

W&S Draft of 8/9/17

Item #170223

8/10/17

ASSET PURCHASE AGREEMENT

by and between

**GAINESVILLE RENEWABLE ENERGY CENTER, LLC,
as Seller**

and

**CITY OF GAINESVILLE, FLORIDA
d/b/a GAINESVILLE REGIONAL UTILITIES,
as Buyer**

Dated as of [____], 2017

CITY APPROVAL PROCESS AND CONTINGENCY. This Agreement is subject to review and input by the Gainesville Utility Advisory Board and review, input and approval by the Gainesville City Commission. This Agreement is contingent upon, and will not become effective and binding on the Buyer until, signed by the Mayor of the City of Gainesville as provided in Section 9.17 hereof.

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS AND INTERPRETATION.....	1
Section 1.1 Defined Terms.....	1
Section 1.2 Interpretation	10
ARTICLE II SALE AND PURCHASE OF PURCHASED ASSETS; ASSUMPTION OF LIABILITIES; PURCHASE PRICE	11
Section 2.1 Sale and Purchase of Purchased Assets.....	11
Section 2.2 Purchase Price	15
Section 2.3 Fuel Price Adjustment.....	15
ARTICLE III CLOSING AND CLOSING CONDITIONS	15
Section 3.1 Time and Place of the Closing	15
Section 3.2 Actions at the Closing	15
Section 3.3 Conditions Precedent to Obligations of Buyer.....	16
Section 3.4 Conditions Precedent to Obligations of Seller	18
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER.....	19
Section 4.1 Representations and Warranties Regarding Seller	19
Section 4.2 Representations and Warranties Regarding the Purchased Assets.....	20
ARTICLE V REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS OF BUYER.....	23
Section 5.1 Representations and Warranties of Buyer	23
Section 5.2 No Further Representations.....	24
ARTICLE VI COVENANTS	25
Section 6.1 Covenants of All Parties.....	25
Section 6.2 Covenants of Seller	26
Section 6.3 Covenants of Buyer.....	30
Section 6.4 Tax Matters/Other Obligations.....	30
ARTICLE VII INDEMNIFICATION	32
Section 7.1 General	32
Section 7.2 Limitations on Indemnification	32
Section 7.3 Procedure for Indemnification.....	34

Section 7.4 No Waiver of Sovereign Immunity	36
ARTICLE VIII TERMINATION	36
Section 8.1 Termination	36
Section 8.2 Effect of Termination	37
ARTICLE IX MISCELLANEOUS	37
Section 9.1 Notices	37
Section 9.2 Entire Agreement; Amendments	38
Section 9.3 Successors and Assigns	38
Section 9.4 Governing Law	38
Section 9.5 Consent to Jurisdiction	38
Section 9.6 Expenses	39
Section 9.7 Public Records and Confidentiality	39
Section 9.8 Joint Effort	40
Section 9.9 Waiver of Consequential Damages	40
Section 9.10 Captions	40
Section 9.11 Severability	40
Section 9.12 Counterparts; Electronic Signatures	41
Section 9.13 Third Parties	41
Section 9.14 No Waiver	41
Section 9.15 No Recourse	41
Section 9.16 Pre-Closing Remedies	41
Section 9.17 City Approval Process and Contingency	41
ARTICLE X SPECIFIC PERFORMANCE	41
Section 10.1 Waivers and Acknowledgments	41

Exhibits

Exhibit A-1	Form of Bill of Sale and Assignment Agreement
Exhibit A-2	Form of Assignment and Assumption of Site Lease
Exhibit B	Form of FIRPTA Certificate
Exhibit C	Form of Settlement and Release Agreement
Exhibit D	Fuel Price Adjustment Determination Procedure
Exhibit E	Form of Escrow Agreement

Schedules

Schedule 1.1(A)	Buyer and Seller Knowledge Persons
Schedule 1.1(B)	Permitted Interim Actions
Schedule 1.1(C)	Project Level Debt

Schedule 1.1(D)	Permitted Liens
Schedule 1.1(E)	Seller Credit Support
Schedule 2.1(a)(i)	Spare Parts Inventory
Schedule 2.1(a)(iv)	Tangible Personal Property
Schedule 2.1(a)(vi)	Deposits; Prepaid Expenses
Schedule 2.1(b)(xi)	Excluded Assets
Schedule 2.1(c)(v)	Assumed Liabilities
Schedule 2.1(d)(vi)	Excluded Liabilities
Schedule 4.1(d)-1	Pre-Closing Seller Approvals and Consents
Schedule 4.1(d)-2	Post-Closing Seller Approvals and Consents
Schedule 4.1(f)	Litigation
Schedule 4.2(a)	Title to and Interest in Tangible Personal Property
Schedule 4.2(b)	Material Contracts
Schedule 4.2(f)	Governmental Approvals
Schedule 4.2(g)	Litigation
Schedule 4.2(i)(i)	Environmental Matters
Schedule 4.2(i)(ii)	Environmental Approvals held by Seller
Schedule 5.1(d)-1	Pre-Closing Buyer Approvals and Consents
Schedule 6.1(c)	Transitional Support

THIS ASSET PURCHASE AGREEMENT (this *Agreement*), dated as of [____], 2017, is made and entered into by and between **GAINESVILLE RENEWABLE ENERGY CENTER, LLC**, a Delaware limited liability company (*Seller*), and **CITY OF GAINESVILLE, FLORIDA**, a municipal corporation, d/b/a Gainesville Regional Utilities (*Buyer*). Seller and Buyer each are referred to herein individually as a *Party* and collectively as the *Parties*.

RECITALS

WHEREAS, Seller is the direct owner of the Project (as defined herein) and is engaged in the business of owning and operating the Project (as so defined) for the generation and sale of electric power (the *Business*); and

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Project, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Agreement and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.1 Defined Terms. Capitalized terms used in this Agreement (including in the recitals hereto) without other definition shall have the following meanings:

Affiliate means, with respect to a Person, any other Person that, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such first Person. For the avoidance of doubt, Buyer's *Affiliates* include all agencies, departments and political subdivisions of Buyer.

Agreement has the meaning given in the preamble to this Agreement.

Assigned Contracts has the meaning given in Section 2.1(a)(ii).

Assignment and Assumption of Site Lease has the meaning given in Section 3.2(a)(iii).

Assumed Liabilities has the meaning given in Section 2.1(c).

Base Purchase Price has the meaning given in Section 2.2.

Bill of Sale and Assignment Agreement has the meaning given in Section 3.2(a)(i).

Books and Records has the meaning given in Section 2.1(a)(vii).

Business has the meaning given in the recitals to this Agreement.

Business Day means any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York or Gainesville, Florida are required or authorized by Law to close.

Buyer has the meaning given in the preamble to this Agreement.

Buyer Environmental Responsibilities means all environmental liabilities or obligations (a) arising out of, resulting from or related to (i) use or ownership of the Real Property prior to execution of the Site Lease or (ii) any actions taken or omitted to be taken by Buyer or any of its Affiliates, including any actions or omissions on properties adjacent to or otherwise near the Real Property, or (b) for which Buyer or any of its Affiliates is responsible under any Buyer Project Agreement.

Buyer Project Agreements means the Site Lease, the Power Purchase Agreement, the Gas Supply Agreement, any Contracts relating to supplemental power and interconnection to which Buyer or any of its Affiliates is a counterparty and any other Contracts relating to the Project to which Buyer or any of its Affiliates is a counterparty.

Buyer Surviving Representations means, collectively, the representations and warranties of Buyer set forth in Section 5.1(b), Section 5.1(e) and Section 5.1(f).

Buyer's Knowledge means the actual knowledge of the persons set forth for Buyer on Schedule 1.1(A), it being understood that none of the individuals set forth on such Schedule shall have any individual or personal liability with respect to any matter to which such knowledge applies.

Cash Grant means a cash grant awarded pursuant to the terms of the Cash Grant Program.

Cash Grant Program means the Payments for Specified Energy Property in Lieu of Tax Credits program established pursuant to Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) and administered by the U.S. Department of Treasury.

Casualty Loss has the meaning given in Section 6.2(b)(i).

Charter Documents means, with respect to any Person, all charter, organizational and other documents by which such Person (other than an individual) establishes its legal existence or which govern its internal affairs, and shall include: (a) in respect of a corporation, its certificate or articles of incorporation or association and/or its by-laws; (b) in respect of a partnership, its certificate of partnership and its partnership agreement; and (c) in respect of a limited liability company, its certificate of formation and operating or limited liability company agreement.

Claim means any claim, demand, lawsuit, proceeding, arbitration or governmental investigation.

Closing has the meaning given in Section 3.1.

Closing Actions has the meaning given in Section 3.2.

Closing Date has the meaning given in Section 3.1.

Code means the Internal Revenue Code of 1986.

Commercially Reasonable Efforts means efforts that are designed to enable a Party to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by this Agreement and which do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities which are customary and reasonable in nature and amount in the context of the transactions contemplated by this Agreement.

Condemnation Event has the meaning given in Section 6.2(c)(i).

Condemnation Value has the meaning given in Section 6.2(c)(i).

Contract means any legally binding agreement, contract, lease, consensual obligation, promissory note, evidence of indebtedness, purchase order, letter of credit or license of any nature (whether written or oral and whether express or implied).

Control means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by Contract or otherwise.

Deductible Amount has the meaning given in Section 7.2(b).

Dollars and \$ mean United States dollars.

Effective Date means the date on which this Agreement is signed by the Mayor of the City of Gainesville as provided in Section 9.17.

Environmental Approvals means authorizations, approvals, consents, licenses, permits, certifications, exemptions or registrations issued pursuant to an Environmental Rule.

Environmental Claim means any and all administrative or judicial actions, suits, pending claims, outstanding written notices, or legal proceedings by any Governmental Person, whether criminal or civil, relating to the Project based upon, alleging, asserting, or claiming any actual or potential (a) violation of any Environmental Rule, (b) violation of any Environmental Approval or (c) liability under any Environmental Rule for investigatory costs, cleanup costs, removal costs, remedial costs, response costs, natural resource damages, property damage, personal injury, fines, or penalties arising out of, based on, resulting from, or related to the presence, release, or threatened release into the environment, of any Hazardous Material.

Environmental Rule means any applicable federal, state, municipal or local law, statute, rule, regulation, ordinance, code, judgment, decree or decision duly implementing any of the foregoing by any Governmental Person relating to (a) the protection of the air, water, land or natural resources or (b) the generation, use, handling, treatment, storage, disposal and transportation of Hazardous Materials.

Escrow Agent means Wilmington Trust, National Association or such other bank as shall be acceptable to Buyer and Seller.

Escrow Agreement means the escrow agreement among Buyer, Seller and the Escrow Agent, substantially in the form attached hereto as Exhibit E.

Escrow Amount has the meaning given in Section 3.2(d).

Excluded Actions means all actions taken or omitted to be taken by Buyer or any of its Affiliates or its Representatives in connection with the Project or this Agreement.

Excluded Assets has the meaning given in Section 2.1(b).

Excluded Information means information (a) in the case of information of Seller, contained in or relating to Excluded Assets, (b) that is subject to legal privilege or to confidentiality obligations of Seller to third parties or (c) the publication of which to the general public is prohibited by law or contractual obligation.

Excluded Liabilities has the meaning given in Section 2.1(d).

Excluded Taxes means any Taxes imposed on or measured by net income (however denominated) of Seller or any of its Affiliates, and franchise Taxes imposed on Seller or any of its Affiliates.

Expiration Date has the meaning given in Section 8.1(b).

FERC means the Federal Energy Regulatory Commission or its successor Governmental Authority.

Fuel Price Adjustment has the meaning given in Section 2.3.

Fuel Stock has the meaning given in Section 2.1(a)(i).

GAAP means generally accepted accounting principles as in effect from time to time in the United States of America.

Gas Supply Agreement means the Natural Gas Contract, dated as of April 4, 2012, between Seller and Buyer.

Governmental Approval means any authorization, approval, consent, license, ruling, permit, tariff, certification, exemption, order, grant, confirmation, clearance, filing or registration by or with any Governmental Person.

Governmental Person means any federal, national, regional, state, municipal or local government, any political subdivision or any governmental, judicial, public or statutory instrumentality, tribunal, court, agency, authority, body or entity, or other regulatory bureau, authority, body or entity having legal jurisdiction over the matter or Person in question;

provided, that, for purposes of this Agreement, **Governmental Person** does not include Buyer or any of its Affiliates.

Governmental Rule means any applicable federal, national, regional, state, municipal or local law, statute, treaty, rule, regulation, ordinance, order, code, judgment, decree, directive, injunction, writ or similar action or decision duly implementing any of the foregoing by any Governmental Person, other than Environmental Rules and Governmental Approvals; provided, that, for purposes of this Agreement, **Governmental Rule** does not include any Governmental Rule implemented by Buyer or any of its Affiliates.

Hazardous Materials means any substance, waste, contaminant, constituent or material in quantities or concentrations listed, defined, designated, classified or regulated as hazardous, radioactive or toxic, or as a pollutant or contaminant, under or pursuant to any Environmental Rule or Environmental Approval.

Indemnified Group has the meaning given in Section 7.1.

Indemnified Party has the meaning given in Section 7.1.

Indemnitor has the meaning given in Section 7.1.

Intellectual Property means all intellectual property and proprietary rights owned or licensed by Seller and utilized primarily in the operation of the Project, including (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all provisionals, reissuances, continuations, continuations-in-part, divisions, revisions, extensions and reexaminations thereof, (b) all Trademarks and (c) all works of authorship and other copyrightable works, all copyrights, any and all website content, and all applications, registrations and renewals in connection therewith.

IT Assets means all computers, software, servers, workstations, associated data, routers, hubs, switches, circuits, networks, data communications lines and all other information technology equipment owned by Seller and, in each case, utilized primarily in the operation of the Project.

Law means all (a) Governmental Approvals (other than Environmental Approvals and Environmental Rules) and (b) Governmental Rules.

Leased Tangible Personal Property has the meaning given in Section 2.1(a)(iv).

Lien means any mortgage, pledge, lien, charge, claim, option, equitable interest, security interest, third-party right, assignment, hypothecation, encumbrance, conditional sale or other title retention agreement.

Licensed IP means the technical data, designs, drawings, specifications and test information relating to the Project, including engineering designs and as-built plans included among the Purchased Assets.

Loss means the amount of (a) any out of pocket loss, cost, expense, damage or liability, including interest, fines, reasonable legal and accounting fees and expenses, reduced by (b) any amounts receivable by the Indemnified Parties as a result of any recovery, settlement, or otherwise under or pursuant to any insurance coverage, or pursuant to any Claim, recovery, settlement, or payment by or against any other Person in connection with the circumstances giving rise to such Loss.

Made Available means, with respect to documents and materials, that such documents or materials have been posted to an electronic file site to which Buyer or its Representatives has access or otherwise delivered to Buyer or its Representatives by Seller or its Representatives not less than five (5) Business Days prior to the Effective Date.

Material Adverse Effect means any condition, circumstance, event or change which causes a material adverse change from and after the Effective Date in the Purchased Assets or the ownership or operation of the Project, in each case taken as a whole, or on the ability of Seller to perform its obligations under the Transaction Documents, except: (a) any event or condition resulting from or relating to changes or developments in Laws, Environmental Rules or Environmental Approvals or the economy, financial markets or commodity markets; (b) any changes in any GAAP or regulatory accounting requirements of general applicability or changes in the interpretation thereof; (c) changes in international, national, regional, state or local wholesale or retail markets for energy, capacity, power transmission, fuel supply or transportation or related products, including those due to actions by competitors; (d) any event or condition generally applicable to the electric generating, transmission or distribution industries, whether international, national, regional or local; (e) any order or act of a Governmental Person affecting providers or users of generation, transmission or distribution of electricity generally, that imposes restrictions, regulations or other requirements thereon; (f) changes in general regulatory or political conditions, including any acts of war, civil unrest or terrorist activities; (g) changes in regional electric transmission or distribution systems including the operation or condition thereof; (h) strikes, work stoppages or other labor disputes extending for not more than six months; (i) changes in the costs of commodities, services, equipment, materials or supplies, including fuel and other consumables, or changes in the price of energy, capacity or ancillary services; (j) changes or adverse conditions in the securities markets generally, including those relating to debt financing, interest rates or currency exchange rates; (k) any effect, occurrence, development, or condition which is cured in all material respects (including by the payment of money) before the earlier of the Closing Date or the termination of this Agreement; (l) any change, financial or otherwise, to the business, affairs or operation of Buyer or any of its Affiliates; (m) any Casualty Loss or Condemnation Event, the effects of which shall be governed by Section 6.2(b) and Section 6.2(c); (n) any event or condition attributable to the execution or delivery of this Agreement or the announcement or pendency of the transactions contemplated herein, or resulting from or relating to compliance with the terms hereof; (o) any condition, circumstance, event or change to the extent caused by an Excluded Action; or (p) any Permitted Lien; provided that the exclusions in clauses (a) and (e) above shall not apply to the extent that the change, order or act referred to therein disproportionately affects the Purchased Assets relative to other power plants that are comparable to the Project in terms of size, fuel type and general geographic region.

Material Contract means any Contract relating to the Business to which a Seller is a party (a) that relates to the sale or distribution of energy, capacity or ancillary services; (b) that relates to any interconnection or transmission; (c) that relates to the purchase or transportation of fuel; (d) that relates to any real property interests; or (e) as to which the expected annual cost of performing such Contract by Seller, or the annual revenue expected to be received under such Contract by Seller exceeds \$500,000 or (f) the non-performance or the absence of which would result in a Material Adverse Effect.

Minimum Fuel Requirement means the amount of fuel set forth on Exhibit D.

Owned Tangible Personal Property has the meaning given in Section 2.1(a)(iv).

Party or **Parties** has the meaning given in the preamble to this Agreement.

Payoff Amount has the meaning given in Section 3.3(i).

Pending Dispute means the American Arbitration Association Case No. 01-16-0000-8157 pending between Seller and Buyer.

Permitted Actions means any (a) scheduled or unscheduled outage at the Project, (b) purchase, disposition, replacement or refurbishment of spare parts, Fuel Stock and other tangible personal property in the ordinary course of business, in connection with any maintenance activities relating to or performed at the Project, (c) transfer of Excluded Assets, (d) termination, severance or assignment of any Contract that is not an Assigned Contract, (e) amendment, modification or renewal of any Environmental Approval required by Governmental Rule and (f) other transaction related to any of the foregoing transactions, to the extent consummated in the ordinary course of business.

Permitted Interim Actions means actions directly related to any of the matters listed on Schedule 1.1(B), each of which shall be taken on commercially reasonable terms, and Permitted Actions.

Permitted Liens means (a) Liens for Taxes, other than Excluded Taxes (i) not yet due and payable, (ii) being contested in good faith by appropriate proceedings and for which amounts have been appropriately reserved by Seller in accordance with GAAP and deposited for the benefit of Buyer into an escrow (other than under the Escrow Agreement) with a bank and on terms reasonably acceptable to Buyer or (iii) which are the responsibility, either directly or via reimbursement, of Buyer under any Buyer Project Agreement; (b) materialmen's, warehousemen's, workmen's, mechanic's, repairmen's, landlord's or other similar Liens arising in the ordinary course of business securing payments not yet due or being contested in good faith by appropriate proceedings, and for which amounts have been appropriately reserved by Seller in accordance with GAAP and deposited for the benefit of Buyer into an escrow (other than under the Escrow Agreement) with a bank and on terms reasonably acceptable to Buyer or bonded over in accordance with applicable Law; (c) zoning, entitlement, environmental or conservation restrictions and other land use and environmental regulations imposed by Governmental Persons so long as such restrictions and regulations do not materially interfere with the operation of the Project; (d) recorded or unrecorded easements, restrictions, covenants, licenses and other similar Liens and matters affecting real property so long as such matters do not materially interfere with

the operation of the Project; (e) all matters that are disclosed on the Survey; (f) Liens created by or arising by reason of this Agreement, the Assigned Contracts, or the Project Level Debt (provided that all such Liens created by or arising from the Project Level Debt shall be released on Closing); (g) any Lien that is released at or prior to the Closing; (h) Liens arising out of, pursuant to or incurred because of any Excluded Action; and (i) any other matters identified on Schedule 1.1(D).

Person means any individual, sole proprietorship, corporation, partnership, joint venture, limited partnership, limited liability company, trust, unincorporated association, institution, Governmental Person or any other entity.

Power Purchase Agreement means the Power Purchase Agreement for the Supply of Dependable Capacity, Energy and Environmental Attributes from a Biomass-Fired Production Facility between Seller and Buyer dated April 29, 2009, as amended.

Pre-Closing Period means the period commencing with the Effective Date and ending upon the consummation of the Closing or termination of this Agreement in accordance with ARTICLE VIII.

Project means the approximate 102.5 MW biomass electricity generating facility that is owned by Seller, located in the City of Gainesville, Florida and known as the Gainesville Renewable Energy Center.

Project Level Debt means the debt described on Schedule 1.1(C).

Proprietary Rights has the meaning given in Section 4.2(d).

Purchase Price has the meaning given in Section 2.2.

Purchased Assets has the meaning given in Section 2.1(a).

Real Property means the real property described in Site Lease.

Representatives means each Party's respective officers, directors, employees, representatives, agents, attorneys and advisors.

Restoration Cost has the meaning given in Section 6.2(b)(i).

Schedule means any schedule to this Agreement.

Seller has the meaning given in the preamble to this Agreement.

Seller Credit Support means, collectively, each guaranty, letter of credit, performance or surety bond or similar credit support arrangement issued by or for the account of Seller or any of its Affiliates in relation to any Assigned Contract and set forth on Schedule 1.1(E).

Seller Surviving Representations means, collectively, the representations and warranties of Seller set forth in Section 4.1(b), Section 4.1(e), Section 4.1(f), Section 4.2(a), Section 4.2(g), Section 4.2(h), Section 4.2(i) and Section 4.2(j).

Seller's Knowledge means the actual knowledge of the persons set forth for Seller on Schedule 1.1(A), it being understood that none of the individuals set forth on such Schedule shall have any individual or personal liability with respect to any matter to which such knowledge applies.

Settlement and Release Agreement means the Settlement Agreement and General Release as to American Arbitration Association Case No. 01-16-0000-8157 and Termination and General Release as to the Purchase Power Agreement, in the form attached hereto as Exhibit C.

Site Lease means the Lease Agreement, dated as of September 28, 2009, between Seller and Buyer, together with the Corrective Lease Agreement, effective as of September 28, 2009, between Seller and Buyer.

Survey means the ALTA/ACSM Land Title Survey (A Boundary Survey) in Section 27, Township 8 South, Range 19 East City of Gainesville, Alachua County, Florida prepared for Seller.

Tangible Personal Property has the meaning given in Section 2.1(a)(iv).

Tax or ***Taxes*** means all taxes, including all charges, fees, duties, levies or other assessments in the nature of taxes, imposed by any federal, state, local or foreign Taxing Authority, however levied or imposed, whether payable directly or by withholding, including net income, gross income, capital gains, gross receipts, net receipts, excise, sales, gain, use, license, custom duty, unemployment, capital stock, transfer, conveyance, franchise, payroll or other employment, withholding, social security, estimated, profit, gift, severance, value added, disability, occupation, stamp, goods and services, ad valorem, utility, utility users, registration, recording, premium, personal property, real property, unclaimed property, environmental (including Code Section 59A), alternative or add-on, windfall profits and other taxes, and shall include interest, penalties or additions attributable thereto or attributable to any failure to comply with any requirement regarding Tax Returns.

Tax Returns means any return, declaration, report, claim for refund, or information return or statement relating to Taxes filed with or required to be filed with a Taxing Authority or a third party, including any such document prepared on a consolidated, combined or unitary basis and also including any schedule or attachment thereto, and including any amendment thereof.

Taxing Authority means the United States Internal Revenue Service and any other Governmental Person responsible for administration of Taxes under the Laws of any jurisdiction; provided, that, notwithstanding the proviso in the definition of ***Governmental Person***, for purposes of Section 2.1 and Section 6.4 only, ***Taxing Authority*** includes Buyer and its Affiliates to the extent they are responsible for the administration of Taxes.

Trademarks means all trademarks, service marks, trade names, trade dress, corporate names, company names, business names, Internet domain names, logos, certification marks,

collective marks and other indicia of origin pertaining to the Project and owned by Seller, together with all translations, adaptations, derivations and combinations thereof, all registrations, applications and renewals in connection therewith and all of the goodwill connected with the use of, and symbolized by any of, the foregoing.

Transaction Documents means, collectively, this Agreement, the Bill of Sale and Assignment Agreement, the Settlement and Release Agreement, the Escrow Agreement and all other agreements between the Parties or their Affiliates entered into pursuant to the terms hereof in order to carry out the Closing Actions and the other transactions contemplated hereby.

Transfer Taxes has the meaning given in Section 6.4(c).

Section 1.2 Interpretation. Except where otherwise expressly provided or unless the context otherwise necessarily requires, in this Agreement (including in the recitals hereto):

(a) Reference to a given Article, Section, clause, Exhibit or Schedule is a reference to an Article, Section, clause, Exhibit or Schedule of this Agreement, unless otherwise specified.

(b) The terms “hereof”, “herein”, “hereto”, “hereunder” and “herewith” refer to this Agreement as a whole.

(c) Reference to a Contract, instrument, document or Law is a reference to that Contract, instrument, document or Law as modified, amended, supplemented or restated as of the Closing Date.

(d) Unless otherwise specified, accounting and finance terms have the meanings given to them under GAAP.

(e) Reference to a Person includes its predecessors, successors and permitted assigns and, in the case of any Governmental Person, any Person succeeding to its respective function and capacities.

(f) The singular includes the plural and the masculine includes the feminine, and vice versa.

(g) “Includes” or “including” shall be deemed to be followed in each instance by the words “for example and without limitation.”

(h) References to “days” means calendar days.

(i) Any item disclosed by a Party on any Schedule to this Agreement shall be deemed to be disclosed and incorporated by reference into each other Schedule as though fully set forth therein to the extent the applicability of the disclosure to such other Schedules is reasonably apparent on the face of such disclosure.

(j) The inclusion of an item in the information Made Available to Buyer or in any Schedule to this Agreement, including any updating information provided in accordance with Section 6.2(e), shall not be deemed an indication or admission that such item is material to Seller or the Business, or is required by this Agreement to be reflected therein (and such inclusion shall not be deemed to establish or be considered for purposes of establishing a standard of materiality or other disclosure threshold). Without limiting the foregoing, no such references to or disclosure of a possible breach or violation of any Contract or applicable Law shall be construed as an admission or indication that a breach or violation exists or has actually occurred.

ARTICLE II

SALE AND PURCHASE OF PURCHASED ASSETS; ASSUMPTION OF LIABILITIES; PURCHASE PRICE

Section 2.1 Sale and Purchase of Purchased Assets. Subject to the terms and conditions hereof, at the Closing:

(a) Purchased Assets. Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of all Liens other than Permitted Liens, all of Seller's right, title and interest in, to and under all of the following assets, properties and rights of Seller (other than Excluded Assets) (collectively, the ***Purchased Assets***):

(i) all spare parts set forth on Schedule 2.1(a)(i) and any fuel on site at the Project (***Fuel Stock***), except for any spare parts and Fuel Stock used or consumed on site at the Project or exchanged in the ordinary course of business during the Pre-Closing Period;

(ii) all Contracts set forth on Schedule 4.2(b) that are designated with an asterisk (collectively, the ***Assigned Contracts***);

(iii) all right, title and interest in and to, to the extent utilized primarily in the operation of the Project, (A) all Intellectual Property and (B) the IT Assets;

(iv) all furniture, fixtures, equipment (including any cars, trucks, fork lifts and other industrial vehicles), machinery, parts, bulk process chemicals, bulk process lubricants and other tangible personal property, in each case, to the extent utilized primarily in the operation of the Project and either (A) owned by Seller and listed on Schedule 2.1(a)(iv)-1 (the ***Owned Tangible Personal Property***) or (B) leased by Seller and listed on Schedule 2.1(a)(iv)-2 (***Leased Tangible Personal Property*** and, together with the Owned Tangible Personal Property, the ***Tangible Personal Property***), in each case, except to the extent used or consumed on site at the Project, or exchanged in the ordinary course of business during the Pre-Closing Period;

(v) all Governmental Approvals, including Environmental Approvals, listed on Schedule 4.2(f), but only to the extent such Governmental Approvals

may be transferred under applicable Law (including upon request or application to the applicable Governmental Person);

(vi) all deposits, prepaid expenses, credits, advance payments, security, deposits, charges, sums and fees (including pursuant to any Assigned Contract) set forth on Schedule 2.1(a)(vi);

(vii) all of Seller's rights under warranties and licenses with respect to the Purchased Assets received from third parties to the extent such warranties and licenses may be transferred under applicable Law and Contract (including upon request or application to the applicable Person);

(viii) all books, operating records, engineering designs, blueprints, as built plans, specifications, procedures, studies, reports and equipment repair, safety, maintenance or service records of Seller with respect to the Purchased Assets, and all files relating to compliance with Environmental Rules, Environmental Approvals and files with respect to the environmental condition of the Purchased Assets except for any such books and records (A) to the extent related to or that otherwise constitute Excluded Assets or (B) that constitute or contain attorney-client communications or are subject to attorney-client privilege or the work product doctrine (all of the foregoing, collectively, **Books and Records**);

(ix) any claims, counterclaims, setoffs, rights of recoupment, equity rights or defenses that Seller may have with respect to any Assumed Liabilities; and

(x) all goodwill associated with any of the Purchased Assets described in the foregoing clauses.

(b) Excluded Assets. Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, and the Purchased Assets do not include any of the following (the **Excluded Assets**):

(i) all accounts and notes receivable of the Business, including accounts receivable of Seller under the Power Purchase Agreement that are owed for performance prior to the Closing;

(ii) all cash and cash equivalents, bank accounts and securities of Seller;

(iii) all Contracts that are not Assigned Contracts and all rights, claims, credits, causes of action or rights of set off against third parties held by Seller in connection therewith;

(iv) all Intellectual Property other than as expressly set forth in Section 2.1(a)(iii);

(v) the organizational documents, minute books, membership books, Tax Returns, financial statements, books of account or other records having to do with the legal organization or financial condition of Seller, or its research and development and legal files;

(vi) all other records relating to Seller or its operations, correspondence, customer lists and price lists and any other books and records of Seller other than as expressly set forth in Section 2.1(a)(viii);

(vii) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder and any right to any refund thereunder;

(viii) all Tax assets (including duty and Tax refunds and prepayments) of Seller or any of its Affiliates);

(ix) all rights to any action, suit or claim of any nature available to or being pursued by Seller, whether arising by way of counterclaim or otherwise, other than as expressly set forth in Section 2.1(a)(ix);

(x) the Seller Credit Support;

(xi) the assets, properties and rights specifically set forth on Schedule 2.1(b)(xi);

(xii) all Excluded Information of Seller;

(xiii) all laptop and desktop computers, email servers, files, email messages, records and other documents, other than Books and Records (whether in print or electronic format) that are not necessary for the operation of the Project; and

(xiv) the rights which accrue or will accrue to Seller under the Transaction Documents.

(c) Assumed Liabilities. Subject to the terms and conditions set forth herein, Seller shall assign to Buyer and Buyer shall assume from Seller and pay, perform and discharge when due each of the Assumed Liabilities. *Assumed Liabilities* shall mean solely the following, and shall not include any other liabilities of Seller relating to the Purchased Assets, the Business, the Project or otherwise:

(i) all liabilities and obligations arising (A) on or after the Closing under or relating to the Assigned Contracts or (B) prior to the Closing under or relating to the Assigned Contracts to which Buyer or any of its Affiliates is a counterparty;

(ii) all liabilities and obligations for (A) Taxes relating to the Purchased Assets or the Assumed Liabilities for any taxable period beginning after the Closing Date or (B) property Taxes, ad valorem and other Taxes which are the

responsibility of Buyer or its Affiliates or that are the responsibility of Seller but subject to reimbursement by Buyer, in each case, pursuant to any Buyer Project Agreement;

(iii) all liabilities and obligations in respect of or relating to Permitted Liens;

(iv) all other liabilities and obligations arising out of or relating to Buyer's ownership or operation of the Project and the Purchased Assets on or after the Closing;

(v) all liabilities and obligations of Seller set forth on Schedule 2.1(c)(v); and

(vi) all Buyer Environmental Responsibilities.

(d) Excluded Liabilities. Buyer shall not assume and shall not be responsible to pay, perform or discharge any of the following liabilities or obligations of Seller which shall be and remain liabilities of Seller for which Seller shall remain responsible (collectively, the *Excluded Liabilities*):

(i) all trade accounts payable of Seller to third parties in connection with the Business that remain unpaid as of the Closing Date;

(ii) all liabilities and obligations arising under or relating to the Assigned Contracts (other than those to which Buyer or any of its Affiliates is a counterparty) prior to the Closing;

(iii) any liabilities or obligations relating to or arising out of the Excluded Assets;

(iv) except as otherwise expressly provided in Section 6.4(c) or as are specifically included among the Assumed Liabilities, any liabilities or obligations (whether direct or as a result of transferee liability, joint and several liability, contractual liability, or otherwise) for (A) Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities for any taxable period ending on or prior to the Closing Date (whether payable on, after, or before the Closing Date), (B) any other Taxes of Seller not relating to the Business, the Purchased Assets or the Assumed Liabilities for any taxable period, and (C) any liabilities or obligations relating to or arising out of a recapture of any portion of any Cash Grant that was claimed with respect to the Business or the Purchased Assets (whether such recapture is caused by the transactions contemplated by the Transaction Documents or otherwise);

(v) all liabilities arising under Environmental Rules or Environmental Approvals as a result of acts or omissions of Seller or its Affiliates occurring prior to the Closing Date, whether discovered before or after the Closing Date; and

(vi) any liabilities and obligations of Seller set forth on Schedule 2.1(d)(vi).

For the avoidance of doubt, the Excluded Liabilities do not include liabilities for which Buyer or any of its Affiliates is liable under any Buyer Project Agreement.

Section 2.2 Purchase Price. The aggregate consideration for the Purchased Assets shall be Seven hundred and fifty million Dollars (\$750,000,000) (the **Base Purchase Price**) plus any Fuel Price Adjustment that is positive or minus any Fuel Price Adjustment that is negative (the Base Purchase Price as so adjusted, the **Purchase Price**).

Section 2.3 Fuel Price Adjustment. Not later than three (3) Business Days, nor earlier than five (5) Business Days, prior to the Closing Date, Seller shall demonstrate to Buyer's reasonable satisfaction that the amount of Fuel Stock is at least equal to the Minimum Fuel Requirement. To the extent such amount is less than or greater than the Minimum Fuel Requirement, the Base Purchase Price shall be adjusted, upward or downward, by an amount determined in accordance with Exhibit D (the **Fuel Price Adjustment**).

ARTICLE III

CLOSING AND CLOSING CONDITIONS

Section 3.1 Time and Place of the Closing. Subject to the terms and conditions hereof, including ARTICLE VIII (relating to termination) the closing of the transactions contemplated by ARTICLE II (the **Closing**) shall take place at the office of Winston & Strawn LLP, 200 Park Avenue, New York, NY or such other location as the Parties mutually agree no later than three (3) Business Days after the satisfaction or waiver of the closing conditions set forth in this ARTICLE III (other than conditions that can only be satisfied at the Closing), and/or at such other place and on such other date as the Parties mutually agree (the actual date of the Closing is referred to herein as the **Closing Date**).

Section 3.2 Actions at the Closing. At the Closing Seller and Buyer shall take or cause to be taken the following actions all of which will be deemed taken simultaneously at the Closing and no one of which will be deemed completed until all have been completed and the Closing shall have occurred (the **Closing Actions**):

(a) Transfer of Purchased Assets.

(i) Seller shall execute and deliver to Buyer, and Buyer shall execute and deliver to Seller, a bill of sale and assignment and assumption agreement in the form of Exhibit A-1 hereto (the **Bill of Sale and Assignment Agreement**), transferring the Purchased Assets described therein (including all Assigned Contracts to which Buyer or any of its Affiliates is a counterparty, other than the Site Lease) to Buyer and effecting the assignment to and assumption by Buyer of such Purchased Assets and the Assumed Liabilities;

(ii) with respect to each Assigned Contract (other than Assigned Contracts to which Buyer or any of its Affiliates is a counterparty), Seller shall

execute and deliver to Buyer such additional instruments and agreements in a form reasonably acceptable to Buyer as shall be reasonably necessary to convey all of Seller's rights and interests therein to Buyer; and

(iii) with respect to the Site Lease, Seller shall execute and deliver to Buyer, an assignment and assumption of Site Lease in the form of Exhibit A-2 hereto (the ***Assignment and Assumption of Site Lease***), conveying all of Seller's rights and interests therein to Buyer and which instrument indicates the amount of the Purchase Price allocated to the transfer of Seller's interest in the Site Lease to Buyer.

(b) Payment of Purchase Price. Buyer shall pay to Seller an amount equal to (i) the Purchase Price *minus* (ii) the Payoff Amount, by wire transfer of immediately available funds, without deduction (other than as expressly set forth in this Agreement), to such account or accounts as shall be specified not less than three (3) Business Days prior to Closing by Seller in writing to Buyer. Seller hereby directs Buyer to pay a portion of the Purchase Price to the Escrow Agent in accordance with Section 3.2(d).

(c) Payoff of Project Level Debt. Buyer shall pay or cause to be paid to the applicable lenders (or administrative agents) the Payoff Amount by wire transfer of immediately available funds (to such account or accounts as Seller shall have notified Buyer in writing on behalf of the parties entitled thereto not less than three (3) Business Day prior to the Closing).

(d) Deposit of Escrow Amount. Seller directs Buyer to cause to be paid from Seller's proceeds of the Purchase Price to the Escrow Agent Eighteen Million, Seven Hundred Fifty Thousand Dollars (\$18,750,000) (the ***Escrow Amount***), by wire transfer of immediately available funds (to such account or accounts as the Escrow Agent shall have notified Buyer in writing not less than one (1) Business Day prior to the Closing), to be held by the Escrow Agent pursuant to the Escrow Agreement.

(e) Settlement and Release. Buyer and Seller shall each execute and deliver to the other the Settlement and Release Agreement, and Buyer shall make payment of all amounts required to be paid thereunder.

(f) Release of Support Obligations. Seller and Buyer shall effect the release to Seller of, effective as of Closing, the Seller Credit Support.

(g) Escrow Agreement. Each of Buyer, Seller and the Escrow Agent shall execute and deliver the Escrow Agreement.

(h) Additional Actions. The Parties shall execute and deliver, or cause to be executed and delivered, all other documents, and take such other actions, in each case as shall be reasonably necessary or appropriate to consummate the transactions contemplated hereby.

Section 3.3 Conditions Precedent to Obligations of Buyer. The obligation of Buyer to consummate the transactions contemplated hereby shall be subject to the satisfaction, at

or prior to the Closing, of the following conditions precedent, any of which may be waived by Buyer in its sole discretion:

(a) Performance of Closing Actions. Seller shall have tendered performance of the Closing Actions to be performed by Seller.

(b) Governmental Approvals. All Governmental Approvals identified on Schedules 4.1(d) and 5.1(d) shall have been duly obtained, made or filed, as the case may be.

(c) Consents. All third-party consents identified on Schedule 4.1(d)-1 and 5.1(d)-1 shall have been duly obtained and be in full force and effect.

(d) No Injunction. There is not in effect any legal requirement, injunction, writ or preliminary restraining order or any order of any nature issued by a Governmental Person which prevents the consummation of the transactions contemplated by the Transaction Documents.

(e) Representations and Warranties. The representations and warranties set forth in Section 4.1 and Section 4.2 (without giving effect to any materiality qualifiers contained therein, including by reference to Material Adverse Effect) shall be true and correct in all respects as of the Closing Date, except (i) to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date, subject to the immediately following clause (ii), or (ii) where the failure to be true and accurate (A) would not, in the aggregate, have a Material Adverse Effect or (B) is caused by an Excluded Action.

(f) Covenants. Seller shall have performed or complied with, in all material respects, the covenants and obligations hereunder required to be performed or complied with by it on or prior to the Closing, except for any nonperformance or noncompliance that has been cured prior to the Closing.

(g) Seller's Certificates. Buyer shall have received, with respect to Seller, (i) a certificate, dated as of the Closing Date and signed by a member or duly authorized officer of Seller, pursuant to which such Person certifies that the conditions described in Section 3.3(a) and Section 3.3(e) have been satisfied and (ii) a certificate from Seller, dated as of the Closing Date and signed by a member or its secretary or assistant secretary, certifying as to its authorized signatories, Charter Documents, good standing and authorization.

(h) Non-foreign Certificates. Seller shall furnish Buyer with a certificate, substantially in the form of Exhibit B hereto, which satisfies the requirements of Section 1.1445-2(b)(2) of the Treasury Regulations.

(i) Repayment of Project Level Debt and Release of Liens. Seller shall have delivered to Buyer payoff letters with respect to the Project Level Debt, in form and substance reasonably satisfactory to Buyer, that (i) set forth the total amount necessary to repay the Project Level Debt in full as of the Closing (the **Payoff Amount**) and (ii) releases any Liens securing such indebtedness and provide for the filing of UCC-3 termination statements and other

appropriate Lien releases and satisfactions to evidence release of such Liens upon payment in full of the Payoff Amount.

(j) Books and Records. Seller shall deliver the Books and Records, it being understood that any Books and Records located at the Project shall be kept at the Project and deemed delivered at the Closing.

(k) Tax Liens and Mechanics Liens. Seller shall have delivered to Buyer such instruments and agreements duly executed by Seller in a form reasonably acceptable to Buyer as shall be necessary to secure either through bond or escrowed reserves of the type described in clause (b) and subclause (a)(ii) of the definition of Permitted Liens against Liens described in said clause (b) or in subclause (a)(ii) of the definition of Permitted Liens.

(l) Buyer Financing. The closing and funding of Buyer's financing of the Purchase Price shall have occurred.

Section 3.4 Conditions Precedent to Obligations of Seller. The obligation of Seller to consummate the transactions contemplated hereby shall be subject to the satisfaction, on or prior to the Closing, of the following conditions precedent, any of which may be waived by Seller in their sole discretion:

(a) Performance of Closing Actions. Buyer shall have tendered performance of the Closing Actions to be performed by Buyer.

(b) Governmental Approvals. All Governmental Approvals identified on Schedules 4.1(d) and 5.1(d) shall have been duly obtained, made or filed, as the case may be.

(c) Consents. All third-party consents specifically identified on Schedule 4.1(d)-1 and 5.1(d)-1 shall have been duly obtained and be in full force and effect.

(d) No Injunction. There is not in effect any legal requirement, injunction, writ or preliminary restraining order or any order of any nature issued by a Governmental Person which prevents the consummation of the transactions contemplated by the Transaction Documents.

(e) Representations and Warranties. The representations and warranties set forth in Section 5.1 that are qualified with respect to materiality shall be true and correct in all respects, and the representations and warranties set forth in Section 5.1 that are not so qualified shall be true and correct in all material respects, in each case as of the Closing Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date).

(f) Covenants. Buyer shall have performed or complied with, in all material respects, the covenants and obligations hereunder required to be performed or complied with by Buyer on or prior to the Closing, except for any nonperformance or noncompliance that has been cured prior to the Closing.

(g) Buyer's Certificates. Buyer shall have furnished to Seller (i) a certificate, dated as of the Closing Date and signed by a duly authorized official of Buyer, pursuant to which such official certifies that the conditions described in Section 3.4(a) and Section 3.4(e) have been satisfied, and (ii) a certificate from Buyer, dated as of the Closing Date and signed by an authorized official, certifying as to its authorized signatories and due authorization.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER

Section 4.1 Representations and Warranties Regarding Seller. Seller hereby represents and warrants to Buyer as of the Effective Date and as of the Closing Date (except with respect to representations and warranties made as of a particular date, which shall be deemed to be made only as of such date) as follows:

(a) Organization. Seller is a limited liability Company, duly formed, validly existing and in good standing under the Laws of the State of Delaware. Seller is qualified to do business in all jurisdictions where the failure to qualify would materially and adversely affect its ability to execute or deliver, or perform its obligations under, the Transaction Documents to which it is or will be a party.

(b) Authority and Power. Seller has the requisite limited liability company power and authority to enter into each of the Transaction Documents to which it is or will be a party, consummate each of the transactions and undertakings contemplated thereby, and perform all of the terms and conditions thereof to be performed by it. The execution, delivery and performance of each of the Transaction Documents to which Seller is or will be a party and the consummation of each of the transactions and undertakings contemplated thereby have been duly authorized by all requisite limited liability company action on the part of Seller under its respective Charter Documents.

(c) Valid and Binding Obligations. Each of the Transaction Documents to which Seller is or will be a party has been, or will be when executed and delivered, duly and validly executed and delivered by Seller and is, or will be when executed and delivered, enforceable against Seller in accordance with the terms thereof, except as such enforceability may be limited or denied by (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights and the enforcement of debtors' obligations generally and (ii) general principles of equity, regardless of whether enforcement is pursuant to a proceeding in equity or at law.

(d) Approvals and Consents. Assuming the receipt, effectiveness and validity of the approvals and consents set forth in Schedules 4.1(d) and 5.1(d) hereto, Seller is not and will not be, required to give any notice to, make any filing with, or obtain any consent or approval from, any Person (including Governmental Approvals and consents or approvals of any third party) to execute, deliver or perform any of the Transaction Documents to which it is or will be a party or to consummate the transactions contemplated. Schedule 4.1(d)-1 sets forth each notice that Seller is required to give and each approval and consent that Seller is required to

obtain prior to the Closing in order to execute, deliver or perform any of the Transaction Documents to which it is or will be a party or to consummate the transactions contemplated.

(e) No Violations. Assuming that all filings, consents and approvals set forth on Schedule 4.1(d) have been timely made or obtained, as applicable, the execution, delivery and performance by Seller of each of the Transaction Documents to which it is or will be a party, and the consummation of the transactions contemplated thereby, does not (i) violate the Charter Documents of Seller; (ii) violate or be in conflict with, or constitute a default (or any event which, with or without due notice or lapse of time, or both, would constitute a default) under (A) any Assigned Contract or (B) any other Contract to which Seller is a party or by which any properties or assets of Seller are or may be bound, in each case, under clause (A) and (B) above, other than any Contract to which Buyer or any of its Affiliates is a party; or (iii) violate any Law applicable to Seller.

(f) No Litigation. Except for the Pending Dispute and as set forth on Schedule 4.1(f), there are no actions, suits, or legal, mediation or arbitration proceedings pending to which Seller is a party (and, to Seller's Knowledge, there are no actions, suits or legal, mediation or arbitration proceedings threatened in writing against Seller), before any Governmental Person or arbitral body against or affecting Seller, that (i) challenges the validity of, or seeks to enjoin, the consummation of the transactions contemplated by the Transaction Documents and has resulted in any legal requirement, injunction, writ or preliminary restraining order or any order of any nature issued by a Governmental Person which prevents the consummation of the transactions contemplated by the Transaction Documents or (ii) would, individually or in the aggregate, have a Material Adverse Effect.

Section 4.2 Representations and Warranties Regarding the Purchased Assets. Seller hereby represents and warrants to Buyer as of the Effective Date and as of the Closing Date (except with respect to representations and warranties made as of a particular date, which shall be deemed to be made only as of such date) as follows:

(a) Title to and Interest in Tangible Personal Property. Except as set forth in Schedule 4.2(a), Seller has good and valid title to the Owned Tangible Personal Property and a valid leasehold interest in all of the Leased Tangible Personal Property, in each case free and clear of any Liens except for Permitted Liens.

(b) Contracts. Schedule 4.2(b) contains a true, correct and complete list of all Material Contracts and all amendments and supplements thereto. True, correct and complete copies of all such Material Contracts that are included among the Assigned Contracts have been Made Available to Buyer. Seller is not in default (and to Seller's Knowledge, no other party thereto is in default) as of the date hereof of any obligation under any such Assigned Contract, except for such defaults (i) that would not, individually or in the aggregate, result in a Material Adverse Effect or (ii) that are under any Assigned Contract to which Buyer or any of its Affiliates is the counterparty.

(c) Real Property. The Real Property constitutes all of the real property interests used or held for use by Seller in connection with the operation of the Project as presently conducted. Other than the Site Lease and the Permitted Liens, there are no leases,

ground leases, subleases, licenses, options, appurtenant easements, rights of way, real property licenses or other real property entitlements used in connection with the Business. Seller has not subleased or otherwise granted any Person the right to use or occupy any portion of the Real Property which shall remain in effect after the Closing, other than the granting of Permitted Liens.

(d) Proprietary Rights. To Seller's Knowledge, Seller owns all software, U.S. trademarks, designs, trade names, patents, registered designs and copyrights necessary for the conduct of the Business (collectively, the ***Proprietary Rights***) that it purports to own, free and clear of any Liens other than Permitted Liens, or has a valid license to use all Proprietary Rights that it purports to license, except, in each case, as would not, individually or in the aggregate, have a Material Adverse Effect. The representations and warranties made in this Section 4.2(d) are the sole and exclusive representations and warranties with respect to the Proprietary Rights of Seller.

(e) Compliance with Laws. Except (i) as has been cured or otherwise resolved in all material respects, (ii) as to any Environmental Approval, Environmental Rule, Hazardous Material or any other environmental matters (which matters are covered exclusively by the representations made in Section 4.2(i) below) or (iii) as would not, individually or in the aggregate, have a Material Adverse Effect, (A) Seller is in compliance with all applicable Laws, and (B) no notice, charge, claim, action or assertion has been filed, or commenced against Seller or threatened in writing against Seller alleging any violation of any applicable Laws, which such notice, charge, action or assertion remains threatened or pending.

(f) Governmental Approvals. Each material Governmental Approval obtained by Seller in connection with the operation of the Project is listed on Schedule 4.2(f).

(g) Litigation. Except for the Pending Dispute and as set forth on Schedule 4.2(g), there are no actions, suits or legal, mediation or arbitration proceedings pending to which Seller is a party (and to Seller's Knowledge there are no actions, suits or legal, mediation or arbitration proceedings threatened against Seller), in any such case at law or in equity before any Governmental Person or arbitral body with respect to the Purchased Assets, which actions, suits, legal proceedings, mediation or arbitration proceedings in any such case would reasonably be expected to have a Material Adverse Effect.

(h) Tax Matters.

(i) Tax Returns. Seller has filed (or will file) all material Tax Returns with respect to the Purchased Assets and the Project that are required to be filed on or before the Closing Date (giving regard to valid extensions) and such Tax Returns are (or will be) true, correct and complete in all material respects.

(ii) Taxes Paid. All Taxes shown to be due on all Tax Returns with respect to the Purchased Assets filed on or before the Closing Date by Seller have been (or will be) timely paid by Seller in full on or before the Closing Date.

(iii) Audits; Assessments. No audits or other proceedings are ongoing or, to the Knowledge of Seller, threatened with respect to any Taxes relating to

the Business or the Purchased Assets for which Buyer could have liability under this Agreement or under applicable Law. There are no written notices of unpaid or proposed assessments for Taxes with respect to any of the Purchased Assets received by Seller.

(iv) Tax Liens. There are no existing Liens for Taxes on any of the Purchased Assets other than Permitted Liens.

(v) Tax Rulings. There are no Tax rulings or special agreements relating to the Purchased Assets or exclusively relating to the Business.

(vi) Recapture Liability. Buyer will not be responsible for any payment required to be made to the extent relating to or arising out of any recapture of any portion of any Cash Grant that was claimed with respect to the Purchased Assets or the Business as a result of the transactions contemplated by the Transaction Documents.

(i) Environmental Matters. Except (x) as set forth on Schedule 4.2(i)(i) and (y) for any matters arising out of, resulting from, related to or otherwise constituting Buyer Environmental Responsibilities:

(i) During the term of the Site Lease, no Hazardous Materials have been released by Seller at, onto, from, under or in the Project with respect to which Seller bears any obligation or responsibility for investigation or other remedial action under any Environmental Approval or Environmental Rule, other than such investigation or other remedial action as has been completed;

(ii) (A) all Environmental Approvals held by Seller in connection with the operation of the Project (1) are listed on Schedule 4.2(i)(ii), and (2) to Seller's Knowledge, are in full force and effect; and

(iii) There are no pending Environmental Claims that have been asserted against Seller in writing with respect to the Purchased Assets, and to Seller's Knowledge, no such Environmental Claims have been threatened in writing, in each case that remain outstanding and unresolved; and

(iv) Seller is not subject to any orders, decrees or judgments arising in connection with an Environmental Rule or Environmental Approval, excluding any such orders, decrees or judgments that have been fully satisfied with no further obligation on the part of Seller, as acknowledged by a court or agency of appropriate authority and jurisdiction.

(j) No Defects. To Seller's Knowledge, there are no operational deficiencies or defects in the Project that would have a Material Adverse Effect:

The representations and warranties made in this Section 4.2(i) are the sole and exclusive representations and warranties with respect to Environmental Approvals, Environmental Rules, Hazardous Materials and other environmental matters.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS OF BUYER

Section 5.1 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as of the Effective Date and as of the Closing Date (except with respect to representations and warranties made as of a particular date, which shall be deemed to be made only as of such date) as follows:

(a) Organization. Buyer is a municipal corporation duly organized, validly existing and in good standing under the Laws of the State of Florida.

(b) Authority and Power. Buyer has the requisite power and authority to enter into each of the Transaction Documents to which it is or will be a party, consummate each of the transactions and undertakings contemplated thereby, and perform all of the terms and conditions thereof to be performed by it. The execution, delivery and performance of each of the Transaction Documents to which Buyer is or will be a party and the consummation of each of the transactions and undertakings contemplated thereby have been duly authorized by all requisite action on the part of Buyer.

(c) Valid and Binding Obligations. Each of the Transaction Documents to which Buyer is or will be a party has been, or will be when executed and delivered, duly and validly executed and delivered by Buyer, and is, or will be when executed and delivered, enforceable against Buyer in accordance with the terms thereof, except as such enforceability may be limited or denied by (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights and the enforcement of debtors' obligations generally and (ii) general principles of equity, regardless of whether enforcement is pursuant to a proceeding in equity or at law.

(d) Approvals and Consents. Assuming the receipt, effectiveness and validity of the approvals and consents set forth in Schedules 4.1(d) and 5.1(d) hereto, Buyer is not and will not be, required to give any notice to, make any filing with, or obtain any consent or approval from, any Person (including Governmental Approvals and consents or approvals of any third party) to execute, deliver or perform any of the Transaction Documents to which it is or will be a party or to consummate the transactions contemplated. Schedule 5.1(d)-1 sets forth each notice that Buyer is required to give and each approval and consent that Buyer is required to obtain prior to the Closing in order to execute, deliver or perform any of the Transaction Documents to which it is or will be a party or to consummate the transactions contemplated.

(e) No Violations. Assuming that all filings, consents and approvals set forth on Schedule 5.1(d) have been timely made or obtained, as applicable, the execution, delivery and performance by Buyer of each of the Transaction Documents to which it is or will be a party, and the consummation of the transactions contemplated thereby, does not: (i) violate the Charter Documents of Buyer, (ii) violate or be in conflict with, or constitute a default (or any event which, with or without due notice or lapse of time, or both, would constitute a default) under, any Contract to which Buyer is a party or by which any of Buyer's properties or assets are or may be bound, which in any case, would materially and adversely affect the ability of Buyer

to perform its obligations under the Transaction Documents to which it is or will be a party, or (iii) violate in any material respect any Law applicable to Buyer.

(f) No Litigation. Except for the Pending Dispute, there are no actions, suits, or legal, mediation or arbitration proceedings pending to which Buyer is a party (and, to Buyer's Knowledge, there are no actions, suits or legal, mediation or arbitration proceedings threatened in writing against Buyer), before any Governmental Person or arbitral body against or affecting Buyer, that (i) challenges the validity of, or seeks to enjoin, the consummation of the transactions contemplated by the Transaction Documents and has resulted in any legal requirement, injunction, writ or preliminary restraining order or any order of any nature issued by a Governmental Person which prevents the consummation of the transactions contemplated by the Transaction Documents or (ii) would, individually or in the aggregate, have a material adverse effect on the ability of Buyer to perform its obligations under the Transaction Documents or to consummate the transactions contemplated thereby.

Section 5.2 No Further Representations. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH AND MADE BY SELLER IN ARTICLE IV OF THIS AGREEMENT OR IN ANY OTHER TRANSACTION DOCUMENTS, SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, RELATING TO SELLER, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES, THE BUSINESS, THE PROJECT OR THE TRANSACTIONS CONTEMPLATED HEREBY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AND EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE IV OF THIS AGREEMENT OR IN ANY OTHER TRANSACTION DOCUMENTS, BUYER ACKNOWLEDGES AND AGREES IN PARTICULAR AS FOLLOWS: (A) THE PURCHASED ASSETS AND ANY PART THEREOF, ARE BEING ACQUIRED, "AS IS, WHERE IS" ON THE CLOSING DATE, AND IN THEIR RESPECTIVE CONDITIONS ON THE CLOSING DATE "WITH ALL FAULTS"; (B) BUYER IS RELYING ON ITS OWN EXAMINATION OF THE PURCHASED ASSETS, THE BUSINESS AND THE PROJECT AND NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE GIVEN AS TO LIABILITIES, OPERATION OF THE PURCHASED ASSETS, INCLUDING THE PROJECT, THE TITLE, CONDITION, VALUE OR QUALITY OF THE PURCHASED ASSETS OR THE BUSINESS, CONDITION (FINANCIAL OR OTHERWISE) OR PROSPECTS OF THE BUSINESS, THE RISKS AND OTHER INCIDENTS OF OWNERSHIP OF THE PURCHASED ASSETS, THE BUSINESS, THE PROJECT AND ANY PART THEREOF, AND ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO PURCHASED ASSETS, THE BUSINESS, THE PROJECT, OR ANY PART THEREOF, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF DEFECTS THEREIN, WHETHER LATENT OR PATENT; AND (C) NO INFORMATION OR MATERIAL PROVIDED BY OR COMMUNICATION MADE BY SELLER OR ANY REPRESENTATIVE OF SELLER CREATE OR OTHERWISE CAUSE TO EXIST ANY REPRESENTATION OR WARRANTY BY SELLER.

ARTICLE VI

COVENANTS

Section 6.1 Covenants of All Parties.

(a) Consummation of Transactions and Obtaining Approvals. Each Party shall (i) as promptly as is reasonably practicable, diligently and in good faith, use its Commercially Reasonable Efforts to cause the Closing conditions in Section 3.3 (in the case of Seller) and Section 3.4 (in the case of Buyer) to be satisfied as soon as practicable and (ii) coordinate and cooperate with the other Party in providing such information (other than Excluded Information) and supplying such assistance as may be reasonably requested by such other Party in connection with the foregoing, to the extent not protected by a legal privilege or prohibited by Law. Without limiting the generality of the foregoing or any other provision of this Agreement regarding approvals, Buyer and Seller agree to take, or cause to be taken, all actions and to do, or cause to be done, all things required, necessary, proper or advisable to obtain such authorizations, consents, orders and approvals from any Governmental Person, including FERC, or any third-party as are required, necessary, proper or advisable in connection with the consummation of the transactions contemplated hereby on the terms set forth herein. Each Party will promptly inform the other Party of any material communication received by such Party from, or given by such party to, any Governmental Person from which any such authorization, consent, order or approvals is required and of any material communication received or given in connection with any Claim by a private party, in each case regarding any of the transactions contemplated hereby, and will permit the other party to review any communication given by it to, and consult with each other in advance of any meeting or conference with, any such Governmental Person or, in connection with any Claim by a private party, with such other Person, and to the extent permitted by such Governmental Person or other Person, give the other Party the opportunity to attend and to participate in such meetings and conferences.

(b) Pending Dispute. Each Party agrees that during the Pre-Closing Period (i) this Agreement shall operate to stay the Pending Dispute, and (ii) Buyer shall not withhold any amounts invoiced by Seller under the Power Purchase Agreement, other than amounts that may be withheld in accordance with the Power Purchase Agreement where such withholding is based on either (A) one or more of Buyer's claims or counterclaims that are the subject of the Pending Dispute (consistent with Buyer's past practice) or (B) any calculation error that may appear in such invoices; provided, that, Buyer shall not retroactively withhold any amounts that have been previously paid by Buyer under the Power Purchase Agreement.

(c) Further Assurances. Following the Closing, each Party shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents. Without limiting the generality of the foregoing, Seller shall execute and deliver to Buyer such bills of sale, endorsements, assignments and other good and sufficient instruments of assignment, transfer and conveyance, in form and substance reasonably satisfactory to Buyer and Seller, and take such additional actions as Buyer may reasonably request to vest in Buyer all of

Seller' right, title and interest in and to the Purchased Assets. Seller and Buyer shall also cooperate in the transition of operational matters in respect of the Purchased Assets as outlined in Schedule 6.1(c).

Section 6.2 Covenants of Seller.

(a) Pre-Closing Period Actions. During the Pre-Closing Period Seller shall operate and maintain the Project in the ordinary course consistent with past practices and in accordance with the terms of the Site Lease and the Power Purchase Agreement. Without limiting the generality of the foregoing, except (i) as otherwise contemplated herein, (ii) to the extent constituting Permitted Interim Actions, (iii) as required by any Law, Environmental Approval, Environmental Rule, Governmental Approval, Governmental Rule or Material Contract; **provided**, that, for purposes of this clause (iii) only, the definition of **Governmental Person** includes Buyer and its Affiliates or (iv) to the extent constituting actions taken with Buyer's consent (which consent shall not be unreasonably withheld, conditioned or delayed), during the Pre-Closing Period, Seller shall:

(i) not take actions which are outside of the ordinary course of the Business;

(ii) not amend, modify in any material respect or terminate any Assigned Contract;

(iii) not abandon any rights in any material respect under any Assigned Contract or fail to honor or perform in any material respect any Assigned Contract;

(iv) maintain, to the extent available on commercially reasonable terms, in full force and effect insurance policies and programs currently in effect as of the Effective Date;

(v) not mortgage, pledge or subject to Liens (other than Permitted Liens) any of the Purchased Assets;

(vi) not lease, license, surrender, relinquish, sell, transfer, convey, assign or otherwise dispose of any interest in any Purchased Assets other than a *de minimis* part thereof in the ordinary course of business, which *de minimis* disposition of any such interest may be in connection with the normal repair and replacement of assets or to the extent obsolete or no longer needed; or

(vii) not agree or commit to do any of the foregoing.

Notwithstanding the foregoing, Seller may take any action otherwise prohibited by this Section 6.2(a) during the Pre-Closing Period to the extent determined in good faith by Seller to be necessary in accordance with prudent industry practice to respond to an emergency so long as Seller shall as soon as reasonably possible inform Buyer of any such actions taken outside of the ordinary course of business.

(b) Casualty Losses.

(i) If the Project (or any portion thereof) is damaged or destroyed by casualty loss during the Pre-Closing Period (a *Casualty Loss*), and the cost of restoring the Project (or portion thereof), to a condition reasonably comparable to its prior condition, as estimated by a qualified engineering firm selected by Seller and reasonably acceptable to Buyer (the *Restoration Cost*) is greater than Five Million Dollars (\$5,000,000) but does not exceed Seventy-Five Million Dollars (\$75,000,000), Seller shall elect, by notice to Buyer within thirty (30) days after the date of such Casualty Loss, to: (A) repair or replace the damaged or destroyed Project (or portion thereof) to a condition reasonably comparable to its prior condition, in which event Seller shall receive all casualty insurance proceeds in connection with such Casualty Loss (including any such proceeds received by Seller or Buyer after the Closing), or (B) reduce the amount of the Purchase Price by such Restoration Cost, in which event Seller shall receive all casualty insurance proceeds in connection with such Casualty Loss (including any such proceeds received by Seller or Buyer after the Closing).

(ii) If the Restoration Cost is in excess of Seventy-Five Million Dollars (\$75,000,000) or Seller is unable to undertake the restoration and repair work resulting from such Casualty Loss as a result of the Project Level Debt, Seller shall elect, by notice to Buyer within thirty (30) days after the date of such Casualty Loss, to: (A) without any delay in the Closing, reduce the Purchase Price by the Restoration Cost (and Seller shall not have an obligation to repair or replace the damaged or destroyed Project), in which event Seller shall receive all casualty insurance proceeds in connection with such Casualty Loss (including any such proceeds received by Seller or Buyer after the Closing) or (B) terminate this Agreement; **provided** that if Seller does not elect to terminate this Agreement as provided in this sentence, then Buyer may, by written notice to Seller, terminate this Agreement within ten (10) Business Days of receipt by Buyer of Seller's notice regarding its election.

(iii) Seller shall promptly notify Buyer of any Casualty Loss for which Seller reasonably expects the Restoration Cost to exceed Five Million Dollars (\$5,000,000). Any repair or replacement of a Casualty Loss, reduction in the Purchase Price on account thereof or termination of this Agreement, in each case, pursuant to this Section 6.2(b), shall be the exclusive remedy in respect of such Casualty Loss under this Agreement.

(c) Condemnation Events.

(i) If the Project (or any portion thereof) is taken by condemnation during the Pre-Closing Period (a *Condemnation Event*), other than as a result of action taken by Buyer or any of its Affiliates, and the condemnation value of the Project (or portion thereof) as estimated by a qualified firm selected by Seller and reasonably acceptable to Buyer (the *Condemnation Value*) is greater than Five Million Dollars (\$5,000,000) but is not in excess of Seventy-Five Million Dollars (\$75,000,000), Seller shall elect, by notice to Buyer within thirty (30) days after the date of such Condemnation Event, either to: (A) replace the Project (or portion thereof) that is subject

to the condemnation proceeding with reasonably comparable assets, in which event Seller shall receive all condemnation award proceeds in connection with such Condemnation Event (including any such proceeds received by Seller or Buyer after the Closing) or (B) reduce the Purchase Price by such Condemnation Value, in which event Seller shall receive all condemnation award proceeds in connection with such Condemnation Event (including any such proceeds received by Seller or Buyer after the Closing).

(ii) If the Condemnation Value is in excess of Seventy-Five Million Dollars (\$75,000,000) or Seller is unable to replace the condemned assets as a result of the Project Level Debt, Seller shall elect, by notice to Buyer within thirty (30) days after the award of the condemnation proceeds, elect to: (A) without any delay in the Closing, reduce the Purchase Price up to such Condemnation Value (and Seller shall not have an obligation to replace the condemned Project (or portion thereof)), in which event Seller shall receive all condemnation award proceeds in connection with such Condemnation Event (including any such proceeds received by Seller or Buyer after the Closing) or (B) terminate this Agreement; **provided** that if Seller does not elect to terminate this Agreement as provided in this sentence, then Buyer may, by written notice to Seller, terminate this Agreement within ten (10) Business Days of receipt by Buyer of Seller's notice regarding its election.

(iii) Seller shall promptly notify Buyer of any Condemnation Event for which Seller reasonably expects the Condemnation Value to exceed Five Million Dollars (\$5,000,000). Any replacement in respect of a Condemnation Event, reduction in the Purchase Price on account thereof or termination of this Agreement, in each case, pursuant to this Section 6.2(c), shall be the exclusive remedy in respect of such Condemnation Event under this Agreement.

(iv) Notwithstanding the foregoing, in the event of a Condemnation Event that is the result of any action taken by Buyer or any of its Affiliates, such Condemnation Event and any action taken by Buyer or any of its Affiliates that results in such Condemnation Event shall constitute Excluded Actions, and such Condemnation Event shall not otherwise affect the rights or obligations of Buyer or Seller under this Agreement.

(d) Access. Subject to applicable Law and such safety and other procedures as Seller may reasonably specify, during the Pre-Closing Period, upon reasonable notice, Seller shall (i) give Buyer and its Representatives reasonable access during normal business hours to the Purchased Assets for the purpose of transitioning ownership of the Purchased Assets and (ii) furnish to Buyer and its Representatives such operating and property data and other information constituting Purchased Assets as Buyer may reasonably request (excluding, for the avoidance of doubt, Seller's proprietary information and Excluded Information). All inspections shall be conducted so as not to interfere with the conduct of the Business by Seller. Buyer agrees to indemnify and hold Seller and their Affiliates and their respective Representatives harmless of and from all actions, suits, claims, investigations, fines, judgments, damages, losses, deficiencies, liabilities, costs and expenses (including attorneys' fees and expenses) that arise out of or relate to physical injuries or damage arising from Buyer's or its Representative's inspection of the Purchased Assets (other than to the extent any of the

foregoing results from the gross negligence or the willful misconduct of the Person seeking such indemnification).

(e) Updating. Seller shall promptly notify Buyer of any change or addition to any of the Schedules which to Seller's Knowledge is reasonably necessary to correct any matter that would otherwise constitute a breach of any representation or warranty in ARTICLE IV. No such updates shall be deemed to cure any inaccuracy of any representation or warranty made in this Agreement as of the Effective Date or for purposes of Section 3.3(e) or ARTICLE VII, unless Buyer specifically agrees thereto; **provided** that if Buyer has the right to, but does not elect to terminate this Agreement as a result of such breach of representation or warranty pursuant to Section 8.1(e) and the Closing occurs, then (i) Buyer shall be deemed to have irrevocably waived any right to terminate this Agreement with respect to the matters set forth in such Schedule update or addition, (ii) such update or addition shall be deemed to be incorporated into and to supplement, amend and modify the Schedules, and (iii) Buyer shall have irrevocably waived its rights to indemnification under Section 7.1 with respect to the matters set forth in such Schedule update or addition. Notwithstanding the foregoing, any aforesaid change or addition to any of the Schedules to correct any matters that would otherwise constitute a breach of any representation or warranty in ARTICLE IV that is reasonably necessary because of an event or circumstance arising after Seller's execution of this Agreement and on or before the execution hereof by the Mayor of the City of Gainesville pursuant to Section 9.17, upon notice thereof from Seller to Buyer (x) shall be deemed to be incorporated into and to supplement, amend and modify the Schedules and (y) shall not entitle Buyer to any indemnification under Section 7.1 in respect of the matters set forth in such Schedule update or addition; provided, however, that, if Buyer shall not have been notified of such change or addition prior to such time as the Mayor of the City of Gainesville shall have executed this Agreement pursuant to Section 9.17, then, for purposes of Section 3.3(e), such change or addition shall not be deemed to be incorporated into and to supplement, amend and modify the Schedules unless the Closing occurs.

(f) Exclusivity. Prior to the earlier of the Closing and the termination of this Agreement, Seller shall not, and shall not permit any of its Affiliates or any of its or their respective Representatives to, directly or indirectly, (1) sell all, or any portion of, or interest in, Seller, the Business, the Project or any Purchased Assets to any other Person, or (2) engage in discussions (whether solicited or unsolicited) or negotiate with, or solicit any expression of interest, inquiry, proposal or offer from, any Person (other than Buyer) relating to the possible acquisition of or investment in any or all of Seller, the Business, the Project or any Purchased Assets; provided, however, that the foregoing provisions shall not create restrictions on transfers of indirect interests in Seller that are not already addressed in the Power Purchase Agreement. Further, prior to the Expiration Date, Seller will promptly notify Buyer of the receipt by Seller, any of its Affiliates or any of its or their respective Representatives of any expression of interest or offer to acquire or invest in all or any portion of Seller, the Project or any Purchased Assets (or enter into any other transaction that is substantially similar to, or that would preclude, the transaction contemplated hereby), and the terms and conditions of any such offer or expression of interest.

(g) Post-Closing Consents and Approvals. Following the Closing, Seller agrees to take, or cause to be taken, all actions and to do, or cause to be done, all things

required, necessary, proper or advisable to obtain the authorizations, consents, orders and approvals set forth on Schedule 4.1(d)-2.

Section 6.3 Covenants of Buyer.

(a) Contact During Pre-Closing Period. Notwithstanding anything to the contrary in this Agreement, during the Pre-Closing Period, without Seller's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), Buyer shall not contact or correspond with the Project's operator or any customer, supplier, contract counterparty, financing party, subcontractor or agent of Seller or the Project, any management or other personnel directly or indirectly employed by a Seller or the Project, any other Person that is a party to a Material Contract or any Governmental Person in relation to the matters contemplated by this Agreement.

(b) Withholding Under Power Purchase Agreement. During the Pre-Closing Period, Buyer shall not withhold amounts from Seller's monthly invoices other than amounts that may be withheld with respect to any invoice when payment is due for such invoice in accordance with the Power Purchase Agreement where such withholding is based on either (i) one or more of Buyer's claims or counterclaims that are the subject of the Pending Dispute (consistent with Buyer's prior practice), or (ii) any calculation error that may appear in such invoices. Buyer shall not retroactively withhold any amounts that have previously been paid under any Seller invoice.

(c) Post-Closing Consents and Approvals. Following the Closing, Buyer agrees to take, or cause to be taken, all actions and to do, or cause to be done, all things required, necessary, proper or advisable to obtain the authorizations, consents, orders and approvals set forth on Schedule 5.1(d)-2.

Section 6.4 Tax Matters/Other Obligations.

(a) Cooperation. Seller and Buyer shall cooperate, and shall cause their Affiliates, officers, employees, agents, auditors and representatives to cooperate, as reasonably required to prepare and to file all Tax Returns in respect of the Purchased Assets or the Business and to deal with any audit, examination or other proceedings related to liabilities for Taxes. Such assistance shall include making employees available on a mutually convenient basis to provide additional information (other than Excluded Information) or explanation of material provided hereunder and shall include providing copies of relevant tax returns and supporting material. The party requesting assistance hereunder shall reimburse the assisting party for reasonable out-of-pocket expenses incurred in providing assistance. Buyer and Seller will retain for the full period of any statute of limitations and provide the others with any records or information which may be relevant to such preparation, audit, examination, proceeding or determination for which Seller could be liable. Seller and Buyer agree that the transactions contemplated by Section 2.1 shall be treated for Tax purposes as a purchase of the Purchased Assets by Buyer and agree not to take any position that is inconsistent with such treatment on any Tax Return, before any Taxing Authority or otherwise.

(b) Tax Contests. If any Taxing Authority makes a Claim or proposes an adjustment that could give rise to a Claim for Taxes for which Seller could be liable, Buyer promptly shall give Seller written notice of the Claim or proposal; provided, however, that no failure or delay of Buyer in providing such notice shall reduce or otherwise affect the obligations or liabilities of Seller pursuant to this Agreement except to the extent Seller is actually prejudiced. Seller shall have the right to contest the Claim or proposal in proper proceedings at Seller's sole cost and expense. Buyer shall have the right to attend the proceedings at its own expense with its own counsel and to receive copies of all materials relevant to the proceedings. Seller shall not settle or compromise any Claim or agree to any payment, refund or credit of Tax that is an Assumed Liability without the written consent of Buyer (which shall not be unreasonably withheld or delayed).

(c) Transfer Taxes and Taxes and Other Obligations Payable Under Contracts.

(i) All sales, general excise, use, transfer, goods and services, real property transfer, conveyance, value added, filing, recording, gains, documentary, stock transfer, stamp duty, excise, gross receipts and other similar taxes, duties, fees and charges but excluding any Excluded Taxes (*Transfer Taxes*), if any, arising out of or in connection with the purchase of the Purchased Assets shall be paid by Buyer, other than Transfer Taxes arising out of or in connection with the assignment of the Site Lease, which shall be paid by Seller.

(ii) Any Taxes and other obligations for which Buyer or any of its Affiliates are responsible (whether directly or via reimbursement) under any Buyer Project Agreement, including all Buyer Environmental Responsibilities and any property and ad valorem Taxes, shall be paid or otherwise satisfied by Buyer as and when due.

(iii) Buyer shall prepare and timely file all Tax Returns or other documentation relating to such Transfer Taxes; provided, however, that to the extent required by applicable Law, Seller will join in the execution of any such Tax Returns or other documents relating to such Transfer Taxes or file them directly. Buyer shall provide Seller with copies of each such Tax Return or other document at least thirty (30) days prior to the date on which such Tax Return or other document is required to be filed. To the extent an exemption is claimed from Transfer Taxes, Buyer will provide Seller with any required exemption certificate.

(d) Licensed IP. Buyer hereby (i) grants to Seller or its designated Affiliates, contingent on and effective as of the Closing, a royalty-free, non-transferable license to use the Licensed IP solely in connection with other electricity generating facilities developed or owned in whole or in part by Seller or such Affiliates and (ii) agrees to provide copies of such Licensed IP to Seller or such Affiliates and take such other actions as shall be reasonably necessary to effectuate the license granted hereby.

ARTICLE VII

INDEMNIFICATION

Section 7.1 General. To the fullest extent permitted by applicable Law, but subject to Section 7.2, from and after the Closing, Seller shall defend, indemnify and hold harmless Buyer, and Buyer shall defend, indemnify and hold harmless Seller (the applicable indemnifying party, the **Indemnitor**), including, in the case of non-indemnifying Seller and Buyer, such Party's Affiliates and their respective partners, managers, members, shareholders, consultants, Representatives, successors and assigns (each, an **Indemnified Party**, with each Party and its respective group of Indemnified Parties being referred to collectively as an **Indemnified Group**) from and against any Loss actually suffered or incurred by any Indemnified Party to the extent arising out of, or resulting from (a)(i) with respect to Seller's indemnity of Buyer, the inaccuracy of any Seller Surviving Representation, and with respect to Buyer's indemnity of Seller, the inaccuracy of any Buyer Surviving Representation, and (b)(i) with respect to Seller's indemnity of Buyer, any Excluded Liability and (ii) with respect to Buyer's indemnity of Seller, any Assumed Liability. Notwithstanding the foregoing, no Indemnified Party shall be entitled to any indemnification hereunder in respect of any Loss to the extent caused by the negligence, willful misconduct or failure to perform obligations under this Agreement of such Indemnified Party or any Person who is a member of its Indemnified Group.

Section 7.2 Limitations on Indemnification.

(a) Timing of Claim. Notwithstanding the provisions of Section 7.1 above, no Indemnified Party shall be entitled to make any claim for indemnification as provided in Section 7.1 unless such claim shall have been made in writing no later than the one-year anniversary of the Closing Date, except that any claim for indemnification that results from fraud or willful misconduct on the part of the Indemnitor may be made at any time that is no later than the expiration of the applicable statute of limitations (including extensions).

(b) Deductible Amount. An Indemnified Party shall not be entitled to make any claim for indemnification under Section 7.1 to the extent that, except in the case of any claim for indemnification that results from fraud or willful misconduct on the part of the Indemnitor in which case this Section 7.2(b) shall not apply, the aggregate amount of all Losses for which such Person's Indemnified Group is entitled to indemnification pursuant to Section 7.1 does not exceed an amount equal to Four Million Dollars (\$4,000,000) (the **Deductible Amount**). After the Deductible Amount has been reached with respect to an Indemnitor, such Indemnified Party shall be entitled to indemnification only for amounts in excess of the Deductible Amount and only to the extent otherwise allowable, including under Section 7.2(c).

(c) Overall Limitation on Liability of Parties.

(i) Liability of Seller. Except to the extent that any claim for indemnification results from fraud or willful misconduct on the part of the Indemnitor in which case this Section 7.2(c)(i) shall not apply, notwithstanding any other provision of this Agreement or any other Transaction Document, the aggregate liability of Seller

under this ARTICLE VII for all Losses shall not exceed Eighteen Million, Seven Hundred Fifty Thousand Dollars (\$18,750,000).

(ii) Liability of Buyer. Except to the extent that any claim for indemnification results from fraud or willful misconduct on the part of the Indemnitor in which case this Section 7.2(c)(ii) shall not apply, notwithstanding any other provision of this Agreement or any other Transaction Document, the aggregate liability of Buyer under this ARTICLE VII shall not exceed Eighteen Million Seven Hundred Fifty Thousand Dollars (\$18,750,000).

(d) Exclusive Remedy. Except for breaches resulting from fraud or willful misconduct, from and after the Closing, the indemnification provisions of this ARTICLE VII shall be the sole and exclusive remedy of each Party (including Indemnified Parties) (i) for any breach of any Party's representations, warranties, covenants or agreements contained in this Agreement or (ii) otherwise with respect to this Agreement, the Project or the transactions contemplated hereby.

(e) Except to the extent that any claim for indemnification results from fraud or willful misconduct, with respect to claims of the Buyer pursuant to the indemnification obligations of Seller set forth in Section 7.1, all such claims shall be sought to be collected exclusively from the funds held pursuant to the Escrow Agreement (including interest thereon), subject to Section 7.2(f).

(f) The Losses suffered by any Indemnified Party shall be calculated after giving effect to any amounts actually received from third parties, including insurance proceeds, in each case net of the reasonable third party out-of-pocket costs and expenses associated with such recoveries to such Indemnified Party and net of the Deductible Amount. If any insurance proceeds or other recoveries from third parties are actually realized (in each case, calculated net of the reasonable third party out-of-pocket costs and expenses associated with such recoveries and net of the Deductible Amount) by an Indemnified Party subsequent to the receipt by such Indemnified Party of an indemnification payment hereunder in respect of the claims to which such insurance proceeds or third party recoveries relate, appropriate refunds shall be made promptly to the Indemnitor in respect of such insurance proceeds or third party recoveries. If an indemnification payment is made by an Indemnitor to an Indemnified Party hereunder other than with insurance proceeds or recoveries from third parties, such Indemnitor shall be subrogated to any rights of the Indemnified Party in respect of any such proceeds or recoveries as provided in Section 7.3(e).

(g) Notwithstanding anything contained in this Agreement to the contrary, the Indemnitor will have no obligation to indemnify the Indemnified Group or any other Person pursuant to ARTICLE VII with respect to any breaches of the Indemnitor to the extent that the breach, or the facts and circumstances underlying such breach, was known to the Indemnified Group as of the date of this Agreement or the Closing Date.

(h) Notwithstanding anything contained in this Agreement to the contrary, Seller will have no obligation to indemnify Buyer or any other Person pursuant to

ARTICLE VII with respect to Losses that are caused or induced by, or otherwise result from, any Excluded Action.

(i) Notwithstanding anything contained in this Agreement to the contrary, Seller will have no obligation to indemnify Buyer or any other Person pursuant to ARTICLE VII with respect to Losses based on or resulting from Assumed Liabilities.

(j) Notwithstanding anything contained in this Agreement to the contrary, Buyer will have no obligation to indemnify Seller or any other Person pursuant to ARTICLE VII with respect to Losses based on or resulting from Excluded Liabilities.

Section 7.3 Procedure for Indemnification.

(a) Notice of Claim. If any Claim shall be instituted or shall be asserted by any third party in respect of which indemnification may be sought by any Indemnified Party under this ARTICLE VII, such Indemnified Party shall, within twenty days of the actual receipt of notice thereof by a responsible officer, cause written notice of such Claim to be forwarded to the Indemnitor, specifying the nature of such Claim and the amount or the estimated amount thereof to the extent then feasible, which estimate shall not be binding upon the Indemnified Party, in its effort to collect the final amount arising out of such Claim; **provided**, that the failure of an Indemnified Party to give timely notice shall not affect its rights to indemnification under this ARTICLE VII except to the extent that the Indemnitor has been prejudiced by such failure.

(b) Conduct of Claim. If any such Claim is brought by a third party, the Indemnitor shall be entitled, upon written notice to the Indemnified Party, to participate in the defense of such Claim and, to the extent that it wishes, to assume the defense of, and to negotiate and/or settle, such Claim. The Indemnified Party shall, in its sole discretion, have the right to employ separate counsel in any such action and to participate in the defense thereof, **provided** all fees and expenses of such counsel shall be paid by such Indemnified Party. If notice is given to the Indemnitor by the Indemnified Party of the commencement of any third-party Claim and (i) the Indemnitor does not, within 30 days after receiving such notice, give notice to the Indemnified Party of its election to assume the defense of such Claim, (ii) the Indemnitor chooses counsel not reasonably acceptable to Indemnified Party, (iii) the Indemnitor or its Affiliate is also a party to such third-party Claim and the Indemnified Party has been advised by counsel that a conflict of interest exists between the Indemnitor or its Affiliate and the Indemnified Party, or (iv) after undertaking the defense of such third-party Claim, the Indemnitor or legal counsel selected by it fails to pursue the defense of Claim with reasonable diligence, then in any such case the Indemnified Party shall (upon notice to the Indemnitor) have the right to participate or in or assume the defense, compromise or settlement of such Claim, and the Indemnitor shall reimburse such Indemnified Party for the reasonable costs of defending against such third-party Claim (including reasonable attorneys' fees and expenses) to the extent it is determined that such Indemnifying Party is obligated with respect to such third-party Claim under this Agreement. If an Indemnitor assumes the defense of a third-party Claim, no compromise, discharge or settlement of such Claim may be effected by the Indemnitor without the Indemnified Party's consent, such consent not to be unreasonably withheld, delayed or conditioned; **provided**, that no such consent shall be necessary (and the Indemnitor shall be

entitled to effect such compromise, discharge or settlement on its own behalf and on behalf of the Indemnified Parties) if (A) there is no finding or admission of any violation of Law by or on behalf of the Indemnified Parties, (B) if applicable, the sole relief provided in connection with such third-party Claim is monetary damages that are paid in full by the Indemnifying Party and (C) an unconditional term of the compromise, discharge or settlement of such Claim is the giving of a release from all liability with respect to such Claim by the applicable claimant or plaintiff to each Indemnified Party that is or may be subject to the third-party Claim. Whether or not the Indemnitor assumes the defense of a third-party Claim, the Indemnified Party shall not admit any liability with respect to, or compromise, discharge or settle, such third-party Claim without the Indemnitor's prior written consent, which consent not to be unreasonably withheld, delayed or conditioned. The Indemnitor and the Indemnified Party shall cooperate fully with each other in connection with the defense, negotiation or settlement of any such Claim. Notwithstanding the foregoing, the conduct of any Claim by Buyer or Seller for indemnification with respect to Taxes shall be governed solely by the provisions of Section 6.4.

(c) Payment of Third-Party Claims. After final judgment or award shall have been rendered by a court, arbitration board or administrative agency of competent jurisdiction and the expiration of the time in which to appeal therefrom, or a settlement shall have been consummated in accordance with this Agreement, or the Indemnified Party and the Indemnitor shall have arrived at a mutually binding agreement with respect to each separate matter indemnified by the Indemnitor, the Indemnified Party shall forward to the Indemnitor notice of any sums due and owing by the Indemnitor with respect to such matter.

(d) Access to Information. If any Claim is made by a third party against an Indemnified Party, the Indemnified Party shall use commercially reasonable efforts to make available to the Indemnitor those partners, members, officers and employees whose assistance, testimony or presence is necessary to assist the Indemnitor in evaluating and in defending such Claims; **provided**, that any such access shall be conducted at reasonable times upon reasonable notice in such a manner as not to interfere unreasonably with the operations of the business of the Indemnified Party, and any out of pocket expenses incurred by any Indemnified Party in connection therewith shall be included in such Indemnified Party's Losses.

(e) Subrogation. Upon payment of a Loss by an Indemnitor to an Indemnified Party pursuant to this ARTICLE VII, such Indemnitor, without any further action, shall be subrogated to any and all Claims that such Indemnified Party or any member of its Indemnified Group may have against third parties relating to such Loss, to the extent of the amount paid to such Indemnified Party or any member of its Indemnified Group by such Indemnitor in respect of such Loss, and such Indemnified Party and the members of its Indemnified Group shall use commercially reasonable efforts to cooperate with such Indemnitor, at the expense of such Indemnitor in order to enable such Indemnitor to pursue such Claims.

(f) Payment of Legal Expenses. In the event of a dispute between the Parties relating to the validity of any Claim hereunder or the amount of such Claim, the prevailing Party shall be entitled to reimbursement by the unsuccessful Party of the attorneys' fees and costs reasonably incurred by the prevailing Party in connection with the resolution of such dispute without regard to the limitations set forth in Section 7.2. Any such reimbursement shall be made promptly following demand therefor and, if the unsuccessful Party is the Seller,

then, unless otherwise paid, may at Buyer's discretion constitute a Claim payable from the Escrow Amount.

Section 7.4 No Waiver of Sovereign Immunity. Nothing in this Article VII shall be interpreted as a waiver of Buyer's sovereign immunity to any extent beyond the limited waiver set forth in section 768.28, Fla. Stat., which includes prohibitions on punitive damages and prejudgment interest, caps on damages and attorney's fees, and other provisions. Nothing in this Section 7.4 shall limit a Party's right to specific performance pursuant to Section 10.1.

ARTICLE VIII

TERMINATION

Section 8.1 Termination. This Agreement may be terminated at any time prior to the Closing only in the following manner:

- (a) By mutual written agreement of Seller and Buyer;
- (b) By Buyer or Seller by written notice to each other Party if the Closing shall not have occurred on or before November 24, 2017 (such date, the ***Expiration Date***); **provided**, that a Party shall only be entitled to deliver a written notice under this Section 8.1(b) if such Party shall not have breached its obligations under this Agreement in any manner that shall have proximately caused the failure of the Closing to occur on or before such date;
- (c) By Buyer if on the date that is five (5) days prior to the Closing the interest rate of 30-year United States Treasury bonds is more than 3.43%, provided that the date that is five (5) days prior to the Closing is not before November 19, 2017;
- (d) By Seller upon written notice to Buyer if Buyer shall have breached in any material respect any of its covenants contained in this Agreement, and such breach would result in failure to satisfy the conditions to Closing set forth in Section 3.4, but (except in the case of a failure by Buyer to pay the Purchase Price when due, which shall not be subject to the following) only if (i) Seller shall have first given written notice to Buyer identifying such breach and (ii) Buyer has not cured or remedied such breach within thirty (30) days of receipt of such notice; **provided** that if such breach is capable of being cured and Buyer has commenced to cure or remedy such breach within thirty (30) days of receipt of such notice from Seller, Buyer shall have until the date that is sixty (60) days following the receipt of such notice from Seller to cure or remedy such breach before Seller may terminate this Agreement pursuant to this Section 8.1(d);
- (e) By Buyer upon written notice to Seller if Seller shall have breached in any material respect any of its covenants contained in this Agreement, and such breach would result in failure to satisfy the conditions to Closing set forth in Section 3.3, but only if (i) Buyer shall have first given written notice to Seller identifying such breach and (ii) Seller has not cured or remedied such breach within thirty (30) days of receipt of such notice; **provided** that if such breach is capable of being cured and Seller has commenced to cure or remedy such breach within thirty (30) days of receipt of such notice from Buyer, Seller shall have until the date that is sixty (60) days following the receipt of such notice from Seller to cure

or remedy such breach before Buyer may terminate this Agreement pursuant to this Section 8.1(e); or

(f) By Buyer or Seller pursuant to Section 6.2(b) or Section 6.2(c).

Section 8.2 Effect of Termination. In the event of a termination of this Agreement as provided in Section 8.1, except as otherwise expressly agreed in writing by the Parties, this Agreement shall cease to have force and effect, and there shall be no further liability or obligation on the part of Seller or of Buyer, except that the provisions of ARTICLE VIII and ARTICLE IX shall continue to apply following any such termination.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices. Any notice, statement, demand, claim, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be deemed properly served, given or made if delivered in person or sent by electronic mail, facsimile or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to the other Party at the addresses specified below, or such other address as a Party may specify in the manner specified in this Section 9.1:

(a) If to Buyer, to:

General Manager for Utilities
Gainesville Regional Utilities
301 S.E. 4th Avenue
Gainesville, Florida 32614-7117
Telephone: 352-393-1007
Facsimile: 352-334-2229

With a copy, which shall not constitute notice to:

City Attorney
200 E. University Avenue
Gainesville, Florida 32627
Telephone: 352-393-8747
Facsimile: 352-334-2229

(b) If to Seller, to:

Gainesville Renewable Energy Center
c/o Energy Management, Inc.
20 Park Plaza, Suite 320
Boston, MA 02116
Attention: Jim Gordon
Telephone: 617-904-3100
Facsimile: 617-904-3109
Email: jgordon@emienergy.com

With a copy, which shall not constitute notice to:

Norton Rose Fulbright US LLP
1200 New Hampshire Ave N.W.
Washington, DC 20036
Attention: Keith Martin
Telephone: 202-974-5674
Facsimile: 202-974-5602
Email: keith.martin@nortonrosefulbright.com

Notice given by personal delivery, mail or overnight courier pursuant to this Section 9.1 shall be effective upon physical receipt. Notice given by facsimile or electronic mail pursuant to this Section 9.1 shall be effective as of the date of confirmed delivery if delivered before 5:00 p.m. Eastern Time on any Business Day or the next succeeding Business Day if confirmed delivery is after 5:00 p.m. Eastern Time on any Business Day or during any non-Business Day.

Section 9.2 Entire Agreement; Amendments. This Agreement and the other Transaction Documents constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, of the Parties with respect to the subject matter hereof. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the party to be charged. This Agreement may be amended or modified only by a written instrument executed by the Parties.

Section 9.3 Successors and Assigns. This Agreement and the other Transaction Documents shall be binding upon, and shall inure to the benefit of, and shall be enforceable by, the Parties and their respective successors and permitted assigns. Neither this Agreement, nor any other Transaction Document, nor any right hereunder or thereunder, may be assigned by any Party without the prior written consent of each other Party.

Section 9.4 Governing Law. This Agreement, and any instrument or agreement required hereunder (to the extent not otherwise expressly provided for therein), shall be governed by, and construed in accordance with, the Law of the State of Florida.

Section 9.5 Consent to Jurisdiction. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its Affiliates or designees) with respect to or

arising out of this Agreement or any other Transaction Document shall be brought exclusively in the Federal or State courts sitting in Miami-Dade County, Florida as the Party instituting such suit, action or other legal proceeding may elect; **provided** that if Seller requests that such suit, action or other legal proceeding be heard in the Federal courts sitting in Miami-Dade County, Florida (whether or not Seller is the Party that is instituting such suit, action or other legal proceeding), Buyer shall not object to such venue or otherwise challenge the jurisdiction of such Federal court. By execution and delivery of this Agreement, each Party (for itself, its Affiliates and its designees) irrevocably and unconditionally consents and submits to the exclusive jurisdiction of such courts and the appellate courts therefrom, and waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding. The Parties irrevocably consent to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, first class postage prepaid to the addresses set forth in Section 9.1. IN ALL CASES, EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY AND ALL ACTIONS, CLAIMS AND DISPUTES IN CONNECTION WITH THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 9.6 Expenses. Regardless of whether the transactions contemplated by this Agreement are consummated, each Party shall bear responsibility for its own costs and expenses in connection with this Agreement, the Transaction Documents and the transactions contemplated hereby or thereby, including the fees and expenses of its legal counsel and other consultants and advisors in connection with this Agreement and any other Transaction Document, except as may be otherwise provided herein

Section 9.7 Public Records and Confidentiality.

(a) This Agreement is a public record that will be disclosed to the public and discussed during public meetings of the Gainesville Utility Advisory Board and Gainesville City Commission.

(b) Should either Party reasonably believe that written information provided in connection with this Agreement, due diligence, closing or otherwise provided in connection with this purchase and sale transaction falls within a specific exemption under Florida's public record laws, the Party transmitting or providing such information shall submit such information to the receiving Party in a separate envelope that includes a general description of the information together with a reference to the specific Florida public record laws or other law that deems such materials exempt from public disclosure. The receiving Party will not warrant or guarantee that information designated by the transmitting Party as exempt is in fact exempt under Florida's public record laws, and the receiving Party will offer no opinion as to the accuracy of the legal reference provided by the transmitting Party.

(c) If the receiving Party receives a public records request for any information that the transmitting Party has designated as exempt, the receiving Party will notify the transmitting Party through email notice. The transmitting Party shall have no longer than five (5) business days after receipt of such notice to file any necessary court documents to prevent the disclosure of the information, at the sole expense of the transmitting Party. If the

transmitting Party timely files the necessary court documents, the receiving Party will not disclose the information until the conclusion of any proceedings.

(d) If the transmitting Party fails to comply with any of the requirements in this section or fails to file any necessary court documents to prevent the receiving Party from disclosing materials as described herein, such failure shall be deemed as a waiver by the transmitting Party to the claim that any materials submitted by the transmitting Party constitute exempt information. The transmitting Party agrees that its designation of information as exempt may be challenged in court by any person or entity. The transmitting Party agrees to indemnify and defend the receiving Party, its employees, agents and officials against all claims and actions, whether or not a lawsuit is commenced, related to the transmitting Party's designation of materials as exempt and to hold harmless such receiving Party and its employees, agents and officials for any award to a plaintiff for damages, costs and attorneys' fees by reason of any claim or action arising out of or related to the transmitting Party's designation of materials as exempt.

(e) Notwithstanding the foregoing, the Parties agree that any information provided, including any materials designated as exempt, will be distributed to members of staff, management and members of the Utility Advisory Board and City Commission for evaluation and consideration of the purchase and sale transaction.

(f) Notwithstanding the foregoing, Buyer acknowledges and agrees that Seller shall not be obligated to provide Buyer with any Excluded Information in connection with the transactions contemplated by the Transaction Documents or for any other reason.

Section 9.8 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one Party than against any other Party.

Section 9.9 Waiver of Consequential Damages. Notwithstanding any provision in this Agreement to the contrary, except to the extent included in a third-party Claim for which indemnification is sought under ARTICLE VII or a Claim resulting from fraud or willful misconduct, in no event shall either Party or its Affiliates, or their respective managers, members, shareholders, or Representatives, be liable hereunder at any time for punitive, incidental, consequential special or indirect damages, including loss of future profits, revenue or income, or loss of business reputation of the other Party or any of its Affiliates, whether in contract, tort (including negligence), strict liability or otherwise.

Section 9.10 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

Section 9.11 Severability. The invalidity of one or more phrases, sentences, clauses, Sections or Articles contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.

Section 9.12 Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall constitute an original but all of which, taken together, shall constitute but one agreement. Signatures to this Agreement, any Transaction Document or any other document or instrument delivered in connection herewith, may be delivered by facsimile or transmitted electronically (including by portable document format) and shall be deemed originals for all purposes.

Section 9.13 Third Parties. Except as otherwise expressly provided in this Agreement, nothing contained in this Agreement shall be construed to create any right in, duty to, standard of care with respect to, or any liability to any Person who is not a party to this Agreement.

Section 9.14 No Waiver. Any failure of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.

Section 9.15 No Recourse. Each Party acknowledges that no recourse under, upon or arising out of any obligation contained in this Agreement shall be had against any Affiliate, partner, member, stockholder, director, officer or employee of the other Party. Each Party expressly waives and releases all rights to assert liability under or arising out of this Agreement, or to satisfy any claim arising hereunder, against any such person.

Section 9.16 Pre-Closing Remedies. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that their respective rights to (a) seek specific performance to enforce the terms and provisions of this Agreement against the other Party pursuant to Section 10.1 and (b) terminate this Agreement in accordance with the terms and subject to the conditions set forth in ARTICLE VIII shall be the Parties' sole and exclusive remedies prior to the Closing for any breach of the other Party's representations, warranties, covenants or agreements contained in this Agreement.

Section 9.17 City Approval Process and Contingency. This Agreement is subject to approval by the Gainesville City Commission and is further contingent upon, and will not become effective and binding on the Buyer until executed by the Mayor of the City of Gainesville. If the City Commission does not act to approve this Agreement by August 31, 2017 or if the Mayor does not execute this Agreement by September 14, 2017, then this Agreement shall have no force or effect.

ARTICLE X

SPECIFIC PERFORMANCE

Section 10.1 Waivers and Acknowledgments. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement are not performed by the Parties in accordance with their specific terms or are otherwise breached. It is accordingly agreed that Buyer, on the one hand, and Seller, on the other hand, may seek an injunction or

injunctions to prevent breaches of this Agreement by the other for the purpose of enforcing specifically the terms and provisions of this Agreement against the other Party and to cause the Closing to occur on the terms and subject to the conditions thereto set forth herein. In such case, each of the Parties hereby waives (i) any defenses in any action for specific performance that such other Party is required to mitigate damages or otherwise has an adequate remedy under Law and (ii) any requirement under any Law to post a bond or other security as a prerequisite to obtaining such equitable relief. If either Party brings any action to enforce specifically the performance of the terms and provisions hereof by the other Party, the Expiration Date shall automatically be extended by (x) the amount of time during which such action is pending, plus twenty (20) Business Days or (y) such other time period established by the court presiding over such action.

IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement to be duly executed and delivered as of the date first written above.

SELLER:

**GAINESVILLE RENEWABLE ENERGY
CENTER, LLC,**

By: _____

Name:

Title:

BUYER:

**Recommended for approval to the City
Commission,**

By: _____
Name:
Title:

**CITY OF GAINESVILLE, FLORIDA, D/B/A
GAINESVILLE REGIONAL UTILITIES,**

By: _____
Name: Lauren Poe
Title: Mayor
Date:

For Buyer: Approved as to form and legality

By: _____
Name:
Title:
Date: