion of the price that would be distributed to it under Section 5.3 by credit against that distribution, and takes the Site subject to the Company's existing agreements and the restrictions in Section 10.3. A Develop-Yourselves Purchase is a Disposition for all purposes of this Agreement.

6.6 **Other dispositions.** Subject to Sections 6.3 and 6.5, the Manager may cause the Company to dispose of the Site on terms it determines to be in the best interests of the Company. A Disposition to the Manager or its Affiliates requires the approval of a Majority in Interest.

6.7 **Abandonment.** If the Manager determines in good faith that the Site will not reach the Close Gate on acceptable terms, it may cause the Company to terminate its contract and abandon the Site, return any unused Capital Contributions after reserves, and wind up under Article 11.

ARTICLE 7. MANAGEMENT

7.1 **Authority of the Manager.** The Manager has exclusive authority to manage the Company's business and may bind the Company, subject only to the limits in this Agreement. The Investor Members do not take part in the management or control of the Company and have no authority to act for it.

7.2 **Management Agreement and Management Fee.** The Company and the Manager are parties to a management agreement (the "**Management Agreement**") under which the Company pays the Manager a fee (the "**Management Fee**") for each calendar quarter equal to the greater of (a) one-quarter (1/4) of two percent (2%) of the Total Commitments and (b) three thousand dollars ($3,000). The Management Fee is payable quarterly in advance on the first business day of each quarter, beginning on the Closing Date (prorated for any partial quarter) and ending on the date of a Disposition or abandonment of the Site, with a prorated refund of any amount paid for the period after that date. It is a Company obligation borne by all Members pro rata to their Percentage Interests and is paid from Capital Contributions or Company cash. The Manager may defer or waive any part of it. The Manager bears its own overhead, including personnel, office rent and general administrative costs, from the Management Fee.

7.3 **Company Expenses.** The Company bears all costs of its business other than those the Manager bears under Section 7.2 ("Company Expenses"), including: the costs of controlling, acquiring, developing, holding and disposing of the Site, including option fees, deposits, purchase price, survey, title, environmental, engineering, utility study and application fees, and legal and brokerage fees; interest and financing costs; property taxes and insurance; accounting and tax preparation; bank fees; litigation and indemnification; and taxes and governmental fees. The Company also bears its organizational and offering expenses up to fifteen thousand dollars ($15,000); the Manager bears any excess.

7.4 **Development Agreement.** The Company and the Affiliated Developer are parties to a site development agreement (the "**Development Agreement**") under which the Affiliated Developer manages the development of the Site and is paid a development fee equal to five thousand dollars ($5,000) per megawatt of Confirmed Capacity (the "**Development Fee**"). One half of the Development Fee is earned and payable on the earlier of (a) the closing of the Company's acquisition of the Site and (b) the closing of an assignment of the Company's contract to acquire the Site. The other half is earned and payable on the closing of a Disposition, from its proceeds, before Net Proceeds are determined. If both events occur at the same closing, the whole Development Fee is payable at that closing. No Development Fee is payable on a Site the Company abandons before the relevant event. The Affiliated Developer is reimbursed at cost, without markup, for third-party costs it pays on the Company's behalf under the Budget. The Members acknowledge and approve the Development Agreement and the Management Agreement.

7.5 **Other affiliate transactions.** Any amendment of the Development Agreement or the Management Agreement that increases amounts payable by the Company, and any other transaction between the Company and the Manager or its Affiliates other than those described in Sections 7.2 and 7.4, the Promote and the reimbursement of Company Expenses, requires the

approval of a Majority in Interest. The Manager shall disclose in the Site Offering Notice any interest that it or its Affiliates hold in the Site, its seller or any adjoining land.

7.6 **Other activities.** The Manager shall cause the Key Person to devote such time to the Company as is reasonably necessary to conduct its business. The Members acknowledge that the Manager, the Key Person and their Affiliates, including the Affiliated Developer, develop powered sites for their own account and for others, manage other single-site companies, and may offer other sites to other investors, and that the Affiliated Developer holds existing sites with its own co-investors, some of whom have contractual rights to participate in sites it develops. The Company has no right to any other site or opportunity. These are conflicts of interest the Members accept.

7.7 **Key Person event.** If the Key Person ceases to be actively involved in the management of the Manager, the Manager shall notify the Members within ten (10) business days, and no further capital may be called except to preserve the Site or pay obligations already incurred, unless a Majority in Interest consents within ninety (90) days.

7.8 **Duties.** The Manager shall act in good faith and in a manner it reasonably believes to be in the best interests of the Company. To the fullest extent permitted by the Act, the Manager owes no other duties to the Company or the Members, and a matter approved under Section 7.4 or by a Majority in Interest is conclusively deemed fair to the Company.

7.9 **Removal of the Manager.** Investor Members holding at least sixty-six and two-thirds percent (66 2/3%) of the Capital Commitments of the Investor Members (excluding the Manager and its Affiliates) may remove the Manager for Cause by written notice. On removal: (a) the removed Manager keeps its Capital Commitment interest and its right to the Promote only if a binding agreement for a Disposition was signed before the removal notice, and otherwise forfeits the Promote; (b) the Management Fee stops accruing and the Management Agreement terminates; (c) the Investor Members may, by the same vote, admit a substitute manager; and (d) the Company may terminate the Development Agreement on thirty (30) days' notice, and only the portion of the Development Fee already earned, or earned on a Disposition under an agreement signed before the removal notice, remains payable.

ARTICLE 8. EXCULPATION AND INDEMNIFICATION

8.1 **Exculpation.** None of the Manager, its Affiliates, the Key Person, or their respective members, managers, officers, employees and agents (each a "**Covered Person**") is liable to the Company or any Member for any loss arising from any act or omission in connection with the Company, unless the loss results from that Covered Person's fraud, willful misconduct, gross negligence or material breach of this Agreement.

8.2 **Indemnification.** The Company shall indemnify and hold harmless each Covered Person against all losses, claims, damages, liabilities and expenses, including reasonable attorneys' fees, arising from the Company's business, except those resulting from that Covered Person's fraud, willful misconduct, gross negligence or material breach of this Agreement, and shall advance expenses on receipt of an undertaking to repay them if indemnification is later found not to be available. Indemnification is payable only from Company assets. A Member is not required to fund it except from its unfunded Capital Commitment, or to return distributions for it except that each Member shall return distributions received in the two (2) years before a claim, up to twenty-five percent (25%) of its Capital Commitment, if the Company's other assets are insufficient.

ARTICLE 9. BOOKS, REPORTS AND TAX

9.1 **Books.** The Manager shall keep complete books of account for the Company, separate from those of any other person, at its principal office. Each Member may inspect them on reasonable notice, at its own expense, for a purpose reasonably related to its interest.

9.2 **Reports.** The Manager shall deliver to each Member: (a) within forty-five (45) days after the end of each calendar quarter, a report of the Company's cash, Capital Contributions, distributions, fees and expenses and the status of the Site, including its stage, capacity and any change in the Budget; (b) within one hundred twenty (120) days after the end of each fiscal year, annual financial statements, which shall be audited if a Majority in Interest so requests at the Company's expense; and (c) the information necessary to prepare its federal income tax return, including Schedule K-1, which the Manager shall use commercially reasonable efforts to deliver within ninety (90) days after the end of each fiscal year.

9.3 **Fiscal year.** The fiscal year is the calendar year.

9.4 **Partnership representative.** The Manager is the partnership representative under Section 6223 of the Code and may appoint a designated individual. It shall keep the Members informed of any tax audit and may make any election available under the Code, including an election under Section 6226.

ARTICLE 10. TRANSFERS, WITHDRAWAL AND CONFIDENTIALITY

10.1 **Transfers by Investor Members.** No Investor Member may sell, assign, pledge or otherwise transfer any part of its interest, directly or through a transfer of an interest in the Investor Member, without the prior written consent of the Manager, which may be withheld in its discretion. A transferee becomes a substitute member only if the Manager consents and the transferee agrees in writing to be bound by this Agreement. The Manager shall not unreasonably withhold consent to a transfer to an Investor Member's Affiliate, family member or estate-planning vehicle that assumes the transferor's unfunded Capital Commitment. Any transfer that would cause the Company to be treated as a publicly traded partnership, to have more than one hundred (100) beneficial owners for purposes of the Investment Company Act of 1940, or to hold plan assets under ERISA, is void.

10.2 **Transfers by the Manager.** The Manager may not transfer its interest as manager, other than to an Affiliate, without the consent of a Majority in Interest.

10.3 **Confidentiality and non-circumvention.** Each Investor Member shall keep confidential all information it receives about the Company, the Site, the Affiliated Developer and their counterparties, and shall use it only to monitor its investment. While it is a Member and for two (2) years after the Disposition of the Site, no Investor Member shall, directly or through any Affiliate, acquire or pursue any interest in land within five (5) miles of the substation serving the Site, pursue capacity at that substation, or deal with the landowner of the Site, except through the Company or by a Develop-Yourselves Purchase. The confidentiality and non-circumvention agreement signed by an Investor Member before its admission continues in effect. An Investor Member may disclose information to its advisors who are bound by duties of confidentiality, and as required by law.

10.4 **No withdrawal.** No Investor Member may withdraw from the Company before its dissolution.

10.5 **Death or incapacity.** The death, incapacity, dissolution or bankruptcy of an Investor Member does not dissolve the Company. Its successor has the rights of an assignee until admitted under Section 10.1.

ARTICLE 11. DISSOLUTION AND WINDING UP

11.1 **Events of dissolution.** The Company dissolves on the first to occur of: (a) the Disposition or abandonment of the Site and the collection of its proceeds; (b) the decision of the Manager with the consent of a Majority in Interest; (c) the removal, bankruptcy or withdrawal of the Manager, unless a Majority in Interest elects within ninety (90) days to continue the Company and admits a substitute manager; or (d) a judicial decree of dissolution.

11.2 **Winding up.** On dissolution, the Manager (or a liquidator appointed by a Majority in Interest) shall wind up the Company's affairs, dispose of its assets within a reasonable time, and apply the proceeds: first, to creditors, including Members who are creditors; second, to reserves for contingent liabilities; and third, to the Members under Section 5.3, after giving effect to Section 5.5.

11.3 **No deficit restoration.** No Member is required to restore a deficit balance in its capital account.

ARTICLE 12. MISCELLANEOUS

12.1 **Power of attorney.** Each Investor Member appoints the Manager as its attorney-in-fact to sign, file and record this Agreement, any amendment made in accordance with it, the certificate of formation and any other document required to carry out this Agreement. The power is coupled with an interest and survives the death, incapacity or dissolution of the Investor Member.

12.2 **Amendments.** This Agreement may be amended by the Manager with the consent of a Majority in Interest, except that: (a) the Manager may amend it without consent to reflect the admission or substitution of Members, to cure ambiguities, or to comply with law, provided the amendment does not adversely affect any Investor Member; and (b) an amendment that increases a Member's Capital Commitment, reduces its share of distributions, or changes Sections 2.3, 3.9, 5.3, 6.5, 7.2, 7.4 or this Section 12.2 in a way adverse to an Investor Member requires that Investor Member's consent.

12.3 **Side letters.** The Manager may enter into side letters with individual Investor Members. The Manager shall disclose the terms of each side letter that affects economics or governance to all Investor Members, and shall offer those terms to each Investor Member with an equal or larger Capital Commitment.

12.4 **Notices.** Notices are given in writing and are effective: when delivered by hand; one (1) business day after deposit with a nationally recognized overnight courier; or on transmission by electronic mail to the address on Schedule A or in the Member's Subscription Agreement. Capital Calls and reports may be delivered by electronic mail or by posting to a secure investor portal with notice by electronic mail. A Member may change its address by notice.

12.5 **Governing law; venue; jury waiver.** This Agreement is governed by the laws of the State of Texas. The state and federal courts located in Harris County, Texas have exclusive jurisdiction over any dispute arising under it. EACH MEMBER WAIVES TRIAL BY JURY IN ANY SUCH DISPUTE.

12.6 **Entire agreement.** This Agreement, the Site Offering Notice, the Subscription Agreements and any side letters are the entire agreement of the Members about the Company and supersede all

prior agreements. If this Agreement and the Site Offering Notice conflict, this Agreement controls, except for the site-specific figures that Section 6.2 assigns to the notice.

12.7 **Severability; successors; counterparts.** An invalid provision is severed and the remainder enforced. This Agreement binds and benefits the Members and their permitted successors. It may be signed in counterparts and by electronic signature, and an Investor Member may become a party by signing a Subscription Agreement that the Manager accepts.

12.8 **Schedule A.** Schedule A lists each Member, its address, electronic mail address for notices and Capital Commitment, and is updated by the Manager after each closing, transfer or default.

The Manager signs below. Each Investor Member becomes a party by signing a Subscription Agreement that the Manager accepts.

MANAGER: First Meter Partners GP, LLC

By: _____

Name: _____

Manager: _____

Date: _____

SCHEDULE A. MEMBERS AND CAPITAL COMMITMENTS

As of _____

Member	Notice address and e-mail	Capital Commitment	Percentage Interest
First Meter Partners GP, LLC (Manager)	_____	$_____ (10% of Total Commitments)	10%
_____	_____	$_____	____%
_____	_____	$_____	____%
_____	_____	$_____	____%
Total Commitments		$_____	100%