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April 10, 2012

VIA FEDERAL EXPRESS

James O'Connor
City Manager
City of Vero Beach
3455 Airport West Drive
Vero Beach, FL 32960

Re: Purchase Agreement between City of Vero Beach and Florida Power and Light Company

Dear Jim:

Enclosed please find a clean and redlined version of the Purchase Agreement for your review indicating the revisions to the current version of the purchase agreement based on our conversation and your additional comments.

Sincerely,

Mark Arnold

Enclosures
PMB 435002.3

Received
APR 2012
City Mgr's Office

THE CITY OF VERO BEACH ELECTRIC UTILITY

ASSET PURCHASE AND SALE AGREEMENT

BY AND AMONG

THE CITY OF VERO BEACH,
AS SELLER

AND

FLORIDA POWER & LIGHT COMPANY,
AS BUYER

DATED AS OF [_____], 2012

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EXHIBITS

Exhibit A	Form of Assignment and Assumption Agreement
Exhibit B	Form of Bill of Sale
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[[Exhibit H	Form of Other Real Property Lease Agreement and Memorandum of Lease]]
Exhibit I	Form of Airport Substation 5 Lease Agreement
Exhibit J	Form of Airport Substation 6 Lease Agreement
Exhibit K	Form of Airport Warehouse Lease Agreement
Exhibit L	Current Form of Streetlight Agreement (**FOR REFERENCE ONLY**)
Exhibit M	Form of Pole Attachment for Seller Fiber Optic System
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Exhibit O	Capital Expenditure and Maintenance Plan
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Exhibit Z	Vero Beach Power Plant Site property description

SCHEDULES **[To be listed]**

ASSET PURCHASE AND SALE AGREEMENT

This ASSET PURCHASE AND SALE AGREEMENT (the ***"Agreement"***), dated as of [_____] 2012 (***"Effective Date"***), is made and entered into by and between THE CITY OF VERO BEACH, a municipal corporation organized under the laws of the State of Florida (***"Seller"***), and FLORIDA POWER & LIGHT COMPANY, a corporation organized under the laws of the State of Florida (***"Buyer"***). Seller and Buyer are referred to individually as a ***"Party,"*** and collectively as the ***"Parties."***

W I T N E S S E T H:

WHEREAS, Seller owns and operates an electric utility in Indian River County, Florida;

WHEREAS, Buyer desires to purchase and assume, and Seller desires to sell and assign, certain electric utility assets and certain associated liabilities, upon the terms and conditions hereinafter set forth in this Agreement (the "***Transaction***");

WHEREAS, Buyer and Seller desire for Buyer to provide retail electric service to Seller's electric utility customers, commencing on the day that Buyer purchases from Seller such electric utility assets upon the terms and conditions hereinafter set forth in this Agreement; and

WHEREAS, Buyer and Seller desire for the rates for retail electric service to be provided to Seller's electric utility customers to be the same as the rates for retail electric service charged by Buyer to its retail electric service customers.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions.

As used in this Agreement, the following terms have the meanings specified in this Section 1.1.

(1) ***"Acquired Assets"*** has the meaning set forth in Section 2.1.

(2) ***"Acquired Land In Fee"*** has the meaning set forth in Section 4.7(l).

(3) ***"Action"*** means any suit, claim, proceeding, litigation, arbitration, audit or investigation by or before any Governmental Authority or arbitral tribunal.

(4) ***"Affiliate"*** means, with respect to any Person, (i) each Person that directly or indirectly, controls or is controlled by or is under common control with such designated Person; (ii) any Person that beneficially owns or holds fifty percent (50%) or more of any class

of voting securities of such designated Person or fifty percent (50%) or more of the equity interest in such designated Person; or (iii) any Person of which such designated Person beneficially owns or holds fifty percent (50%) or more of the equity interest. For the purposes of this definition, ***"control"*** (including, with correlative meanings, the terms "***controlled by***" and ***"under common control with"***), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

(5) "***After-Tax Basis***" means (a) for purposes of any provision of this Agreement that requires a payment to be made on an After-Tax Basis, such payment shall be made in an amount equal to the sum of (i) the payment to be made before adding the amounts referred to in clause (ii) of this sentence (the "***Base Payment***") and (ii) an amount equal to the sum of any and all Taxes paid or required to be paid by or on behalf of the payee as a result of receipt or recognition of such Base Payment (including, without limitation, any Taxes on such additional amounts) (the "***Additional Payment***"); *provided, however*, that no Additional Payment shall be payable if (A) the Base Payment is not includible in the payee's gross income, (B) the Base Payment is being made to compensate the recipient for a loss or expense that is deductible for federal Tax purposes or (C) the Base Payment compensates the payee for failure to receive an amount, other than a base payment, that would have been includible in the recipient's gross income, had such amount been received, so that the net amount actually received and retained by the payee after payment of all Taxes on the Base Amount and the Additional Amount is equal to the payment otherwise required to be made to the payee under any provision of this Agreement; and (b) for purposes of determining the After-Tax Basis, each payee shall be deemed to be subject to tax at the highest marginal (federal, state and local, as the case may be) Tax rate applicable to a Person with the same legal status as payee doing business in Florida in effect or scheduled to be in effect for the year in which receipt of the payment or payments is taxed.

(6) ***"Agreement"*** means this Asset Purchase and Sale Agreement together with the Schedules and Exhibits hereto, as the same may be amended from time to time in accordance herewith.

(7) ***"Airport Property Lease Agreements"*** means the Airport Substation 5 Lease Agreement, Airport Substation 6 Lease Agreement and Airport Warehouse Lease Agreement, collectively.

(8) ***"Airport Substation 5 Lease Agreement"*** means a lease agreement in the form attached hereto as Exhibit I.

(9) ***"Airport Substation 6 Lease Agreement"*** means a lease agreement in the form attached hereto as Exhibit J.

(10) ***"Airport Warehouse Lease Agreement"*** means a lease agreement in the form attached hereto as Exhibit K.

(11) ***"Allocation"*** has the meaning set forth in Section 3.5(b).

(12) ***"Ancillary Agreements"*** means the Bill of Sale, Assignment and

Assumption Agreement, the Vero Beach Power Plant Site Lease Agreement, the Airport Property Lease Agreements, the VB Sublicenses, [[the Other Real Property Lease Agreement]], the Pole Attachment Agreement for Seller Fiber Optic System, the Dark Fiber Lease Agreement, the Streetlight Agreement, the Termination of Territorial Boundary Agreement, the Franchise Ordinance, and **[INSERT ANY OTHER ANCILLARY AGREEMENTS]**, as the same may be amended from time to time in accordance therewith.

(13) ***"Assignment and Assumption Agreement"*** means the Assignment and Assumption Agreement between Seller and Buyer in the form of Exhibit A hereto.

(14) ***"Assumed Contracts"*** mean the Contracts listed in Schedule 1.1([ ]).

(15) ***"Assumed Liabilities"*** has the meaning set forth in Section 2.3.

(16) ***"Assumed Pension Liability"*** has the meaning set forth in Section 6.10(g).

(17) ***"Attachment Agreements"*** means all pole attachment agreements, wireline agreements, streetlight attachment agreements, joint use agreements, CATV (cable) agreements, fiber optic agreements, franchise agreements for the placement of telecommunication facilities, fiber-optic cable or cable facilities on any of the Acquired Assets, agreements for the placement of telecommunication, cable or other ground equipment and monopoles on any of the Acquired Assets, agreements for the attachment of facilities (including by Governmental Authorities) to towers, substations, buildings, transmission or distribution poles or other facilities comprising the Acquired Assets, banner agreements, holiday lights agreements and other similar agreements.

(18) ***"Attachment Agreements Net Revenue"*** means the payments received by Buyer under the Attachment Agreements listed in Schedule 1.1([ ]), less any costs incurred by Buyer (a) under such Attachment Agreements or (b) relating to any attachment or other property of any Person (other than Buyer) that is the subject of such agreements, including the maintenance, repair or removal thereof.

(19) ***"Benefit Plans"*** means each employee benefit plan as defined in Section 3(3) of ERISA, each governmental plan as defined in Section 3(32) of ERISA, and each other plan, contract, agreement, arrangement or policy, whether written or oral, qualified or non-qualified, providing for (i) compensation, severance benefits, bonuses, profit-sharing or other forms of incentive compensation; (ii) vacation, holiday, sickness or other time-off; (iii) health, medical, dental, disability, life, accidental death and dismemberment, employee assistance, educational assistance, relocation or fringe benefits or perquisites, including post-employment benefits; and (iv) deferred compensation, defined benefit or defined contribution, retirement or pension benefits.

(20) ***"Between Meter Readings Period"*** has the meaning set forth in Section 6.24.

(21) ***"Bill of Sale"*** means the Bill of Sale, in the form of Exhibit B hereto.

(22) "***Bond Resolution***" means **[the City of Vero Beach Electric Revenue**

Bond Resolution No. [__], as amended].

(23) ***"Breach"*** means (a) any breach or violation of, or any inaccuracy in, any representation or warranty, (b) any breach of, or failure to perform or comply with, any condition, provision, covenant or obligation, or (c) any other violation, breach or event of default.

(24) ***"Business Books and Records"*** has the meaning set forth in Section 2.1(h).

(25) ***"Business Day"*** shall mean any day other than Saturday, Sunday and any day on which banking institutions in the State of Florida are authorized by law or other governmental action to close.

(26) ***"Business of the Vero Beach Electric Utility"*** means each of the following: (a) the ownership, operation and maintenance of the Vero Beach Electric Utility; (b) the sale and provision of electricity to the Customers; and (c) the ownership, operation and maintenance of the Streetlight Assets.

(27) ***"Buyer"*** has the meaning set forth in the preamble to this Agreement.

(28) ***"Buyer Benefit Plans"*** has the meaning set forth in Section 6.1(e).

(29) ***"Buyer Fundamental Representations***" means the representations and warranties made in Sections 5.1, 5.2, 5.3(a)(i) and 6.7.

(30) ***"Buyer Indemnitee"*** has the meaning set forth in Section 8.1(b).

(31) ***"Buyer's Required Regulatory Approvals"*** has the meaning set forth in Section 5.3(b).

(32) ***"Capital Expenditure and Maintenance Plan"*** means the document attached hereto as Exhibit O.

(33) ***"Capital Improvement Notice"*** has the meaning set forth in Section 6.16(a).

(34) ***"Closing"*** has the meaning set forth in Section 3.1.

(35) ***"Closing Date"*** has the meaning set forth in Section 3.1.

(36) ***"COBRA"*** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and the rules and regulations promulgated thereunder and any similar state or local Laws.

(37) ***"Code"*** means the Internal Revenue Code of 1986, as amended.

(38) ***"Commercially Reasonable Efforts"*** mean efforts which are designed to enable a Party, directly or indirectly, to expeditiously 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.

(39) ***"Confidential Document"*** has the meaning set forth in Section 6.5.

(40) ***"Consumption Allocation Percentage"*** means the percentage applicable to a particular calendar day as set forth in Exhibit Q hereto.

(41) ***"Contract"*** means any agreement, contract, purchase order, lease, license, right, commitment, evidence of Indebtedness, binding bid or other legally binding arrangement.

(42) ***"Converted Represented Transferred Employees"*** means employees who were covered by Seller's Collective Bargaining Agreement while employed with the Seller, but who will be employed by the Buyer in positions that are not subject to a collective bargaining agreement.

(43) ***"Converted Unrepresented Transferred Employees"*** means employees who were not covered by Seller's Collective Bargaining Agreement while employed with the Seller, but who will be employed by the Buyer in positions that are subject to a collective bargaining agreement.

(44) ***"Council"*** means the City Council of the Seller.

(45) ***"Customer"*** means any existing or possible, retail electric service customer of Seller within the Service Territory.

(46) ***"Customer Deposits"*** means the electric utility deposits collected by Seller from its electric utility customers or the portion of deposits collected from customers of electric, water and sewer utility services allocable to the electric service provided by the Seller, which deposits are owned by such customers, are held on their behalf by Seller, and are returnable to customers upon termination of customer accounts provided such customers pay in full all amounts due to Seller when seeking a return of such deposits. **[NOTE: PARTIES TO DISCUSS HOW TO HANDLE CUSTOMER DEPOSITS]**

(47) ***"Customer Service Assets"*** means the customer service facilities, equipment and other tangible property and assets relating to, or used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility or located on the Real Property, including but not limited to the facilities, equipment and other tangible property and assets that connect the Distribution Assets to each individual Customer's Delivery Point (and other property and assets associated with or ancillary thereto), Customer/premise/account data, historical consumption information, meters, remote metering equipment, and equipment needed to access the meters (e.g., keys to locked meter rooms, any meter/special/barrel lock/anchor keys), and without limiting the generality of the foregoing, specifically includes the facilities and equipment described in Schedule 1.1([ ]). ***{Note: excluding assets used for water and sewer and license from licensors to the City of those assets used by City for all utilities for water and sewer, and excluding City office facilities }.***

(48) ***"Dark Fiber Lease Agreement"*** means an agreement in the form attached hereto as Exhibit N.

(49) ***"Deductible Amount"*** has the meaning set forth in Section 8.1(c)(iii).

(50) ***"Deed"*** means a special warranty deed in **[substantially]** the form of the attached hereto as Exhibit C.

(51) ***"Delivery Point"*** means the point on the Customer's premises where, (i) if delivery is being made through overhead wires, Seller's wires connect to Customer's wires at the Customer's weatherhead, and (ii) if delivery is being made through underground wires, Seller's wires connect to the Customer's meter can.

(52) ***"Department of Energy"*** means the United States Department of Energy and any successor agency thereto.

(53) ***"Department of Justice"*** means the United States Department of Justice and any successor agency thereto.

(54) "***Department of Labor***" means the United States Department of Labor and any successor agency thereto.

(55) "***Direct Claim***" has the meaning set forth in Section 8.2(c).

(56) "***Distribution Assets***" means the electric distribution facilities, equipment and other tangible property and assets relating to, or used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility or located on the Real Property or the Vero Beach Power Plant Site, including but not limited to the facilities, equipment and other tangible property and assets that connect the Transmission Assets to the Customer Service Assets (and other property and assets associated with or ancillary thereto), distribution substation equipment, feeder circuits and associated hardware (switches and switch gear, regulators, capacitor banks, reclosers, protective equipment, etc), primary circuits, transformers, secondaries and services, and associated physical assets (including poles, conductors, cables, insulators, metering, street lights and outdoor lights), and , without limiting the generality of the foregoing, specifically includes the facilities and equipment described in Schedule 1.1([ ]).

(57) ***"District Permit VB-2"*** means the Permit and Interlocal Agreement between the Indian River Farms Water Control District and the Seller in the form attached hereto as Exhibit R.

(58) ***"District Permit VB-5"*** means the Permit and Interlocal Agreement between the Indian River Farms Water Control District and the Seller in the form attached hereto as Exhibit S.

(59) ***"District Permit VB-6"*** means the Permit and Interlocal Agreement between the Indian River Farms Water Control District and the Seller in the form attached hereto

as Exhibit T.

(60) ***"Effective Date"*** has the meaning set forth in the preamble to this Agreement.

(61) ***"Electric Utility Accounting Records"*** means all financial statements, accounting books and related records of Seller relating to the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility.

(62) ***"Encumbrances"*** means any liens, charges, pledges, options, mortgages, deeds of trust, security interests, equitable interests, claims, easements, rights-of-way, leases, mineral reservations, covenants, conditional and installment sales contracts, title retention arrangements, adverse claims or restrictions of any kind, including restriction on transfer or use, option, right of first refusal, license or other right of third parties, and other encumbrances affecting title or right to property, whether imposed by Law, agreement, understanding or otherwise and whether or not of record.

(63) ***"Environment"*** means all soil, real property, air, water (including surface waters, streams, ponds, drainage basins and wetlands), groundwater, water body sediments, drinking water supply, stream sediments or land, including land surface or subsurface strata, including all fish, plant, wildlife, and other biota and any other environmental medium or natural resource.

(64) ***"Environmental Claim"*** means any and all communications, whether written or oral, alleging potential Liability, administrative or judicial actions, suits, orders, liens, notices alleging Liability, notices of violation, investigations which have been disclosed to Seller, complaints, requests for information relating to the Release or threatened Release into the Environment of Hazardous Substances, proceedings, or other communication, whether criminal or civil, pursuant to or relating to any applicable Environmental Law, by any Person (including any Governmental Authority) based upon, alleging, asserting, or claiming any actual or potential (a) violation of, or Liability under any Environmental Law, (b) violation of any Environmental Permit, or (c) Liability for investigatory costs, cleanup costs, removal costs, remedial costs, response costs, monitoring 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 Substances at any location related to the Acquired Assets, including, but not limited to, any off-Site location to which Hazardous Substances, or materials containing Hazardous Substances, were sent.

(65) ***"Environmental Clean-up Site"*** means any location which is listed or formally proposed for listing on the National Priorities List, the Comprehensive Environmental Response, Compensation and Liability Information System, or on any similar state list of sites requiring investigation or cleanup, or which is the subject of any action, suit, proceeding or investigation which has been disclosed to Seller for any alleged violation of any Environmental Law, or at which there has been a Release, or a threatened or suspected Release, of a Hazardous Substance.

(66) ***"Environmental Laws"*** means all Laws regarding pollution or protection

of the Environment, the conservation and management of land, natural resources and wildlife or human health and safety or the Occupational Safety and Health Act (only as it relates to Hazardous Substances), including, without limitation, Laws regarding Releases or threatened Releases of Hazardous Substances (including, without limitation, Releases to ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport, disposal or handling of Hazardous Substances. ***"Environmental Laws"*** include, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Oil Pollution Act (33 U.S.C. §§ 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001 et seq.), the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.) only as it relates to Hazardous Substances, and all other Laws analogous to any of the above.

(67) ***"Environmental Permit"*** means any Permit under or in connection with any Environmental Law, including any and all orders, consent orders or binding agreements issued or entered into by a Governmental Authority under any applicable Environmental Law, that is used in, or necessary for, (i) the Business of the Vero Beach Electric Utility, or (ii) the ownership, use or operation of the Acquired Assets or the Real Property, in each case under clause (i) or (ii), as conducted prior to the Effective Date and as conducted prior to the Closing Date.

(68) ***"ERISA"*** means the Employee Retirement Income Security Act of 1974, as amended, and the applicable rules and regulations promulgated thereunder.

(69) ***"ERISA Affiliate"*** means any trade or business under Section 414(b), (c), (m) or (o) of the Code.

(70) ***"Estimated Allocation"*** has the meaning set forth in Section 3.5(a).

(71) ***"Estimated Closing Statement"*** has the meaning set forth in Section 3.3(b).

(72) ***"Excluded Assets"*** has the meaning set forth in Section 2.2.

(73) ***"Excluded Contracts"*** means the FMPA Agreements, the Other FMPA Agreements, the OUC Agreement, the St. Lucie Unit No. 2 Capacity and Energy Sales Contract, the Excluded Licenses and the Contracts listed on Schedule 1.1([ ]).

(74) "***Exluded Inventory***" means any inventory of Seller not listed on Schedule 2.1(g).

(75) ***"Excluded Liabilities"*** has the meaning set forth in Section 2.4.

(76) ***"Excluded Licenses"*** means those license agreements listed on Schedule [ ]. [To be discussed – we envision a need to bifurcate one or more of the City's current

license agreements. In that event, Buyer may enter into new license agreements with providers depending on its needs.]

(77) ***"Excluded Environmental Liabilities"*** has the meaning set forth in Section 2.4(d).

(78) ***"Excluded Real Property"*** means the Grand Harbor property described in the attached Exhibit U.

(79) ***"Excluded Streetlight Assets"*** means **[Describe downtown ornamental lights]** and any inventory solely related to such assets.

(80) ***"Federal Communications Commission"*** means the United States Federal Communications Commission or any successor agency thereto.

(81) ***"Federal Power Act"*** means the Federal Power Act, as amended.

(82) ***"Federal Trade Commission"*** means the United States Federal Trade Commission or any successor agency thereto.

(83) ***"FERC"*** means the Federal Energy Regulatory Commission or any successor agency thereto.

(84) ***"Fiber Optic System"*** means [_____].

(85) ***"Final Determination"*** has the meaning set forth in Section 1313(a) of the Code (or any similar provision of state or local law).

(86) ***"Financed Amount"*** has the meaning set forth in Section 3.4(a).

(87) ***"FMPA"*** means the Florida Municipal Power Agency.

(88) ***"FMPA Agreements"*** means all of the following Contracts: (i) St. Lucie Project Power Sales Contract dated June 1, 1982, between the FMPA and Seller, as amended; (ii) St. Lucie Project Power Support Contract dated June 1, 1982, between the FMPA and Seller, as amended; (iii) the Stanton Contracts; and (iv) All-Requirements Power Supply Project Contract dated October 1, 1996, between the FMPA and Seller, as amended.

(89) ***"FMPA Entitlement Assignment"*** has the meaning set forth in Section 6.13(c).

(90) ***"FMPA Member"*** means any member in good standing of the FMPA.

(91) ***"FPUA"*** means the Fort Pierce Utilities Authority or any successor electric utility.

(92) ***"FPUA Joint Facilities"*** means the transmission and substation facilities owned jointly by Seller and FPUA in St. Lucie County, Florida, and Indian River County, Florida, and identified as "Substation 20" on the schedule of the Acquired Land in Fee and as

Substation 20 Transmission Line R/Ws.

(93) ***"FPSC"*** means the Florida Public Service Commission or any successor agency thereto.

(94) ***"Franchise Ordinance"*** means the franchise ordinance agreement in substantially the form attached as Exhibit E.

(95) ***"Gas Transportation Contracts"*** means [_____].

(96) ***"Good Industry Practices"*** means the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in Florida during the relevant time period that, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, would reasonably be expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability and safety.

(97) ***"Governmental Authority"*** means any federal, state, county, city, local or other governmental, regulatory or administrative agency, body, authority (including taxing authority), official, district (including water control district), commission, department, board or other governmental subdivision, court, tribunal or arbitrating body, and any national or regional electric reliability organizations, including NERC.

(98) ***"Hazardous Substances"*** means (a) any petroleum, asbestos, asbestos-containing material, and urea formaldehyde foam insulation and transformers or other equipment that contains polychlorinated biphenyls; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants," "pollutants," "toxic pollutants," "hazardous air pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

(99) ***"Holding Company Act"*** means the Public Utility Holding Company Act of 1935, as amended.

(100) ***"HSR Act"*** means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

(101) ***"Income Tax"*** means any Tax (a) based upon, measured by or calculated with respect to net income, profits or receipts (including, without limitation, capital gains Taxes and minimum Taxes), or (b) based upon, measured by or calculated with respect to multiple bases (including, without limitation, corporate franchise Taxes) if one or more of the bases on which such Tax may be based, measured by or calculated with respect to, is described in clause (a), in each case together with any interest, penalties or additions to such Tax.

(102) ***"Indebtedness"*** means, with respect to any Person, at any time without duplication, (i) all indebtedness for borrowed money, (ii) all obligations for the deferred purchase price of property or services, (iii) all obligations of such Person evidenced by notes,

bonds, debentures or other similar instruments, (iv) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (v) all obligations of such Person as lessee under leases that are or should be capitalized in accordance with generally accepted accounting practices, (vi) all obligations of such Person under acceptance, letter of credit or similar facilities, (vii) all obligations of such Person in respect of any exchange-traded or over-the-counter derivative transaction, including interest rate or currency hedging agreements, and (viii) all obligations of such Person to guarantee any Indebtedness, leases, dividends or other payment obligations of such Person or any other Person.

(103) ***"Indemnifiable Loss"*** has the meaning set forth in Section 8.1(a).

(104) ***"Indemnifying Party"*** has the meaning set forth in Section 8.1(e).

(105) ***"Indemnitee"*** means either a Seller Indemnitee or a Buyer Indemnitee.

(106) ***"Independent Accounting Firm"*** means such independent accounting firm of national reputation as is mutually appointed by Seller and Buyer.

(107) ***"Initial Payment"*** has the meaning set forth in Section 3.4(a).

(108) ***"Intellectual Property"*** means the following rights, both statutory and common law rights, if applicable: (a) copyrights, registrations and applications for registration thereof, (b) trademarks, service marks, trade names, slogans, domain names, business names, logos, trade dress, and registrations and applications for registrations thereof, (c) patents, as well as any reissued and reexamined patents and extensions corresponding to the patents, and any patent applications, as well as any related continuation, continuation in part and divisional applications and patents issuing therefrom, (d) trade secrets and other confidential and proprietary information, including ideas, designs, concepts, compilations of information, methods, techniques, procedures, processes and other know-how, whether or not patentable, and (e) computer programs and other software, including source and object codes.

(109) ***"Intellectual Property Licenses"*** means those agreements related to Licensed Intellectual Property.

(110) ***"Interconnection Points"*** mean the points at which the Seller's Transmission Assets connect to: (a) [_____], (b) [_____], and (c) the FPUA Joint Facilities.

(111) ***"Interim Period"*** has the meaning set forth in Section 6.1(a).

(112) ***"Inventory"*** means materials, spare parts, supplies, fuel, chemicals and other items of inventory relating to, or used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility, including the Streetlight Maintenance Inventory and other material items of inventory located in Seller's warehouses located at the Seller's airport warehouse the principal items of which are described on Schedule 2.1(g). **[NOTE: FPL AND COVB TO DETERMINE WHAT INVENTORIES SHOULD BE SCHEDULED OUT – SUGGESTION IS FOR SPECIFIC INVENTORY ITEMS TO BE LISTED AND BETTER**

DESCRIBED IN THIS DEFINITION]

(113) ***"IRS"*** means the United States Internal Revenue Service or any successor agency thereto.

(114) ***"Knowledge"*** means (i) with respect to Buyer, the assumed or actual knowledge (based on a reasonable inquiry of appropriate current employees of Buyer) of the corporate officers of the Buyer who are charged with responsibility for the particular function relating to the matter of the inquiry and (ii) with respect to Seller, the assumed or actual knowledge (based on a reasonable inquiry of appropriate current employees of Seller) of the City Attorney and City Manager of Seller.

(115) ***"Law"*** means any applicable foreign, federal, state or local law, constitutional provision, statute, ordinance or other law, rule, regulation, code (including any zoning code, fire code or health and safety code), Permit, or interpretation of any Governmental Authority or any Order of or by, or any Contract with, any Governmental Authority, including all Environmental Laws and NERC standards, requirements and regulations.

(116) ***"Lease Agreements"*** mean the Vero Beach Power Plant Site Lease Agreement, the Airport Property Lease Agreements [[and the Other Real Property Lease Agreement.]]

(117) ***"Liability"*** means any direct or indirect debt, liability, commitment, Indebtedness or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or un-accrued, whether liquidated or un-liquidated, and whether due or to become due) of any kind, character or nature, or any demand, claim or Action asserted or brought against the relevant Person.

(118) ***"Liability Cap"*** has the meaning set forth in Section 8.1(c)(iv).

(119) ***"Licensed Intellectual Property"*** means the Intellectual Property described in Schedule 1.1([__]).

(120) ***"Long Term Real Property Interests"*** means the Acquired Land In Fee, the Airport Property Lease Agreements, the VB Sublicenses and the Substation 20 Transmission Line R/Ws.

(121) ***"Loss"*** or ***"Losses"*** means any and all damages, fines, fees, penalties, deficiencies, losses, Liabilities, interest, awards, judgments, claims, Actions, diminution of value and expenses (whether or not involving a third party claim), including without limitation all Remediation costs, fees of attorneys, accountants and other experts, or other expenses of litigation or proceedings or of any claim, default or assessment relating to the foregoing.

(122) ***"Material Adverse Effect"*** means any change, effect, condition, fact, circumstance or event that individually or in the aggregate is or is reasonably likely to be materially adverse to, or have or result in a material adverse effect on, the condition or properties of the Acquired Assets, prior to or after the Closing Date and that amounts to a financial or economic adverse effect of at least $10,000,000; *provided, however*, that none of the following

shall be taken into account in determining whether there has been or will be a Material Adverse Effect: (x) any change, effect, condition, fact, circumstance or event in the economy in general or (y) any change, effect, condition, fact, circumstance or event primarily caused by Buyer or its Affiliates.

(123) ***"Material Seller Contracts*** shall have the meaning set forth in Section 4.14(a).

(124) ***"NERC"*** means the North American Electric Reliability Corporation.

(125) ***"Non-Environmental Permit"*** means any Permit (other than an Environmental Permit) that is used in, or necessary for, (i) the Business of the Vero Beach Electric Utility, or (ii) the ownership, use or operation of the Acquired Assets or the Real Property, in each case under clause (i) or (ii), as conducted prior to the Effective Date and as conducted prior to the Closing Date, and specifically includes the Radio Licenses.

(126) ***"Observers"*** has the meaning set forth in Section 6.1(b).

(127) ***"Order"*** means any judgment, decision, consent, assessment, decree, injunction, stay, ruling, writ or order of or by any Governmental Authority.

(128) ***"Other FMPA Agreements"*** means that certain Interlocal Agreement Creating the Florida Municipal Power Agency dated [_____], as amended, and all other Contracts relating to FMPA, including any bond resolutions but excluding the FMPA Agreements.

(129) ***"Other Real Property Interest"*** means any real property lease, easement, license, rights of way, right to use or other right in real property, including any option for any of the foregoing or for acquisitions of real property and any crossing agreement or consent and entry agreement, but excluding the Long Term Real Property Interests.

(130) ***[["Other Real Property Lease Agreement"*** means a lease agreement and memorandum of lease in **[substantially]** the form attached hereto as Exhibit H]].

(131) ***"OUC"*** means the Orlando Utilities Commission.

(132) ***"OUC Agreement"*** means the Agreement for Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management Services dated April 21, 2008 between Seller and OUC.

(133) ***"Owned Intellectual Property"*** means the Intellectual Property described in Schedule 1.1([__]).

(134) ***"Party"*** (and the corresponding term ***"Parties"***) has the meaning set forth in the preamble to this Agreement.

(135) ***"Payment Date"*** has the meaning set forth in Section 3.4(b).

(136) ***"Permits"*** means all permits, licenses, approvals, immunities, entitlements, certificates (including certificates of need), authorizations, franchises, registrations, waivers, variances, exemptions, orders, notices, application, filings and consents from, to, with or issued by any Governmental Authority, including all certificates of occupancy, operating permits, sign permits, development rights and approvals, zoning, building and safety and health approvals.

(137) ***"Permitted Encumbrances"*** means: (i) as to the Real Property Interests**[NEED TITLE SEARCH FOR AIRPORT PROPERTY LEASE AGREEMENTS AND THE VB SUBLICENSES TO COMPLETE THIS SCHEDULE at Buyer's expense]**, those exceptions to title listed in Schedule 1.1([ ]); (ii) Encumbrances created by any mortgage indenture or the Vero Beach Electric Utility Bonds that will be released prior to or at the Closing; *provided*, that such Encumbrances shall cease to be Permitted Encumbrances as of the Closing; (iii) statutory liens for Taxes or other governmental charges or assessments not yet delinquent; (iv) statutory liens (including mechanics' and materialmen's liens and other like statutory liens and inchoate liens incurred in connection with worker's compensation, unemployment insurance, and social security laws) arising in the ordinary course of business securing payments not yet delinquent (or any such lien for a delinquent payment that has been waived in writing by the holder thereof or any such lien for a delinquent payment for which Seller has obtained a waiver, bond or other security in accordance with applicable Law to fully protect the Acquired Assets from any and all claims that may be made on account of any such lien); (v) existing zoning, entitlement, environmental or conservation restriction and other land use and environmental regulations imposed by Governmental Authorities and any existing conditions and obligations arising under any Permit so long as such restrictions, regulations, conditions and obligations do not materially interfere with the Business of the Vero Beach Electric Utility in the ordinary course as conducted prior to the Effective Date and as conducted prior to the Closing Date; (vi) the covenants and restrictions set forth in this Agreement or in any of the Ancillary Agreements; and (vii) Encumbrances with respect to the Acquired Assets created by or resulting from the acts or omissions of Buyer.

(138) ***"Person"*** means a natural person, a corporation, a partnership, a joint venture, a corporation, a union, a limited liability company, a trust, an unincorporated organization, an association, a joint stock company, trustee, estate, real estate investment trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof or a Governmental Authority or any other separate legal entity recognized pursuant to Law.

(139) ***"Pole Attachment Agreement for Seller Fiber Optic System"*** means an agreement in the form attached hereto as Exhibit M.

(140) ***"Post-Closing Adjustment"*** has the meaning set forth in Section 3.3(c).

(141) ***"Post-Closing Consumption Period"*** has the meaning set forth in Section 6.24.

(142) ***"Post-Closing Statement"*** has the meaning set forth in Section 3.3(c).

(143) ***"Pre-Closing Consumption Period"*** has the meaning set forth in Section 6.24.

(144) ***"Proposed Post-Closing Adjustment"*** has the meaning set forth in Section 3.3(c).

(145) ***"PSC"*** means the Public Service Commission of Florida or any successor agency thereto.

(146) ***"Purchase Price"*** has the meaning set forth in Section 3.2.

(147) ***"Radio Licenses"*** means the Permits set forth in Schedule 1.1([__]).

(148) ***"Real Property"*** means:

(a) the real property that is the subject of the Long Term Property Interests; and

(b) the real property owned by Seller and defined as "Public Rights-of-Way" in the Franchise Ordinance.**[NEED TO REVIEW ORDINANCE FOR APPLICABILITY TO THIS SECTION 1.1 (147)]**

(149) ***"Real Property Interests"*** means:

(a) the rights under the Long Term Real Property Interests; and

(b) the rights granted to Buyer in the Franchise Ordinance.

(150) ***"Real Property Interest Instrument"*** means the agreement or other instrument creating a Real Property Interest or by which Seller or Buyer holds title or other interest to a Real Property Interest.

(151) ***"Release"*** means any actual, threatened or alleged spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping or disposing of a Hazardous Substance into the Environment or within any building, structure, facility or fixture.

(152) ***"Reliability Call"*** means [_____]. **[NOTE: THIS IS MEANT TO BE A RIGHT OF FPL TO USE VERO'S GAS TRANSPORTATION CONTRACTS FOR RELIABILITY PURPOSES.]**

(153) ***"Remediate"*** or ***"Remediation"*** means any action of any kind required by applicable Law to address the presence or Release of Hazardous Substances, including but not limited to: (a) monitoring, investigation, assessment, treatment, cleanup containment, removal, mitigation, response or restoration work, as well as obtaining any Permits necessary to conduct any such activity; (b) preparing and implementing any plans or studies for any such activity; and (c) obtaining a written notice from a Governmental Authority with competent jurisdiction under

Environmental Laws, that no material additional work is required.

(154) ***"Representatives"*** of a Party means the Party and its Affiliates and their directors, officers, employees, agents and advisors (including, without limitation, accountants, counsel, environmental consultants, financial advisors and other authorized representatives).

(155) ***"Represented Transferred Employees"*** means any Transferred Employee whose employment with Seller was subject to Seller's Collective Bargaining Agreement and who will be employed by the Buyer in positions that are subject to a collective bargaining agreement.

(156) ***"Retained Employees"*** means the employees that will be remaining with Seller as described in Schedule 1.1([__]).

(157) ***"Schedules"*** means the schedules attached to this Agreement.

(158) ***"Seller"*** has the meaning set forth in the preamble to this Agreement.

(159) ***"Seller Benefit Plans"*** has the meaning set forth in Section 4.12(a).

(160) ***"Seller Contracts"*** means all Contracts (other than Excluded Contracts) relating to the Acquired Assets or the Business of the Vero Beach Electric Utility (i) that are in favor, or for the benefit, of Seller or (ii) to which Seller is a Party or by which any of its assets may be bound, including (A) the Real Property Interest Instruments, the Assumed Contracts and the Intellectual Property Licenses, (B) Contracts associated with the forecasting, modeling, management and operation of the Acquired Assets, (C) Contracts associated with emergency or wind storm preparedness and (D) Contracts leasing, or providing the right to use, to attach to or of access to, any portion of the Acquired Assets, including the Attachment Agreements.

(161) ***"Seller Defined Benefit Plan"*** means the City of Vero Beach General Employee Retirement Plan in effect on the Effective Date.

(162) ***"Seller Employee"*** means an hourly-paid or salaried employee of Seller, who receives an Internal Revenue Service Form W-2 from Seller, who is employed by Seller as of the Closing Date, and whose work responsibilities involve principally the Vero Beach Electric Utility, which employees are set forth in Schedule 6.10(a) (which shall be updated as of the Closing Date).

(163) ***"Seller Fundamental Representations***" means the representations and warranties made in Sections 4.1, 4.2, 4.3(i), 4.7(c) and 6.7.

(164) ***"Seller Indemnitee"*** has the meaning set forth in Section 8.1(a).

(165) ***"Seller's Agent(s)"*** has the meaning set forth in Section 6.1(b).

(166) ***"Seller's Collective Bargaining Agreement"*** means the Contract between Seller and Teamsters Local Union No. 769, dated October 1, 2010 [check with R.Anderson to confirm this date is current and confirm expiration date] and any other collective bargaining

agreement between any trade union, labor organization, collective bargaining representative or employee representative of any Transferred Employees concerning terms and conditions of employment of those employees, as well as all modifications of, or amendments to, any such agreements.

(167) ***"Seller's Past Practices"*** means the recent historical operation, maintenance and repair practices, methods and actions performed prior to the Effective Date by, or on behalf of, Seller with respect to the Acquired Assets.

(168) ***"Service Territory"*** means the area described as Seller's service territory in the map attached hereto as Schedule 1.1 ([ ]).

(169) ***"Spare Parts"*** means those spare parts and equipment identified on Exhibit P hereto.

(170) ***"St. Lucie Unit No. 2 Capacity and Energy Sales Contract"*** means the St. Lucie Unit No. 2 Capacity and Energy Sales Contract dated June 1, 1982, among the City of Alachua, the City of Clewiston, the City of Fort Meade, the City of Green Cove Springs, the City of Jacksonville Beach, the City of Leesburg, the City of Moore Haven, the City of Newberry and the City of Starke, as Selling Systems thereunder, FPUA and Seller, as Purchasing Systems thereunder, and FMPA, as amended, and rights under which were assigned by FPUA to Seller on June 10, 1986.

(171) ***"Stanton Contracts"*** means all of the following Contracts: (a) Stanton I Power Sales Contract , dated January 16, 1984, between the FMPA and Seller; (b) Stanton I Power Support Contract dated January 16, 1984, between the FMPA and Seller, as amended; and (c) Stanton II Power Sales and Project Support Contract dated April 17, 1991, between the FMPA and Seller, as amended

(172) ***"Streetlight Assets"*** means [_____], including the Streetlight Maintenance Inventory but expressly excluding the Excluded Streetlight Assets.

(173) ***"Streetlight Maintenance Inventory"*** means [_____] but specifically excluding any inventory solely related to the Excluded Streetlight Assets.

(174) ***"Streetlight Agreement"*** means the form of [_____ **approved by the FPSC]** that is applicable on the Closing Date. For reference purposes only, Exhibit L contains a copy of the [_____ **approved by the FPSC]** that is applicable on the Effective Date. For the avoidance of doubt, the Streetlight Agreement that is required to be executed under this Agreement may be different than the form attached as Exhibit L.

(175) ***"Substation 20 Transmission Lines"*** means the easements or other rights appurtenant to Substation 20 described in Exhibit Y attached hereto.

(176) ***"Substation Relocation Agreement"*** means the [_____].

(177) ***"Taxes"*** means, all taxes, charges, fees, levies, penalties or other assessments imposed by any federal, state, local, provincial or foreign taxing authority, including

but not limited to, income, gross receipts, excise, real or personal property, sales, transfer, customs, duties, franchise, payroll, withholding, social security, receipts, license, stamp, occupation, employment or other taxes, including any interest, penalties or additions attributable thereto, and any payments to any state, local, provincial or foreign taxing authorities in lieu of any such taxes, charges, fees, levies or assessments. The term ***"Tax"*** means any one of the foregoing Taxes.

(178) ***"Tax Return"*** means any return, report, form, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) required to be supplied to any Governmental Authority with respect to Taxes including amendments thereto, including any information return filed by a tax exempt organization.

(179) ***"Termination Date"*** has the meaning set forth in Section 3.1.

(180) ***"Termination of Territorial Boundary Agreement"*** means the agreement in the form of Exhibit F hereto, to be delivered at the Closing, which terminates the Territorial Boundary Agreement between Buyer and Seller dated June 11, 1980.

(181) ***"Third Party Claim"*** has the meaning set forth in Section 8.2(a).

(182) ***"Total Compensation"*** means base pay, authorized overtime, and benefits provided under all applicable Benefit Plans.

(183) ***"Transferable Permits"*** means the Environmental Permits, the Non-Environmental Permits.

(184) ***"Transferred Employee Records"*** means all records related to Transferred Employees, including but not limited to the following information: (i) skill and development training, (ii) seniority histories, (iii) salary and benefit information, (iv) Occupational, Safety and Health Administration reports, (v) active medical restriction forms, (vi) fitness for duty, (vii) disciplinary actions, (viii) job performance appraisals and/or evaluations, (ix) employment applications, (x) bonuses, (xi) job history and (xii) access authorization records.

(185) ***"Transferred Employees"*** means all Seller Employees who are offered and accept continued employment with Buyer as of the Closing Date.

(186) ***"Transfer Taxes"*** means any real property transfer, sales, use, value added, stamp, documentary, recording, registration, conveyance, stock transfer, intangible property transfer, personal property transfer, gross receipts, registration, duty, securities transactions or similar fees or Taxes or governmental charges (together with any interest or penalty, addition to Tax or additional amount imposed) as levied by any Governmental Authority in connection with the transactions contemplated by this Agreement, including, without limitation, any payments made in lieu of any such Taxes or governmental charges which become payable in connection with the transactions contemplated by this Agreement.

(187) ***"Transmission Assets"*** means the electric transmission facilities relating to, or used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric

Utility or located on the Real Property or the Vero Beach Power Plant Site (and other property and assets associated with or ancillary thereto); including, but not limited to: the facilities, equipment and other tangible property and assets that connect the Vero Beach Power Plant and the Distribution Assets to the Interconnection Points (and other property and assets associated with or ancillary thereto), transformers, breakers, capacitor banks, switches, arresters, instrument transformers, substation structures, substations, buswork, substation battery and chargers, relay protection panels, relay communications/carriers, remote telemetry and control equipment, metering, fault recorders, sequence of event recorders, annunciators, relay vaults, substation fencing, transmission lines, conductors, transmission line structures and poles, and control buildings, and without limiting the generality of the foregoing, specifically includes the facilities and equipment described in Schedule 1.1([__])

(188) ***"Union Representative"*** means the labor union that represents the craft or class of Represented Transferred Employees and Converted Unrepresented Transferred Employees after the Closing Date.

(189) ***"Unrepresented Transferred Employees"*** means any Transferred Employees whose employment with the Seller was not subject to Seller's Collective Bargaining Agreement and who will be employed by Buyer in positions that are also not subject to a collective bargaining agreement.

(190) ***"VB Sublicenses"*** mean the VB-2 Sublicense, VB-5 Sublicense and VB-6 Sublicense, collectively

(191) ***"VB-2 Sublicense"*** means the Sublicense between Seller and Buyer in the form attached hereto as Exhibit V.

(192) ***"VB-5 Sublicense"*** means the Sublicense between Seller and Buyer in the form attached hereto as Exhibit W.

(193) ***"VB-6 Sublicense"*** means the Sublicense between Seller and Buyer in the form attached hereto as Exhibit X.

(194) ***"Vehicles"*** means the vehicles listed in Schedule 1.1([__]).

(195) ***"Vero Beach Electric Utility"*** means the electric utility system of electricity generation, transmission and distribution commonly known as "The City of Vero Beach Electric Utility", including the Vero Beach Power Plant.

(196) ***"Vero Beach Electric Utility Bonds"*** means the Indebtedness created or evidenced by, or arising under, the Bond Resolution, including any principal, interest, fees, penalties and other amounts payable thereunder.

(197) ***"Vero Beach Power Plant"*** means (a) the nominal 157 MW electric generating facility located on the Vero Beach Power Plant Site, consisting of five (5) generating units (two (2) of which operate in combined cycle), and including the combustion turbine generators, steam turbine generators, heat recovery steam generators, boilers, cooling tower, transformers and other structures, facilities, appliances, lines, conductors, instruments, apparatus,

components and equipment comprising and integrating the entire facility, and (b) all other facilities and equipment located on the Vero Beach Power Plant Site, including the Vero Beach Power Plant Substation.

(198) ***"Vero Beach Power Plant Expectations"*** means the maintenance, repair and replacement of the Vero Beach Power Plant in a manner consistent with the Capital Expenditure and Maintenance Plan and that ensures that (a) the Vero Beach Power Plant will be capable of operation for four (4) years after the Closing Date in a manner consistent with Seller's Past Practices and (b) the other Acquired Assets (such as the Transmission Assets and the Distribution Assets) will be capable of operating in a manner consistent with Seller's Past Practices.

(199) ***"Vero Beach Power Plant Site"*** means the real property described in Exhibit Z.

(200) ***"Vero Beach Power Plant Site Lease Agreement"*** means a lease agreement and memorandum of lease in the form attached hereto as Exhibit G; with Seller as lessor and Buyer as lessee, and including a term of three (3) years from the Closing Date, with an option for Buyer to extend for one (1) additional year, with rent of $1,000,000 per year payable monthly along with lessee's obligation to pay taxes, utilities, and all operating, regulatory, and maintenance expenses at the Power Plant during the term of the lease.

(201) ***"Vero Beach Power Plant Substation"*** means the substation and other transmission and distribution facilities and equipment located on the Vero Beach Power Plant Site.

Section 1.2 Certain Interpretive Matters.

(a) Unless otherwise required by the context in which any term appears:

(i) Capitalized terms used in this Agreement shall have the meanings specified in this Article.

(ii) The singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and neuter.

(iii) References to "Articles", "Sections", "Schedules" or "Exhibits" shall be to articles, sections, schedules or exhibits of or to this Agreement, and references to "paragraphs" or "clauses" shall be to separate paragraphs or clauses of the section or subsection in which the reference occurs.

(iv) The words "herein", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; and the words "include", "includes" or "including" shall mean "including, but not limited to."

(v) The term "day" shall mean a calendar day, commencing at 12:00 a.m. (Eastern Time). The term "week" shall mean any seven consecutive day period commencing on a Sunday, and the term "month" shall mean a calendar month; provided that

when a period measured in months commences on a date other than the first day of a month, the period shall run from the date on which it starts to the corresponding date in the next month and, as appropriate, to succeeding months thereafter. Whenever an event is to be performed or a payment is to be made by a particular date and the date in question falls on a day which is not a Business Day, the event shall be performed, or the payment shall be made, on the next succeeding Business Day; provided, however, that all calculations shall be made regardless of whether any given day is a Business Day and whether or not any given period ends on a Business Day.

(vi) All references to a particular Person shall include such Person's successors and permitted assigns unless otherwise specifically provided herein.

(vii) All references herein to any Law, Permit or Contract shall be to such Law, Permit or Contract as amended, supplemented or modified from time to time unless otherwise specifically provided herein.

(b) The titles of the articles, sections, schedules and exhibits herein have been inserted as a matter of convenience of reference only, and shall not control or affect the meaning or construction of any of the terms or provisions hereof.

(c) This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party; the Parties have agreed to the wording of this Agreement; and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

(d) The Schedules and Exhibits hereto are incorporated in and are intended to be a part of this Agreement.

ARTICLE II
PURCHASE AND SALE

Section 2.1 Acquired Assets.

Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing, Seller will sell, assign, convey, transfer and deliver to Buyer, and Buyer will purchase and acquire from Seller, free and clear of all Encumbrances (except for Permitted Encumbrances), all of the property, assets and rights (other than the Excluded Assets), of every kind, nature, character and description, whether real, personal or mixed, tangible or intangible, owned (or hereafter acquired), wherever located, that relate to and are normally used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility (collectively, the ***"Acquired Assets"***); *provided* that the Acquired Assets shall specifically include the following property, assets and rights (other than the Excluded Assets):

(a) the Vero Beach Power Plant;

(b) the Transmission Assets;

(c) the Distribution Assets;

(d) the Customer Service Assets;

(e) [the Customer Deposits;][To be discussed]

(f) the Vehicles;

(g) all machinery, mobile or otherwise, equipment (including computer hardware and communications equipment), tools, works in progress, fixtures, furniture and furnishings and other personal property that relate to, or are used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility, including all Inventory;

(h) all books, operating records, licensing records, quality assurance records, purchasing records, equipment repair, maintenance or service records, operating, safety and maintenance manuals, inspection reports, environmental assessments, engineering design plans, documents, blueprints and as built plans, specifications, drawings, procedures and other similar items of Seller, wherever located, relating to or used in or for, the Vero Beach Electric Utility, other Acquired Assets or the Business of the Vero Beach Electric Utility, whether existing in hard copy or magnetic or electronic form (collectively, the ***"Business Books and Records"***);

(i) the Acquired Land In Fee, and improvements thereon together with all rights incidental or appurtenant thereto, including, without limitation, all related rights of ingress and egress thereto);

(j) all rights, title and interest in, to and under the Real Property Interests and any improvements to the Real Property owned by Seller that is the subject of such Real Property Interests, together with all rights incidental or appurtenant thereto, the leasehold, easement, license and other rights relating to such Real Property Interests or appurtenant thereto, and all rights incidental thereto (including, without limitation, all related rights of ingress and egress);

(k) all rights, title and interest in, to and under the Transferrable Permits (other than Excluded Liabilities thereunder);

(l) all rights, title and interest in, to and under Assumed Contracts (other than Excluded Liabilities thereunder) and other Seller Contracts (other than Excluded Liabilities thereunder), including any unexpired, warranties and guarantees from third parties;

(m) all rights, title and interest in, to and under the Intellectual Property Licenses;

(n) the Owned Intellectual Property;

(o) Seller's rights, title and interest in the FPUA Joint Facilities;

(p) the Streetlight Assets;

(q) the rights of Seller in and to any causes of action, Actions or claims (including, without limitation, rights under insurance policies to proceeds, refunds or distributions thereunder paid on or after the Closing Date with respect to periods before the

Closing Date) and defenses against third parties (including indemnification and contribution) relating to any Assumed Liabilities;

(r) the Transferred Employee Records;

(s) the Electric Utility Accounting Records;

(t) emissions allowances and credits;

(u) all models and systems associated with the forecasting, modeling, management and operation of the Acquired Assets;

(v) all property, assets and rights, excluding cash, associated with emergency or wind storm preparedness for the Vero Beach Power Plant or other Acquired Assets; and

(w) the Other Real Property Interests.

Notwithstanding the foregoing, the transfer of the Acquired Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Acquired Assets unless Buyer expressly assumes that Liability pursuant to Section 2.3. Seller may retain a copy of all Business Books and Records and Electric Utility Accounting Records as deemed appropriate by Seller.

Section 2.2 Excluded Assets.

Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be construed as conferring on Buyer, and Buyer is not acquiring, any right, title or interest in or to the following specific property, assets and rights (the ***"Excluded Assets"***), which are hereby specifically excluded from the sale and the definition of Acquired Assets herein and which shall remain the property of Seller after the Closing:

(a) All cash, cash equivalents, bank deposits and bank accounts, and any income, sales, payroll or other receivables relating to Taxes, in each case relating to the Acquired Assets prior to the Closing Date;

(b) All personnel records of Seller relating to the Vero Beach Electric Utility, except the Transferred Employee Records;

(c) All Benefit Plan assets, including those held in any related trust or otherwise, including without limitation, all assets related to the Seller Defined Benefit Plan; **[SUBJECT TO FURTHER REVIEW AND REVISION BY FPL]**

(d) Any refund or credit (i) related to Taxes paid by Seller with respect to periods (or portions thereof) that end prior to the Closing Date in respect of the Acquired Assets, whether such refund is received as a payment or as a credit against future Taxes, or (ii) arising under any agreement which is part of the Acquired Assets and relating to a period (or portion thereof) ending prior to the Closing Date;

(e) All rights in, to or under the Excluded Contracts;

(f) All Customer accounts receivables for periods prior to the Closing Date;

(g) The Vero Beach Power Plant Site;

(h) The Excluded Streetlight Assets and Excluded Streetlight Maintenance Inventory;

(i) The Fiber Optic System;

(j) **[The Gas Transportation Contracts, subject to the Reliability Call in favor of Buyer;] [NOTE: FPL REQUIRES RELIABILITY CALL ON THESE CONTRACTS UNTIL POWER PLANT IS DECOMMISSIONED]**

(k) Any vehicle that is not a Vehicle;

(l) Excluded Substations;

(m) Excluded Real Property;

(n) Any wastes or Hazardous Substances generated in relation to the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility prior to the Closing Date;

(o) All rights of Seller under this Agreement and the Ancillary Agreements; and

(p) Any customer service assets that are not Customer Service Assets;

(q) Excluded Inventory.

Section 2.3 Assumed Liabilities.

On the Closing Date, Buyer shall deliver to Seller the Assignment and Assumption Agreement pursuant to which Buyer shall assume and agree to discharge when due, all of the Liabilities of Seller specifically listed below, other than the Excluded Liabilities (collectively, ***"Assumed Liabilities"***): **[NOTE: COVB AND FPL TO DISCUSS ACCOUNTS PAYABLE]**

(a) All Liabilities of Seller arising on or after the Closing Date, or arising prior to the Closing Date in the ordinary course of business but payable or to be performed in such ordinary course after the Closing Date, under (i) the Real Property Interest Instruments, (ii) the Assumed Contracts, (iii) the Intellectual Property Licenses, (iv) to the extent an Acquired Asset, the Transferable Permits, and (v) including all accounts payable incurred in the ordinary course of business and relating to the Business of the Vero Beach Electric Utility less than 45 days old on the day prior to the Closing Date, in each case under items (i) to (v), in accordance with the terms thereof;

(b) [DISCUSS] [The obligation, on and after the Closing Date, to provide electrical service to any Person within the Service Territory who requests electrical service and

meets Buyer's customer qualification criteria and as provided under the Franchise Ordinance.]

(c) The Assumed Pension Liability;

(d) All Liabilities of Seller with respect to Transferred Employees for which Buyer is responsible pursuant to Section 6.10;

(e) The liability to the Customers with respect to the Customer Deposits delivered to Buyer;

(f) All Liabilities for any Taxes relating to the Acquired Assets with respect to taxable periods (or portions thereof) beginning on or after the Closing Date (except for any Income Taxes imposed upon Seller and any Taxes imposed upon Seller under Section 6.8);

Section 2.4 Excluded Liabilities.

Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be construed to impose on Buyer, and Buyer shall not assume or be obligated to pay, perform or otherwise discharge, the following Liabilities (the "***Excluded Liabilities***"), with all of such Excluded Liabilities remaining the responsibility, and as obligations, of Seller:

(a) Any Liabilities in respect of any Excluded Assets;

(b) Subject to Section 3.6, all Liabilities under or relating to the Real Property Interest Instruments, the Assumed Contracts, the Intellectual Property Licenses and the Transferable Permits (i) arising out of or relating to any event, condition, circumstance, act or omission occurring prior to the Closing Date, including any Breach that occurred prior to the Closing Date or any payment obligation arising prior to the Closing Date or invoice received prior to the Closing Date, or (ii) for payment of goods delivered or services rendered prior to the Closing Date;

(c) Any Liability under or relating to any Seller Contract that is not an Assumed Contracts;

(d) All Liabilities under or related to Environmental Laws, Environmental Permits or Environmental Claims with respect to the Business of the Vero Beach Electric Utility or the Acquired Assets relating to or arising from any event, condition, circumstance, act or omission occurring prior to the Closing Date, including relating to or arising from the presence or Release of Hazardous Substances at, on, in, under, adjacent to or migrating from the Acquired Assets or the Real Property prior to the Closing Date ("***Excluded Environmental Liabilities***");

(e) All Liabilities for any Taxes relating to the Acquired Assets with respect to taxable periods (or portions thereof) occurring prior to the Closing Date;

(f) All Liabilities with respect to the Transferred Employees relating to or arising from any event, condition, circumstance, act or omission occurring prior to the Closing Date, other than Liabilities specifically assumed by Buyer in Section 2.3(d);

(g) All Liabilities with respect to Retained Employees;

(h) Subject to Section 6.10, all Liabilities relating to any Seller Benefit Plans, or any other plan, program, arrangement or policy, except as specifically assumed by Buyer in Section 6.10 including accrued vacation and sick pay with respect to Retained Employees, established or maintained in whole or in part by Seller or by any Person (whether or not incorporated) which is or ever has been under common control, or which is or ever has been treated as a single employer, with Seller or to which Seller contributes or contributed, including, but not limited to any such Liability of Seller (i) for the termination or discontinuance of, or the Seller's withdrawal from, any such Benefit Plan, (ii) relating to benefits payable under any Seller Benefit Plans, (iii) with respect to noncompliance with the notice requirements of COBRA to the extent applicable, (iv) with respect to any noncompliance with the Code or any other applicable Laws, and (v) with respect to any suit, proceeding or claim which is brought against Seller, any Seller Benefit Plan or any fiduciary or former fiduciary of, any of the Seller Benefit Plans;

(i) Any Liabilities relating to the failure to hire, the employment or services or termination of employment or services of any individual, including wages, compensation, benefits, affirmative action, personal injury, discrimination, harassment, retaliation, constructive termination, wrongful discharge, unfair labor practices, or constructive termination by Seller of any individual, or any similar or related claim or cause of action attributable to any actions or inactions by Seller prior to the Closing Date with respect to the Acquired Assets, the Transferred Employees, independent contractors, applicants, and any other individuals who are determined by a court or by a Governmental Authority to have been applicants or employees of Seller, or that are filed with or pending before any court, administrative agency or arbitrator prior to the Closing Date; and

(j) Any other Liabilities not expressly assumed by Buyer pursuant to Section 2.3 or Liabilities expressly allocated to or retained by Seller in this Agreement.

ARTICLE III
THE CLOSING

Section 3.1 Closing.

Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, the sale, assignment, conveyance, transfer and delivery of the Acquired Assets to Buyer shall take place at a closing (the ***"Closing"***), to be held at [_____], at 10:00 a.m. local time, or another mutually acceptable time and location, **[on the date that is the first day of the month]** following the day on which the last of the conditions precedent to Closing set forth in Article VII of this Agreement have been either satisfied or waived by the Party for whose benefit such conditions precedent exist (except with respect to those conditions which by their terms are to be satisfied at Closing), but in any event not after the date that is twenty-four (24) months following the Effective Date (the ***"Termination Date"***), unless the Parties mutually agree on another date. The date of Closing is hereinafter called the ***"Closing Date."*** The Closing shall be effective for all purposes as of 12:01 a.m. on the Closing Date.

Subject to Article VII, the Parties shall cause the Closing to occur as soon as possible after the Effective Date.

Section 3.2 Purchase Price.

Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, in consideration of the aforesaid sale, assignment, conveyance, transfer and delivery of the Acquired Assets, Buyer will pay or cause to be paid to Seller in accordance with Section 3.4 the sum of **[One Hundred Million]** Dollars ($**[100,000,000]**) (the ***"Purchase Price"***), plus or minus any adjustments to such Purchase Price pursuant to the provisions of Section 3.3 below. ***[NOTE: given disparity between valuation and unsolicited offer and Purchase Price, City wants detailed explanation as to why cash purchase price cannot exceed $100 million.]***

Section 3.3 Adjustment to Purchase Price.

(a) Subject to Sections 3.3(b) and 3.3(c), the Purchase Price shall be adjusted, without duplication, to account for the items set forth in this Section 3.3(a):

(i) The Purchase Price shall be adjusted to account for the items prorated as of the Closing Date pursuant to Section 3.6; and

(ii) **[NOTE: NEED TO DETERMINE WHETHER AN ADJUSTMENT IS NEEDED FOR ITEMS SUCH AS CUSTOMER DEPOSITS, INVENTORY, ETC.] [Discuss Customer Deposits. Buyer can have whatever Inventory it wants at Closing. No obligation to build up Inventory so long as Seller complies with Budget and Maintenance Plan.]**

(iii) The Purchase Price shall be adjusted in accordance with:

Section 6.16(a).

(b) No fewer than five (5) Business Days prior to the Closing Date, Seller shall prepare in good faith and deliver to Buyer an estimated closing statement (the ***"Estimated Closing Statement"***) that shall set forth Seller's best estimate of all estimated adjustments to the Purchase Price required by Section 3.3(a).

(c) Within sixty (60) Business Days after the Closing Date, Seller shall prepare and deliver to Buyer a final closing statement (the ***"Post-Closing Statement"***) that shall set forth all adjustments, subject to Section 3.6(b), to the Purchase Price required by Section 3.3(a) (the ***"Proposed Post-Closing Adjustment"***) and all work papers detailing such adjustments. The Post-Closing Statement shall be prepared using the same accounting principles, policies and methods as Seller has historically used in connection with the calculation of the items reflected on such Post-Closing Statement. Within thirty (30) days after the delivery of the Post-Closing Statement by Seller to Buyer, Buyer may object to the Proposed Post-Closing Adjustment in writing. Seller and Buyer agree to cooperate with one another to provide one another with the information used to prepare the Post-Closing Statement and information relating thereto. If Buyer objects to the Proposed Post-Closing Adjustment, the Parties shall attempt to resolve such dispute by negotiation. If the Parties are unable to resolve such dispute within thirty (30) days

after any objection by Buyer, the Parties shall appoint the Independent Accounting Firm, which shall, at Seller's and Buyer's joint expense, review the Proposed Post-Closing Adjustment and determine, subject to Section 3.6(b), the appropriate adjustment to the Purchase Price, if any, within thirty (30) days after such appointment. The Parties agree to cooperate with the Independent Accounting Firm and provide it with such information as it reasonably requests to enable it to make such determination. The Independent Accounting Firm shall act as an expert and not as an arbitrator and shall make findings only with respect to the remaining disputes so submitted to it (and not by independent review). The finding of such Independent Accounting Firm shall be binding on the Parties hereto. Upon determination of the appropriate adjustment (the ***"Post-Closing Adjustment"***) by agreement of the Parties or by binding determination of the Independent Accounting Firm, the Party owing the difference shall deliver such amount to the other Party no later than two (2) Business Days after such determination, in immediately available funds or in any other manner as reasonably requested by the payee. **[NOTE: ALTERNATIVE METHODOLOGY FOR NON-SECTION 3.6 ADJUSTMENTS TO BE DISCUSSED]**

Section 3.4 Payment of Purchase Price.

(a) At the Closing, Buyer shall pay Seller an amount equal to the Purchase Price (as adjusted by Section 3.3); unless the Seller elects by written notice (the "***Installment Payment Notice***") prior to the Closing to take a portion of the Purchase Price in installments, in which event at the Closing Buyer shall pay Seller an amount (the "***Initial Payment"***) equal to (i) the Purchase Price (as adjusted by Section 3.3), less (ii) a portion designated by Seller to be paid by Buyer in post-Closing installments (the ***"Financed Amount"***).

(b) On each of the first number of anniversaries (as designated in the Installment Payment Notice) of the Closing Date (each such anniversary date, being a ***"Payment Date"***), Buyer shall pay Seller an amount equal to [__]% of the Financed Amount.

(c) On each Payment Date, Buyer shall pay Seller an amount of interest equal to the outstanding balance of the Financed Amount as of the Payment Date, multiplied by **[___%]**.

(d) All payments of the Purchase Price shall be made by wire transfer of immediately available funds denominated in U.S. dollars or by such other means as are agreed upon by Seller and Buyer.

(e) The Parties agree that any adjustment to the Purchase Price occurring after the Closing Date shall reduce or increase, as applicable, the payment of the Purchase Price to be made on the next Payment Date.

Section 3.5 Allocation of Purchase Price.

(a) At least [___] days prior to the Closing Date, Buyer shall use Commercially Reasonable Efforts to make an estimated allocation among the Acquired Assets of the sum of the Purchase Price and the Assumed Liabilities that is consistent with the allocation methodology provided by Section 1060 of the Code and the regulations promulgated thereunder (the ***"Estimated Allocation"***). The Estimated Allocation (or other allocation determined by

Buyer in its sole discretion) will be used for transfer tax and for all other Closing document purposes.

(b) Within ninety (90) days after the Closing Date, Buyer shall make an allocation among the Acquired Assets of the sum of the Purchase Price (including any adjustments thereto) and the Assumed Liabilities (together with any other relevant items) that is consistent with the allocation methodology provided by Section 1060 of the Code and the regulations promulgated thereunder (the ***"Allocation"***). Seller (to the extent Seller is required to make any such reports) shall report the transactions contemplated by this Agreement for all purposes in a manner consistent with the Allocation. Subsequent to the preparation of the Estimated Allocation and the Allocation, Buyer and Seller agree to provide the other with any information required to complete Form 8594 or other filing or report within ten (10) days of the request for such information. Buyer and Seller shall notify and provide the other with reasonable assistance in the event of an examination, audit or other proceeding relating to the allocation of the Purchase Price pursuant to this Section 3.5. Buyer and Seller shall treat the transaction contemplated by this Agreement as the acquisition by Buyer of a trade or business for United States federal income Tax purposes and agree that no portion of the consideration shall be treated in whole or in part as the payment for services or future services.

Section 3.6 Prorations.

(a) Buyer and Seller agree that all of the items normally prorated, including those listed below (but not including Income Taxes and Transfer Taxes), relating to the Acquired Assets and the Business of the Vero Beach Electric Utility shall be prorated as of the Closing Date to the extent such items are Assumed Liabilities, with Seller liable to the extent such items relate to any time period prior to the Closing Date, and Buyer liable to the extent such items relate to periods commencing with the Closing Date (measured in the same units used to compute the item in question, otherwise measured by calendar days):

(i) Taxes, assessments and other charges, if any, relating to the ownership, use or business of the Acquired Assets;

(ii) Any prepaid expenses (including security deposits) relating to the Acquired Assets;

(iii) Rent, Taxes and all other items (including prepaid services or goods not included in Inventory) payable under any of the Assumed Contracts;

(iv) Any fees, charges or other payments with respect to any Transferable Permit;

(v) Sewer rents and charges for water, telephone, electricity and other utilities for the Vero Beach Power Plant; **[NOTE: NEED TO DETERMINE IF OTHER ASSETS, SUCH AS SUBSTATIONS HAVE UTILITIES]**

(vi) Fees or charges (other than Taxes) imposed by any Governmental Authority; and

(vii) Rent and Taxes and other items payable and relating to the Real Property Interests.

(b) In connection with the prorations referred to in (a) above, in the event that actual figures are not available at the Closing Date, the proration shall be based upon the actual Taxes or other amounts accrued through the Closing Date or paid for the most recent year (or other appropriate period) for which actual Taxes or other amounts paid are available. Such prorated Taxes or other amounts shall be re-prorated and paid to the appropriate Party within sixty (60) days of the date that the previously unavailable actual figures become available. Prorations measured by calendar days shall be based on the number of days in a year or other appropriate period (i) before the Closing Date and (ii) including and after the Closing Date. Seller and Buyer agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 3.6.

(c) To the extent that the proration of an item under this Section 3.6 allocates a portion of such item to a period (or portion thereof) ending before the Closing Date, such portion shall constitute an Excluded Liability. To the extent that the proration of an item under this Section 3.6 allocates a portion of such item to a period (or portion thereof) ending on or after the Closing Date, such portion shall constitute an Assumed Liability.

Section 3.7 Deliveries by Seller.

At the Closing, Seller will deliver, or cause to be delivered, the following to Buyer:

(a) Deed(s) for the Acquired Land In Fee, duly executed and in recordable form;

(b) The Assignment and Assumption Agreement, duly executed and in recordable form;

(c) [[The Other Real Property Lease Agreement, duly executed, together with a Memorandum of such Lease in **[substantially]** the form of the attached in Exhibit H, duly executed and in recordable form;]]

(d) The Vero Beach Power Plant Site Lease Agreement, duly executed, together with a Memorandum of such Lease in the form attached in Exhibit G, duly executed and in recordable form;

(e) The Airport Substation 5 Lease Agreement, duly executed in the form attached in Exhibit I;

(f) The Airport Substation 6 Lease Agreement, duly executed in the form attached in Exhibit J;

(g) The Airport Warehouse Lease Agreement, duly executed in the form attached in Exhibit K;

(h) The VB-2 Sublicense, duly executed in the form attached in Exhibit V;

(i) The VB-5 Sublicense, duly executed in the form attached in Exhibit W;

(j) The VB-6 Sublicense, duly executed in the form attached in Exhibit S;

(k) An assignment of the Substation 20 Transmission Line R/Ws;

(l) A quit claim assignment of the Other Real Property Interests;

(m) Such affidavits, certificates and other documentation as is reasonably required by Buyer's title insurer;

(n) The Bill of Sale, duly executed by Seller;

(o) Copies of any and all Governmental Authority and other third party consents, waivers or approvals obtained by Seller with respect to the transfer of the Acquired Assets to Buyer, or the consummation of the transactions contemplated by this Agreement;

(p) All other Ancillary Agreements, duly executed by Seller, as applicable;

(q) Copies, certified by the City Clerk of Seller, of evidence of approval by the City Council of the Transaction, the Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby (including the execution and delivery hereof and thereof), in the form of a written resolution adopted by the City Council, signed by the Mayor of the Seller and attested to by the City Clerk; **[NOTE: FPL STILL DETERMINING WHAT IS NEEDED FROM THE CITY AS FAR AS GOVERNANCE, INCLUDING WHETHER OPINIONS WILL BE REQUIRED]**

(r) To the extent available, originals of the Seller Contracts, the Transferred Employee Records and the Transferable Permits and, if not available, true and correct copies thereof, in all cases together with notices to and, if required by the terms thereof, consents by other Persons which are parties to the Assumed Contracts, Real Property Interest Instruments and Transferable Permits;

(s) All such other instruments of assignment, transfer or conveyance as shall, in the reasonable opinion of Buyer and its counsel, be necessary or desirable to transfer to Buyer Seller's interest in the Acquired Assets, in accordance with this Agreement and where necessary or desirable in recordable form;

(t) Such other agreements, consents, documents, instruments and writings as are required to be delivered by Seller at or prior to the Closing Date pursuant to this Agreement or the Ancillary Agreements;

(u) All documentation as shall, in the reasonable opinion of Buyer or its counsel, be necessary for Buyer to meet its obligations with respect to Section 6.10 of this Agreement, as set forth on Schedule 3.7(n); and

(v) Such affidavits, releases, certificates or other evidence required pursuant to the Buyer's title commitment in a form reasonably satisfactory to the title insurer to delete from such title commitment and final title insurance policy those matters set forth in Schedule 4.7(a).

Section 3.8 Deliveries by Buyer.

At the Closing, Buyer will deliver, or cause to be delivered, the following to Seller:

(a) The [Purchase Price] [Initial Payment], payable pursuant to Section 3.4(a), as adjusted pursuant to Section 3.3;

(b) All Ancillary Agreements, duly executed by Buyer, as applicable;

(c) Copies, certified by the Secretary or any Assistant Secretary of Buyer, of resolutions authorizing the execution and delivery of this Agreement, and all of the agreements and instruments to be executed and delivered by Buyer in connection herewith, and the consummation of the transactions contemplated hereby;

(d) A certificate of the Secretary or any Assistant Secretary of Buyer identifying the name and title and bearing the signatures of the officers of Buyer authorized to execute and deliver this Agreement, and the other agreements contemplated hereby;

(e) A certificate of good standing with respect to Buyer, issued by the Secretary of the State of Florida;

(f) All such other instruments of assumption as shall, in the reasonable opinion of Seller and its counsel, be necessary for Buyer to assume the Assumed Liabilities in accordance with this Agreement;

(g) The Airport Substation 5 Lease Agreement, duly executed in the form attached in Exhibit I;

(h) The Airport Substation 6 Lease Agreement, duly executed in the form attached in Exhibit J;

(i) The Airport Warehouse Lease Agreement, duly executed in the form attached in Exhibit K;

(j) The VB-2 Sublicense, duly executed in the form attached in Exhibit V;

(k) The VB-5 Sublicense, duly executed in the form attached in Exhibit W;

(l) The VB-6 Sublicense, duly executed in the form attached in Exhibit S;

(m) An assumption of the Substation 20 Transmission Line R/Ws;

(n) An assumption of the Other Real Property Interests;

(o) Substation Relocation Agreement in the form attached as Exhibit AA duly

executed by the Buyer;

(p) Such other agreements, documents, instruments and writings as are required to be delivered by Buyer at or prior to the Closing Date pursuant to this Agreement.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

Section 4.1 Organization.

Seller is a duly created and validly existing municipal corporation under the Constitution and laws of the State of Florida and has all requisite power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted.

Section 4.2 Authority Relative to this Agreement.

Seller has full power and authority to execute and deliver this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action required on the part of Seller and no other proceedings on the part of Seller are necessary to authorize this Agreement or the Ancillary Agreements or to consummate the transactions contemplated hereby and thereby, including authorization of [____] to take all actions on behalf of Seller (including the spending of monies and the execution of contracts) required for satisfaction of all conditions, covenants and obligations of Seller under the Agreement (including authorization to close the Transaction) and the Ancillary Agreements **[, except for approval of the Council for the arrangements with (a) OUC required for satisfaction of the condition described in Section 6.13(a) or (b) FMPA required for satisfaction of the condition described in Section 6.13(c)]. [NOTE: CARVE-OUT ONLY NECESSARY IF OUC AND FMPA ARRANGEMENTS ARE NOT FINALIZED BEFORE THIS AGREEMENT IS SIGNED]** This Agreement has been duly and validly executed and delivered by Seller and at Closing, the Ancillary Agreements will be duly and validly executed and delivered by Seller, and assuming that this Agreement and the applicable Ancillary Agreements constitute valid and binding agreements of Buyer, this Agreement and the Ancillary Agreements constitute the legal, valid and binding agreement of Seller, enforceable against Seller in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereinafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a proceeding in equity or at law).

Section 4.3 Consents and Approvals; No Violation

Subject to the receipt of the third-party consents set forth in Schedule 4.3, neither the execution and delivery of this Agreement or the Ancillary Agreements by Seller nor the consummation by Seller of the transactions contemplated hereby or thereby will (i) conflict with or result in the breach or violation of any provision of the charter or other organizational or

governing documents of Seller, or of resolutions of any governing body of Seller; (ii) require any consent or other action by any Person, or result in a default (or give rise to any right of termination, cancellation or acceleration), under any of the terms, conditions or provisions of any Contract to which Seller is a party or by which Seller or any of the Acquired Assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which, with respect to Contracts that are not Real Property Interest Instruments, Assumed Contracts, Intellectual Property Licenses or Material Seller Contracts, would not, individually or in the aggregate, have a Material Adverse Effect; (iii) violate any Law of, or applicable to, Seller or any of its assets, which violation, individually or in the aggregate, would create a Material Adverse Effect; or (iv) result in the imposition or creation of an Encumbrance (other than a Permitted Encumbrance) on any of the Acquired Assets.

Section 4.4 Reports.

Since January 1, [____], Seller has filed or caused to be filed with the applicable federal, state and/or local utility commissions or regulatory bodies (including NERC and other national and regional electric reliability organizations), as the case may be, all material forms, statements, reports and documents (including all exhibits, amendments and supplements thereto) required to be filed by Seller with respect to the Acquired Assets or the Business of the Vero Beach Electric Utility under applicable Law. All such filings complied in all material respects with all applicable requirements therefor in effect on the date each such form, statement, report and document was filed.

Section 4.5 Undisclosed Liabilities.

Except as set forth in Schedule 4.5, the Acquired Assets are not subject to any material Liability or obligation (whether absolute, accrued, contingent or otherwise) that is not reflected in **[the Electric Utility Accounting Records]**, including the notes thereto, as of September 30, 2011 and other than Liabilities incurred in the ordinary course of the Business of the Vero Beach Electric Utility.

Section 4.6 Absence of Material Adverse Effect.

Since **[September 30, 2011]**, except as set forth in Schedule 4.6, there has not been any Material Adverse Effect.

Section 4.7 Real Property, Title and Related Matters.

(a) [Schedule 4.7(a) contains all Encumbrances (other than Permitted Encumbrances) relating to or affecting any parcel of Real Property for which Seller will secure a release or subordination to Buyer's interest at or before Closing;

(b) To the knowledge of Seller, the Seller has good and marketable title to each parcel of Acquired Land In Fee. **[NOTE: TO BE CONFIRMED BY EW AFTER REVIEWING FPL TITLE COMMITMENT]**

(c) To the knowledge of Seller, Seller has a valid and subsisting easement or leasehold interest in, and the right to quiet enjoyment of, each parcel of the real property under easement or leased by Seller as a Long Term Real Property [[or a Other Real Property Lease Agreement]]for the full term of the applicable easement or lease. There have been no oral leases or oral amendments to any such any lease. Each Real Property Interest Instrument is in full force and effect and constitutes a legal, valid and binding obligation of Seller and enforceable against Seller. To the knowledge of Seller, there is not, under any Real Property Interest Instrument, any material breach, violation or default (or any condition or event which, with notice or lapse of time or both, would constitute a default on the part of Seller), or to the Knowledge of Seller, on the part of any of the parties thereto. Except for the Real Property Interest Instruments and any other instruments identified in Schedule 4.7(c), there are no written or oral agreements between Seller and any other party regarding (i) the matters set forth in, or the transactions contemplated by, the Real Property Interest Instruments or the Ancillary Agreements or (ii) the Real Property or the Real Property Interests.

(d) To Seller's Knowledge, there are no other third party real property interests or permitted uses conflicting with the operation or maintenance of the Acquired Assets or the Business of the Vero Beach Electric Utility with respect to any of the Real Property Interests.

(e) Seller has not received any written notification that the Real Property Interests, the Real Property or the improvements located thereon that are Acquired Assets do not comply with all existing subdivision, land use and zoning ordinances, regulations, restrictions or Orders, and to Seller's Knowledge there is no action, litigation, proceeding, or investigation pending by any Governmental Authority, or threatened against or affecting any Acquired Assets or any Real Property before any Governmental Authority. There exist no outstanding private covenants or agreements in connection with the zoning of the Real Property or any portion thereof which would bind or require Buyer to perform any actions or pay any monies in connection therewith.

(f) Seller has delivered to Buyer prior to the Effective Date true and complete copies of the Real Property Interest Instruments, and all amendments to such instruments, that have been prepared, executed, recorded or issued in connection with the Real Property Interests.

(g) Seller has not received written notice, and Seller does not have any Knowledge, of:

(i) except as may be disclosed in Schedule 4.7(g)(i), any pending or threatened proceedings in eminent domain, for rezoning or otherwise, which would affect any Real Property Interest, any Real Property or any portion thereof or any improvement thereon that is an Acquired Asset;

(ii) except as disclosed in Schedule 4.7(g)(ii), any pending or threatened public improvements or special assessments or Encumbrances by any Governmental Authority and/or violations that could reasonably be expected to result in any charge being levied or assumed or in the creation of any Encumbrance, that could reasonably be expected to affect

any Real Property Interest, any Real Property, or any portion thereof or any improvement thereon that is an Acquired Asset;

(iii) except as disclosed in Schedule 4.7(g)(iii), any plan, study or effort by any Governmental Authority to widen, modify or realign any street or road in which any Acquired Assets are located, or providing access to the Real Property or any portion thereof, or that in any other way could reasonably be expected to materially affect Seller's current or intended use thereof;

(iv) any violations on the Real Property or any portion thereof of any covenants, conditions or restrictions applicable thereto or of any term or provision of any Real Property Interest Instrument;

(v) except for the Permitted Encumbrances, (i) Acquired Assets located on any Real Property encroaching onto adjoining lands, easements, or other interests in favor of third parties, or (ii) any third party structures or improvements encroaching on portions of the Real Property occupied by Acquired Assets;

(vi) except as disclosed in Schedule 4.7(g)(vi), (A) any mining, mineral or water extraction or development projects in progress or planned to commence on or under any Real Property or any portion thereof or (B) defects or conditions of the soil or land, including but not limited to any wetlands, which could reasonably be expected to impair the use of any Real Property Interests, any Real Property or any improvements thereon that are Acquired Assets;

(vii) Except for Permitted Encumbrances, or as disclosed in Schedule 4.7(g)(vii), there are no Encumbrances, covenants, conditions, reservations, restrictions, easements or other matters affecting any Real Property Interest, any Real Property or any portion thereof or any improvement thereon that is an Acquired Asset.

(viii) Except as disclosed in Schedule 4.7(g)(viii), there are no other facts or conditions relating to any Real Property Interest, any Real Property or any portion thereof, or any improvement thereon, that have a Materially Adversely Effect.

(h) Except for amounts payable or receivable as set forth in Schedule 4.7(h) or as set forth in any Lease Agreement, there are no other rents, fees, royalties, water or sewer charges, taxes or assessments or other amounts payable or receivable by Seller or Buyer in connection with any Real Property Interest or Real Property or any tenancies, licenses, occupancies or co-tenancies related to any Real Property Interests, any Real Property or any improvements thereon that are Acquired Assets.

(i) Except for the Permitted Encumbrances, Seller has not entered into any commitments or agreements with any Governmental Authority or public or private utility affecting any Real Property Interest, any Real Property or any portion thereof or any improvement thereon that is an Acquired Asset.

(j) No subdivision approval is required for any of the Real Property or Real Property Interests.

(k) Schedule 4.7(k) contains a true and correct list of all mortgages, deeds of trusts and other agreements or instruments of Seller creating a security interest in any Real Property Interest, any Real Property or any portion thereof or any improvement thereon that is an Acquired Asset.

(l) Schedule 4.7(l) identifies the real property to be acquired by Buyer in fee simple from Seller on the Closing Date at no additional cost ("***Acquired Land In Fee***"). **[NOTE: THIS SCHEDULE WILL BE THE LEGALS FOR SUBSTATIONS]**

Section 4.8 Operability; Condition of the Vero Beach Electric Utility.

(a) The Acquired Assets constitute all of the assets, property and rights used in, or necessary for, the Business of the Vero Beach Electric Utility in the manner in which it has been operated during the twelve (12) month period prior to the date of this Agreement, and, except as disclosed in Schedule 4.8, the Acquired Assets are currently in condition sufficient to operate the Vero Beach Electric Utility at its full capacity.

(b) Except as set forth in the Capital Expenditure and Maintenance Plan and taking into account the Vero Beach Power Plant Expectation, no Acquired Asset is in need of any repair or replacement that either (i) is known to Seller or (ii) would be disclosed by visual inspection or Seller's Past Practices.

Section 4.9 Insurance.

Schedule 4.9 sets forth all material policies of property damage, fire, liability, worker's compensation and other forms of insurance relating to the Acquired Assets. Such policies are in full force and effect, all premiums with respect thereto covering all periods up to and including the date as of which this representation is being made have been paid, and no written notice of cancellation, non-renewal or termination has been received with respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation. No insurance with respect to the Acquired Assets has been refused nor has its coverage been limited by any insurance carrier to which it has applied for any such insurance or with which it has carried insurance during the past three (3) years, and all required notices have been sent to insurers to preserve all material claims under the aforementioned insurance policies. ***[NOTE: disclose on Schedule City's self-insured coverage for claims up to $200,000 to $300,000, then excess coverage applies. (checking with Pat Kineman for all policies)]***

Section 4.10 Environmental, Licensing and Governmental Approval Matters.

Except as disclosed in Schedule 4.10:

(a) Seller has obtained and holds all Environmental Permits, each such Environmental Permit is in full force and effect, Seller is in compliance with all of its obligations thereunder, there are no proceedings pending or, to Seller's Knowledge, threatened that would reasonably be expected to result in the revocation, termination, suspension, modification or amendment of any Environmental Permit, and the Seller has not failed to make in a timely fashion any application or other filing required for the renewal of any Environmental Permit which failure would reasonably be expected to result in any Environmental Permit being

revoked, terminated, suspended or adversely modified. No Environmental Permit will terminate or be subject to termination or revocation as a result of the transactions contemplated by this Agreement;

(b) The Acquired Assets, the Real Property and the Business of the Vero Beach Electric Utility are in compliance in all material respects with all terms, conditions and provisions of all Environmental Laws and Environmental Permits, and Seller has not received any written notice from any Governmental Authority that they are not or have not been in compliance with, any Environmental Law or any Environmental Permit;

(c) There are no Environmental Claims pending against Seller or threatened, with respect to the Acquired Assets, the Real Property or the Business of the Vero Beach Electric Utility and Seller does not have Knowledge of any facts or circumstances which are reasonably likely to form the basis for any Environmental Claim against Seller with respect to the Acquired Assets, the Real Property or the Business of the Vero Beach Electric Utility;

(d) To Seller's Knowledge, no Releases of Hazardous Substances have occurred at, from, on, or under the Acquired Assets or the Real Property or in performance of the Business of the Vero Beach Electric Utility and no Hazardous Substances are present on or migrating from the Acquired Assets or the Real Property that are reasonably likely to give rise to an Environmental Claim against Seller or require any Remediation;

(e) None of the Acquired Assets, the Real Property or any portion thereof is an Environmental Clean-up Site and Seller has not transported or arranged for treatment, storage, handling, disposal or transportation of any Hazardous Substances from the Acquired Assets or the Real Property, or in performance of the Business of the Vero Beach Electric Utility, to any location which is an Environmental Clean-up Site;

(f) There are no (i) underground storage tanks, active or abandoned, or (ii) polychlorinated-biphenyl-containing equipment, located at, on, or under the Acquired Assets or the Real Property;

(g) There are no Encumbrances arising under or pursuant to any Environmental Law with respect to the Acquired Assets or the Real Property or relating to the Business of the Vero Beach Electric Utility, and there are no facts, circumstances or conditions that are reasonably likely to or result in any Encumbrance arising under or pursuant to any Environmental Law with respect to the Acquired Assets or the Real Property or relating to the Business of the Vero Beach Electric Utility;

(h) There have been no environmental audits or assessments with respect to the Acquired Assets, the Real Property or the Business of the Vero Beach Electric Utility by, on behalf of, or which are in the possession of Seller which have not been made available to Buyer prior to the execution of this Agreement; and

(i) There have been no claims by Seller against comprehensive general liability or excess insurance carriers for any Loss resulting from, relating to or arising from Environmental Claims (i) with respect to the Acquired Assets or the Real Property or (ii) relating to the Business of the Vero Beach Electric Utility.

(j) Schedule 4.10(j) sets forth all Environmental Permits.

Section 4.11 Labor Matters.

Schedule 4.11 sets forth Seller's Collective Bargaining Agreement and other written employment agreements that relate to the Seller Employees. True, correct, and complete copies of Seller's Collective Bargaining Agreement and other written employment agreements, including all amendments thereto, have been made available to Buyer as of the date of this Agreement. Each Seller Employee is qualified, licensed, certified or trained, in accordance with applicable government requirements or standards to perform the duties and responsibilities of their current job assignment.

Section 4.12 ERISA; Benefit Plans. **[NOTE: SUBJECT TO ONGOING REVIEW, DILIGENCE AND REVISION.]**

(a) Schedule 4.12(a) lists (as of the date of this Agreement) all Benefit Plans covering any Seller Employee, or maintained, administered or with respect to which contributions are made by Seller in respect of Seller Employees (***"Seller Benefit Plans"***). True, correct, and complete copies of all Seller Benefit Plans, including all amendments thereto have been provided to Buyer.

(b) All Seller Benefit Plans are governmental plans as defined in Section 3(32) of ERISA and Seller Benefits Plans are not subject to ERISA.

(c) Seller has no ERISA Affiliates.

(d) All Seller Benefit Plans are in material compliance with all applicable Laws.

(e) Seller has materially fulfilled its obligations under the funding requirements and filing requirements of all applicable Laws with respect to Seller Benefit Plans as of the Closing Date. No Seller Benefit Plan is a "multiemployer plan" as defined in Section 3(37) of ERISA.

Section 4.13 Location of Acquired Assets.

Except as set forth on Schedule 4.13, all of the physical Acquired Assets are located on the Real Property.

Section 4.14 Contracts.

(a) Excluding the Excluded Contracts, Schedule 4.14 sets forth a complete list of the following Seller Contracts (the ***"Material Seller Contracts"***):

(i) Contracts for the future purchase, exchange or sale of natural gas, fuel oil or other fuel;

(ii) Contracts for the future purchase, exchange or sale of electricity,

energy, capacity or other energy-related product or ancillary services;

(iii) Contracts for the future transportation, storage, parking, loaning, distribution, wheeling, unloading, delivery, balancing, metering or compression of natural gas, fuel oil or other fuel;

(iv) Contracts for the future purchase, exchange, sale or transportation of water;

(v) Contracts for the future transmission of electricity;

(vi) interconnection Contracts;

(vii) Contracts (A) for the sale, transfer or other disposition of any Acquired Asset or (B) that grant a right or option to sell, transfer or otherwise dispose any Acquired Asset, other than in each case under clause (A) or (B), any Contract entered into in the ordinary course of the Business of the Vero Beach Electric Utility with respect to Acquired Assets with a value of less than $25,000;

(viii) Contracts for the future receipt by Seller of any Acquired Assets or services requiring payments in excess of $25,000 for each individual Contract or in the aggregate for Contracts with the same Person;

(ix) Contracts under which it has created, incurred, assumed or guaranteed any outstanding Indebtedness;

(x) Attachment Agreements or any Contract granting the right to use, to attach to or of access to, any portion of the Acquired Assets;

(xi) outstanding futures, swap, collar, put, call, floor, cap, option or other Contracts that have underlying value and payment liability driven by or tied to fluctuations in the price of commodities, including electric power, natural gas, fuel oil, other fuel or securities;

(xii) Contracts that purport to limit Seller's freedom to compete in any line of business or in any geographic area or contain any exclusivity, most-favored nation or similar covenant; and

(xiii) (A) operation, maintenance or management Contracts, (B) water or wastewater supply, treatment or transportation Contracts or (C) Contracts relating to the purchase or sale of air pollutant emission allowances or credits.

(b) Excluding the Excluded Contracts, the Real Property Interest Instruments, the Assumed Contracts and the Intellectual Property Licenses and the Contracts listed on Schedule 4.14, Seller is not, as of the date of this Agreement, a party to any Contract that is material to the ownership or operation of the Acquired Assets or that is material to the Business of the Vero Beach Electric Utility.

(c) Each Assumed Contract, Intellectual Property License and Material Seller Contract is in full force and effect and constitutes a legal, valid and binding obligation of Seller and enforceable against Seller and, to the Knowledge of Seller, constitutes a legal, valid and binding obligation of the other parties thereto and enforceable against Seller the other parties thereto.

(d) There is not, under any Assumed Contract, Intellectual Property License or Material Seller Contract, any breach, violation or default (or any condition or event which, with notice or lapse of time or both, would constitute a default on the part of Seller, or to the Knowledge of Seller, on the part of any of the parties thereto). To Seller's Knowledge, Seller has not received notice from any other party to any Real Property Interest Instrument, Assumed Contract, Intellectual Property License or Material Seller Contract that such other party intends to terminate or fail to renew at the end of its term any such Contract, as applicable, or materially reduce the level of any goods or services to be provided under any such Contract.

Section 4.15 Legal Proceedings, etc.

Except as described in Schedule 4.15, there are no claims or Actions pending or, to Seller's Knowledge, threatened against (i) Seller that seek to enjoin, prohibit, restrain or make illegal the performance of this Agreement or any of the Ancillary Agreements or the consummation of any of the transactions contemplated hereby or thereby or (ii) or affecting any of the Acquired Assets or the Business of the Vero Beach Electric Utility. Seller is not subject to any outstanding Order affecting any of the Acquired Assets or the Business of the Vero Beach Electric Utility.

Section 4.16 Non-Environmental Permits; Compliance with Law.

(a) Seller has obtained and holds all Non-Environmental Permits, each such Non-Environmental Permit is in full force and effect, Seller is in compliance with all of its obligations thereunder, there are no proceedings pending or, to Seller's Knowledge, threatened that would reasonably be expected to result in the revocation, termination, suspension, modification or amendment of any Non-Environmental Permit, and the Seller has not failed to make in a timely fashion any application or other filing required for the renewal of any Non-Environmental Permit which failure would reasonably be expected to result in any Non-Environmental Permit being revoked, terminated, suspended or adversely modified. No Non-Environmental Permit will terminate or be subject to termination or revocation as a result of the transactions contemplated by this Agreement. The Acquired Assets, the Real Property and the Business of the Vero Beach Electric Utility are in compliance in all material respects with all terms, conditions and provisions of all Laws and Non-Environmental Permits, and Seller has not received any written notice from any Governmental Authority that they are not or have not been in compliance with, any Law or any Non-Environmental Permit. Seller is in compliance with all Non-Environmental Permits and all Laws applicable to the Acquired Assets, the Real Property or the Business of the Vero Beach Electric Utility.

(b) Schedule 4.16(b) sets forth all Non-Environmental Permits.

Section 4.17 Regulation as a Utility.

Seller is an electric utility within the meaning of Florida Statutes Section 366.02. Except with respect to local tax and zoning laws, Seller is not, as a result of its ownership or operation of the Acquired Assets or the Business of the Vero Beach Electric Utility, subject to regulation as a public utility or public service company (or similar designation) by any state of the United States other than Florida, or any municipality or any political subdivision of the foregoing.

Section 4.18 Tax Matters

Except as set forth on Schedule 4.18, with respect to the Acquired Assets or the Business of the Vero Beach Electric Utility, (i) all Tax Returns of Seller, if any, required to be filed for taxable periods ended prior to the Closing Date have been filed, and (ii) all Taxes shown to be due on such Tax Returns, if any, have been paid. No notice of deficiency or assessment has been received from any taxing authority with respect to any material amount of liabilities for Taxes of the Seller in respect of any Acquired Asset or the Business of the Vero Beach Electric Utility that has not been fully paid or finally settled. There are no Encumbrances for Taxes upon any Acquired Asset, except for Encumbrances for Taxes not yet due and payable.

Section 4.19 Intellectual Property.

Except as set forth in Schedule 4.19, Seller has ownership of, or a license to use, all of the Intellectual Property used in, or necessary for, the operation of the Acquired Assets or for the Business of the Vero Beach Electric Utility as conducted prior to the Effective Date and as conducted prior to the Closing Date. Except as set forth in Schedule 4.19 and pursuant to the transfer to Buyer of the Owned Intellectual Property and the other Acquired Assets on the Closing Date and assignment to Buyer of the Intellectual Property Licenses on the Closing Date, Buyer will have ownership of, or a license to use, all of the Intellectual Property used in or necessary for (a) the operation of the Acquired Assets or (b) the Business of the Vero Beach Electric Utility, in each case under clause (a) or (b), as conducted prior to the Effective Date and as conducted prior to the Closing Date. The rights of Seller in (i) Owned Intellectual Property are freely transferable to Buyer and (ii) the Intellectual Property Licenses are freely assignable to Buyer. Except as set forth in Schedule 4.19, Seller has not received written notice of any claims or demands of any other Person pertaining to any of the Owner Intellectual Property or the Licensed Intellectual Property and no Action has been instituted, or is pending or, to Seller's Knowledge, threatened, which challenge the rights of Seller in respect thereof. Seller has not granted any rights to any Person in respect of any Owned Intellectual Property or Licensed Intellectual Property. None of the Acquired Assets (including the Owner Intellectual Property) or the Licensed Intellectual Property infringes any Intellectual Property of any Person. Seller is not infringing or making any unauthorized disclosure or use of any Intellectual Property of any Person, including without limitation, of any former employer of any past or present Seller Employee, in its activities related to the Business of the Vero Beach Electric Utility or in performing its obligations under this Agreement.

Section 4.20 Complete Copies.

Except as specified in Schedule 4.20, true, complete and un-redacted copies of all Real Property Interest Instruments, Assumed Contracts, Intellectual Property Licenses, Transferable Permits and Material Seller Contracts have been provided to Buyer.

Section 4.21 Service Territory.

The Delivery Point for each Person purchasing electricity from Seller is located within the Service Territory.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants with respect to itself to Seller as follows:

Section 5.1 Organization; Qualification.

Buyer is a corporation duly formed, validly existing and in good standing under the laws of the State of Florida. Buyer has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as is now being conducted. Buyer has heretofore delivered to Seller complete and correct copies of its articles of incorporation and bylaws as currently in effect.

Section 5.2 Authority Relative to This Agreement

Buyer has full corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party and to consummate the transactions contemplated hereby or thereby. The execution and delivery of this Agreement and the Ancillary Agreement and the consummation of the transactions contemplated hereby or thereby, have been duly and validly authorized by all necessary corporate action required on the part of Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement and the Ancillary Agreements or to consummate the transactions contemplated hereby or thereby. This Agreement has been duly and validly executed and delivered by Buyer, and assuming that this Agreement constitutes a valid and binding agreement of Seller, constitutes a valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereinafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a proceeding in equity or at law).

Section 5.3 Consents and Approvals; No Violation.

(a) Subject to the receipt of the third-party consents set forth in Schedule 5.3(a) and the Buyer's Required Regulatory Approvals, neither the execution and delivery of this Agreement and the Ancillary Agreements by Buyer nor the consummation by Buyer of the transactions contemplated hereby or thereby will (i) conflict with or result in any breach of any provision of the articles of incorporation and bylaws of Buyer, (ii) require any consent or other action by an Person, or result in a default (or give rise to any right of termination, cancellation or acceleration), under any of the terms, conditions or provisions of any Contract to which Buyer is a party or by which Buyer or any of its assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, have Material Adverse Effect, or

(iii) violate any Laws applicable to Buyer, which violations, individually or in the aggregate, would create a Material Adverse Effect.

(b) Except as set forth in Schedule 5.3(b) (the Permits referred to in such Schedule are collectively referred to as the ***"Buyer's Required Regulatory Approvals"***), no Permit is necessary for the consummation by Buyer of the transactions contemplated hereby. Buyer has no Knowledge of any facts or circumstances that make it reasonably likely that Buyer's Required Regulatory Approvals will not be obtained. [NOTE: cover permits to be transferred, including tariffs, environmental, not radio as Seller should retain its FCC permits for water and sewer utility work – DISCUSS];

Section 5.4 Availability of Funds.

Buyer currently has sufficient funds available to it through corporate funds, credit facilities and access to capital markets to provide sufficient funds to pay the Purchase Price on the Closing Date and each Payment Date and to enable Buyer to timely perform all of its obligations under this Agreement.

Section 5.5 Legal Proceedings.

Except as set forth in Schedule 5.5, there are no claims or Actions pending or, to Buyer's Knowledge, threatened against (i) Buyer that seek to enjoin, prohibit, restrain or make illegal the performance of this Agreement or any of the Ancillary Agreements or the consummation of any of the transactions contemplated hereby or thereby.

ARTICLE VI
COVENANTS OF THE PARTIES

Section 6.1 Conduct of Business Relating to the Acquired Assets.

(a) Seller retains the exclusive responsibility for safe operation of the Vero Beach Electric Utility until the Closing, and nothing in this Agreement shall in any way alter the Seller's duties or obligations under any Law or Permit. Except as described in Schedule 6.1(a), during the period from the Effective Date to the Closing Date (the ***"Interim Period"***), Seller shall (i) operate and maintain the Acquired Assets in the ordinary course consistent with Seller's Past Practices (taking into account the Vero Beach Power Plant Expectations) and the Capital Expenditure and Maintenance Plan and conduct the Business of the Vero Beach Electric Utility in the ordinary course consistent with Seller's Past Practices (taking into account the Vero Beach Power Plant Expectations) and the Capital Expenditure and Maintenance Plan(ii) use Commercially Reasonable Efforts to preserve and protect in all material respects the Acquired Assets, taking into account the Vero Beach Power Plant Expectations, (iii) maintain the Transferrable Permits and (iv) comply with all applicable Laws and Permits relating to the Acquired Assets or the Business of the Vero Beach Electric Utility. Without limiting the generality of the foregoing, and, except as contemplated in this Agreement or as described in Schedule 6.1(a), during the Interim Period, without the prior written consent of Buyer (unless such consent would be prohibited by Law), Seller shall not do any of the following with respect to the Acquired Assets:

(i) sell, transfer, remove, assign, convey, distribute or otherwise dispose of, any Acquired Assets outside the ordinary course of the Business of the Vero Beach Electric Utility consistent with Seller's Past Practices and the Capital Expenditure and Maintenance Plan;

(ii) except for Permitted Encumbrances (including amendments and/or replacements to the Permitted Encumbrances), create, permit or allow any Encumbrances to be imposed on or against any of the Acquired Assets;

(iii) grant any waiver of any material term under, exercise any material option under, or give any material consent with respect to any Real Property Interest Instrument, Assumed Contract, Intellectual Property License or Material Seller Contract, including waiving any material default by, or release, settle or compromise any material claim against, any other party thereto;

(iv) enter into, amend or voluntarily terminate prior to the expiration date thereof (i) any Real Property Interest Instrument, Assumed Contract, Intellectual Property License or Transferable Permit or (ii) any Material Seller Contract (other than Contracts that will be fully performed prior to Closing and that are entered into in the ordinary course of the Business of the Vero Beach Electric Utility consistent with Seller's Past Practices (taking into account the Vero Beach Power Plant Expectations) and the Capital Expenditure and Maintenance Plan);

(v) amend in any material respect or cancel any property, liability or casualty insurance policies related to the Acquired Assets or the Business of the Vero Beach Electric Utility, or fail to maintain such insurance policies with current insurance companies who have issued such policies, their successors, or other financially responsible insurance companies in such amounts and against such risks and losses as are customary for such assets and businesses consistent with Seller's Past Practices;

(vi) except as required by any Law or accounting principles generally accepted in the United States, change, in any material respect, its Tax practice or policy (including making new Tax elections or changing Tax elections and settling Tax controversies not in the ordinary course of the Business of the Vero Beach Electric Utility) to the extent such change or settlement would be binding on Buyer;

(vii) engage in any practice, take any action, fail to take any action, or enter into any transaction through the Closing that will result or may reasonably be anticipated to result in any misrepresentation or breach of any warranty of Seller hereunder as of the Closing Date;

(viii) settle any claim or Action that results in any obligation imposed on the Acquired Assets that could reasonably be likely to continue past the Closing Date;

(ix) hire any individual (other than to replace any Seller Employee who may have resigned or have been terminated); or (b) increase the compensation or benefits payable to any Seller Employee, except as required under Seller's Collective Bargaining Agreement; or

(x) agree or commit to do any of the foregoing.

(b) During the Interim Period, in the interest of cooperation between Seller and Buyer and to plan for and facilitate an orderly and seamless transition from Seller to Buyer on the Closing Date of ownership and operation of the Acquired Assets and the Business of the Vero Beach Electric Utility, the Parties agree that at the sole expense of Buyer, and subject to compliance with all applicable Laws and Permits, Seller will permit designated Representatives of Buyer (***"Observers"***) to observe any and all aspects of the Business of the Vero Beach Electric Utility, and such observation will be permitted on a cooperative basis in the presence of one or more individuals designated by Seller (the "***Seller's Agent(s)***"); provided, however, that such Observers and their actions shall not interfere with the Business of the Vero Beach Electric Utility. Seller shall use Commercially Reasonable Efforts to provide to the Observers interim furnished office space and utilities at the Vero Beach Power Plant, and Seller's T&D center as reasonably necessary to allow Buyer to conduct its transition efforts through the Closing Date; provided that Buyer shall be responsible for all costs relating thereto.

Section 6.2 Access to Information; Reporting.

(a) In addition to the rights granted by Sections 6.1(b), during the Interim Period, in the interest of cooperation between Seller and Buyer and to plan for and facilitate an orderly and seamless transition from Seller to Buyer on the Closing Date of ownership and operation of the Acquired Assets and the Business of the Vero Beach Electric Utility, Seller will (i) give Buyer and Buyer's Representatives reasonable access to (x) all management personnel engaged in the Business of the Vero Beach Electric Utility, (y) all books, documents, records and information (including financial and operating data and Permits, reports, schedules or other documents filed with or received from any Governmental Authority) relating to the Acquired Assets or the Business of the Vero Beach Electric Utility and furnish copies thereof as Buyer may from time to time reasonably request (z) all offices and other facilities and properties constituting the Acquired Assets or used in the Business of the Vero Beach Electric Utility; and (ii) permit Buyer and Buyer's Representatives to make such reasonable inspections thereof as Buyer may reasonably request; provided, however, that (A) any such investigation shall be conducted in such a manner as not to interfere unreasonably with the Business of the Vero Beach Electric Utility and (B) Seller need not supply Buyer with any information that Seller is legally prohibited from supplying.

(b) During the Interim Period, promptly after obtaining Knowledge thereof, Seller shall notify Buyer in writing of, (i) any fact, event, circumstance or condition that would reasonably be expected to have a Material Adverse Effect, (ii) any material unanticipated maintenance or repair of any of the Acquired Assets, (iii) any material emergency condition affecting, or material unscheduled interruption of, the operation of any of the Acquired Assets or the Business of the Vero Beach Electric Utility, or (iv) any receipt of a notice of a violation of any Law or Permit relating to the Acquired Assets or the Business of the Vero Beach Electric Utility.

Section 6.3 Expenses.

Except to the extent specifically provided herein, whether or not the transactions

contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including the cost of legal, technical and financial consultants, shall be borne by the Party incurring such costs and expenses; provided, however, that Buyer will bear the cost of filing for and prosecuting applications for Buyer's Required Regulatory Approvals.

Section 6.4 Further Assurances; Cooperation

(a) Subject to the terms and conditions of this Agreement, each of the Parties hereto will take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the sale, transfer, conveyance, assignment and delivery of the Acquired Assets and the assignment of the Assumed Liabilities and the exclusion of the Excluded Liabilities pursuant to this Agreement, including, without limitation, ensuring satisfaction of the conditions precedent to each Party's obligations hereunder, including, without limitation, all regulatory approvals. Neither Buyer nor Seller will, without the prior written consent of the other, advocate or take any action which would reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement or which could reasonably be expected to cause, or to contribute to causing, the other to receive less favorable regulatory treatment than that sought by the other.

(a) From time to time after the Closing Date, Seller will execute and deliver such documents to Buyer as Buyer may reasonably request, at Buyer's expense, in order to more effectively consummate the sale and purchase, including the transfer, conveyance and assignment, of the Acquired Assets or to more effectively vest in Buyer such title to the Acquired Assets (or such rights to use, with respect to Acquired Assets not owned by Seller), as is provided for in Section 4.7, subject to the Permitted Encumbrances. From time to time after the Closing Date, without further consideration, Buyer will, at its own expense, execute and deliver such documents to Seller as Seller may reasonably request in order to evidence Buyer's assumption of the Assumed Liabilities.

Section 6.5 Public Statements.

(a) This Agreement, the Ancillary Agreements and any document submitted by a Party to the other under this Agreement or during the negotiation of this Agreement or any Ancillary Agreements (***"Public Document"***) will be a public record (as defined in Section 119.011, Florida Statutes) and may be open for inspection or copying by any person or entity except to the extent such document or certain information included in such document is exempted under Chapter 119, Florida Statutes. Buyer may claim that certain information included in one or all of the Public Documents is, or has been treated as, being exempt from disclosure in accordance with Florida law. In the event that Seller is requested or required by legal or regulatory authority to disclose any Public Document, Seller shall within three (3) days notify Buyer of such request or requirement prior to disclosure so that Buyer may seek an appropriate protective order if Buyer believes certain information included in such Public Document is exempt from disclosure under Florida law. To the extent reasonably possible and permissible under Florida law, Seller shall endeavor to provide redacted versions of documents, upon request of Buyer if Seller agrees with Buyer's assertion that certain information included in

such Public Document is exempt from public disclosure under Florida law.

(b) The Parties shall not issue any press release or other public disclosure with respect to this Agreement or the transactions contemplated hereby without first affording the non-disclosing Party the opportunity to review and comment on such press release or public disclosure, except as may be required by applicable Law.

Section 6.6 Consents; Approvals.

(a) As promptly as practicable after the Effective Date, Buyer and Seller, as applicable, shall make the filings listed on Schedule 6.6(a). In fulfilling their respective obligations under this Section 6.6(a), Buyer and Seller shall each use Commercially Reasonable Efforts to lodge or cause to be lodged any such filings within thirty (30) days after the Effective Date. Prior to any Party's submission of the applications contemplated by this Section 6.6(a), the submitting Party shall provide a draft of such application to the other Parties for review and comment and the submitting Party shall in good faith consider any revisions reasonably requested by the reviewing Parties. Each Party will bear its own costs for the preparation and review of any such filings.

(b) As promptly as practicable after the Effective Date, but no later than thirty (30) days after Buyer supplies to Seller all of the information regarding Buyer that is required to be included in the application described in this Section 6.6(b), Buyer shall file with FERC, an application for approval of this transaction under Section 203 of the Federal Power Act. In fulfilling their respeetive obligations set forth in this Section 6.6(b), Seller and Buyer shall use their Commercially Reasonable Efforts. Prior to Buyer's submission of such application with FERC, Buyer shall submit such application to Seller for review and comment and Buyer shall consider any revisions reasonably requested by Seller. Seller and Buyer shall respond promptly to all requests from FERC or its staff for additional information regarding such application and use their respective Commercially Reasonable Efforts to participate in any hearings, settlement proceedings or other proceedings ordered by FERC with respect to the application. Buyer shall be solely responsible for the cost of filing this application, any petition(s) for rehearing, or any reapplication(s). Seller shall intervene in the proceeding before FERC and shall support the application. Each Party will bear its own costs of the review of such filings.

(c) Buyer will have primary responsibility for securing approval of the FPSC for: (i) authority under Rule 25-9.044, Florida Administrative Code, to charge Seller's existing retail electric rates to former Customers of the Vero Beach Electric Utility; (ii) termination of the territorial agreement between Buyer and the Vero Beach Electric Utility; and (iii) **[OTHER APPROVALS REQUIRED FROM FPSC (SUCH AS DEPOSITS, ETC)]**. Prior to Buyer's submission of any application for such approval by the FPSC, Buyer shall submit such application to Seller for review and comment and Buyer shall consider any revisions reasonably requested by Seller. Seller and Buyer shall respond promptly to all requests from the FPSC or its staff for additional information regarding such application and use their respective Commercially Reasonable Efforts to participate in any hearings, settlement proceedings or other proceedings ordered by the FPSC with respect to the application. Buyer shall be solely responsible for the cost of filing this application, any petition(s) for rehearing, or any reapplication(s). Seller shall intervene in any proceeding before the FPSC and shall support the application. Each Party will

bear its own costs of the review of such filings.

(d) Seller and Buyer shall cooperate with each other and, as promptly as practicable after the Effective Date, (i) prepare and make with FERC, the Federal Communications Commission or any other Governmental Authority having jurisdiction over Seller, Buyer or the Acquired Assets, all necessary filings required to be made with respect to the transactions contemplated hereby (including those specified above), (ii) effect all necessary applications, notices, petitions and filings and execute all agreements and documents, (iii) use Commercially Reasonable Efforts to obtain the transfer or reissuance to Buyer of all necessary Transferable Permits, and (iv) use Commercially Reasonable Efforts to obtain all necessary consents, approvals and authorizations of all other parties, in the case of each of the foregoing clauses (i), (ii), (iii) and (iv), necessary or advisable to consummate the transactions contemplated by this Agreement (including, without limitation, Buyer's Required Regulatory Approvals). The Parties shall respond promptly to any requests for additional information made by such agencies, use their respective Commercially Reasonable Efforts to participate in any hearings, settlement proceedings or other proceedings ordered with respect to the applications, and use their respective Commercially Reasonable Efforts to cause regulatory approval to be obtained at the earliest possible date after the date of filing. Each Party will bear its own costs of the preparation and review of any such filing. Seller and Buyer shall have the right to review in advance all characterizations of the information relating to the transactions contemplated by this Agreement which appear in any filing made in connection with the transactions contemplated hereby and the filing Party shall consider in good faith any revisions reasonably requested by the non-filing Party.

(e) Buyer shall have the primary responsibility for securing the transfer, reissuance or procurement of the Transferable Permits effective as of the Closing Date. Seller shall cooperate with Buyer's efforts in this regard and assist in any transfer or reissuance of a Transferable Permits held by Seller or the procurement of any other Permit when so requested by Buyer. In the event that Buyer is unable, despite its Commercially Reasonable Efforts, to obtain a transfer or reissuance of one or more of the Transferable Permits as of the Closing Date, Buyer may use the applicable Permit issued to Seller, provided (i) such use is not unlawful, (ii) Buyer notifies Seller prior to the Closing Date, (iii) Buyer continues to make Commercially Reasonable Efforts to obtain a transfer or reissuance of such Permit after the Closing Date, and (iv) Buyer indemnifies Seller for any losses, claims or penalties suffered by Seller in connection with such Permit that is not transferred or reissued as of the Closing Date resulting from Buyer's ownership or operation of the Acquired Assets following the Closing Date.

Section 6.7 Brokerage Fees and Commissions.

Seller and Buyer each represent and warrant to the other that no broker, finder or other Person is entitled to any brokerage fees, commissions or finder's fees in connection with the transaction contemplated hereby by reason of any action taken by the Party making such representation. Seller and Buyer will pay to the other or otherwise discharge, and will indemnify and hold the other harmless from and against, any and all claims or liabilities for all brokerage fees, commissions and finder's fees incurred by reason of any action taken by the indemnifying Party.

Section 6.8 Tax Matters.

(a) Seller and Buyer shall each pay any Transfer Taxes imposed on it by Law in connection with this Agreement and the transactions contemplated hereby. Buyer and Seller will file, to the extent required by applicable Law, all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and, if required by applicable Law, will each join in the execution of any such Tax Returns or other documentation. To the extent Buyer and Seller cannot agree with respect to any item to be included on such Tax Return , such dispute shall be resolved in the manner provided for in Section 6.8(d) below.

(b) With respect to Taxes to be prorated in accordance with Section 3.6 of this Agreement, Buyer shall prepare and timely file all Tax Returns required to be filed after the Closing with respect to the Acquired Assets, if any, and shall duly and timely pay all such Taxes shown to be due on such Tax Returns. Buyer's preparation of any such Tax Returns shall be subject to Seller's approval (not to be unreasonably withheld, delayed or conditioned) to the extent that such Returns relate to any period, allocation or other amount, if any, for which the Seller is responsible. Buyer shall make such Tax Returns and all schedules and working papers supporting such Tax Returns available for Seller's review and approval no later than thirty (30) Business Days prior to the due date for filing such Tax Return. Seller shall respond no later than ten (10) Business Days prior to the due date for filing such Tax Return. Subject to Section 6.8(d), not less than five (5) Business Days prior to the due date of any such Tax Return, Seller shall pay to Buyer its proportionate share of the amount shown as due on such Tax Return as determined in accordance with Section 3.6 of this Agreement. In the event Buyer and Seller cannot agree as to the preparation or the reporting of any material item on a Tax Return to be filed by Buyer, the dispute shall be settled in the manner provided by Section 6.8(d) and the cost of such Independent Accounting Firm shall be borne equally by the Parties; provided, that if the Independent Accounting Firm has not made a determination as of the date that such Tax Return is required to be filed, such Tax Return required to be filed by Buyer may be filed by Buyer in a manner consistent with Buyer's position, and such Tax Return required to be filed by Seller may be filed by Seller in a manner consistent with Seller's position; provided, further, that with respect to any such Tax Return that is filed prior to a determination by the Independent Accounting Firm, Seller and Buyer shall take all commercially reasonable steps to amend such Tax Return, if necessary, to reflect any material determination made by the Independent Accounting Firm.

(c) Each of the Parties shall provide the other with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to Liability for Taxes or effectuating the terms of this Agreement, and each will retain and provide the requesting Party with any records or information which may be relevant to such return, audit or examination, proceedings or determination. Any information obtained pursuant to this Section 6.8(c) or pursuant to any other Section hereof providing for the sharing of information or review of any Tax Return or other schedule relating to Taxes shall be kept confidential by the Parties hereto, except to the extent such information is required to be disclosed by Law.

(d) In the event that a dispute arises between Seller and Buyer as to the

preparation or the reporting of any material item on a Tax Return to be filed by Buyer or the allocation of such Taxes between Seller and Buyer, the Parties shall attempt in good faith to resolve such dispute, and any agreed amount shall be paid to the appropriate Party within ten (10) Business Days of the date on which the Parties reach agreement. If a dispute is not resolved within thirty (30) days of a Party having provided the other Party written notice of a dispute, the Parties shall submit the dispute for determination and resolution to the Independent Accounting Firm, which shall be instructed to determine and report to the Parties in writing, within thirty (30) days after such submission, upon such disputed amount, and such written report shall be final, conclusive and binding on the Parties. The Independent Accounting Firm shall act as an expert and not as an arbitrator and shall make findings only with respect to the remaining disputes so submitted to it (and not by independent review). Notwithstanding anything in this Agreement to the contrary, the fees and expenses of the Independent Accounting Firm in resolving the dispute shall be borne equally by Buyer and Seller. Any payment required to be made as a result of the resolution of the dispute by the Independent Accounting Firm shall be made within ten (10) days after such resolution, together with any interest determined by the Independent Accounting Firm to be appropriate. Submission of a dispute to the Independent Accounting Firm shall not relieve any Party from any obligation under this Agreement to timely file a Tax Return or pay a Tax.

Section 6.9 Updating Disclosure Schedules.

Prior to the Closing Date, Seller shall promptly (but no later than thirty (30) days after obtaining Knowledge thereof) notify Buyer of any changes or additions to the Schedules required by this Agreement with respect to any matter hereafter arising which, if existing or occurring at the date of this Agreement, would have been required to be set forth or described in such Schedules. No notice made pursuant to this Section shall be deemed to cure any breach of any representation or warranty made in this Agreement unless the Parties agree thereto in writing.

Section 6.10 Employees. **[SUBJECT TO ONGOING DILIGENCE, REVIEW AND REVISION BY FPL AND SELLER.]**

(a) Subject to any good faith bargaining requirements, commencing as of the Closing Date, Buyer shall offer employment on terms and conditions substantially identical to the terms and conditions of employment with Seller immediately prior to the Closing Date, to all Seller Employees whose primary work responsibilities are with respect to the Acquired Assets and who are actively employed as of the Closing Date, which Seller Employees are set forth on Schedule 6.10(a), as amended between the date of this Agreement and the Closing Date to reflect any changes in the identities of work force personnel.

(b) Except as Buyer and any Unrepresented Transferred Employee or Converted Represented Transferred Employee may otherwise mutually agree and subject to Buyer's employee policies and procedures, for the period commencing on the Closing Date and ending twenty-four (24) months thereafter, Buyer shall provide Unrepresented Transferred Employees and Converted Represented Transferred Employees with Total Compensation which in the aggregate is comparable to the Total Compensation provided to such Transferred Employees immediately prior to the Closing Date.

(c) Except as otherwise negotiated by the Buyer and the Union Representative and subject to any applicable collective bargaining agreement, for the period commencing on the Closing Date and ending twenty-four (24) months thereafter, Buyer shall provide Represented Transferred Employees and Converted Unrepresented Transferred Employees with employment, Total Compensation and terms and conditions of employment as negotiated with the Union Representative.

(d) As of the Closing Date, all Transferred Employees shall cease to be eligible for active participation in the Seller Benefit Plans and shall commence participation (if applicable eligibility requirements are satisfied) in the Benefit Plans of Buyer, its ERISA Affiliates or, if applicable, the benefit plans negotiated by the Union Representative (***"Buyer Benefit Plans"***).

(e) Except as otherwise negotiated by the Buyer and the Union Representative, with respect to Buyer Benefit Plans that are employee welfare benefit plans as defined in Section 3(1) of ERISA, Buyer shall (i) waive all waiting periods with respect to the Transferred Employees, and (ii) provide each Transferred Employee with credit for any co-payments and deductibles for claims incurred during the plan year of the applicable Buyer Benefit Plan in which the Closing Date falls.

(f) Except as otherwise negotiated by the Buyer and the Union Representative, all Transferred Employees shall be granted credit for all service with Seller under all Buyer Benefit Plans in which such Transferred Employees become participants. The service credit given is for purposes of eligibility, vesting and service related level of benefits.

(g) Except as otherwise negotiated by the Buyer and the Union Representative, effective as of the Closing Date, Buyer shall amend its defined benefit plan to provide Transferred Employees with a benefit equal to a Transferred Employee's accrued benefit under the Seller Defined Benefit Plan as of the Closing Date. Seller will provide records to Buyer within ninety (90) days following the Closing Date setting forth the calculations of each Transferred Employee's accrued benefit under the Seller Defined Benefit Plan as of the Closing Date. Buyer shall assume the obligation and liability to provide to all Transferred Employees accrued benefits under the Seller Defined Benefit Plan based on the benefit formula in the Seller Defined Benefit Plan and utilizing a projected benefit obligation methodology (the "***Assumed Pension Liability***") via a tax-qualified plan of the Buyer ("***Buyer's Retirement Plan***"). With respect to each Transferred Employee, Buyer's Retirement Plan shall be designed to recognize all service with the Seller for purposes of eligibility, vesting and benefit accrual, and for purposes of any early retirement or retirement-type subsidy or ancillary benefit (such as retiree welfare benefits). The Assumed Pension Liability shall (i) be fully vested, (ii) include all optional forms of benefits under the Seller Defined Benefit Plan, (iii) include a provision for a disability benefit corresponding to the disability benefit under the Seller Defined Benefit Plan, and (iv) include a provision for a death benefit corresponding to the death benefit under the Seller Defined Benefit Plan. To the extent the Seller Defined Benefit Plan is required, under Law, to distribute any assets to any Transferred Employees, Buyer shall make corresponding adjustments to the accrued benefit of any such Transferred Employee under the Buyer's Retirement Plan, and provide a make-whole payment to the Seller Defined Benefit Plan for the amounts of distributions to Transferred Employees. Buyer shall indemnify Seller for any

Liabilities relating to the Assumed Pension Liability.

(h) Except as otherwise negotiated by the Buyer and the Union Representative, effective as of the Closing Date, Buyer shall provide to the Transferred Employees a benefit substantially identical to the supplemental insurance plan for retirees provided by the Seller as described in Section 23.06 of the Seller's Collective Bargaining Agreement, whereby the retiree's health insurance premium payment would be subsidized by the Buyer by a percentage multiplied by years of service of the retiree who was a Transferred Employee.

(i) Seller shall be responsible for extending COBRA continuation coverage, or its equivalent, to former Seller Employees and qualified beneficiaries of such former Seller Employees who become or became entitled to such COBRA continuation coverage on or before the Closing Date by reason of the occurrence of a qualifying event on or before the Closing Date, including those for whom the Closing Date occurs during their COBRA election period. Buyer shall be responsible for providing COBRA continuation coverage only to Transferred Employees and qualified beneficiaries of such employees for COBRA qualifying events occurring after the Closing Date.

(j) Seller shall remain responsible for paying Transferred Employees for: (a) all salary, wages, and Seller Benefit Plan benefits, and (b) all workers' compensation, disability benefits, or life insurance benefits for which entitlement to payment is based upon events occurring prior to the Closing Date including any incurred but unreported claims under the Seller Benefit Plans, except that Buyer will assume Seller's obligations to Transferred Employees for all vacation time, floating holidays, sick days, personal days and bonuses for Transferred Employees that have accrued but remain unpaid as of the Closing Date.

(k) Any individual who is otherwise a Transferred Employee but who on the Closing Date is not actively at work due to a leave of absence covered by the Family and Medical Leave Act or similar state or local Law, or due to any other authorized leave of absence, shall remain an employee of Seller and not become a Transferred Employee.

Section 6.11 Risk of Loss; Insurance.

(a) On or prior to the Closing, Buyer shall not bear any risk of loss or damage to the property included in the Acquired Assets. Seller shall replace or repair any damage to the Acquired Assets consistent with Seller's Past Practices (taking into account the Vero Beach Power Plant Expectations) and the Capital Expenditure and Maintenance Plan, except as otherwise provided in paragraphs (b) or (c) below.

(b) If, before the Closing, all or any portion of the Acquired Assets is taken by eminent domain or is the subject of a pending taking which has not been consummated, Seller shall notify Buyer promptly in writing of such fact, and Seller shall replace such portion of the Acquired Assets with reasonably comparable assets (such replacement to be reasonably satisfactory to Buyer), taking into account the Vero Beach Power Plant Expectations. If such replacement is not completed by the Closing, , then Seller may elect by written notice to Buyer to extend the deadline for Closing by up to an additional [24] months ("Closing Extension") in order for Seller to replace such Acquired Assets. If on or before the end of such Closing

Extension, Seller replaces all or substantially all of such Acquired Assets, Buyer will be required to purchase the Acquired Assets pursuant to the terms of this Agreement assuming all other closing conditions are met. If Buyer is unable to replace all or substantially all of such Acquired Assets prior to the Closing Extension, then Buyer may either (i) elect to proceed to Closing (with no Purchase Price Adjustment and no liability of Seller with respect to the replacement of such Acquired Assets), or (ii) terminate this Agreement pursuant to Section 9.1(g).

(c) If, before the Closing, all or any portion of the Acquired Assets is damaged or destroyed by fire or other casualty, Seller shall notify Buyer promptly in writing of such fact, and Seller shall cure such damage or destruction to a condition reasonably comparable to their prior condition (such cure to be reasonably satisfactory to Buyer), taking into account the Vero Beach Power Plant Expectations. If such cure is not completed by the Closing, [_____], Seller may elect by written notice to Buyer to extend the deadline for Closing by up to an additional [24] months ("Closing Extension") in order for Seller to cure such damage or destruction. If on or before the end of such Closing Extension, Seller cures all or substantially all of such damage or destruction, Buyer will be required to Close assuming all other closing conditions are met. If Buyer is unable to cure all or substantially all of such damage or destruction prior to the Closing Extension, then Buyer may either (i) elect to proceed to Closing (with no Purchase Price Adjustment and no liability of Seller with respect to the cure of such damage or destruction), or (ii) then Buyer may terminate this Agreement pursuant to Section 9.1(g).

(d) During the Interim Period, Seller shall continue to pay all premiums for insurance policies described in Schedule 4.9, and Seller shall not amend in any material respect or cancel or fail to maintain any such insurance policies with the current insurance companies or their successors or other financially responsible insurance companies in such amounts and against such risks and losses as are currently maintained. Prior to the Closing Date, Seller shall use Commercially Reasonable Efforts to purchase an extended reporting period of at least three (3) years on all claims-made policies included in Schedule 4.9 to allow for the reporting of any claims that may have taken place prior to the Closing Date that have yet to be reported. After the Closing Date, Seller further agrees to cooperate with Buyer concerning any and all incurred but not reported liability claims that may have taken place prior to the Closing Date covered by Seller's insurance as listed in Schedule 4.9, and Seller agrees to cooperate in the resolution of any pending or disputed property damage claims and shall cause their insurers to do the same.

Section 6.12 Assumed Contracts; Ancillary Agreement.

(a) Seller shall obtain any consents required to assign the Assumed Contracts, the Intellectual Property Licenses and the Transferable Permits to Buyer.

(b) At Closing and effective immediately after Closing, Buyer and Seller shall enter into the Ancillary Agreements.

Section 6.13 OUC Agreement and FMPA Entitlements.

(a) As promptly as practicable after the Effective Date but no later than the Closing Date, Seller shall, at Seller's sole cost as acceptable to Seller in its sole and absolute

discretion, secure the mutual, voluntary termination of the OUC Agreement by Seller and OUC effective no later than the Closing Date. [***Reserved***]

(b) As promptly as practicable after the Effective Date but no later than the Closing Date, Seller shall, at Seller's sole cost as acceptable to Seller in its sole and absolute discretion, secure the mutual, voluntary termination of the St. Lucie Unit No. 2 Capacity and Energy Sales Contract by Seller and all other parties thereto effective no later than the Closing Date. [***Reserved***]

(c) As promptly as practicable after the Effective Date but no later than the Closing Date, Seller shall, at Seller's sole cost as acceptable to Seller in its sole and absolute discretion, (i) **[assign the FMPA Agreements]** to one or more Persons (***"FMPA Entitlement Assignment"***), (ii) obtain the written approval of FMPA and the **[relevant trustees]** for the FMPA Entitlement Assignment and the **[transfer of the applicable Acquired Assets to Buyer]** in form and substance reasonably satisfactory to Seller and Buyer and (iii) obtain the written approval of OUC for the FMPA Entitlement Assignment as it relates to the Stanton Contracts in form and substance reasonably satisfactory to Seller and Buyer. [***Reserved***]. **[NOTE: NEED TO DETERMINE WHAT NEEDS TO HAPPEN WITH RESPECT TO THE ALL REQUIREMENTS CONTRACT]**

Section 6.14 Separation of Seller Assets.

To the extent that the Acquired Assets need to be severed or separated from other Seller property, assets or rights, Seller shall perform and pay for such severance or separation at Seller's cost not to exceed **$10,000**.

Section 6.15 Revenue from Attachment Agreement.

Until the **twentieth (20th)** anniversary of the Closing Date, Buyer shall pay Seller an amount equal to the Attachment Agreements Net Revenue received by Buyer during any twelve (12) month period following the Closing Date by the last day of the month following such period.

Section 6.16 Capital Expenditure and Maintenance Plan; Spare Parts.

(a) Prior to the Closing Date, Seller agrees to perform the activities described in the Capital Expenditure and Maintenance Plan in accordance with the schedule therein. The value (as set forth in the Capital Expenditure and Maintenance Plan) of each such activity not performed in accordance with such schedule by the Closing Date shall reduce the Purchase Price on a dollar-for-dollar basis; except to the extent that the [_____] of Buyer in consultation with Seller agrees in writing that such activity is not required to be performed. If Seller desires to incur any capital expenditure that materially improves the Acquired Assets and is not (x) described in the Capital Expenditure and Maintenance Plan or required to comply with any applicable Law or Permit or (y) a repair, replacement or cure required under Section 6.11, and Seller desires to increase the Purchase Price therefor, Seller shall notify Buyer of the cost of such capital expenditure, of its desire to increase the Purchase Price by such cost and of the expected material improvement to the Acquired Assets (such notice being, the ***"Capital Improvement Notice"***). If Buyer expressly approves such capital expenditure and expressly agrees to increase

the Purchase Price by such cost by notice to Seller referencing this Section 6.16(a), (i) Seller shall be entitled to perform the work necessary to execute, and incur the cost for, such capital expenditure, and (ii) if after completion of such work, the Acquired Assets are materially improved as described in the Capital Improvement Notice, the Purchase Price shall be increased by an amount equal to Seller's costs incurred to execute such capital expenditure, except that such amount shall not exceed the cost described in the Capital Improvement Notice, without Buyer's written consent. All Seller Contracts for such work shall become Assumed Contracts, except that the price payable under such Contracts shall remain the obligation of Seller. Notwithstanding any provision herein to the contrary, the Purchase Price shall not be increased due to Seller's incurrence of any capital or other expenditure, expect as set forth in clause (ii) above.

(b) Prior to the Closing Date, Seller shall at all times maintain an inventory of Spare Parts; provided that Seller shall have the right to use Spare Parts in the ordinary course of the Business of the Vero Beach Electric Utility consistent with Seller's Past Practices but shall be required to purchase replacement Spare Parts upon such use taking into account the Vero Beach Power Plant Expectations.

Section 6.17 Customer Data Conversion.

[NOTE: NEED TO BETTER DESCRIBE WHAT IS NEEDED FROM CAYENTA] [Buyer shall (with the cooperation of Seller) engage Cayenta [ ] to convert Seller's Customer data to a format useable by Buyer as reasonably determined by Buyer.] The Parties shall cooperate with each other to facilitate the an orderly and seamless transition from Seller to Buyer of the information systems, computer applications and processing of data for Buyer to commence conducting the Business of the Vero Beach Electric Utility as of the Closing Date in the manner acceptable to Buyer.

Section 6.18 Seller as Customer.

Seller shall be a retail electric service customer of Buyer commencing with the Closing Date. Seller shall be responsible for providing, prior to the Closing Date, all metering and other equipment necessary for Buyer to measure Seller's consumption of electricity at each facility or other structure of Seller (other than Acquired Assets) requiring electric service.

Section 6.19 Vero Beach Electric Utility Bonds.

[At the Closing, Seller shall have set aside from the Purchase Price proceeds in escrow under an escrow deposit agreement acceptable to Buyer with an independent trustee acceptable to Buyer an amount sufficient, as verified by an independent certified public accountant, to defease, in the opinion of bond counsel for Seller the Vero Beach Electric Utility Bonds in accordance with the applicable Bond Resolution and such escrow deposit agreement and to discharge the Bond Resolution. Such amount shall be invested in U.S. Treasury Securities structured to pay principal of and interest on Vero Beach Electric Utility Bonds as the same become due on the next call date following the Closing. [At Closing, Seller shall cause all Encumbrances on Acquired Assets securing the Vero Beach Electric Utility Bonds to be released.- ***this is not how bonds are defeased***]. Promptly on or after the Closing, Seller shall

cause all Encumbrances on Seller revenue securing the Vero Beach Electric Utility Bonds to be released.] **[NOTE: FPL TO VERIFY THIS PROCESS WITH ITS BOND COUNSEL]**

Section 6.20 Reserved

Section 6.21 Exclusivity.

Except as expressly permitted by this Agreement, Seller will not, directly or indirectly, or through an official, employee, representative or by or through the use of any other conduit (including any other Person), (a) offer to sell or transfer any of the Acquired Assets (or offer to enter into any transaction contemplated by this Agreement with) any Person, or (b) request, solicit or otherwise encourage inquiries, proposals or offers from, or participate in any discussions or negotiations with, any Person other than Buyer with respect to the sale or transfer of any of the Acquired Assets or any transaction contemplated by this Agreement.

Section 6.22 No Seller Changes in Law.

On or prior to the Closing Date, Seller agrees not to promulgate, enact, adopt, repeal, amend, modify or make effective any Law, or take or support any action, that would adversely affect any of the transactions contemplated by this Agreement or the Business of the Vero Beach Electric Utility.

Section 6.23 Customer Deposits.

[NOTE: PARTIES TO ADDRESS CUSTOMER DEPOSITS].

Section 6.24 Customer Consumption Allocation.

(a) Seller shall use reasonable efforts to read the meters of all Customers of Seller within one (1) month prior to the Closing Date, and Buyer shall use reasonable efforts to read the meters of all former Customers of Seller within one (1) month after the Closing Date. Within [__] days after the Closing Date, Seller shall provide to Buyer the date of the last meter reading of each Customer occurring prior to the Closing Date, and within [__] days after the date that Buyer reads the last of the meters of the former Customers of Seller, Buyer shall provide to Seller the date of the first meter reading of each former Customer of Seller occurring on and after the Closing Date. Irrespective of the actual consumption of electricity by a Customer during (a) the period (the ***"Pre-Closing Consumption Period"***) from and including the date of the last meter reading of such Customer occurring prior to the Closing Date and (b) the period (the ***"Post-Closing Consumption Period"*** and together with the Pre-Closing Consumption Period, the ***"Between Meter Readings Period"***) from and including the date of the first meter reading of such Customer occurring on or after the Closing Date, the Parties agree to allocate to the Pre-Closing Consumption Period and the Post-Closing Consumption Period a percentage of the actual consumption of electricity by each Customer during the Between Meter Readings Period pursuant to the following formulas (for the avoidance of doubt, the sum of the percentages allocated to the Pre-Closing Consumption Period and the Post-Closing Consumption Period of a particular Customer must equal 100%):

(i) Allocation to the Pre-Closing Consumption Period shall be: the sum of the Consumption Allocation Percentages applicable to each day in the Pre-Closing Consumption Period, divided by the sum of the Consumption Allocation Percentages applicable to each day in the Between Meter Readings Period; and

(ii) Allocation to the Post-Closing Consumption Period shall be: the sum of the Consumption Allocation Percentages applicable to each day in the Post -Closing Consumption Period, divided by the sum of the Consumption Allocation Percentages applicable to each day in the Between Meter Readings Period. **[NOTE: FPL REVIEWING WHETHER A STRAIGHT LINE ALLOCATION IS APPROPRIATE GIVEN HISTORICAL DIFFERENCES IN CONSUMPTION FROM MONTH TO MONTH DUE TO WEATHER]**

(b) The Parties agree that Seller (and not Buyer) shall bill, and be entitled to collect payment from Customers, for electric service provided to Customers prior to the Closing Date and that Buyer (and not Seller) shall bill, and be entitled to collect payment from Customers, for electric service provided to Customers on and after the Closing Date; provided that, in determining the amount of electricity consumed by a particular Customer that was provided by Seller or by Buyer during the Between Meter Readings Period for such Customer, the Parties agree that, irrespective of the actual amount of electricity provided by Seller or by Buyer during the Between Meter Readings Period, the amount of electricity provided by Seller shall be the amount of electricity deemed to be consumed by such Customer during the Pre-Closing Consumption Period as determined by this Section, and the amount of electricity provided by Buyer shall be the amount of electricity deemed to be consumed by such Customer during the Post-Closing Consumption Period as determined by this Section. **[NOTE: PARTIES NEED TO DISCUSS WHETHER FPL SHOULD BILL FOR THE PRE-CLOSING CONSUMPTION PERIOD AND REMIT PAYMENT TO VERO WHEN RECEIVED DUE TO DIFFICULTIES IN TRANSITIONING FROM VERO'S BILLING SYSTEM TO FPL'S]**

Section 6.25 Real Property Rights.

On or prior to Closing, Seller shall obtain Long Term Real Property Interests with respect to all real property in, upon or over which any Transmission Assets or Distribution Assets are located. Seller shall provide Buyer reasonable notice of any meeting with a potential grantor or counterparty to any Long Term Real Property Interest and use reasonable effort to permit Buyer or any Representative thereof to attend such meeting. **[NOTE: PARTIES TO DISCUSS HOW TO GET FPL THE REAL PROPERTY RIGHTS NEEDED]**

ARTICLE VII
CONDITIONS PRECEDENT

Section 7.1 Conditions Precedent to Obligations of Buyer.

The obligations of Buyer to purchase the Acquired Assets and to consummate the other transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the

Closing Date of the following conditions precedent (except to the extent waived (in whole or in part) in writing by Buyer in its sole discretion):

(a) The representations and warranties (other than the Seller Fundamental Representations) of Seller set forth in this Agreement (without regard to any materiality or Material Adverse Effect qualification therein) shall be true and correct in all respects on and as of the Effective Date and on and as of the Closing Date as though made on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the truth and correctness which shall be determined as of that specified date), except for such failures to be true and correct which would not reasonably be expected to constitute, individually or in the aggregate, a Material Adverse Effect.

(b) The Seller Fundamental Representations shall be true and accurate in all respects on and as of the Effective Date and on and as of the Closing Date as though made on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the truth and correctness which shall be determined as of that specified date).

(c) Seller shall have satisfied all of its obligation under Section 6.13 and has:

(i) secured the mutual, voluntary termination of the OUC Agreement effective no later than the Closing Date;

(ii) secured the mutual, voluntary termination of the St. Lucie Unit No. 2 Capacity and Energy Sales Contract by Seller and all other parties thereto effective no later than the Closing Date; and

(iii) (A) **[assigned the FMPA Agreements]** to one or more Persons;

(B) has obtained the written approval of FMPA and the **[relevant trustees]** for such assignment and the **[transfer of the applicable Acquired Assets to Buyer]** in form and substance reasonably satisfactory to Buyer; and

(C) has obtained the written approval of OUC for such assignment of **[the FMPA Agreements]** as it relates to the Stanton Contracts in form and substance reasonably satisfactory to Buyer; **[NOTE: NEED TO DETERMINE WHAT NEEDS TO HAPPEN WITH RESPECT TO THE ALL REQUIREMENTS CONTRACT]**

(d) No preliminary or permanent injunction or other Order by any Governmental Authority (other than Seller) which restrains or prevents the consummation of the transactions contemplated hereby shall have been issued and remain in effect (each Party agreeing to cooperate in all efforts to have any such injunction or Order lifted) and no Law shall have been enacted by any Governmental Authority which prohibits the consummation of the transactions contemplated hereby;

(e) Buyer shall have received all of Buyer's Required Regulatory Approvals, in form and substance reasonably satisfactory to Buyer and such approvals shall be in full force and effect and either (i) shall be final and non-appealable or (ii) if not final and non-appealable,

shall not be subject to the possibility of appeal, review or reconsideration which, in the reasonable opinion of Buyer, is likely to be successful;

(f) Seller shall have performed and complied in all material respects with the covenants and agreements contained in this Agreement which are required to be performed and complied with by Seller on or prior to the Closing Date or during the Interim Period;

(g) Buyer shall have received a certificate from the City Manager of Seller, dated the Closing Date, to the effect that, to such person's knowledge, the conditions set forth in this Sections 7.1 (a), (b) and (f) have been satisfied by Seller;

(h) Seller shall have delivered, or caused to be delivered, to Buyer at the Closing, Seller's closing deliveries described in Section 3.7;

(i) Since the Effective Date, no Material Adverse Effect shall have occurred and be continuing;

(j) Seller shall have delivered to Buyer reasonably satisfactory evidence of (i) the satisfaction, discharge and payment in full of the Vero Beach Electric Utility Bonds in accordance with Section 6.19 and **[ANY EXCLUDED LIABILITIES THAT SHOULD BE DESCRIBED]**; and (ii) release of all Encumbrances on the Acquired Assets (other than Permitted Encumbrances);

(k) Buyer has received approval from the FPSC to charge Seller's Customers the same rates for retail electric service as Buyer charges its other electric utility customers;

(l) Buyer shall have secured, at Buyer's cost and expense, (i) title insurance policies, insurable at regular rates, in an amount satisfactory to Buyer, from a title insurance company authorized to do business in the State of Florida, insuring that Buyer has good, marketable and insurable title to the Acquired Land in Fee and the right to control, occupy and use the Acquired Land in Fee, free and clear of Encumbrances other than Permitted Encumbrances, and (ii) American Land Title Association (ALTA) surveys issued to Buyer and the title company secured by Buyer prepared by certified surveyors showing the Acquired Land In Fee with all physical encumbrances observed and all matters of record that affect the Acquired Land In Fee, the form and substance of which are satisfactory to Buyer; and

(m) Buyer shall have received such other documents, and certificates as Buyer, or its counsel, shall reasonably request for conveying title to Acquired Assets by written notice to Seller given not less than ten (10) days prior to the Closing Date.

Section 7.2 Conditions Precedent to Obligations of Seller.

The obligation of Seller to sell the Acquired Assets and to consummate the other transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following conditions precedent (except to the extent waived (in whole or in part) in writing by Seller in its sole discretion):

(a) The representations and warranties (other than the Buyer Fundamental

Representations) of Buyer set forth in this Agreement (without regard to any materiality or Material Adverse Effect qualification therein) shall be true and correct in all respects on and as of the Effective Date and on and as of the Closing Date as though made on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the truth and correctness which shall be determined as of that specified date), except for such failures to be true and correct which would not reasonably be expected to constitute, individually or in the aggregate, a Material Adverse Effect.

(b) The Buyer Fundamental Representations shall be true and accurate in all respects on and as of the Effective Date and on and as of the Closing Date as though made on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the truth and correctness which shall be determined as of that specified date).

(c) No preliminary or permanent injunction or other Order by Governmental Authority (other than Seller) which restrains or prevents the consummation of the transactions contemplated hereby shall have been issued and remain in effect (each Party agreeing to use its Commercially Reasonable Efforts to have any such injunction or Order lifted) and no Law shall have been enacted by any state or federal government or Governmental Authority (other than Seller) which prohibits the transactions contemplated hereby;

(d) Buyer shall have performed and complied with in all material respects the covenants and agreements contained in this Agreement which are required to be performed and complied with by Buyer on or prior to the Closing Date or during the Interim Period;

(e) Buyer has received approval from the FPSC to charge Seller's Customers the same rates for retail electric service as Buyer charges its other electric utility customers and at rates lower than the rates charged by Seller to its Customers at Closing;

(f) Seller shall have received a certificate from an authorized officer of Buyer, dated the Closing Date, to the effect that, to such person's knowledge, the conditions set forth in this Sections 7.2 (a), (b) and (d) have been satisfied by Buyer; and

(g) OUC and FMPA shall have entered into and delivered written agreements enabling Seller to have:

(i) secured the mutual, voluntary termination of the OUC Agreement effective no later than the Closing Date, at a cost acceptable to Seller in its sole and absolute discretion;

(ii) secured the mutual, voluntary termination of the St. Lucie Unit No. 2 Capacity and Energy Sales Contract by Seller and all other parties thereto effective no later than the Closing Date, at a cost acceptable to Seller in its sole and absolute discretion; and

(iii) (A) **[assigned the FMPA Agreements]** to one or more Persons, at a cost acceptable to Seller in its sole and absolute discretion;

(B) has obtained the written approval of FMPA and the

[relevant trustees] for such assignment and the **[transfer of the applicable Acquired Assets to Buyer]** in form and substance reasonably satisfactory to Buyer, at a cost acceptable to Seller in its sole and absolute discretion; and

(C) has obtained the written approval of OUC for such assignment of **[the FMPA Agreements]** as it relates to the Stanton Contracts in form and substance reasonably satisfactory to Buyer, at a cost acceptable to Seller in its sole and absolute discretion; **[NOTE: NEED TO DETERMINE WHAT NEEDS TO HAPPEN WITH RESPECT TO THE ALL REQUIREMENTS CONTRACT]**

(h) Buyer shall have delivered, or caused to be delivered, to Seller at the Closing, Buyer's closing deliveries described in Section 3.7.

(i) Buyer shall have obtained all requisite regulatory approvals for the rates it will charge all Customers in the Service Territory and shall after the Closing Date commence charging all Customers in the Service Territory rates for their use of electricity at Buyer's market rates to its other customers in the State of Florida, which market rates shall be less than those rates charged by Seller to such Customers prior to the Closing.

ARTICLE VIII
INDEMNIFICATION

Section 8.1 Indemnification.

(a) From and after the Closing, Buyer shall, on an After-Tax Basis, indemnify, defend and hold harmless Seller and its Counsel and employees (each, a ***"Seller Indemnitee"***) from and against any and all Losses (each, an ***"Indemnifiable Loss"***), asserted against or suffered by any Seller Indemnitee relating to, resulting from or arising out of:

(i) any breach of any covenant (including any indemnification covenant) or agreement of Buyer contained in this Agreement;

(ii) any Assumed Liability (other than any Excluded Liability);

(iii) any Assigned Contract (other than any Loss relating to, resulting from or arising out of any Excluded Liability); or

(iv) any Third Party Claim against a Seller Indemnitee arising out of or in connection with (A) Buyer's ownership, use or operation of the Acquired Assets or (B) Buyer's performance of the Business of the Vero Beach Electric Utility, in each case under clause (A) or (B), following the Closing Date (other than any Loss relating to, resulting from or arising out of any Excluded Asset or Excluded Liability).

(b) From and after the Closing, Seller shall, on an After-Tax Basis, indemnify, defend and hold harmless Buyer and its Affiliates and its and their officers, directors, members, employees, shareholders and agents (each, a ***"Buyer Indemnitee"***) from and against any and all Indemnifiable Losses asserted against or suffered by any Buyer Indemnitee relating to, resulting from or arising out of:

(i) any breach of any covenant (including any indemnification covenant) or agreement of Seller contained in this Agreement;

(ii) any Excluded Liability;

(iii) any Excluded Asset;

(iv) any Third Party Claim against a Buyer Indemnitee arising out of or in connection with (A) Seller's ownership, use or operation of the Acquired Assets, or (B) the Business of the Vero Beach Electric Utility, in each case under clause (A) or (B), on or prior to the Closing Date (other than any Loss relating to, resulting from or arising out of any Assumed Liability or incurred in the ordinary course of business);

– {NOTE: Seller is not willing to indemnify FP&L for OUC or FMPA post-closing; OUC and FMPA will only have claims against FP&L if FP&L assumes obligations or commitments to OUC and / or FMPA. In any agreements with OUC and FMPA we can identify City obligations and FP&L obligations, if any.}; or

(v) any demand claim or Action relating to public assistance funds awarded to Seller relating to any hurricane or other named storm.

(c) Notwithstanding anything in this Agreement to the contrary:

(i) the representations and warranties contained in this Agreement shall not survive the Closing;

(ii) the Parties to this Agreement shall have no liability for Losses under Section 8.1(a) or 8.1(b) after sixty (60) days after the the expiration of the applicable statute of limitations applicable to contracts except with respect to covenants which, by their nature or terms, are to be performed during and/or after such period; **[NOTE: SURVIVAL ANY REAL ESTATE COVENANTS TO BE DISCUSSED WITH OVERALL RESOLUTION OF REAL ESTATE RIGHTS TO BE TRANSFERRED]**

(d) The rights of the Buyer to indemnification or any other remedy under this Agreement shall not be impacted or limited by any knowledge that the Buyer may have acquired, or could have acquired, on or after the Effective Date. Seller hereby acknowledges that, regardless of any investigation made (or not made) by or on behalf of the Buyer, regardless of the results of any such investigation and regardless of any knowledge that the Buyer may have acquired or could have acquired, Buyer has entered into this Agreement (and the Closing if occurring) in express reliance upon the representations, warranties, covenants and agreements of the Seller made in this Agreement and the indemnification and other remedies of Buyer under this Agreement. Neither Seller nor Buyer shall have any obligation to indemnify the other for any breaches of representations and warranties made in this Agreement because such representations and warranties shall not survive the Closing.

(e) The expiration or termination of any covenant or agreement shall not affect the Parties' obligations under this Section 8.1 if the Indemnitee provided the Person required to provide indemnification under this Agreement (the ***"Indemnifying Party"***) with proper notice of

the claim or event for which indemnification is sought prior to such expiration, termination or extinguishment.

(f) Except for intentional fraud or to the extent otherwise provided in Article IX or in Section 6.8(d), the rights and remedies of Seller and Buyer under this Article VIII are exclusive and in lieu of any and all other rights and remedies which Seller and Buyer may have under this Agreement or otherwise for monetary relief after the occurrence of the Closing with respect to any breach of or failure to perform any covenant, or agreement set forth in this Agreement. Notwithstanding any provision in this Agreement to the contrary, each Party shall have the express right to collect amounts payable under this Agreement pursuant to legal action and each Party shall have the right to seek the remedy of specific performance with respect to the Closing.

Section 8.2 Defense of Claims.

(a) If any Indemnitee receives notice of the assertion of any claim or of the commencement of any claim, action, or proceeding made or brought by any Person who is not a Party to this Agreement or any Affiliate of a Party to this Agreement (a ***"Third Party Claim"***), including but not limited to an information document request or a notice of proposed disallowance issued by the IRS relating to a matter covered by Section 6.8, with respect to which indemnification is to be sought from an Indemnifying Party, the Indemnitee shall give such Indemnifying Party reasonably prompt written notice thereof, but in any event such notice shall not be given later than twenty (20) calendar days after the Indemnitee's receipt of notice of such Third Party Claim. Such notice shall describe the nature of the Third Party Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnifying Party will have the right to participate in or, by giving written notice to the Indemnitee, to elect to assume the defense of any Third Party Claim at such Indemnifying Party's expense and by such Indemnifying Party's own counsel, provided that the counsel for the Indemnifying Party who shall conduct the defense of such Third Party Claim shall be reasonably satisfactory to the Indemnitee. The Indemnitee shall cooperate in good faith in such defense at such Indemnitee's own expense. If an Indemnifying Party elects not to assume the defense of any Third Party Claim, the Indemnitee may compromise or settle such Third Party Claim over the objection of the Indemnifying Party, which settlement or compromise shall conclusively establish the Indemnifying Party's Liability pursuant to this Agreement; provided, however, that the Indemnitee provides written notice to the Indemnifying Party of its intent to settle and such notice reasonably describes the terms of such settlement at least ten (10) Business Days prior to entering into any settlement.

(b) (i) If, within twenty (20) calendar days after an Indemnitee provides written notice to the Indemnifying Party of any Third Party Claims, the Indemnitee receives written notice from the Indemnifying Party that such Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in Section 8.2(a), the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnifying Party shall fail to take reasonable steps necessary to defend diligently such Third Party Claim within twenty (20) calendar days after receiving notice from the Indemnitee that the Indemnitee believes the Indemnifying Party has failed to take such steps, the Indemnitee may assume its own defense and

the Indemnifying Party shall be liable for all reasonable expenses thereof.

(ii) Without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld, conditioned or delayed, the Indemnifying Party shall not enter into any settlement of any Third Party Claim which would lead to Liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder. If a firm offer is made to settle a Third Party Claim without leading to Liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within twenty (20) calendar days after its receipt of such notice, the Indemnifying Party shall be relieved of its obligations to defend such Third Party Claim and the Indemnitee may contest or defend such Third Party Claim. In such event, the maximum Liability of the Indemnifying Party as to such Third Party Claim will be the amount of such settlement offer plus reasonable costs and expenses paid or incurred by Indemnitee up to the date of said notice.

(c) Any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim (a ***"Direct Claim"***) shall be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable, but in any event such notice shall not be given later than twenty (20) calendar days after the Indemnitee becomes aware of such Direct Claim, and the Indemnifying Party shall have a period of twenty (20) calendar days within which to respond to such Direct Claim. If the Indemnifying Party does not respond within such twenty (20) calendar day period, the Indemnifying Party shall be deemed to have accepted such claim. If the Indemnifying Party rejects such claim, the Indemnitee will be free to seek enforcement of its right to indemnification under this Agreement.

(d) The amount of any Indemnifiable Loss shall be reduced to the extent that the Indemnitee receives any insurance proceeds with respect to an Indemnifiable Loss. If the amount of any Indemnifiable Loss, at any time subsequent to the making of an indemnity payment in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by, from or against any other entity, the amount of such reduction, less any costs, expenses or premiums incurred in connection therewith (together with interest thereon from the date of payment thereof to the date or repayment at the "prime rate" as published in *The Wall Street Journal*) shall promptly be repaid by the Indemnitee to the Indemnifying Party.

(e) A failure to give timely notice as provided in this Section 8.2 shall not affect the rights or obligations of any Party hereunder except if, and only to the extent that, as a result of such failure, the Party which was entitled to receive such notice was actually prejudiced as a result of such failure.

Section 8.3 Offset.

Buyer shall have the right to offset, on a dollar for dollar basis, any portion of any payment to be made under Article III against any amount payable by Seller under this Article

VIII.; provided that Buyer shall offset any such amounts against the last scheduled installment payment(s) of the Financed Amount due to Seller, if any portion of the Purchase Price is treated at Seller's option as the Financed Amount pursuant to Section 3.4.

ARTICLE IX
TERMINATION

Section 9.1 Termination.

(a) This Agreement may be terminated at any time prior to the Closing Date by mutual written consent of Seller and Buyer.

(b) This Agreement may be terminated by Seller or Buyer, if (i) any federal or state court of competent jurisdiction shall have issued an Order permanently restraining, enjoining or otherwise prohibiting the Closing, and such Order, shall have become final and nonappealable; (ii) any Law shall have been enacted or issued by any Governmental Authority (other than Seller) which, directly or indirectly, prohibits the consummation of the Closing; or (iii) the conditions precedent contained in Section 7.1 with respect to Buyer and the conditions precedent contained in Section 7.2 with respect to Seller have not been fulfilled or waived as provided therein and the Closing contemplated hereby shall have not occurred on or before the Termination Date; provided, that the right to terminate this Agreement under this Section 9.1(b)(iii) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date.

(c) This Agreement may be terminated by Buyer if any of Buyer's Required Regulatory Approvals shall have been denied or shall have been granted but are not in form and substance reasonably satisfactory to Buyer.

(d) This Agreement may be terminated by Buyer if there has been one or more violations or breaches by Seller of any representation or warranty contained in this Agreement and such violation(s) or breach(es) (individually or in the aggregate) constitutes a Material Adverse Effect and is not cured by the earlier of the Closing Date or ninety (90) days, if such violation or breach is capable of being cured within such 90-day period, after receipt by Seller (or by Buyer in the case of notice by Seller pursuant to Section 6.9) of written notice specifying particularly such violation(s) or breach(es). Notwithstanding the foregoing, if Buyer gives Seller such notice of a violation or breach by Seller of any such representation or warranty within 6 months before the deadline for Closing, Seller may elect by written notice to Buyer prior to the Closing Date to extend the deadline for Closing by up to six (6) additional months if Seller deems such additional time necessary for it to cure such violations or breaches of its representations and warranties.

(e) This Agreement may be terminated by Seller if there has been one or more violations or breaches by Buyer of any representation or warranty contained in this Agreement and such violation(s) or breach(es) (individually or in the aggregate) constitutes a Material Adverse Effect and is not cured by the earlier of the Closing Date or ninety (90) days, if such violation or breach is capable of being cured within such 90-day period, after receipt by Buyer of

written notice specifying particularly such violation(s) or breach(es). Notwithstanding the foregoing, if Seller gives Buyer such notice of a violation or breach by Seller of any such representation or warranty within 6 months of the deadline for Closing, Buyer may elect by written notice to Seller prior to the Closing Date to extend the deadline for Closing by up to six (6) additional months if Buyer deems such additional time necessary for it to cure such violations or breaches of its representations and warranties.

(f) This Agreement may be terminated by a Party if there has been one or more material breaches by the other Party of any covenant or agreement contained in this Agreement and such breach(es) is not cured by the other Party within one hundred and twenty (120) days after receipt by the breaching Party of written notice specifying particularly such breach(es). If such initial written notice is delivered to the other Party within 120 days of the deadline for Closing, the deadline for Closing shall be extended by 120 days.

(g) This Agreement may be terminated by Buyer in accordance with the provisions of Sections 6.11(b) or (c).

Section 9.2 Effect of Termination.

(a) In the event of termination of this Agreement by Seller or Buyer pursuant to Section 9.1, written notice thereof shall promptly be given by the terminating Party to the other Party, and this Agreement shall thereupon terminate. Notwithstanding the foregoing, if this Agreement terminates pursuant to Section 9.1, this Agreement shall be null and void and neither Party shall have any liability or obligation to the other Party under this Agreement or as a result of the termination hereof. If this Agreement is terminated as provided herein, all filings, applications and other submissions made to any Governmental Authority shall, to the extent practicable, be withdrawn from the Governmental Authority to which they were made.

(b) Notwithstanding the existence of any violation or breach by a Party of its representations, warranties or covenants included in this Agreement prior to Closing, if the other Party elects to proceed to Closing, such violations or breaches shall be deemed waived and there shall be no liability to the other Party for such violations or breaches of its representations, warranties or covenants.

(c) Notwithstanding any provision herein to the contrary, if this Agreement is terminated by Seller pursuant to Section 9.1(e) or (f) or if the Closing does not occur because the Federal Trade Commission or the Department of Justice deny approval of the Transaction under the HSR Act by determining that the Transaction violates U.S. antitrust laws, then, in any such case, Buyer shall pay Seller, by wire transfer of immediately available funds within three (3) Business Days following the date of such termination an amount equal to the [transaction costs] incurred by Seller not to exceed $4,000,000.

ARTICLE X
MISCELLANEOUS PROVISIONS

Section 10.1 Amendment and Modification.

This Agreement may not be amended, modified or supplemented, except by written agreement of Seller and Buyer.

Section 10.2 Waiver of Compliance; Consents.

Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not invalidate this Agreement, nor shall such waiver be deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement. Except as otherwise provided herein, the failure of a Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights. A waiver by a Party of the performance of any covenant, condition, representation or warranty of the other Party shall not invalidate this Agreement, nor shall such waiver be construed as a waiver of any other covenant, condition, representation or warranty. A waiver by a Party of the time for performing any act shall not constitute a waiver of the time for performing any other act or the time for performing an identical act required to be performed at a later time. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

Section 10.3 Third Party Beneficiaries.

(a) Except for the provisions of Article VIII which are intended to be for the benefit of the Persons identified therein, the terms and provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person, including without limitation any employee or any beneficiaries or dependents thereof. No provision of this Agreement shall create any third party beneficiary rights in any employee or former employee of Seller (including any beneficiary or dependent thereof) in respect of continued employment or resumed employment, and no provision of this Agreement shall create any rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any employee benefit plan or arrangement except as expressly provided for thereunder.

Section 10.4 Notices.

All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by overnight courier or registered or certified mail (return receipt requested), postage prepaid, to the recipient Party at its address (or at such other address for a Party as shall be specified by like notice; provided, however, that notices of a change of address shall be effective only upon receipt thereof):

(a) If to Seller, to:

City of Vero Beach

_____
Attention: City Manager

with a copy to:

_____
_____
_____
Attention: City Attorney

(b) if to Buyer, to:

_____
_____
_____
Attention: _____

with a copy to:

_____
_____
_____
Attention: _____

Section 10.5 Assignment.

Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Party, except that, from and after the Closing, Buyer may (without the consent of any other Party) assign this Agreement or all or any portion of Buyer's rights, interests or obligations hereunder to any Affiliate of Buyer or any Person providing financing to Buyer or any of its their Affiliates, but no such assignment shall release Buyer of its obligations under this Agreement. Subject to this Section 10.5, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

Section 10.6 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without giving effect to conflict of law principles) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies. THE PARTIES HERETO AGREE THAT VENUE IN ANY AND ALL ACTIONS AND PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE IN THE COURT OF THE STATE OF FLORIDA IN INDIAN RIVER COUNTY, FLORIDA, WHICH COURT SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH

PURPOSE AND THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING. SERVICE OF PROCESS MAY BE MADE IN ANY MANNER RECOGNIZED BY SUCH COURT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT, AND SHALL SURVIVE THE CLOSING OR TERMINATION OF THIS AGREEMENT.

Section 10.7 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 10.8 Schedules and Exhibits.

Except as otherwise provided in this Agreement, all Exhibits and Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement.

Section 10.9 Entire Agreement.

This Agreement and the Ancillary Agreements, including the Exhibits, Schedules, documents, certificates and instruments referred to herein or therein, embody the entire agreement and understanding of the Parties hereto in respect of the transactions contemplated by this Agreement and shall supersede all previous oral and written and all contemporaneous oral negotiations, commitments and understandings including, without limitation, (a) that certain Letter of Intent dated May 6, 2011, between Seller and Buyer, as amended, and (b) all documents or communications, whether oral, written or electronic, submitted or made by (i) Buyer or any of its representatives to Seller or any of its representatives or (ii) Seller or any of its representatives to Buyer or any of its representatives, in connection with the sale process that occurred prior to the execution of this Agreement or otherwise in connection with the negotiation and execution of this Agreement.

Section 10.10 No Joint Venture.

Nothing in this Agreement creates or is intended to create an association, trust, partnership, joint venture or other entity or similar legal relationship among the Parties, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to the Parties.

Section 10.11 Change in Law.

If and to the extent that any Laws (other than Laws of Seller) that govern any aspect of this Agreement shall change, so as to make any aspect of this transaction unlawful, then the Parties agree to make such modifications to this Agreement as may be reasonably necessary for this Agreement to accommodate any such legal or regulatory changes, without materially changing the overall benefits or consideration expected hereunder by any Party.

Section 10.12 Specific Performance.

Each Party acknowledges and agrees that the other Party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each Party agrees that the other Party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in addition to any other remedy to which it may be entitled, at law or in equity.

Section 10.13 Severability.

If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

FLORIDA POWER & LIGHT COMPANY

By: _____

Name: _____

Title: _____

ATTEST:

_____
Tammy K. Vock
City Clerk

(City Seal)

Approved as to form and legal sufficiency:

_____
Wayne R. Coment
Acting City Attorney

Approved as to technical requirements:

_____

CITY OF VERO BEACH, FLORIDA

_____
Pilar Turner
Mayor

Approved as conforming to municipal policy:

_____
James R. O'Connor
City Manager

Approved as to technical requirements:

_____

THE CITY OF VERO BEACH ELECTRIC UTILITY

ASSET PURCHASE AND SALE AGREEMENT

BY AND AMONG

THE CITY OF VERO BEACH,
AS SELLER

AND

FLORIDA POWER & LIGHT COMPANY,
AS BUYER

DATED AS OF [_____], 2012

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LIST OF EXHIBITS AND SCHEDULES **[To be updated.]**

EXHIBITS

Exhibit A	Form of Assignment and Assumption Agreement
Exhibit B	Form of Bill of Sale
Exhibit C	Form of Special Warranty Deed
Exhibit D	Form of Seller's FIRPTA Affidavit
Exhibit E	Form of Franchise Ordinance
Exhibit F	Form of Termination of Territorial Boundary Agreement
Exhibit G	Form of Vero Beach Power Plant Site Lease Agreement and Memorandum of Lease
[[Exhibit H	Form of Other Real Property Lease Agreement and Memorandum of Lease]]
Exhibit I	Form of Airport Substation 5 Lease Agreement
Exhibit J	Form of Airport Substation 6 Lease Agreement
Exhibit K	Form of Airport Warehouse Lease Agreement
Exhibit L	Current Form of Streetlight Agreement (**FOR REFERENCE ONLY**)
Exhibit M	Form of Pole Attachment for Seller Fiber Optic System
Exhibit N	Form of Dark Fiber Lease Agreement
Exhibit O	Capital Expenditure and Maintenance Plan
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Exhibit Q	Consumption Allocation Percentages
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Exhibit X	VB-6 Sublicense
Exhibit Y	Substation 20 Transmission Line Easements or Rights of Ways
Exhibit Z	Vero Beach Power Plant Site property description

SCHEDULES **[To be listed]**

ASSET PURCHASE AND SALE AGREEMENT

This ASSET PURCHASE AND SALE AGREEMENT (the ***"Agreement"***), dated as of [_____] 2012 (***"Effective Date"***), is made and entered into by and between THE CITY OF VERO BEACH, a municipal corporation organized under the laws of the State of Florida (***"Seller"***), and FLORIDA POWER & LIGHT COMPANY, a corporation organized under the laws of the State of Florida (***"Buyer"***). Seller and Buyer are referred to individually as a ***"Party,"*** and collectively as the ***"Parties."***

W I T N E S S E T H:

WHEREAS, Seller owns and operates an electric utility in Indian River County, Florida;

WHEREAS, Buyer desires to purchase and assume, and Seller desires to sell and assign, certain electric utility assets and certain associated liabilities, upon the terms and conditions hereinafter set forth in this Agreement (the "***Transaction***");

WHEREAS, Buyer and Seller desire for Buyer to provide retail electric service to Seller's electric utility customers, commencing on the day that Buyer purchases from Seller such electric utility assets upon the terms and conditions hereinafter set forth in this Agreement; and

WHEREAS, Buyer and Seller desire for the rates for retail electric service to be provided to Seller's electric utility customers to be ~~at rates lower than the rates currently~~**the same as the rates for retail electric service** charged by ~~Seller~~**Buyer** to its retail electric service customers.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions.

As used in this Agreement, the following terms have the meanings specified in this Section 1.1.

(1) ***"Acquired Assets"*** has the meaning set forth in Section 2.1.

(2) ***"Acquired Land In Fee"*** has the meaning set forth in Section 4.7(l).

(3) ***"Action"*** means any suit, claim, proceeding, litigation, arbitration, audit or investigation by or before any Governmental Authority or arbitral tribunal.

(4) ***"Affiliate"*** means, with respect to any Person, (i) each Person that directly or indirectly, controls or is controlled by or is under common control with such designated

Person; (ii) any Person that beneficially owns or holds fifty percent (50%) or more of any class of voting securities of such designated Person or fifty percent (50%) or more of the equity interest in such designated Person; or (iii) any Person of which such designated Person beneficially owns or holds fifty percent (50%) or more of the equity interest. For the purposes of this definition, ***"control"*** (including, with correlative meanings, the terms "***controlled by***" and ***"under common control with"***), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

(5) "***After-Tax Basis***" means (a) for purposes of any provision of this Agreement that requires a payment to be made on an After-Tax Basis, such payment shall be made in an amount equal to the sum of (i) the payment to be made before adding the amounts referred to in clause (ii) of this sentence (the "***Base Payment***") and (ii) an amount equal to the sum of any and all Taxes paid or required to be paid by or on behalf of the payee as a result of receipt or recognition of such Base Payment (including, without limitation, any Taxes on such additional amounts) (the "***Additional Payment***"); *provided, however*, that no Additional Payment shall be payable if (A) the Base Payment is not includible in the payee's gross income, (B) the Base Payment is being made to compensate the recipient for a loss or expense that is deductible for federal Tax purposes or (C) the Base Payment compensates the payee for failure to receive an amount, other than a base payment, that would have been includible in the recipient's gross income, had such amount been received, so that the net amount actually received and retained by the payee after payment of all Taxes on the Base Amount and the Additional Amount is equal to the payment otherwise required to be made to the payee under any provision of this Agreement; and (b) for purposes of determining the After-Tax Basis, each payee shall be deemed to be subject to tax at the highest marginal (federal, state and local, as the case may be) Tax rate applicable to a Person with the same legal status as payee doing business in Florida in effect or scheduled to be in effect for the year in which receipt of the payment or payments is taxed.

(6) ***"Agreement"*** means this Asset Purchase and Sale Agreement together with the Schedules and Exhibits hereto, as the same may be amended from time to time in accordance herewith.

(7) ***"Airport Property Lease Agreements"*** means the Airport Substation 5 Lease Agreement, Airport Substation 6 Lease Agreement and Airport Warehouse Lease Agreement, collectively.

(8) ***"Airport Substation 5 Lease Agreement"*** means a lease agreement in the form attached hereto as Exhibit I.

(9) ***"Airport Substation 6 Lease Agreement"*** means a lease agreement in the form attached hereto as Exhibit J.

(10) ***"Airport Warehouse Lease Agreement"*** means a lease agreement in the form attached hereto as Exhibit K.

(11) ***"Allocation"*** has the meaning set forth in Section 3.5(b).

(12) ***"Ancillary Agreements"*** means the Bill of Sale, Assignment and Assumption Agreement, the Vero Beach Power Plant Site Lease Agreement, the Airport Property Lease Agreements, the VB Sublicenses, [[the Other Real Property Lease Agreement]], the Pole Attachment Agreement for Seller Fiber Optic System, the Dark Fiber Lease Agreement, the Streetlight Agreement, the Termination of Territorial Boundary Agreement, the Franchise Ordinance, and **[INSERT ANY OTHER ANCILLARY AGREEMENTS]**, as the same may be amended from time to time in accordance therewith.

(13) ***"Assignment and Assumption Agreement"*** means the Assignment and Assumption Agreement between Seller and Buyer in the form of Exhibit A hereto.

(14) ***"Assumed Contracts"*** mean the Contracts listed in Schedule 1.1([__]).

(15) ***"Assumed Liabilities"*** has the meaning set forth in Section 2.3.

(16) ***"Assumed Pension Liability"*** has the meaning set forth in Section 6.10(g).

(17) ***"Attachment Agreements"*** means all pole attachment agreements, wireline agreements, streetlight attachment agreements, joint use agreements, CATV (cable) agreements, fiber optic agreements, franchise agreements for the placement of telecommunication facilities, fiber-optic cable or cable facilities on any of the Acquired Assets, agreements for the placement of telecommunication, cable or other ground equipment and monopoles on any of the Acquired Assets, agreements for the attachment of facilities (including by Governmental Authorities) to towers, substations, buildings, transmission or distribution poles or other facilities comprising the Acquired Assets, banner agreements, holiday lights agreements and other similar agreements.

(18) ***"Attachment Agreements Net Revenue"*** means the payments received by Buyer under the Attachment Agreements listed in Schedule 1.1([__]), less any costs incurred by Buyer (a) under such Attachment Agreements or (b) relating to any attachment or other property of any Person (other than Buyer) that is the subject of such agreements, including the maintenance, repair or removal thereof.

(19) ***"Benefit Plans"*** means each employee benefit plan as defined in Section 3(3) of ERISA, each governmental plan as defined in Section 3(32) of ERISA, and each other plan, contract, agreement, arrangement or policy, whether written or oral, qualified or non-qualified, providing for (i) compensation, severance benefits, bonuses, profit-sharing or other forms of incentive compensation; (ii) vacation, holiday, sickness or other time-off; (iii) health, medical, dental, disability, life, accidental death and dismemberment, employee assistance, educational assistance, relocation or fringe benefits or perquisites, including post-employment benefits; and (iv) deferred compensation, defined benefit or defined contribution, retirement or pension benefits.

(20) ***"Between Meter Readings Period"*** has the meaning set forth in Section 6.24.

(21) ***"Bill of Sale"*** means the Bill of Sale, in the form of Exhibit B hereto.

(22) "***Bond Resolution***" means **[the City of Vero Beach Electric Revenue Bond Resolution No. [__], as amended]**.

(23) ***"Breach"*** means (a) any breach or violation of, or any inaccuracy in, any representation or warranty, (b) any breach of, or failure to perform or comply with, any condition, provision, covenant or obligation, or (c) any other violation, breach or event of default.

(24) ***"Business Books and Records"*** has the meaning set forth in Section 2.1(h).

(25) ***"Business Day"*** shall mean any day other than Saturday, Sunday and any day on which banking institutions in the State of Florida are authorized by law or other governmental action to close.

(26) ***"Business of the Vero Beach Electric Utility"*** means each of the following: (a) the ownership, operation and maintenance of the Vero Beach Electric Utility; (b) the sale and provision of electricity to the Customers; and (c) the ownership, operation and maintenance of the Streetlight Assets.

(27) ***"Buyer"*** has the meaning set forth in the preamble to this Agreement.

(28) ***"Buyer Benefit Plans"*** has the meaning set forth in Section 6.1(e).

(29) ***"Buyer Fundamental Representations***" means the representations and warranties made in Sections 5.1, 5.2, 5.3(a)(i) and 6.7.

(30) ***"Buyer Indemnitee"*** has the meaning set forth in Section 8.1(b).

(31) ***"Buyer's Required Regulatory Approvals"*** has the meaning set forth in Section 5.3(b).

(32) ***"Capital Expenditure and Maintenance Plan"*** means the document attached hereto as Exhibit O.

(33) ***"Capital Improvement Notice"*** has the meaning set forth in Section 6.16(a).

(34) ***"Closing"*** has the meaning set forth in Section 3.1.

(35) ***"Closing Date"*** has the meaning set forth in Section 3.1.

(36) ***"COBRA"*** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and the rules and regulations promulgated thereunder and any similar state or local Laws.

(37) ***"Code"*** means the Internal Revenue Code of 1986, as amended.

(38) ***"Commercially Reasonable Efforts"*** mean efforts which are designed to

enable a Party, directly or indirectly, to expeditiously 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.

(39) ***"Confidential Document"*** has the meaning set forth in Section 6.5.

(40) ***"Consumption Allocation Percentage"*** means the percentage applicable to a particular calendar day as set forth in Exhibit Q hereto.

(41) ***"Contract"*** means any agreement, contract, purchase order, lease, license, right, commitment, evidence of Indebtedness, binding bid or other legally binding arrangement.

(42) ***"Converted Represented Transferred Employees"*** means employees who were covered by Seller's Collective Bargaining Agreement while employed with the Seller, but who will be employed by the Buyer in positions that are not subject to a collective bargaining agreement.

(43) ***"Converted Unrepresented Transferred Employees"*** means employees who were not covered by Seller's Collective Bargaining Agreement while employed with the Seller, but who will be employed by the Buyer in positions that are subject to a collective bargaining agreement.

(44) ***"Council"*** means the City Council of the Seller.

(45) ***"Customer"*** means any existing or possible, retail electric service customer of Seller within the Service Territory.

(46) ***"Customer Deposits"*** means the electric utility deposits collected by Seller from its electric utility customers or the portion of deposits collected from customers of electric, water and sewer utility services allocable to the electric service provided by the Seller, which deposits are owned by such customers, are held on their behalf by Seller, and are returnable to customers upon termination of customer accounts provided such customers pay in full all amounts due to Seller when seeking a return of such deposits. **[NOTE: PARTIES TO DISCUSS HOW TO HANDLE CUSTOMER DEPOSITS]**

(47) ***"Customer Service Assets"*** means the customer service facilities, equipment and other tangible property and assets relating to, or used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility or located on the Real Property, including but not limited to the facilities, equipment and other tangible property and assets that connect the Distribution Assets to each individual Customer's Delivery Point (and other property and assets associated with or ancillary thereto), Customer/premise/account data, historical consumption information, meters, remote metering equipment, and equipment needed to access the meters (e.g., keys to locked meter rooms, any meter/special/barrel lock/anchor keys), and without limiting the generality of the foregoing, specifically includes the facilities and equipment described in Schedule 1.1([ ]). ***{Note: excluding assets used ~~solely~~ for water and sewer and license from licensors to the City of those assets used by City for all utilities for***

water and sewer, and excluding City office facilities }.

(48) ***"Dark Fiber Lease Agreement"*** means an agreement in the form attached hereto as Exhibit N.

(49) ***"Deductible Amount"*** has the meaning set forth in Section 8.1(c)(iii).

(50) ***"Deed"*** means a special warranty deed in **[substantially]** the form of the attached hereto as Exhibit C.

(51) ***"Delivery Point"*** means the point on the Customer's premises where, (i) if delivery is being made through overhead wires, Seller's wires connect to Customer's wires at the Customer's weatherhead, and (ii) if delivery is being made through underground wires, Seller's wires connect to the Customer's meter can.

(52) ***"Department of Energy"*** means the United States Department of Energy and any successor agency thereto.

(53) ***"Department of Justice"*** means the United States Department of Justice and any successor agency thereto.

(54) "***Department of Labor***" means the United States Department of Labor and any successor agency thereto.

(55) "***Direct Claim***" has the meaning set forth in Section 8.2(c).

(56) "***Distribution Assets***" means the electric distribution facilities, equipment and other tangible property and assets relating to, or used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility or located on the Real Property or the Vero Beach Power Plant Site, including but not limited to the facilities, equipment and other tangible property and assets that connect the Transmission Assets to the Customer Service Assets (and other property and assets associated with or ancillary thereto), distribution substation equipment, feeder circuits and associated hardware (switches and switch gear, regulators, capacitor banks, reclosers, protective equipment, etc), primary circuits, transformers, secondaries and services, and associated physical assets (including poles, conductors, cables, insulators, metering, street lights and outdoor lights), and , without limiting the generality of the foregoing, specifically includes the facilities and equipment described in Schedule 1.1([ ]).

(57) ***"District Permit VB-2"*** means the Permit and Interlocal Agreement between the Indian River Farms Water Control District and the Seller in the form attached hereto as Exhibit R.

(58) ***"District Permit VB-5"*** means the Permit and Interlocal Agreement between the Indian River Farms Water Control District and the Seller in the form attached hereto as Exhibit S.

(59) ***"District Permit VB-6"*** means the Permit and Interlocal Agreement between the Indian River Farms Water Control District and the Seller in the form attached hereto as Exhibit T.

(60) ***"Effective Date"*** has the meaning set forth in the preamble to this Agreement.

(61) ***"Electric Utility Accounting Records"*** means all financial statements, accounting books and related records of Seller relating to the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility.

(62) ***"Encumbrances"*** means any liens, charges, pledges, options, mortgages, deeds of trust, security interests, equitable interests, claims, easements, rights-of-way, leases, mineral reservations, covenants, conditional and installment sales contracts, title retention arrangements, adverse claims or restrictions of any kind, including restriction on transfer or use, option, right of first refusal, license or other right of third parties, and other encumbrances affecting title or right to property, whether imposed by Law, agreement, understanding or otherwise and whether or not of record.

(63) ***"Environment"*** means all soil, real property, air, water (including surface waters, streams, ponds, drainage basins and wetlands), groundwater, water body sediments, drinking water supply, stream sediments or land, including land surface or subsurface strata, including all fish, plant, wildlife, and other biota and any other environmental medium or natural resource.

(64) ***"Environmental Claim"*** means any and all communications, whether written or oral, alleging potential Liability, administrative or judicial actions, suits, orders, liens, notices alleging Liability, notices of violation, investigations which have been disclosed to Seller, complaints, requests for information relating to the Release or threatened Release into the Environment of Hazardous Substances, proceedings, or other communication, whether criminal or civil, pursuant to or relating to any applicable Environmental Law, by any Person (including any Governmental Authority) based upon, alleging, asserting, or claiming any actual or potential (a) violation of, or Liability under any Environmental Law, (b) violation of any Environmental Permit, or (c) Liability for investigatory costs, cleanup costs, removal costs, remedial costs, response costs, monitoring 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 Substances at any location related to the Acquired Assets, including, but not limited to, any off-Site location to which Hazardous Substances, or materials containing Hazardous Substances, were sent.

(65) ***"Environmental Clean-up Site"*** means any location which is listed or formally proposed for listing on the National Priorities List, the Comprehensive Environmental Response, Compensation and Liability Information System, or on any similar state list of sites requiring investigation or cleanup, or which is the subject of any action, suit, proceeding or investigation which has been disclosed to Seller for any alleged violation of any Environmental Law, or at which there has been a Release, or a threatened or suspected Release, of a Hazardous Substance.

(66) ***"Environmental Laws"*** means all Laws regarding pollution or protection of the Environment, the conservation and management of land, natural resources and wildlife or human health and safety or the Occupational Safety and Health Act (only as it relates to Hazardous Substances), including, without limitation, Laws regarding Releases or threatened Releases of Hazardous Substances (including, without limitation, Releases to ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport, disposal or handling of Hazardous Substances. ***"Environmental Laws"*** include, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Oil Pollution Act (33 U.S.C. §§ 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001 et seq.), the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.) only as it relates to Hazardous Substances, and all other Laws analogous to any of the above.

(67) ***"Environmental Permit"*** means any Permit under or in connection with any Environmental Law, including any and all orders, consent orders or binding agreements issued or entered into by a Governmental Authority under any applicable Environmental Law, that is used in, or necessary for, (i) the Business of the Vero Beach Electric Utility, or (ii) the ownership, use or operation of the Acquired Assets or the Real Property, in each case under clause (i) or (ii), as conducted prior to the Effective Date and as conducted prior to the Closing Date.

(68) ***"ERISA"*** means the Employee Retirement Income Security Act of 1974, as amended, and the applicable rules and regulations promulgated thereunder.

(69) ***"ERISA Affiliate"*** means any trade or business under Section 414(b), (c), (m) or (o) of the Code.

(70) ***"Estimated Allocation"*** has the meaning set forth in Section 3.5(a).

(71) ***"Estimated Closing Statement"*** has the meaning set forth in Section 3.3(b).

(72) ***"Excluded Assets"*** has the meaning set forth in Section 2.2.

(73) ***"Excluded Contracts"*** means the FMPA Agreements, the Other FMPA Agreements, the OUC Agreement, the St. Lucie Unit No. 2 Capacity and Energy Sales Contract, the Excluded Licenses and the Contracts listed on Schedule 1.1([ ]).

(74) *"Exluded Inventory"* means any inventory of Seller not listed on Schedule 2.1(g).

(75) ~~(74)~~ ***"Excluded Liabilities"*** has the meaning set forth in Section 2.4.

(76) ~~(75)~~ ***"Excluded Licenses"*** means those license agreements listed on

Schedule [___]. [To be discussed – we envision a need to bifurcate one or more of the City's current license agreements. In that event, Buyer may enter into new license agreements with providers depending on its needs.]

(77) ~~(76)~~ ***"Excluded Environmental Liabilities"*** has the meaning set forth in Section 2.4(d).

(78) ~~(77)~~ ***"Excluded Real Property"*** means the Grand Harbor property described in the attached Exhibit U.

(79) ~~(78)~~ ***"Excluded Streetlight Assets"*** means **[Describe downtown ornamental lights] and any inventory solely related to such assets.**

(80) ~~(79)~~ ***"Federal Communications Commission"*** means the United States Federal Communications Commission or any successor agency thereto.

(81) ~~(80)~~ ***"Federal Power Act"*** means the Federal Power Act, as amended.

(82) ~~(81)~~ ***"Federal Trade Commission"*** means the United States Federal Trade Commission or any successor agency thereto.

(83) ~~(82)~~ ***"FERC"*** means the Federal Energy Regulatory Commission or any successor agency thereto.

(84) ~~(83)~~ ***"Fiber Optic System"*** means [_____].

(85) ~~(84)~~ ***"Final Determination"*** has the meaning set forth in Section 1313(a) of the Code (or any similar provision of state or local law).

(86) ~~(85)~~ ***"Financed Amount"*** has the meaning set forth in Section 3.4(a).

(87) ~~(86)~~ ***"FMPA"*** means the Florida Municipal Power Agency.

(88) ~~(87)~~ ***"FMPA Agreements"*** means all of the following Contracts: (i) St. Lucie Project Power Sales Contract dated June 1, 1982, between the FMPA and Seller, as amended; (ii) St. Lucie Project Power Support Contract dated June 1, 1982, between the FMPA and Seller, as amended; (iii) the Stanton Contracts; and (iv) All-Requirements Power Supply Project Contract dated October 1, 1996, between the FMPA and Seller, as amended.

(89) ~~(88)~~ ***"FMPA Entitlement Assignment"*** has the meaning set forth in Section 6.13(c).

(90) ~~(89)~~ ***"FMPA Member"*** means any member in good standing of the FMPA.

(91) ~~(90)~~ ***"FPUA"*** means the Fort Pierce Utilities Authority or any successor electric utility.

(92) ~~(91)~~ ***"FPUA Joint Facilities"*** means the transmission and substation

facilities owned jointly by Seller and FPUA in St. Lucie County, Florida, and Indian River County, Florida, and identified as "Substation 20" on the schedule of the Acquired Land in Fee and as Substation 20 Transmission Line R/Ws.

(93) ~~(92)~~ ***"FPSC"*** means the Florida Public Service Commission or any successor agency thereto.

(94) ~~(93)~~ ***"Franchise Ordinance"*** means the franchise ordinance agreement in substantially the form attached as Exhibit E.

(95) ~~(94)~~ ***"Gas Transportation Contracts"*** means [_____].

(96) ~~(95)~~ ***"Good Industry Practices"*** means the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in Florida during the relevant time period that, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, would reasonably be expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability and safety.

(97) ~~(96)~~ ***"Governmental Authority"*** means any federal, state, county, city, local or other governmental, regulatory or administrative agency, body, authority (including taxing authority), official, district (including water control district), commission, department, board or other governmental subdivision, court, tribunal or arbitrating body, and any national or regional electric reliability organizations, including NERC.

(98) ~~(97)~~ ***"Hazardous Substances"*** means (a) any petroleum, asbestos, asbestos-containing material, and urea formaldehyde foam insulation and transformers or other equipment that contains polychlorinated biphenyls; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants," "pollutants," "toxic pollutants," "hazardous air pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

(99) ~~(98)~~ ***"Holding Company Act"*** means the Public Utility Holding Company Act of 1935, as amended.

(100) ~~(99)~~ ***"HSR Act"*** means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

(101) ~~(100)~~ ***"Income Tax"*** means any Tax (a) based upon, measured by or calculated with respect to net income, profits or receipts (including, without limitation, capital gains Taxes and minimum Taxes), or (b) based upon, measured by or calculated with respect to multiple bases (including, without limitation, corporate franchise Taxes) if one or more of the bases on which such Tax may be based, measured by or calculated with respect to, is described in clause (a), in each case together with any interest, penalties or additions to such Tax.

(102) ~~(101)~~ ***"Indebtedness"*** means, with respect to any Person, at any time

without duplication, (i) all indebtedness for borrowed money, (ii) all obligations for the deferred purchase price of property or services, (iii) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (iv) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (v) all obligations of such Person as lessee under leases that are or should be capitalized in accordance with generally accepted accounting practices, (vi) all obligations of such Person under acceptance, letter of credit or similar facilities, (vii) all obligations of such Person in respect of any exchange-traded or over-the-counter derivative transaction, including interest rate or currency hedging agreements, and (viii) all obligations of such Person to guarantee any Indebtedness, leases, dividends or other payment obligations of such Person or any other Person.

(103) ~~(102)~~ ***"Indemnifiable Loss"*** has the meaning set forth in Section 8.1(a).

(104) ~~(103)~~ ***"Indemnifying Party"*** has the meaning set forth in Section 8.1(e).

(105) ~~(104)~~ ***"Indemnitee"*** means either a Seller Indemnitee or a Buyer Indemnitee.

(106) ~~(105)~~ ***"Independent Accounting Firm"*** means such independent accounting firm of national reputation as is mutually appointed by Seller and Buyer.

(107) ~~(106)~~ ***"Initial Payment"*** has the meaning set forth in Section 3.4(a).

(108) ~~(107)~~ ***"Intellectual Property"*** means the following rights, both statutory and common law rights, if applicable: (a) copyrights, registrations and applications for registration thereof, (b) trademarks, service marks, trade names, slogans, domain names, business names, logos, trade dress, and registrations and applications for registrations thereof, (c) patents, as well as any reissued and reexamined patents and extensions corresponding to the patents, and any patent applications, as well as any related continuation, continuation in part and divisional applications and patents issuing therefrom, (d) trade secrets and other confidential and proprietary information, including ideas, designs, concepts, compilations of information, methods, techniques, procedures, processes and other know-how, whether or not patentable, and (e) computer programs and other software, including source and object codes.

(109) ~~(108)~~ ***"Intellectual Property Licenses"*** means those agreements related to Licensed Intellectual Property.

(110) ~~(109)~~ ***"Interconnection Points"*** mean the points at which the Seller's Transmission Assets connect to: (a) [_____], (b) [_____], and (c) the FPUA Joint Facilities.

(111) ~~(110)~~ ***"Interim Period"*** has the meaning set forth in Section 6.1(a).

(112) ~~(111)~~ ***"Inventory"*** means materials, spare parts, supplies, fuel, chemicals and other items of inventory relating to, or used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility, including the Streetlight Maintenance Inventory and other material items of inventory located in Seller's warehouses located at ~~[ ]~~**the Seller's**

airport warehouse the principal items of which are described on Schedule 2.1(g). **[NOTE: FPL AND COVB TO DETERMINE WHAT INVENTORIES SHOULD BE SCHEDULED OUT – SUGGESTION IS FOR SPECIFIC INVENTORY ITEMS TO BE LISTED AND BETTER DESCRIBED IN THIS DEFINITION]**

(113) ~~(112)~~ ***"IRS"*** means the United States Internal Revenue Service or any successor agency thereto.

(114) ~~(113)~~ ***"Knowledge"*** means (i) with respect to Buyer, the assumed or actual knowledge (based on a reasonable inquiry of appropriate current employees of Buyer) of the corporate officers of the Buyer who are charged with responsibility for the particular function relating to the matter of the inquiry and (ii) with respect to Seller, the assumed or actual knowledge (based on a reasonable inquiry of appropriate current employees of Seller) of the City Attorney and City Manager of Seller.

(115) ~~(114)~~ ***"Law"*** means any applicable foreign, federal, state or local law, constitutional provision, statute, ordinance or other law, rule, regulation, code (including any zoning code, fire code or health and safety code), Permit, or interpretation of any Governmental Authority or any Order of or by, or any Contract with, any Governmental Authority, including all Environmental Laws and NERC standards, requirements and regulations.

(116) ~~(115)~~ ***"Lease Agreements"*** mean the Vero Beach Power Plant Site Lease Agreement, the Airport Property Lease Agreements [[and the Other Real Property Lease Agreement.]]

(117) ~~(116)~~ ***"Liability"*** means any direct or indirect debt, liability, commitment, Indebtedness or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or un-accrued, whether liquidated or un-liquidated, and whether due or to become due) of any kind, character or nature, or any demand, claim or Action asserted or brought against the relevant Person.

(118) ~~(117)~~ ***"Liability Cap"*** has the meaning set forth in Section 8.1(c)(iv).

(119) ~~(118)~~ ***"Licensed Intellectual Property"*** means the Intellectual Property described in Schedule 1.1([__]).

(120) ~~(119)~~ ***"Long Term Real Property Interests"*** means the Acquired Land In Fee, the Airport Property Lease Agreements, the VB Sublicenses and the Substation 20 Transmission Line R/Ws.

(121) ~~(120)~~ ***"Loss"*** or ***"Losses"*** means any and all damages, fines, fees, penalties, deficiencies, losses, Liabilities, interest, awards, judgments, claims, Actions, diminution of value and expenses (whether or not involving a third party claim), including without limitation all Remediation costs, fees of attorneys, accountants and other experts, or other expenses of litigation or proceedings or of any claim, default or assessment relating to the foregoing.

(122) ~~(121)~~ ***"Material Adverse Effect"*** means any change, effect, condition,

fact, circumstance or event that individually or in the aggregate is or is reasonably likely to be materially adverse to, or have or result in a material adverse effect on, the condition or properties of the Acquired Assets, prior to or after the Closing Date and that amounts to a financial or economic adverse effect of at least $10,000,000; *provided, however*, that none of the following shall be taken into account in determining whether there has been or will be a Material Adverse Effect: (x) any change, effect, condition, fact, circumstance or event in the economy in general or (y) any change, effect, condition, fact, circumstance or event primarily caused by Buyer or its Affiliates.

(123) ~~(122)~~ ***"Material Seller Contracts*** shall have the meaning set forth in Section 4.14(a).

(124) ~~(123)~~ ***"NERC"*** means the North American Electric Reliability Corporation.

(125) ~~(124)~~ ***"Non-Environmental Permit"*** means any Permit (other than an Environmental Permit) that is used in, or necessary for, (i) the Business of the Vero Beach Electric Utility, or (ii) the ownership, use or operation of the Acquired Assets or the Real Property, in each case under clause (i) or (ii), as conducted prior to the Effective Date and as conducted prior to the Closing Date, and specifically includes the Radio Licenses.

(126) ~~(125)~~ ***"Observers"*** has the meaning set forth in Section 6.1(b).

(127) ~~(126)~~ ***"Order"*** means any judgment, decision, consent, assessment, decree, injunction, stay, ruling, writ or order of or by any Governmental Authority.

(128) ~~(127)~~ ***"Other FMPA Agreements"*** means that certain Interlocal Agreement Creating the Florida Municipal Power Agency dated [_____], as amended, and all other Contracts relating to FMPA, including any bond resolutions but excluding the FMPA Agreements.

(129) ~~(128)~~ ***"Other Real Property Interest"*** means any real property lease, easement, license, rights of way, right to use or other right in real property, including any option for any of the foregoing or for acquisitions of real property and any crossing agreement or consent and entry agreement, but excluding the Long Term Real Property Interests.

(130) ~~(129)~~ ***[["Other Real Property Lease Agreement"*** means a lease agreement and memorandum of lease in **[substantially]** the form attached hereto as Exhibit H]].

(131) ~~(130)~~ ***"OUC"*** means the Orlando Utilities Commission.

(132) ~~(131)~~ ***"OUC Agreement"*** means the Agreement for Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management Services dated April 21, 2008 between Seller and OUC.

(133) ~~(132)~~ ***"Owned Intellectual Property"*** means the Intellectual Property described in Schedule 1.1([__]).

(134) ~~(133)~~ ***"Party"*** (and the corresponding term ***"Parties"***) has the meaning set forth in the preamble to this Agreement.

(135) ~~(134)~~ ***"Payment Date"*** has the meaning set forth in Section 3.4(b).

(136) ~~(135)~~ ***"Permits"*** means all permits, licenses, approvals, immunities, entitlements, certificates (including certificates of need), authorizations, franchises, registrations, waivers, variances, exemptions, orders, notices, application, filings and consents from, to, with or issued by any Governmental Authority, including all certificates of occupancy, operating permits, sign permits, development rights and approvals, zoning, building and safety and health approvals.

(137) ~~(136)~~ ***"Permitted Encumbrances"*** means: (i) as to the Real Property Interests**[NEED TITLE SEARCH FOR AIRPORT PROPERTY LEASE AGREEMENTS AND THE VB SUBLICENSES TO COMPLETE THIS SCHEDULE at Buyer's expense]**, those exceptions to title listed in Schedule 1.1([ ]); (ii) Encumbrances created by any mortgage indenture or the Vero Beach Electric Utility Bonds that will be released prior to or at the Closing; *provided*, that such Encumbrances shall cease to be Permitted Encumbrances as of the Closing; (iii) statutory liens for Taxes or other governmental charges or assessments not yet delinquent; (iv) statutory liens (including mechanics' and materialmen's liens and other like statutory liens and inchoate liens incurred in connection with worker's compensation, unemployment insurance, and social security laws) arising in the ordinary course of business securing payments not yet delinquent (or any such lien for a delinquent payment that has been waived in writing by the holder thereof or any such lien for a delinquent payment for which Seller has obtained a waiver, bond or other security in accordance with applicable Law to fully protect the Acquired Assets from any and all claims that may be made on account of any such lien); (v) existing zoning, entitlement, environmental or conservation restriction and other land use and environmental regulations imposed by Governmental Authorities and any existing conditions and obligations arising under any Permit so long as such restrictions, regulations, conditions and obligations do not materially interfere with the Business of the Vero Beach Electric Utility in the ordinary course as conducted prior to the Effective Date and as conducted prior to the Closing Date; (vi) the covenants and restrictions set forth in this Agreement or in any of the Ancillary Agreements; and (vii) Encumbrances with respect to the Acquired Assets created by or resulting from the acts or omissions of Buyer.

(138) ~~(137)~~ ***"Person"*** means a natural person, a corporation~~,~~, a partnership, a joint venture, a corporation, a union, a limited liability company, a trust, an unincorporated organization, an association, a joint stock company, trustee, estate, real estate investment trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof or a Governmental Authority or any other separate legal entity recognized pursuant to Law.

(139) ~~(138)~~ ***"Pole Attachment Agreement for Seller Fiber Optic System"*** means an agreement in the form attached hereto as Exhibit M.

(140) ~~(139)~~ ***"Post-Closing Adjustment"*** has the meaning set forth in Section 3.3(c).

(141) ~~(140)~~ ***"Post-Closing Consumption Period"*** has the meaning set forth in Section 6.24.

(142) ~~(141)~~ ***"Post-Closing Statement"*** has the meaning set forth in Section 3.3(c).

(143) ~~(142)~~ ***"Pre-Closing Consumption Period"*** has the meaning set forth in Section 6.24.

(144) ~~(143)~~ ***"Proposed Post-Closing Adjustment"*** has the meaning set forth in Section 3.3(c).

(145) ~~(144)~~ ***"PSC"*** means the Public Service Commission of Florida or any successor agency thereto.

(146) ~~(145)~~ ***"Purchase Price"*** has the meaning set forth in Section 3.2.

(147) ~~(146)~~ ***"Radio Licenses"*** means the Permits set forth in Schedule 1.1([__]).

(148) ~~(147)~~ ***"Real Property"*** means:

(a) the real property that is the subject of the Long Term Property Interests; and

(b) the real property owned by Seller and defined as "Public Rights-of-Way" in the Franchise Ordinance.**[NEED TO REVIEW ORDINANCE FOR APPLICABILITY TO THIS SECTION 1.1 (147)]**

(149) ~~(148)~~ ***"Real Property Interests"*** means:

(a) the rights under the Long Term Real Property Interests; and

(b) the rights granted to Buyer in the Franchise Ordinance.

(150) ~~(149)~~ ***"Real Property Interest Instrument"*** means the agreement or other instrument creating a Real Property Interest or by which Seller or Buyer holds title or other interest to a Real Property Interest.

(151) ~~(150)~~ ***"Release"*** means any actual, threatened or alleged spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping or disposing of a Hazardous Substance into the Environment or within any building, structure, facility or fixture.

(152) ~~(151)~~ ***"Reliability Call"*** means [_____]. **[NOTE: THIS IS MEANT TO BE A RIGHT OF FPL TO USE VERO'S GAS TRANSPORTATION CONTRACTS FOR RELIABILITY PURPOSES~~ OR VERO'S OBTAINING OF SIMILAR RIGHTS IN SOMEONE ELSE'S GAS TRANSPORTATION CONTRACT IF~~**

~~VERO'S GAS TRANSPORTATION CONTRACTS ARE TERMINATED.~~]

(153) ~~(152)~~ ***"Remediate"*** or ***"Remediation"*** means any action of any kind required by applicable Law to address the presence or Release of Hazardous Substances, including but not limited to: (a) monitoring, investigation, assessment, treatment, cleanup containment, removal, mitigation, response or restoration work, as well as obtaining any Permits necessary to conduct any such activity; (b) preparing and implementing any plans or studies for any such activity; and (c) obtaining a written notice from a Governmental Authority with competent jurisdiction under Environmental Laws, that no material additional work is required.

(154) ~~(153)~~ ***"Representatives"*** of a Party means the Party and its Affiliates and their directors, officers, employees, agents and advisors (including, without limitation, accountants, counsel, environmental consultants, financial advisors and other authorized representatives).

(155) ~~(154)~~ ***"Represented Transferred Employees"*** means any Transferred Employee whose employment with Seller was subject to Seller's Collective Bargaining Agreement and who will be employed by the Buyer in positions that are subject to a collective bargaining agreement.

(156) ~~(155)~~ ***"Retained Employees"*** means the employees that will be remaining with Seller as described in Schedule 1.1([__]).

(157) ~~(156)~~ ***"Schedules"*** means the schedules attached to this Agreement.

(158) ~~(157)~~ ***"Seller"*** has the meaning set forth in the preamble to this Agreement.

(159) ~~(158)~~ ***"Seller Benefit Plans"*** has the meaning set forth in Section 4.12(a).

(160) ~~(159)~~ ***"Seller Contracts"*** means all Contracts (other than Excluded Contracts) relating to the Acquired Assets or the Business of the Vero Beach Electric Utility (i) that are in favor, or for the benefit, of Seller or (ii) to which Seller is a Party or by which any of its assets may be bound, including (A) the Real Property Interest Instruments, the Assumed Contracts and the Intellectual Property Licenses, (B) Contracts associated with the forecasting, modeling, management and operation of the Acquired Assets, (C) Contracts associated with emergency or wind storm preparedness and (D) Contracts leasing, or providing the right to use, to attach to or of access to, any portion of the Acquired Assets, including the Attachment Agreements.

(161) ~~(160)~~ ***"Seller Defined Benefit Plan"*** means the City of Vero Beach General Employee Retirement Plan in effect on the Effective Date.

(162) ~~(161)~~ ***"Seller Employee"*** means an hourly-paid or salaried employee of Seller, who receives an Internal Revenue Service Form W-2 from Seller, who is employed by Seller as of the Closing Date, and whose work responsibilities involve principally the Vero Beach Electric Utility, which employees are set forth in Schedule 6.10(a) (which shall be updated as of the Closing Date).

(163) ~~(162)~~ ***"Seller Fundamental Representations"*** means the representations and warranties made in Sections 4.1, 4.2, 4.3(i), 4.7(c) and 6.7.

(164) ~~(163)~~ ***"Seller Indemnitee"*** has the meaning set forth in Section 8.1(a).

(165) ~~(164)~~ ***"Seller's Agent(s)"*** has the meaning set forth in Section 6.1(b).

(166) ~~(165)~~ ***"Seller's Collective Bargaining Agreement"*** means the Contract between Seller and Teamsters Local Union No. 769, dated October 1, 2010 **[check with R.Anderson to confirm this date is current and confirm expiration date]** and any other collective bargaining agreement between any trade union, labor organization, collective bargaining representative or employee representative of any Transferred Employees concerning terms and conditions of employment of those employees, as well as all modifications of, or amendments to, any such agreements.

(167) ~~(166)~~ ***"Seller's Past Practices"*** means the recent historical operation, maintenance and repair practices, methods and actions performed prior to the Effective Date by, or on behalf of, Seller with respect to the Acquired Assets.

(168) ~~(167)~~ ***"Service Territory"*** means the area described as Seller's service territory in the map attached hereto as Schedule 1.1 ([__]).

(169) ~~(168)~~ ***"Spare Parts"*** means those spare parts and equipment identified on Exhibit P hereto.

(170) ~~(169)~~ ***"St. Lucie Unit No. 2 Capacity and Energy Sales Contract"*** means the St. Lucie Unit No. 2 Capacity and Energy Sales Contract dated June 1, 1982, among the City of Alachua, the City of Clewiston, the City of Fort Meade, the City of Green Cove Springs, the City of Jacksonville Beach, the City of Leesburg, the City of Moore Haven, the City of Newberry and the City of Starke, as Selling Systems thereunder, FPUA and Seller, as Purchasing Systems thereunder, and FMPA, as amended, and rights under which were assigned by FPUA to Seller on June 10, 1986.

(171) ~~(170)~~ ***"Stanton Contracts"*** means all of the following Contracts: (a) Stanton I Power Sales Contract , dated January 16, 1984, between the FMPA and Seller; (b) Stanton I Power Support Contract dated January 16, 1984, between the FMPA and Seller, as amended; and (c) Stanton II Power Sales and Project Support Contract dated April 17, 1991, between the FMPA and Seller, as amended

(172) ~~(171)~~ ***"Streetlight Assets"*** means **[_____]**, including the Streetlight Maintenance Inventory but expressly excluding the Excluded Streetlight Assets.

(173) ~~(172)~~ ***"Streetlight Maintenance Inventory"*** means **[_____]** **but specifically excluding any inventory solely related to the Excluded Streetlight Assets**.

(174) ~~(173)~~ ***"Streetlight Agreement"*** means the form of **[_____ approved by the FPSC]** that is applicable on the Closing Date. For reference purposes only, Exhibit L contains a copy of the **[_____ approved by the FPSC]** that is applicable on the

Effective Date. For the avoidance of doubt, the Streetlight Agreement that is required to be executed under this Agreement may be different than the form attached as Exhibit L.

(175) ~~(174)~~ ***"Substation 20 Transmission Lines"*** means the easements or **other** rights ~~of ways~~ appurtenant to Substation 20 described in Exhibit Y attached hereto.

(176) ~~(175)~~ ***"Substation Relocation Agreement"*** means the [_____].

(177) ~~(176)~~ ***"Taxes"*** means, all taxes, charges, fees, levies, penalties or other assessments imposed by any federal, state, local, provincial or foreign taxing authority, including but not limited to, income, gross receipts, excise, real or personal property, sales, transfer, customs, duties, franchise, payroll, withholding, social security, receipts, license, stamp, occupation, employment or other taxes, including any interest, penalties or additions attributable thereto, and any payments to any state, local, provincial or foreign taxing authorities in lieu of any such taxes, charges, fees, levies or assessments. The term ***"Tax"*** means any one of the foregoing Taxes.

(178) ~~(177)~~ ***"Tax Return"*** means any return, report, form, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) required to be supplied to any Governmental Authority with respect to Taxes including amendments thereto, including any information return filed by a tax exempt organization.

(179) ~~(178)~~ ***"Termination Date"*** has the meaning set forth in Section 3.1.

(180) ~~(179)~~ ***"Termination of Territorial Boundary Agreement"*** means the agreement in the form of Exhibit F hereto, to be delivered at the Closing, which terminates the Territorial Boundary Agreement between Buyer and Seller dated June 11, 1980.

(181) ~~(180)~~ ***"Third Party Claim"*** has the meaning set forth in Section 8.2(a).

(182) ~~(181)~~ ***"Total Compensation"*** means base pay, authorized overtime, and benefits provided under all applicable Benefit Plans.

(183) ~~(182)~~ ***"Transferable Permits"*** means the Environmental Permits, the Non-Environmental Permits.

(184) ~~(183)~~ ***"Transferred Employee Records"*** means all records related to Transferred Employees, including but not limited to the following information: (i) skill and development training, (ii) seniority histories, (iii) salary and benefit information, (iv) Occupational, Safety and Health Administration reports, (v) active medical restriction forms, (vi) fitness for duty, (vii) disciplinary actions, (viii) job performance appraisals and/or evaluations, (ix) employment applications, (x) bonuses, (xi) job history and (xii) access authorization records.

(185) ~~(184)~~ ***"Transferred Employees"*** means all Seller Employees who are offered and accept continued employment with Buyer as of the Closing Date.

(186) ~~(185)~~ ***"Transfer Taxes"*** means any real property transfer, sales, use,

value added, stamp, documentary, recording, registration, conveyance, stock transfer, intangible property transfer, personal property transfer, gross receipts, registration, duty, securities transactions or similar fees or Taxes or governmental charges (together with any interest or penalty, addition to Tax or additional amount imposed) as levied by any Governmental Authority in connection with the transactions contemplated by this Agreement, including, without limitation, any payments made in lieu of any such Taxes or governmental charges which become payable in connection with the transactions contemplated by this Agreement.

(187) ~~(186)~~ ***"Transmission Assets"*** means the electric transmission facilities relating to, or used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility or located on the Real Property or the Vero Beach Power Plant Site (and other property and assets associated with or ancillary thereto); including, but not limited to: the facilities, equipment and other tangible property and assets that connect the Vero Beach Power Plant and the Distribution Assets to the Interconnection Points (and other property and assets associated with or ancillary thereto), transformers, breakers, capacitor banks, switches, arresters, instrument transformers, substation structures, substations, buswork, substation battery and chargers, relay protection panels, relay communications/carriers, remote telemetry and control equipment, metering, fault recorders, sequence of event recorders, annunciators, relay vaults, substation fencing, transmission lines, conductors, transmission line structures and poles, and control buildings, and without limiting the generality of the foregoing, specifically includes the facilities and equipment described in Schedule 1.1([__])

(188) ~~(187)~~ ***"Union Representative"*** means the labor union that represents the craft or class of Represented Transferred Employees and Converted Unrepresented Transferred Employees after the Closing Date.

(189) ~~(188)~~ ***"Unrepresented Transferred Employees"*** means any Transferred Employees whose employment with the Seller was not subject to Seller's Collective Bargaining Agreement and who will be employed by Buyer in positions that are also not subject to a collective bargaining agreement.

(190) ~~(189)~~ ***"VB Sublicenses"*** mean the VB-2 Sublicense, VB-5 Sublicense and VB-6 Sublicense, collectively

(191) ~~(190)~~ ***"VB-2 Sublicense"*** means the Sublicense between Seller and Buyer in the form attached hereto as Exhibit V.

(192) ~~(191)~~ ***"VB-5 Sublicense"*** means the Sublicense between Seller and Buyer in the form attached hereto as Exhibit W.

(193) ~~(192)~~ ***"VB-6 Sublicense"*** means the Sublicense between Seller and Buyer in the form attached hereto as Exhibit X.

(194) ~~(193)~~ ***"Vehicles"*** means the vehicles listed in Schedule 1.1([__]).

(195) ~~(194)~~ ***"Vero Beach Electric Utility"*** means the electric utility system of electricity generation, transmission and distribution commonly known as "The City of Vero Beach Electric Utility", including the Vero Beach Power Plant.

(196) ~~(195)~~ ***"Vero Beach Electric Utility Bonds"*** means the Indebtedness created or evidenced by, or arising under, the Bond Resolution, including any principal, interest, fees, penalties and other amounts payable thereunder.

(197) ~~(196)~~ ***"Vero Beach Power Plant"*** means (a) the nominal 157 MW electric generating facility located on the Vero Beach Power Plant Site, consisting of five (5) generating units (two (2) of which operate in combined cycle), and including the combustion turbine generators, steam turbine generators, heat recovery steam generators, boilers, cooling tower, transformers and other structures, facilities, appliances, lines, conductors, instruments, apparatus, components and equipment comprising and integrating the entire facility, and (b) all other facilities and equipment located on the Vero Beach Power Plant Site, including the Vero Beach Power Plant Substation.

(198) ~~(197)~~ ***"Vero Beach Power Plant Expectations"*** means the maintenance, repair and replacement of the Vero Beach Power Plant in a manner consistent with the Capital Expenditure and Maintenance Plan and that ensures that (a) the Vero Beach Power Plant will be capable of operation for four (4) years after the Closing Date in a manner consistent with Seller's Past Practices and (b) the other Acquired Assets (such as the Transmission Assets and the Distribution Assets) will be capable of operating in a manner consistent with Seller's Past Practices.

(199) ~~(198)~~ ***"Vero Beach Power Plant Site"*** means the real property described in Exhibit Z.

(200) ~~(199)~~ ***"Vero Beach Power Plant Site Lease Agreement"*** means a lease agreement and memorandum of lease in the form attached hereto as Exhibit G; with Seller as lessor and Buyer as lessee, and including a term of three (3) years from the Closing Date, with an option for Buyer to extend for one (1) additional year, with rent of $1,000,000 per year payable monthly along with lessee's obligation to pay taxes, utilities, and all operating, regulatory, and maintenance expenses at the Power Plant during the term of the lease.

(201) ~~(200)~~ ***"Vero Beach Power Plant Substation"*** means the substation and other transmission and distribution facilities and equipment located on the Vero Beach Power Plant Site.

Section 1.2 Certain Interpretive Matters.

(a) Unless otherwise required by the context in which any term appears:

(i) Capitalized terms used in this Agreement shall have the meanings specified in this Article.

(ii) The singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and neuter.

(iii) References to "Articles", "Sections", "Schedules" or "Exhibits" shall be to articles, sections, schedules or exhibits of or to this Agreement, and references to "paragraphs" or "clauses" shall be to separate paragraphs or clauses of the section or subsection

in which the reference occurs.

(iv) The words "herein", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; and the words "include", "includes" or "including" shall mean "including, but not limited to."

(v) The term "day" shall mean a calendar day, commencing at 12:00 a.m. (Eastern Time). The term "week" shall mean any seven consecutive day period commencing on a Sunday, and the term "month" shall mean a calendar month; provided that when a period measured in months commences on a date other than the first day of a month, the period shall run from the date on which it starts to the corresponding date in the next month and, as appropriate, to succeeding months thereafter. Whenever an event is to be performed or a payment is to be made by a particular date and the date in question falls on a day which is not a Business Day, the event shall be performed, or the payment shall be made, on the next succeeding Business Day; provided, however, that all calculations shall be made regardless of whether any given day is a Business Day and whether or not any given period ends on a Business Day.

(vi) All references to a particular Person shall include such Person's successors and permitted assigns unless otherwise specifically provided herein.

(vii) All references herein to any Law, Permit or Contract shall be to such Law, Permit or Contract as amended, supplemented or modified from time to time unless otherwise specifically provided herein.

(b) The titles of the articles, sections, schedules and exhibits herein have been inserted as a matter of convenience of reference only, and shall not control or affect the meaning or construction of any of the terms or provisions hereof.

(c) This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party; the Parties have agreed to the wording of this Agreement; and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

(d) The Schedules and Exhibits hereto are incorporated in and are intended to be a part of this Agreement.

ARTICLE II
PURCHASE AND SALE

Section 2.1 Acquired Assets.

Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing, Seller will sell, assign, convey, transfer and deliver to Buyer, and Buyer will purchase and acquire from Seller, free and clear of all Encumbrances (except for Permitted Encumbrances), all of the property, assets and rights (other than the Excluded Assets), of every kind, nature, character and description, whether real, personal or mixed, tangible or intangible, owned (or hereafter acquired), wherever located, that relate to and are normally used

in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility (collectively, the ***"Acquired Assets"***); *provided* that the Acquired Assets shall specifically include the following property, assets and rights (other than the Excluded Assets):

(a) the Vero Beach Power Plant;

(b) the Transmission Assets;

(c) the Distribution Assets;

(d) the Customer Service Assets;

(e) [the Customer Deposits;][To be discussed]

(f) the Vehicles;

(g) all machinery, mobile or otherwise, equipment (including computer hardware and communications equipment), tools, works in progress, fixtures, furniture and furnishings and other personal property that relate to, or are used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility, including all Inventory;

(h) all books, operating records, licensing records, quality assurance records, purchasing records, equipment repair, maintenance or service records, operating, safety and maintenance manuals, inspection reports, environmental assessments, engineering design plans, documents, blueprints and as built plans, specifications, drawings, procedures and other similar items of Seller, wherever located, relating to or used in or for, the Vero Beach Electric Utility, other Acquired Assets or the Business of the Vero Beach Electric Utility, whether existing in hard copy or magnetic or electronic form (collectively, the ***"Business Books and Records"***);

(i) the Acquired Land In Fee, and improvements thereon together with all rights incidental or appurtenant thereto, including, without limitation, all related rights of ingress and egress thereto);

(j) all rights, title and interest in, to and under the Real Property Interests and any improvements to the Real Property owned by Seller that is the subject of such Real Property Interests, together with all rights incidental or appurtenant thereto, the leasehold, easement, license and other rights relating to such Real Property Interests or appurtenant thereto, and all rights incidental thereto (including, without limitation, all related rights of ingress and egress);

(k) all rights, title and interest in, to and under the Transferrable Permits (other than Excluded Liabilities thereunder);

(l) all rights, title and interest in, to and under Assumed Contracts (other than Excluded Liabilities thereunder) and other Seller Contracts (other than Excluded Liabilities thereunder), including any unexpired, warranties and guarantees from third parties;

(m) all rights, title and interest in, to and under the Intellectual Property Licenses;

(n) the Owned Intellectual Property;

(o) Seller's rights, title and interest in the FPUA Joint Facilities;

(p) the Streetlight Assets;

(q) the rights of Seller in and to any causes of action, Actions or claims (including, without limitation, rights under insurance policies to proceeds, refunds or distributions thereunder paid on or after the Closing Date with respect to periods before the Closing Date) and defenses against third parties (including indemnification and contribution) relating to any Assumed Liabilities;

(r) the Transferred Employee Records;

(s) the Electric Utility Accounting Records;

(t) emissions allowances and credits;

(u) all models and systems associated with the forecasting, modeling, management and operation of the Acquired Assets;

(v) all property, assets and rights, excluding cash, associated with emergency or wind storm preparedness for the Vero Beach Power Plant or other Acquired Assets; and

(w) the Other Real Property Interests.

Notwithstanding the foregoing, the transfer of the Acquired Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Acquired Assets unless Buyer expressly assumes that Liability pursuant to Section 2.3. Seller may retain a copy of all Business Books and Records and Electric Utility Accounting Records as deemed appropriate by Seller.

Section 2.2 Excluded Assets.

Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be construed as conferring on Buyer, and Buyer is not acquiring, any right, title or interest in or to the following specific property, assets and rights (the ***"Excluded Assets"***), which are hereby specifically excluded from the sale and the definition of Acquired Assets herein and which shall remain the property of Seller after the Closing:

(a) All cash, cash equivalents, bank deposits and bank accounts, and any income, sales, payroll or other receivables relating to Taxes, in each case relating to the Acquired Assets prior to the Closing Date;

(b) All personnel records of Seller relating to the Vero Beach Electric Utility, except the Transferred Employee Records;

(c) All Benefit Plan assets, including those held in any related trust or otherwise, including without limitation, all assets related to the Seller Defined Benefit Plan;

[SUBJECT TO FURTHER REVIEW AND REVISION BY FPL]

(d) Any refund or credit (i) related to Taxes paid by Seller with respect to periods (or portions thereof) that end prior to the Closing Date in respect of the Acquired Assets, whether such refund is received as a payment or as a credit against future Taxes, or (ii) arising under any agreement which is part of the Acquired Assets and relating to a period (or portion thereof) ending prior to the Closing Date;

(e) All rights in, to or under the Excluded Contracts;

(f) All Customer accounts receivables for periods prior to the Closing Date;

(g) The Vero Beach Power Plant Site;

(h) The Excluded Streetlight Assets **and Excluded Streetlight Maintenance Inventory**;

(i) The Fiber Optic System;

(j) **[The Gas Transportation Contracts, subject to the Reliability Call in favor of Buyer;] [NOTE: FPL REQUIRES RELIABILITY CALL ON THESE CONTRACTS UNTIL POWER PLANT IS DECOMMISSIONED]**

(k) Any vehicle that is not a Vehicle;

(l) Excluded Substations;

(m) Excluded Real Property;

(n) Any wastes or Hazardous Substances generated in relation to the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility prior to the Closing Date; ~~and~~

(o) All rights of Seller under this Agreement and the Ancillary Agreements**; and**

(p) Any customer service assets that are not Customer Service Assets;

(q) Excluded Inventory.

Section 2.3 Assumed Liabilities.

On the Closing Date, Buyer shall deliver to Seller the Assignment and Assumption Agreement pursuant to which Buyer shall assume and agree to discharge when due, all of the Liabilities of Seller specifically listed below, other than the Excluded Liabilities (collectively, ***"Assumed Liabilities"***): **[NOTE: COVB AND FPL TO DISCUSS ACCOUNTS PAYABLE]**

(a) All Liabilities of Seller arising on or after the Closing Date, or arising prior to the Closing Date in the ordinary course of business but payable or to be performed in such

ordinary course after the Closing Date, under (i) the Real Property Interest Instruments, (ii) the Assumed Contracts, (iii) the Intellectual Property Licenses, (iv) to the extent an Acquired Asset, the Transferable Permits, and (v) including all accounts payable incurred in the ordinary course of business and relating to the Business of the Vero Beach Electric Utility less than 45 days old on the day prior to the Closing Date, in each case under items (i) to (v), in accordance with the terms thereof;

(b) [DISCUSS] [The obligation, on and after the Closing Date, to provide electrical service to any Person within the Service Territory who requests electrical service and meets Buyer's customer qualification criteria and as provided under the Franchise Ordinance.]

(c) The Assumed Pension Liability;

(d) All Liabilities of Seller with respect to Transferred Employees for which Buyer is responsible pursuant to Section 6.10;

(e) The liability to the Customers with respect to the Customer Deposits delivered to Buyer;

(f) All Liabilities for any Taxes relating to the Acquired Assets with respect to taxable periods (or portions thereof) beginning on or after the Closing Date (except for any Income Taxes imposed upon Seller and any Taxes imposed upon Seller under Section 6.8);

Section 2.4 Excluded Liabilities.

Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be construed to impose on Buyer, and Buyer shall not assume or be obligated to pay, perform or otherwise discharge, the following Liabilities (the "***Excluded Liabilities***"), with all of such Excluded Liabilities remaining the responsibility, and as obligations, of Seller:

(a) Any Liabilities in respect of any Excluded Assets;

(b) Subject to Section 3.6, all Liabilities under or relating to the Real Property Interest Instruments, the Assumed Contracts, the Intellectual Property Licenses and the Transferable Permits (i) arising out of or relating to any event, condition, circumstance, act or omission occurring prior to the Closing Date, including any Breach that occurred prior to the Closing Date or any payment obligation arising prior to the Closing Date or invoice received prior to the Closing Date, or (ii) for payment of goods delivered or services rendered prior to the Closing Date;

(c) Any Liability under or relating to any Seller Contract that is not an Assumed Contracts;

(d) All Liabilities under or related to Environmental Laws, Environmental Permits or Environmental Claims with respect to the Business of the Vero Beach Electric Utility or the Acquired Assets relating to or arising from any event, condition, circumstance, act or omission occurring prior to the Closing Date, including relating to or arising from the presence or Release of Hazardous Substances at, on, in, under, adjacent to or migrating from the Acquired

Assets or the Real Property prior to the Closing Date ("***Excluded Environmental Liabilities***");

(e) All Liabilities for any Taxes relating to the Acquired Assets with respect to taxable periods (or portions thereof) occurring prior to the Closing Date;

(f) All Liabilities with respect to the Transferred Employees relating to or arising from any event, condition, circumstance, act or omission occurring prior to the Closing Date**, other than Liabilities specifically assumed by Buyer in Section 2.3(d)**;

(g) All Liabilities with respect to Retained Employees;

(h) Subject to Section 6.10, all Liabilities relating to any Seller Benefit Plans, or any other plan, program, arrangement or policy, except as specifically assumed by Buyer in Section 6.10 including accrued vacation and sick pay with respect to Retained Employees, established or maintained in whole or in part by Seller or by any Person (whether or not incorporated) which is or ever has been under common control, or which is or ever has been treated as a single employer, with Seller or to which Seller contributes or contributed, including, but not limited to any such Liability of Seller (i) for the termination or discontinuance of, or the Seller's withdrawal from, any such Benefit Plan, (ii) relating to benefits payable under any Seller Benefit Plans, (iii) with respect to noncompliance with the notice requirements of COBRA to the extent applicable, (iv) with respect to any noncompliance with the Code or any other applicable Laws, and (v) with respect to any suit, proceeding or claim which is brought against Seller, any Seller Benefit Plan or any fiduciary or former fiduciary of, any of the Seller Benefit Plans;

(i) Any Liabilities relating to the failure to hire, the employment or services or termination of employment or services of any individual, including wages, compensation, benefits, affirmative action, personal injury, discrimination, harassment, retaliation, constructive termination, wrongful discharge, unfair labor practices, or constructive termination by Seller of any individual, or any similar or related claim or cause of action attributable to any actions or inactions by Seller prior to the Closing Date with respect to the Acquired Assets, the Transferred Employees, independent contractors, applicants, and any other individuals who are determined by a court or by a Governmental Authority to have been applicants or employees of Seller, or that are filed with or pending before any court, administrative agency or arbitrator prior to the Closing Date; and

(j) Any other Liabilities not expressly assumed by Buyer pursuant to Section 2.3 or Liabilities expressly allocated to or retained by Seller in this Agreement.

ARTICLE III
THE CLOSING

Section 3.1 Closing.

Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, the sale, assignment, conveyance, transfer and delivery of the Acquired Assets to

Buyer shall take place at a closing (the ***"Closing"***), to be held at [_____], at 10:00 a.m. local time, or another mutually acceptable time and location, **[on the date that is the first day of the month]** following the day on which the last of the conditions precedent to Closing set forth in Article VII of this Agreement have been either satisfied or waived by the Party for whose benefit such conditions precedent exist (except with respect to those conditions which by their terms are to be satisfied at Closing), but in any event not after the date that is twenty-four (24) months following the Effective Date (the ***"Termination Date"***), unless the Parties mutually agree on another date. The date of Closing is hereinafter called the ***"Closing Date."*** The Closing shall be effective for all purposes as of 12:01 a.m. on the Closing Date. Subject to Article VII, the Parties shall cause the Closing to occur as soon as possible after the Effective Date.

Section 3.2 Purchase Price.

Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, in consideration of the aforesaid sale, assignment, conveyance, transfer and delivery of the Acquired Assets, Buyer will pay or cause to be paid to Seller in accordance with Section 3.4 the sum of **[One Hundred Million]** Dollars ($**[100,000,000]**) (the ***"Purchase Price"***), plus or minus any adjustments to such Purchase Price pursuant to the provisions of Section 3.3 below. ***[NOTE: given disparity between valuation and unsolicited offer and Purchase Price, City wants detailed explanation as to why cash purchase price cannot exceed $100 million.]***

Section 3.3 Adjustment to Purchase Price.

(a) Subject to Sections 3.3(b) and 3.3(c), the Purchase Price shall be adjusted, without duplication, to account for the items set forth in this Section 3.3(a):

(i) The Purchase Price shall be adjusted to account for the items prorated as of the Closing Date pursuant to Section 3.6; and

(ii) **[NOTE: NEED TO DETERMINE WHETHER AN ADJUSTMENT IS NEEDED FOR ITEMS SUCH AS CUSTOMER DEPOSITS, INVENTORY, ETC.] [Discuss Customer Deposits. Buyer can have whatever Inventory it wants at Closing. No obligation to build up Inventory so long as Seller complies with Budget and Maintenance Plan.]**

(iii) The Purchase Price shall be adjusted in accordance with:

Section 6.16(a).

(b) No fewer than five (5) Business Days prior to the Closing Date, Seller shall prepare in good faith and deliver to Buyer an estimated closing statement (the ***"Estimated Closing Statement"***) that shall set forth Seller's best estimate of all estimated adjustments to the Purchase Price required by Section 3.3(a).

(c) Within sixty (60) Business Days after the Closing Date, Seller shall prepare and deliver to Buyer a final closing statement (the ***"Post-Closing Statement"***) that shall set forth all adjustments, subject to Section 3.6(b), to the Purchase Price required by Section 3.3(a) (the

"Proposed Post-Closing Adjustment") and all work papers detailing such adjustments. The Post-Closing Statement shall be prepared using the same accounting principles, policies and methods as Seller has historically used in connection with the calculation of the items reflected on such Post-Closing Statement. Within thirty (30) days after the delivery of the Post-Closing Statement by Seller to Buyer, Buyer may object to the Proposed Post-Closing Adjustment in writing. Seller and Buyer agree to cooperate with one another to provide one another with the information used to prepare the Post-Closing Statement and information relating thereto. If Buyer objects to the Proposed Post-Closing Adjustment, the Parties shall attempt to resolve such dispute by negotiation. If the Parties are unable to resolve such dispute within thirty (30) days after any objection by Buyer, the Parties shall appoint the Independent Accounting Firm, which shall, at Seller's and Buyer's joint expense, review the Proposed Post-Closing Adjustment and determine, subject to Section 3.6(b), the appropriate adjustment to the Purchase Price, if any, within thirty (30) days after such appointment. The Parties agree to cooperate with the Independent Accounting Firm and provide it with such information as it reasonably requests to enable it to make such determination. The Independent Accounting Firm shall act as an expert and not as an arbitrator and shall make findings only with respect to the remaining disputes so submitted to it (and not by independent review). The finding of such Independent Accounting Firm shall be binding on the Parties hereto. Upon determination of the appropriate adjustment (the ***"Post-Closing Adjustment"***) by agreement of the Parties or by binding determination of the Independent Accounting Firm, the Party owing the difference shall deliver such amount to the other Party no later than two (2) Business Days after such determination, in immediately available funds or in any other manner as reasonably requested by the payee. **[NOTE: ALTERNATIVE METHODOLOGY FOR NON-SECTION 3.6 ADJUSTMENTS TO BE DISCUSSED]**

Section 3.4 Payment of Purchase Price.

(a) At the Closing, Buyer shall pay Seller an amount equal to the Purchase Price (as adjusted by Section 3.3); unless the Seller elects by written notice (the "***Installment Payment Notice***") prior to the Closing to take a portion of the Purchase Price in installments, in which event at the Closing Buyer shall pay Seller an amount (the "***Initial Payment***") equal to (i) the Purchase Price (as adjusted by Section 3.3), less (ii) a portion designated by Seller to be paid by Buyer in post-Closing installments (the ***"Financed Amount"***).

(b) On each of the first number of anniversaries (as designated in the Installment Payment Notice) of the Closing Date (each such anniversary date, being a ***"Payment Date"***), Buyer shall pay Seller an amount equal to [__]% of the Financed Amount.

(c) On each Payment Date, Buyer shall pay Seller an amount of interest equal to the outstanding balance of the Financed Amount as of the Payment Date, multiplied by **[___%].**

(d) All payments of the Purchase Price shall be made by wire transfer of immediately available funds denominated in U.S. dollars or by such other means as are agreed upon by Seller and Buyer.

(e) The Parties agree that any adjustment to the Purchase Price occurring after

the Closing Date shall reduce or increase, as applicable, the payment of the Purchase Price to be made on the next Payment Date.

Section 3.5 Allocation of Purchase Price.

(a) At least [___] days prior to the Closing Date, Buyer shall use Commercially Reasonable Efforts to make an estimated allocation among the Acquired Assets of the sum of the Purchase Price and the Assumed Liabilities that is consistent with the allocation methodology provided by Section 1060 of the Code and the regulations promulgated thereunder (the ***"Estimated Allocation"***). The Estimated Allocation (or other allocation determined by Buyer in its sole discretion) will be used for transfer tax and for all other Closing document purposes.

(b) Within ninety (90) days after the Closing Date, Buyer shall make an allocation among the Acquired Assets of the sum of the Purchase Price (including any adjustments thereto) and the Assumed Liabilities (together with any other relevant items) that is consistent with the allocation methodology provided by Section 1060 of the Code and the regulations promulgated thereunder (the ***"Allocation"***). Seller (to the extent Seller is required to make any such reports) shall report the transactions contemplated by this Agreement for all purposes in a manner consistent with the Allocation. Subsequent to the preparation of the Estimated Allocation and the Allocation, Buyer and Seller agree to provide the other with any information required to complete Form 8594 or other filing or report within ten (10) days of the request for such information. Buyer and Seller shall notify and provide the other with reasonable assistance in the event of an examination, audit or other proceeding relating to the allocation of the Purchase Price pursuant to this Section 3.5. Buyer and Seller shall treat the transaction contemplated by this Agreement as the acquisition by Buyer of a trade or business for United States federal income Tax purposes and agree that no portion of the consideration shall be treated in whole or in part as the payment for services or future services.

Section 3.6 Prorations.

(a) Buyer and Seller agree that all of the items normally prorated, including those listed below (but not including Income Taxes and Transfer Taxes), relating to the Acquired Assets and the Business of the Vero Beach Electric Utility shall be prorated as of the Closing Date to the extent such items are Assumed Liabilities, with Seller liable to the extent such items relate to any time period prior to the Closing Date, and Buyer liable to the extent such items relate to periods commencing with the Closing Date (measured in the same units used to compute the item in question, otherwise measured by calendar days):

(i) Taxes, assessments and other charges, if any, relating to the ownership, use or business of the Acquired Assets;

(ii) Any prepaid expenses (including security deposits) relating to the Acquired Assets;

(iii) Rent, Taxes and all other items (including prepaid services or goods not included in Inventory) payable under any of the Assumed Contracts;

(iv) Any fees, charges or other payments with respect to any Transferable Permit;

(v) Sewer rents and charges for water, telephone, electricity and other utilities for the Vero Beach Power Plant; **[NOTE: NEED TO DETERMINE IF OTHER ASSETS, SUCH AS SUBSTATIONS HAVE UTILITIES]**

(vi) Fees or charges (other than Taxes) imposed by any Governmental Authority; and

(vii) Rent and Taxes and other items payable and relating to the Real Property Interests.

(b) In connection with the prorations referred to in (a) above, in the event that actual figures are not available at the Closing Date, the proration shall be based upon the actual Taxes or other amounts accrued through the Closing Date or paid for the most recent year (or other appropriate period) for which actual Taxes or other amounts paid are available. Such prorated Taxes or other amounts shall be re-prorated and paid to the appropriate Party within sixty (60) days of the date that the previously unavailable actual figures become available. Prorations measured by calendar days shall be based on the number of days in a year or other appropriate period (i) before the Closing Date and (ii) including and after the Closing Date. Seller and Buyer agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 3.6.

(c) To the extent that the proration of an item under this Section 3.6 allocates a portion of such item to a period (or portion thereof) ending before the Closing Date, such portion shall constitute an Excluded Liability. To the extent that the proration of an item under this Section 3.6 allocates a portion of such item to a period (or portion thereof) ending on or after the Closing Date, such portion shall constitute an Assumed Liability.

Section 3.7 Deliveries by Seller.

At the Closing, Seller will deliver, or cause to be delivered, the following to Buyer:

(a) Deed(s) for the Acquired Land In Fee, duly executed and in recordable form;

(b) The Assignment and Assumption Agreement, duly executed and in recordable form;

(c) [[The Other Real Property Lease Agreement, duly executed, together with a Memorandum of such Lease in **[substantially]** the form of the attached in Exhibit H, duly executed and in recordable form;]]

(d) The Vero Beach Power Plant Site Lease Agreement, duly executed, together with a Memorandum of such Lease in the form attached in Exhibit G, duly executed and in recordable form;

(e) The Airport Substation 5 Lease Agreement, duly executed in the form attached in Exhibit I;

(f) The Airport Substation 6 Lease Agreement, duly executed in the form attached in Exhibit J;

(g) The Airport Warehouse Lease Agreement, duly executed in the form attached in Exhibit K;

(h) The VB-2 Sublicense, duly executed in the form attached in Exhibit V;

(i) The VB-5 Sublicense, duly executed in the form attached in Exhibit W;

(j) The VB-6 Sublicense, duly executed in the form attached in Exhibit S;

(k) An assignment of the Substation 20 Transmission Line R/Ws;

(l) A quit claim assignment of the Other Real Property Interests;

(m) Such affidavits, certificates and other documentation as is reasonably required by Buyer's title insurer;

(n) The Bill of Sale, duly executed by Seller;

(o) Copies of any and all Governmental Authority and other third party consents, waivers or approvals obtained by Seller with respect to the transfer of the Acquired Assets to Buyer, or the consummation of the transactions contemplated by this Agreement;

(p) All other Ancillary Agreements, duly executed by Seller, as applicable;

(q) Copies, certified by the City Clerk of Seller, of evidence of approval by the City Council of the Transaction, the Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby (including the execution and delivery hereof and thereof), in the form of a written resolution adopted by the City Council, signed by the Mayor of the Seller and attested to by the City Clerk; **[NOTE: FPL STILL DETERMINING WHAT IS NEEDED FROM THE CITY AS FAR AS GOVERNANCE, INCLUDING WHETHER OPINIONS WILL BE REQUIRED]**

(r) To the extent available, originals of the Seller Contracts, the Transferred Employee Records and the Transferable Permits and, if not available, true and correct copies thereof, in all cases together with notices to and, if required by the terms thereof, consents by other Persons which are parties to the Assumed Contracts, Real Property Interest Instruments and Transferable Permits;

(s) All such other instruments of assignment, transfer or conveyance as shall, in the reasonable opinion of Buyer and its counsel, be necessary or desirable to transfer to Buyer Seller's interest in the Acquired Assets, in accordance with this Agreement and where necessary or desirable in recordable form;

(t) Such other agreements, consents, documents, instruments and writings as are required to be delivered by Seller at or prior to the Closing Date pursuant to this Agreement or the Ancillary Agreements;

(u) All documentation as shall, in the reasonable opinion of Buyer or its counsel, be necessary for Buyer to meet its obligations with respect to Section 6.10 of this Agreement, as set forth on Schedule 3.7(n); and

(v) Such affidavits, releases, certificates or other evidence required pursuant to the Buyer's title commitment in a form reasonably satisfactory to the title insurer to delete from such title commitment and final title insurance policy those matters set forth in Schedule 4.7(a).

Section 3.8 Deliveries by Buyer.

At the Closing, Buyer will deliver, or cause to be delivered, the following to Seller:

(a) The [Purchase Price] [Initial Payment], payable pursuant to Section 3.4(a), as adjusted pursuant to Section 3.3;

(b) All Ancillary Agreements, duly executed by Buyer, as applicable;

(c) Copies, certified by the Secretary or any Assistant Secretary of Buyer, of resolutions authorizing the execution and delivery of this Agreement, and all of the agreements and instruments to be executed and delivered by Buyer in connection herewith, and the consummation of the transactions contemplated hereby;

(d) A certificate of the Secretary or any Assistant Secretary of Buyer identifying the name and title and bearing the signatures of the officers of Buyer authorized to execute and deliver this Agreement, and the other agreements contemplated hereby;

(e) A certificate of good standing with respect to Buyer, issued by the Secretary of the State of Florida;

(f) All such other instruments of assumption as shall, in the reasonable opinion of Seller and its counsel, be necessary for Buyer to assume the Assumed Liabilities in accordance with this Agreement;

(g) The Airport Substation 5 Lease Agreement, duly executed in the form attached in Exhibit I;

(h) The Airport Substation 6 Lease Agreement, duly executed in the form attached in Exhibit J;

(i) The Airport Warehouse Lease Agreement, duly executed in the form attached in Exhibit K;

(j) The VB-2 Sublicense, duly executed in the form attached in Exhibit V;

(k) The VB-5 Sublicense, duly executed in the form attached in Exhibit W;

(l) The VB-6 Sublicense, duly executed in the form attached in Exhibit S;

(m) An assumption of the Substation 20 Transmission Line R/Ws;

(n) An assumption of the Other Real Property Interests;

(o) Substation Relocation Agreement in the form attached as Exhibit AA duly executed by the Buyer;

(p) Such other agreements, documents, instruments and writings as are required to be delivered by Buyer at or prior to the Closing Date pursuant to this Agreement.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

Section 4.1 Organization.

Seller is a duly created and validly existing municipal corporation under the Constitution and laws of the State of Florida and has all requisite power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted.

Section 4.2 Authority Relative to this Agreement.

Seller has full power and authority to execute and deliver this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action required on the part of Seller and no other proceedings on the part of Seller are necessary to authorize this Agreement or the Ancillary Agreements or to consummate the transactions contemplated hereby and thereby, including authorization of [____] to take all actions on behalf of Seller (including the spending of monies and the execution of contracts) required for satisfaction of all conditions, covenants and obligations of Seller under the Agreement (including authorization to close the Transaction) and the Ancillary Agreements **[, except for approval of the Council for the arrangements with (a) OUC required for satisfaction of the condition deseribed in Section 6.13(a) or (b) FMPA required for satisfaction of the condition described in Section 6.13(c)]. [NOTE: CARVE-OUT ONLY NECESSARY IF OUC AND FMPA ARRANGEMENTS ARE NOT FINALIZED BEFORE THIS AGREEMENT IS SIGNED]** This Agreement has been duly and validly executed and delivered by Seller and at Closing, the Ancillary Agreements will be duly and validly executed and delivered by Seller, and assuming that this Agreement and the applicable Ancillary Agreements constitute valid and binding agreements of Buyer, this Agreement and the Ancillary Agreements constitute the legal, valid and binding agreement of Seller, enforceable against Seller in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereinafter

in effect relating to creditors' rights generally, and general equitable principles (whether considered in a proceeding in equity or at law).

Section 4.3 Consents and Approvals; No Violation

Subject to the receipt of the third-party consents set forth in Schedule 4.3, neither the execution and delivery of this Agreement or the Ancillary Agreements by Seller nor the consummation by Seller of the transactions contemplated hereby or thereby will (i) conflict with or result in the breach or violation of any provision of the charter or other organizational or governing documents of Seller, or of resolutions of any governing body of Seller; (ii) require any consent or other action by any Person, or result in a default (or give rise to any right of termination, cancellation or acceleration), under any of the terms, conditions or provisions of any Contract to which Seller is a party or by which Seller or any of the Acquired Assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which, with respect to Contracts that are not Real Property Interest Instruments, Assumed Contracts, Intellectual Property Licenses or Material Seller Contracts, would not, individually or in the aggregate, have a Material Adverse Effect; (iii) violate any Law of, or applicable to, Seller or any of its assets, which violation, individually or in the aggregate, would create a Material Adverse Effect; or (iv) result in the imposition or creation of an Encumbrance (other than a Permitted Encumbrance) on any of the Acquired Assets.

Section 4.4 Reports.

Since January 1, **[_____]**, Seller has filed or caused to be filed with the applicable federal, state and/or local utility commissions or regulatory bodies (including NERC and other national and regional electric reliability organizations), as the case may be, all material forms, statements, reports and documents (including all exhibits, amendments and supplements thereto) required to be filed by Seller with respect to the Acquired Assets or the Business of the Vero Beach Electric Utility under applicable Law. All such filings complied in all material respects with all applicable requirements therefor in effect on the date each such form, statement, report and document was filed.

Section 4.5 Undisclosed Liabilities.

Except as set forth in Schedule 4.5, the Acquired Assets are not subject to any material Liability or obligation (whether absolute, accrued, contingent or otherwise) that is not reflected in **[the Electric Utility Accounting Records]**, including the notes thereto, as of September 30, 2011 and other than Liabilities incurred in the ordinary course of the Business of the Vero Beach Electric Utility.

Section 4.6 Absence of Material Adverse Effect.

Since **[September 30, 2011]**, except as set forth in Schedule 4.6, there has not been any Material Adverse Effect.

Section 4.7 Real Property, Title and Related Matters.

(a) [Schedule 4.7(a) contains all Encumbrances (other than Permitted Encumbrances) relating to or affecting any parcel of Real Property for which Seller will secure a release or subordination to Buyer's interest at or before Closing;

(b) To the knowledge of Seller, the Seller has good and marketable title to each parcel of Acquired Land In Fee. **[NOTE: TO BE CONFIRMED BY EW AFTER REVIEWING FPL TITLE COMMITMENT]**

(c) To the knowledge of Seller, Seller has a valid and subsisting easement or leasehold interest in, and the right to quiet enjoyment of, each parcel of the real property under easement or leased by Seller as a Long Term Real Property [[or a Other Real Property Lease Agreement]]for the full term of the applicable easement or lease. There have been no oral leases or oral amendments to any such any lease. Each Real Property Interest Instrument is in full force and effect and constitutes a legal, valid and binding obligation of Seller and enforceable against Seller. To the knowledge of Seller, there is not, under any Real Property Interest Instrument, any material breach, violation or default (or any condition or event which, with notice or lapse of time or both, would constitute a default on the part of Seller), or to the Knowledge of Seller, on the part of any of the parties thereto. Except for the Real Property Interest Instruments and any other instruments identified in Schedule 4.7(c), there are no written or oral agreements between Seller and any other party regarding (i) the matters set forth in, or the transactions contemplated by, the Real Property Interest Instruments or the Ancillary Agreements or (ii) the Real Property or the Real Property Interests.

(d) To Seller's Knowledge, there are no other third party real property interests or permitted uses conflicting with the operation or maintenance of the Acquired Assets or the Business of the Vero Beach Electric Utility with respect to any of the Real Property Interests.

(e) Seller has not received any written notification that the Real Property Interests, the Real Property or the improvements located thereon that are Acquired Assets do not comply with all existing subdivision, land use and zoning ordinances, regulations, restrictions or Orders, and to Seller's Knowledge there is no action, litigation, proceeding, or investigation pending by any Governmental Authority, or threatened against or affecting any Acquired Assets or any Real Property before any Governmental Authority. There exist no outstanding private covenants or agreements in connection with the zoning of the Real Property or any portion thereof which would bind or require Buyer to perform any actions or pay any monies in connection therewith.

(f) Seller has delivered to Buyer prior to the Effective Date true and complete copies of the Real Property Interest Instruments, and all amendments to such instruments, that have been prepared, executed, recorded or issued in connection with the Real Property Interests.

(g) Seller has not received written notice, and Seller does not have any Knowledge, of:

(i) except as may be disclosed in Schedule 4.7(g)(i), any pending or threatened proceedings in eminent domain, for rezoning or otherwise, which would affect any

Real Property Interest, any Real Property or any portion thereof or any improvement thereon that is an Acquired Asset;

(ii) except as disclosed in Schedule 4.7(g)(ii), any pending or threatened public improvements or special assessments or Encumbrances by any Governmental Authority and/or violations that could reasonably be expected to result in any charge being levied or assumed or in the creation of any Encumbrance, that could reasonably be expected to affect any Real Property Interest, any Real Property, or any portion thereof or any improvement thereon that is an Acquired Asset;

(iii) except as disclosed in Schedule 4.7(g)(iii), any plan, study or effort by any Governmental Authority to widen, modify or realign any street or road in which any Acquired Assets are located, or providing access to the Real Property or any portion thereof, or that in any other way could reasonably be expected to materially affect Seller's current or intended use thereof;

(iv) any violations on the Real Property or any portion thereof of any covenants, conditions or restrictions applicable thereto or of any term or provision of any Real Property Interest Instrument;

(v) except for the Permitted Encumbrances, (i) Acquired Assets located on any Real Property encroaching onto adjoining lands, easements, or other interests in favor of third parties, or (ii) any third party structures or improvements encroaching on portions of the Real Property occupied by Acquired Assets;

(vi) except as disclosed in Schedule 4.7(g)(vi), (A) any mining, mineral or water extraction or development projects in progress or planned to commence on or under any Real Property or any portion thereof or (B) defects or conditions of the soil or land, including but not limited to any wetlands, which could reasonably be expected to impair the use of any Real Property Interests, any Real Property or any improvements thereon that are Acquired Assets;

(vii) Except for Permitted Encumbrances, or as disclosed in Schedule 4.7(g)(vii), there are no Encumbrances, covenants, conditions, reservations, restrictions, easements or other matters affecting any Real Property Interest, any Real Property or any portion thereof or any improvement thereon that is an Acquired Asset.

(viii) Except as disclosed in Schedule 4.7(g)(viii), there are no other facts or conditions relating to any Real Property Interest, any Real Property or any portion thereof, or any improvement thereon, that have a Materially Adversely Effect.

(h) Except for amounts payable or receivable as set forth in Schedule 4.7(h) or as set forth in any Lease Agreement, there are no other rents, fees, royalties, water or sewer charges, taxes or assessments or other amounts payable or receivable by Seller or Buyer in connection with any Real Property Interest or Real Property or any tenancies, licenses, occupancies or co-tenancies related to any Real Property Interests, any Real Property or any improvements thereon that are Acquired Assets.

(i) Except for the Permitted Encumbrances, Seller has not entered into any commitments or agreements with any Governmental Authority or public or private utility affecting any Real Property Interest, any Real Property or any portion thereof or any improvement thereon that is an Acquired Asset.

(j) No subdivision approval is required for any of the Real Property or Real Property Interests.

(k) Schedule 4.7(k) contains a true and correct list of all mortgages, deeds of trusts and other agreements or instruments of Seller creating a security interest in any Real Property Interest, any Real Property or any portion thereof or any improvement thereon that is an Acquired Asset.

(l) Schedule 4.7(l) identifies the real property to be acquired by Buyer in fee simple from Seller on the Closing Date at no additional cost ("***Acquired Land In Fee***"). **[NOTE: THIS SCHEDULE WILL BE THE LEGALS FOR SUBSTATIONS]**

Section 4.8 Operability; Condition of the Vero Beach Electric Utility.

(a) The Acquired Assets constitute all of the assets, property and rights used in, or necessary for, the Business of the Vero Beach Electric Utility in the manner in which it has been operated during the twelve (12) month period prior to the date of this Agreement, and, except as disclosed in Schedule 4.8, the Acquired Assets are currently in condition sufficient to operate the Vero Beach Electric Utility at its full capacity.

(b) Except as set forth in the Capital Expenditure and Maintenance Plan and taking into account the Vero Beach Power Plant Expectation, no Acquired Asset is in need of any repair or replacement that either (i) is known to Seller or (ii) would be disclosed by visual inspection or Seller's Past Practices.

Section 4.9 Insurance.

Schedule 4.9 sets forth all material policies of property damage, fire, liability, worker's compensation and other forms of insurance relating to the Acquired Assets. Such policies are in full force and effeet, all premiums with respect thereto covering all periods up to and including the date as of which this representation is being made have been paid, and no written notice of cancellation, non-renewal or termination has been received with respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation. No insurance with respect to the Acquired Assets has been refused nor has its coverage been limited by any insurance carrier to which it has applied for any such insurance or with which it has carried insurance during the past three (3) years, and all required notices have been sent to insurers to preserve all material claims under the aforementioned insurance policies. ***[NOTE: disclose on Schedule City's self-insured coverage for claims up to $200,000 to $300,000, then excess coverage applies. (checking with Pat Kineman for all policies)]***

Section 4.10 Environmental, Licensing and Governmental Approval Matters.

Except as disclosed in Schedule 4.10:

(a) Seller has obtained and holds all Environmental Permits, each such Environmental Permit is in full force and effect, Seller is in compliance with all of its obligations thereunder, there are no proceedings pending or, to Seller's Knowledge, threatened that would reasonably be expected to result in the revocation, termination, suspension, modification or amendment of any Environmental Permit, and the Seller has not failed to make in a timely fashion any application or other filing required for the renewal of any Environmental Permit which failure would reasonably be expected to result in any Environmental Permit being revoked, terminated, suspended or adversely modified. No Environmental Permit will terminate or be subject to termination or revocation as a result of the transactions contemplated by this Agreement;

(b) The Acquired Assets, the Real Property and the Business of the Vero Beach Electric Utility are in compliance in all material respects with all terms, conditions and provisions of all Environmental Laws and Environmental Permits, and Seller has not received any written notice from any Governmental Authority that they are not or have not been in compliance with, any Environmental Law or any Environmental Permit;

(c) There are no Environmental Claims pending against Seller or threatened, with respect to the Acquired Assets, the Real Property or the Business of the Vero Beach Electric Utility and Seller does not have Knowledge of any facts or circumstances which are reasonably likely to form the basis for any Environmental Claim against Seller with respect to the Acquired Assets, the Real Property or the Business of the Vero Beach Electric Utility;

(d) ~~No~~**To Seller's Knowledge, no** Releases of Hazardous Substances have occurred at, from, on, or under the Acquired Assets or the Real Property or in performance of the Business of the Vero Beach Electric Utility and no Hazardous Substances are present on or migrating from the Acquired Assets or the Real Property that are reasonably likely to give rise to an Environmental Claim against Seller or require any Remediation;

(e) None of the Acquired Assets, the Real Property or any portion thereof is an Environmental Clean-up Site and Seller has not transported or arranged for treatment, storage, handling, disposal or transportation of any Hazardous Substances from the Acquired Assets or the Real Property, or in performance of the Business of the Vero Beach Electric Utility, to any location which is an Environmental Clean-up Site;

(f) There are no (i) underground storage tanks, active or abandoned, or (ii) polychlorinated-biphenyl-containing equipment, located at, on, or under the Acquired Assets or the Real Property;

(g) There are no Encumbrances arising under or pursuant to any Environmental Law with respect to the Acquired Assets or the Real Property or relating to the Business of the Vero Beach Electric Utility, and there are no facts, circumstances or conditions that are reasonably likely to or result in any Encumbrance arising under or pursuant to any Environmental Law with respect to the Acquired Assets or the Real Property or relating to the Business of the Vero Beach Electric Utility;

(h) There have been no environmental audits or assessments with respect to the

Acquired Assets, the Real Property or the Business of the Vero Beach Electric Utility by, on behalf of, or which are in the possession of Seller which have not been made available to Buyer prior to the execution of this Agreement; and

(i) There have been no claims by Seller against comprehensive general liability or excess insurance carriers for any Loss resulting from, relating to or arising from Environmental Claims (i) with respect to the Acquired Assets or the Real Property or (ii) relating to the Business of the Vero Beach Electric Utility.

(j) Schedule 4.10(j) sets forth all Environmental Permits.

Section 4.11 Labor Matters.

Schedule 4.11 sets forth Seller's Collective Bargaining Agreement and other written employment agreements that relate to the Seller Employees. True, correct, and complete copies of Seller's Collective Bargaining Agreement and other written employment agreements, including all amendments thereto, have been made available to Buyer as of the date of this Agreement. Each Seller Employee is qualified, licensed, certified or trained, in accordance with applicable government requirements or standards to perform the duties and responsibilities of their current job assignment.

Section 4.12 ERISA; Benefit Plans. **[NOTE: SUBJECT TO ONGOING REVIEW, DILIGENCE AND REVISION.]**

(a) Schedule 4.12(a) lists (as of the date of this Agreement) all Benefit Plans covering any Seller Employee, or maintained, administered or with respect to which contributions are made by Seller in respect of Seller Employees (***"Seller Benefit Plans"***). True, correct, and complete copies of all Seller Benefit Plans, including all amendments thereto have been provided to Buyer.

(b) All Seller Benefit Plans are governmental plans as defined in Section 3(32) of ERISA and Seller Benefits Plans are not subject to ERISA.

(c) Seller has no ERISA Affiliates.

(d) All Seller Benefit Plans are in material compliance with all applicable Laws.

(e) Seller has materially fulfilled its obligations under the funding requirements and filing requirements of all applicable Laws with respect to Seller Benefit Plans as of the Closing Date. No Seller Benefit Plan is a "multiemployer plan" as defined in Section 3(37) of ERISA.

Section 4.13 Location of Acquired Assets.

Except as set forth on Schedule 4.13, all of the physical Acquired Assets are located on the Real Property.

Section 4.14 Contracts.

(a) Excluding the Excluded Contracts, Schedule 4.14 sets forth a complete list of the following Seller Contracts (the ***"Material Seller Contracts"***):

(i) Contracts for the future purchase, exchange or sale of natural gas, fuel oil or other fuel;

(ii) Contracts for the future purchase, exchange or sale of electricity, energy, capacity or other energy-related product or ancillary services;

(iii) Contracts for the future transportation, storage, parking, loaning, distribution, wheeling, unloading, delivery, balancing, metering or compression of natural gas, fuel oil or other fuel;

(iv) Contracts for the future purchase, exchange, sale or transportation of water;

(v) Contracts for the future transmission of electricity;

(vi) interconnection Contracts;

(vii) Contracts (A) for the sale, transfer or other disposition of any Acquired Asset or (B) that grant a right or option to sell, transfer or otherwise dispose any Acquired Asset, other than in each case under clause (A) or (B), any Contract entered into in the ordinary course of the Business of the Vero Beach Electric Utility with respect to Acquired Assets with a value of less than $25,000;

(viii) Contracts for the future receipt by Seller of any Acquired Assets or services requiring payments in excess of $25,000 for each individual Contract or in the aggregate for Contracts with the same Person;

(ix) Contracts under which it has created, incurred, assumed or guaranteed any outstanding Indebtedness;

(x) Attachment Agreements or any Contract granting the right to use, to attach to or of access to, any portion of the Acquired Assets;

(xi) outstanding futures, swap, collar, put, call, floor, cap, option or other Contracts that have underlying value and payment liability driven by or tied to fluctuations in the price of commodities, including electric power, natural gas, fuel oil, other fuel or securities;

(xii) Contracts that purport to limit Seller's freedom to compete in any line of business or in any geographic area or contain any exclusivity, most-favored nation or similar covenant; and

(xiii) (A) operation, maintenance or management Contracts, (B) water or

wastewater supply, treatment or transportation Contracts or (C) Contracts relating to the purchase or sale of air pollutant emission allowances or credits.

(b) Excluding the Excluded Contracts, the Real Property Interest Instruments, the Assumed Contracts and the Intellectual Property Licenses and the Contracts listed on Schedule 4.14, Seller is not, as of the date of this Agreement, a party to any Contract that is material to the ownership or operation of the Acquired Assets or that is material to the Business of the Vero Beach Electric Utility.

(c) Each Assumed Contract, Intellectual Property License and Material Seller Contract is in full force and effect and constitutes a legal, valid and binding obligation of Seller and enforceable against Seller and, to the Knowledge of Seller, constitutes a legal, valid and binding obligation of the other parties thereto and enforceable against Seller the other parties thereto.

(d) There is not, under any Assumed Contract, Intellectual Property License or Material Seller Contract, any breach, violation or default (or any condition or event which, with notice or lapse of time or both, would constitute a default on the part of Seller, or to the Knowledge of Seller, on the part of any of the parties thereto). To Seller's Knowledge, Seller has not received notice from any other party to any Real Property Interest Instrument, Assumed Contract, Intellectual Property License or Material Seller Contract that such other party intends to terminate or fail to renew at the end of its term any such Contract, as applicable, or materially reduce the level of any goods or services to be provided under any such Contract.

Section 4.15 Legal Proceedings, etc.

Except as described in Schedule 4.15, there are no claims or Actions pending or, to Seller's Knowledge, threatened against (i) Seller that seek to enjoin, prohibit, restrain or make illegal the performance of this Agreement or any of the Ancillary Agreements or the consummation of any of the transactions contemplated hereby or thereby or (ii) or affecting any of the Acquired Assets or the Business of the Vero Beach Electric Utility. Seller is not subject to any outstanding Order affecting any of the Acquired Assets or the Business of the Vero Beach Electric Utility.

Section 4.16 Non-Environmental Permits; Compliance with Law.

(a) Seller has obtained and holds all Non-Environmental Permits, each such Non-Environmental Permit is in full force and effect, Seller is in compliance with all of its obligations thereunder, there are no proceedings pending or, to Seller's Knowledge, threatened that would reasonably be expected to result in the revocation, termination, suspension, modification or amendment of any Non-Environmental Permit, and the Seller has not failed to make in a timely fashion any application or other filing required for the renewal of any Non-Environmental Permit which failure would reasonably be expected to result in any Non-Environmental Permit being revoked, terminated, suspended or adversely modified. No Non-Environmental Permit will terminate or be subject to termination or revocation as a result of the transactions contemplated by this Agreement. The Acquired Assets, the Real Property and the Business of the Vero Beach Electric Utility are in compliance in all material respects with all

terms, conditions and provisions of all Laws and Non-Environmental Permits, and Seller has not received any written notice from any Governmental Authority that they are not or have not been in compliance with, any Law or any Non-Environmental Permit. Seller is in compliance with all Non-Environmental Permits and all Laws applicable to the Acquired Assets, the Real Property or the Business of the Vero Beach Electric Utility.

(b) Schedule 4.16(b) sets forth all Non-Environmental Permits.

Section 4.17 Regulation as a Utility.

Seller is an electric utility within the meaning of Florida Statutes Section 366.02. Except with respect to local tax and zoning laws, Seller is not, as a result of its ownership or operation of the Acquired Assets or the Business of the Vero Beach Electric Utility, subject to regulation as a public utility or public service company (or similar designation) by any state of the United States other than Florida, or any municipality or any political subdivision of the foregoing.

Section 4.18 Tax Matters

Except as set forth on Schedule 4.18, with respect to the Acquired Assets or the Business of the Vero Beach Electric Utility, (i) all Tax Returns of Seller, if any, required to be filed for taxable periods ended prior to the Closing Date have been filed, and (ii) all Taxes shown to be due on such Tax Returns, if any, have been paid. No notice of deficiency or assessment has been received from any taxing authority with respect to any material amount of liabilities for Taxes of the Seller in respect of any Acquired Asset or the Business of the Vero Beach Electric Utility that has not been fully paid or finally settled. There are no Encumbrances for Taxes upon any Acquired Asset, except for Encumbrances for Taxes not yet due and payable.

Section 4.19 Intellectual Property.

Except as set forth in Schedule 4.19, Seller has ownership of, or a license to use, all of the Intellectual Property used in, or necessary for, the operation of the Acquired Assets or for the Business of the Vero Beach Electric Utility as conducted prior to the Effective Date and as conducted prior to the Closing Date. Except as set forth in Schedule 4.19 and pursuant to the transfer to Buyer of the Owned Intellectual Property and the other Acquired Assets on the Closing Date and assignment to Buyer of the Intellectual Property Licenses on the Closing Date, Buyer will have ownership of, or a license to use, all of the Intellectual Property used in or necessary for (a) the operation of the Acquired Assets or (b) the Business of the Vero Beach Electric Utility, in each case under clause (a) or (b), as conducted prior to the Effective Date and as conducted prior to the Closing Date. The rights of Seller in (i) Owned Intellectual Property are freely transferable to Buyer and (ii) the Intellectual Property Licenses are freely assignable to Buyer. Except as set forth in Schedule 4.19, Seller has not received written notice of any claims or demands of any other Person pertaining to any of the Owner Intellectual Property or the Licensed Intellectual Property and no Action has been instituted, or is pending or, to Seller's Knowledge, threatened, which challenge the rights of Seller in respect thereof. Seller has not granted any rights to any Person in respect of any Owned Intellectual Property or Licensed Intellectual Property. None of the Acquired Assets (including the Owner Intellectual Property) or the Licensed Intellectual Property infringes any Intellectual Property of any Person. Seller is

not infringing or making any unauthorized disclosure or use of any Intellectual Property of any Person, including without limitation, of any former employer of any past or present Seller Employee, in its activities related to the Business of the Vero Beach Electric Utility or in performing its obligations under this Agreement.

Section 4.20 Complete Copies.

Except as specified in Schedule 4.20, true, complete and un-redacted copies of all Real Property Interest Instruments, Assumed Contracts, Intellectual Property Licenses, Transferable Permits and Material Seller Contracts have been provided to Buyer.

Section 4.21 Service Territory.

The Delivery Point for each Person purchasing electricity from Seller is located within the Service Territory.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants with respect to itself to Seller as follows:

Section 5.1 Organization; Qualification.

Buyer is a corporation duly formed, validly existing and in good standing under the laws of the State of Florida. Buyer has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as is now being conducted. Buyer has heretofore delivered to Seller complete and correct copies of its articles of incorporation and bylaws as currently in effect.

Section 5.2 Authority Relative to This Agreement

Buyer has full corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party and to consummate the transactions contemplated hereby or thereby. The execution and delivery of this Agreement and the Ancillary Agreement and the consummation of the transactions contemplated hereby or thereby, have been duly and validly authorized by all necessary corporate action required on the part of Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement and the Ancillary Agreements or to consummate the transactions contemplated hereby or thereby. This Agreement has been duly and validly executed and delivered by Buyer, and assuming that this Agreement constitutes a valid and binding agreement of Seller, constitutes a valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereinafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a proceeding in equity or at law).

Section 5.3 Consents and Approvals; No Violation.

(a) Subject to the receipt of the third-party consents set forth in Schedule 5.3(a) and the Buyer's Required Regulatory Approvals, neither the execution and delivery of this Agreement and the Ancillary Agreements by Buyer nor the consummation by Buyer of the transactions contemplated hereby or thereby will (i) conflict with or result in any breach of any provision of the articles of incorporation and bylaws of Buyer, (ii) require any consent or other action by an Person, or result in a default (or give rise to any right of termination, cancellation or acceleration), under any of the terms, conditions or provisions of any Contract to which Buyer is a party or by which Buyer or any of its assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, have Material Adverse Effect, or (iii) violate any Laws applicable to Buyer, which violations, individually or in the aggregate, would create a Material Adverse Effect.

(b) Except as set forth in Schedule 5.3(b) (the Permits referred to in such Schedule are collectively referred to as the ***"Buyer's Required Regulatory Approvals"***), no Permit is necessary for the consummation by Buyer of the transactions contemplated hereby. Buyer has no Knowledge of any facts or circumstances that make it reasonably likely that Buyer's Required Regulatory Approvals will not be obtained. [NOTE: cover permits to be transferred, including tariffs, environmental, not radio as Seller should retain its FCC permits for water and sewer utility work – DISCUSS];

Section 5.4 Availability of Funds.

Buyer currently has sufficient funds available to it through corporate funds, credit facilities and access to capital markets to provide sufficient funds to pay the Purchase Price on the Closing Date and each Payment Date and to enable Buyer to timely perform all of its obligations under this Agreement.

Section 5.5 Legal Proceedings.

Except as set forth in Schedule 5.5, there are no claims or Actions pending or, to Buyer's Knowledge, threatened against (i) Buyer that seek to enjoin, prohibit, restrain or make illegal the performance of this Agreement or any of the Ancillary Agreements or the consummation of any of the transactions contemplated hereby or thereby.

ARTICLE VI
COVENANTS OF THE PARTIES

Section 6.1 Conduct of Business Relating to the Acquired Assets.

(a) Seller retains the exclusive responsibility for safe operation of the Vero Beach Electric Utility until the Closing, and nothing in this Agreement shall in any way alter the Seller's duties or obligations under any Law or Permit. Except as described in Schedule 6.1(a), during the period from the Effective Date to the Closing Date (the ***"Interim Period"***), Seller shall (i) operate and maintain the Acquired Assets in the ordinary course consistent with Seller's Past Practices (taking into account the Vero Beach Power Plant Expectations) and the Capital Expenditure and Maintenance Plan and conduct the Business of the Vero Beach Electric Utility in the ordinary course consistent with Seller's Past Practices (taking into account the Vero Beach

Power Plant Expectations) and the Capital Expenditure and Maintenance Plan(ii) use Commercially Reasonable Efforts to preserve and protect in all material respects the Acquired Assets, taking into account the Vero Beach Power Plant Expectations, (iii) maintain the Transferrable Permits and (iv) comply with all applicable Laws and Permits relating to the Acquired Assets or the Business of the Vero Beach Electric Utility. Without limiting the generality of the foregoing, and, except as contemplated in this Agreement or as described in Schedule 6.1(a), during the Interim Period, without the prior written consent of Buyer (unless such consent would be prohibited by Law), Seller shall not do any of the following with respect to the Acquired Assets:

(i) sell, transfer, remove, assign, convey, distribute or otherwise dispose of, any Acquired Assets outside the ordinary course of the Business of the Vero Beach Electric Utility consistent with Seller's Past Practices and the Capital Expenditure and Maintenance Plan;

(ii) except for Permitted Encumbrances (including amendments and/or replacements to the Permitted Encumbrances), create, permit or allow any Encumbrances to be imposed on or against any of the Acquired Assets;

(iii) grant any waiver of any material term under, exercise any material option under, or give any material consent with respect to any Real Property Interest Instrument, Assumed Contract, Intellectual Property License or Material Seller Contract, including waiving any material default by, or release, settle or compromise any material claim against, any other party thereto;

(iv) enter into, amend or voluntarily terminate prior to the expiration date thereof (i) any Real Property Interest Instrument, Assumed Contract, Intellectual Property License or Transferable Permit or (ii) any Material Seller Contract (other than Contracts that will be fully performed prior to Closing and that are entered into in the ordinary course of the Business of the Vero Beach Electric Utility consistent with Seller's Past Practices (taking into account the Vero Beach Power Plant Expectations) and the Capital Expenditure and Maintenance Plan);

(v) amend in any material respect or cancel any property, liability or casualty insurance policies related to the Acquired Assets or the Business of the Vero Beach Electric Utility, or fail to maintain such insurance policies with current insurance companies who have issued such policies, their successors, or other financially responsible insurance companies in such amounts and against such risks and losses as are customary for such assets and businesses consistent with Seller's Past Practices;

(vi) except as required by any Law or accounting principles generally accepted in the United States, change, in any material respect, its Tax practice or policy (including making new Tax elections or changing Tax elections and settling Tax controversies not in the ordinary course of the Business of the Vero Beach Electric Utility) to the extent such change or settlement would be binding on Buyer;

(vii) engage in any practice, take any action, fail to take any action, or

enter into any transaction through the Closing that will result or may reasonably be anticipated to result in any misrepresentation or breach of any warranty of Seller hereunder as of the Closing Date;

(viii) settle any claim or Action that results in any obligation imposed on the Acquired Assets that could reasonably be likely to continue past the Closing Date;

(ix) hire any individual (other than to replace any Seller Employee who may have resigned or have been terminated); or (b) increase the compensation or benefits payable to any Seller Employee, except as required under Seller's Collective Bargaining Agreement; or

(x) agree or commit to do any of the foregoing.

(b) During the Interim Period, in the interest of cooperation between Seller and Buyer and to plan for and facilitate an orderly and seamless transition from Seller to Buyer on the Closing Date of ownership and operation of the Acquired Assets and the Business of the Vero Beach Electric Utility, the Parties agree that at the sole expense of Buyer, and subject to compliance with all applicable Laws and Permits, Seller will permit designated Representatives of Buyer (***"Observers"***) to observe any and all aspects of the Business of the Vero Beach Electric Utility, and such observation will be permitted on a cooperative basis in the presence of one or more individuals designated by Seller (the "***Seller's Agent(s)***"); provided, however, that such Observers and their actions shall not interfere with the Business of the Vero Beach Electric Utility. Seller shall use Commercially Reasonable Efforts to provide to the Observers interim furnished office space and utilities at the Vero Beach Power Plant, and Seller's T&D center as reasonably necessary to allow Buyer to conduct its transition efforts through the Closing Date; provided that Buyer shall be responsible for all costs relating thereto.

Section 6.2 Access to Information; Reporting.

(a) In addition to the rights granted by Sections 6.1(b), during the Interim Period, in the interest of cooperation between Seller and Buyer and to plan for and facilitate an orderly and seamless transition from Seller to Buyer on the Closing Date of ownership and operation of the Acquired Assets and the Business of the Vero Beach Electric Utility, Seller will (i) give Buyer and Buyer's Representatives reasonable access to (x) all management personnel engaged in the Business of the Vero Beach Electric Utility, (y) all books, documents, records and information (including financial and operating data and Permits, reports, schedules or other documents filed with or received from any Governmental Authority) relating to the Acquired Assets or the Business of the Vero Beach Electric Utility and furnish copies thereof as Buyer may from time to time reasonably request (z) all offices and other facilities and properties constituting the Acquired Assets or used in the Business of the Vero Beach Electric Utility; and (ii) permit Buyer and Buyer's Representatives to make such reasonable inspections thereof as Buyer may reasonably request; provided, however, that (A) any such investigation shall be conducted in such a manner as not to interfere unreasonably with the Business of the Vero Beach Electric Utility and (B) Seller need not supply Buyer with any information that Seller is legally prohibited from supplying.

(b) During the Interim Period, promptly after obtaining Knowledge thereof, Seller shall notify Buyer in writing of, (i) any fact, event, circumstance or condition that would reasonably be expected to have a Material Adverse Effect, (ii) any material unanticipated maintenance or repair of any of the Acquired Assets, (iii) any material emergency condition affecting, or material unscheduled interruption of, the operation of any of the Acquired Assets or the Business of the Vero Beach Electric Utility, or (iv) any receipt of a notice of a violation of any Law or Permit relating to the Acquired Assets or the Business of the Vero Beach Electric Utility.

Section 6.3 Expenses.

Except to the extent specifically provided herein, whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including the cost of legal, technical and financial consultants, shall be borne by the Party incurring such costs and expenses; provided, however, that Buyer will bear the cost of filing for and prosecuting applications for Buyer's Required Regulatory Approvals.

Section 6.4 Further Assurances; Cooperation

(a) Subject to the terms and conditions of this Agreement, each of the Parties hereto will take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the sale, transfer, conveyance, assignment and delivery of the Acquired Assets and the assignment of the Assumed Liabilities and the exclusion of the Excluded Liabilities pursuant to this Agreement, including, without limitation, ensuring satisfaction of the conditions precedent to each Party's obligations hereunder, including, without limitation, all regulatory approvals. Neither Buyer nor Seller will, without the prior written consent of the other, advocate or take any action which would reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement or which could reasonably be expected to cause, or to contribute to causing, the other to receive less favorable regulatory treatment than that sought by the other.

(a) From time to time after the Closing Date, Seller will execute and deliver such documents to Buyer as Buyer may reasonably request, at Buyer's expense, in order to more effectively consummate the sale and purchase, including the transfer, conveyance and assignment, of the Acquired Assets or to more effectively vest in Buyer such title to the Acquired Assets (or such rights to use, with respect to Acquired Assets not owned by Seller), as is provided for in Section 4.7, subject to the Permitted Encumbrances. From time to time after the Closing Date, without further consideration, Buyer will, at its own expense, execute and deliver such documents to Seller as Seller may reasonably request in order to evidence Buyer's assumption of the Assumed Liabilities.

Section 6.5 Public Statements.

(a) This Agreement, the Ancillary Agreements and any document submitted by a Party to the other under this Agreement or during the negotiation of this Agreement or any

Ancillary Agreements (***"Public Document"***) will be a public record (as defined in Section 119.011, Florida Statutes) and may be open for inspection or copying by any person or entity except to the extent such document or certain information included in such document is exempted under Chapter 119, Florida Statutes. Buyer may claim that certain information included in one or all of the Public Documents is, or has been treated as, being exempt from disclosure in accordance with Florida law. In the event that Seller is requested or required by legal or regulatory authority to disclose any Public Document, Seller shall within three (3) days notify Buyer of such request or requirement prior to disclosure so that Buyer may seek an appropriate protective order if Buyer believes certain information included in such Public Document is exempt from disclosure under Florida law. To the extent reasonably possible and permissible under Florida law, Seller shall endeavor to provide redacted versions of documents, upon request of Buyer if Seller agrees with Buyer's assertion that certain information included in such Public Document is exempt from public disclosure under Florida law.

(b) The Parties shall not issue any press release or other public disclosure with respect to this Agreement or the transactions contemplated hereby without first affording the non-disclosing Party the opportunity to review and comment on such press release or public disclosure, except as may be required by applicable Law.

Section 6.6 Consents; Approvals.

(a) As promptly as practicable after the Effective Date, Buyer and Seller, as applicable, shall make the filings listed on Schedule 6.6(a). In fulfilling their respective obligations under this Section 6.6(a), Buyer and Seller shall each use Commercially Reasonable Efforts to lodge or cause to be lodged any such filings within thirty (30) days after the Effective Date. Prior to any Party's submission of the applications contemplated by this Section 6.6(a), the submitting Party shall provide a draft of such application to the other Parties for review and comment and the submitting Party shall in good faith consider any revisions reasonably requested by the reviewing Parties. Each Party will bear its own costs for the preparation and review of any such filings.

(b) As promptly as practicable after the Effective Date, but no later than thirty (30) days after Buyer supplies to Seller all of the information regarding Buyer that is required to be included in the application described in this Section 6.6(b), Buyer shall file with FERC, an application for approval of this transaction under Section 203 of the Federal Power Act. In fulfilling their respective obligations set forth in this Section 6.6(b), Seller and Buyer shall use their Commercially Reasonable Efforts. Prior to Buyer's submission of such application with FERC, Buyer shall submit such application to Seller for review and comment and Buyer shall consider any revisions reasonably requested by Seller. Seller and Buyer shall respond promptly to all requests from FERC or its staff for additional information regarding such application and use their respective Commercially Reasonable Efforts to participate in any hearings, settlement proceedings or other proceedings ordered by FERC with respect to the application. Buyer shall be solely responsible for the cost of filing this application, any petition(s) for rehearing, or any reapplication(s). Seller shall intervene in the proceeding before FERC and shall support the application. Each Party will bear its own costs of the review of such filings.

(c) Buyer will have primary responsibility for securing approval of the FPSC

for: (i) authority under Rule 25-9.044, Florida Administrative Code, to charge Seller's existing retail electric rates to former Customers of the Vero Beach Electric Utility; (ii) termination of the territorial agreement between Buyer and the Vero Beach Electric Utility; and (iii) **[OTHER APPROVALS REQUIRED FROM FPSC (SUCH AS DEPOSITS, ETC)]**. Prior to Buyer's submission of any application for such approval by the FPSC, Buyer shall submit such application to Seller for review and comment and Buyer shall consider any revisions reasonably requested by Seller. Seller and Buyer shall respond promptly to all requests from the FPSC or its staff for additional information regarding such application and use their respective Commercially Reasonable Efforts to participate in any hearings, settlement proceedings or other proceedings ordered by the FPSC with respect to the application. Buyer shall be solely responsible for the cost of filing this application, any petition(s) for rehearing, or any reapplication(s). Seller shall intervene in any proceeding before the FPSC and shall support the application. Each Party will bear its own costs of the review of such filings.

(d) Seller and Buyer shall cooperate with each other and, as promptly as practicable after the Effective Date, (i) prepare and make with FERC, the Federal Communications Commission or any other Governmental Authority having jurisdiction over Seller, Buyer or the Acquired Assets, all necessary filings required to be made with respect to the transactions contemplated hereby (including those specified above), (ii) effect all necessary applications, notices, petitions and filings and execute all agreements and documents, (iii) use Commercially Reasonable Efforts to obtain the transfer or reissuance to Buyer of all necessary Transferable Permits, and (iv) use Commercially Reasonable Efforts to obtain all necessary consents, approvals and authorizations of all other parties, in the case of each of the foregoing clauses (i), (ii), (iii) and (iv), necessary or advisable to consummate the transactions contemplated by this Agreement (including, without limitation, Buyer's Required Regulatory Approvals). The Parties shall respond promptly to any requests for additional information made by such agencies, use their respective Commercially Reasonable Efforts to participate in any hearings, settlement proceedings or other proceedings ordered with respect to the applications, and use their respective Commercially Reasonable Efforts to cause regulatory approval to be obtained at the earliest possible date after the date of filing. Each Party will bear its own costs of the preparation and review of any such filing. Seller and Buyer shall have the right to review in advance all characterizations of the information relating to the transactions contemplated by this Agreement which appear in any filing made in connection with the transactions contemplated hereby and the filing Party shall consider in good faith any revisions reasonably requested by the non-filing Party.

(e) Buyer shall have the primary responsibility for securing the transfer, reissuance or procurement of the Transferable Permits effective as of the Closing Date. Seller shall cooperate with Buyer's efforts in this regard and assist in any transfer or reissuance of a Transferable Permits held by Seller or the procurement of any other Permit when so requested by Buyer. In the event that Buyer is unable, despite its Commercially Reasonable Efforts, to obtain a transfer or reissuance of one or more of the Transferable Permits as of the Closing Date, Buyer may use the applicable Permit issued to Seller, provided (i) such use is not unlawful, (ii) Buyer notifies Seller prior to the Closing Date, (iii) Buyer continues to make Commercially Reasonable Efforts to obtain a transfer or reissuance of such Permit after the Closing Date, and (iv) Buyer indemnifies Seller for any losses, claims or penalties suffered by Seller in connection with such Permit that is not transferred or reissued as of the Closing Date resulting from Buyer's ownership

or operation of the Acquired Assets following the Closing Date.

Section 6.7 Brokerage Fees and Commissions.

Seller and Buyer each represent and warrant to the other that no broker, finder or other Person is entitled to any brokerage fees, commissions or finder's fees in connection with the transaction contemplated hereby by reason of any action taken by the Party making such representation. Seller and Buyer will pay to the other or otherwise discharge, and will indemnify and hold the other harmless from and against, any and all claims or liabilities for all brokerage fees, commissions and finder's fees incurred by reason of any action taken by the indemnifying Party.

Section 6.8 Tax Matters.

(a) Seller and Buyer shall each pay any Transfer Taxes imposed on it by Law in connection with this Agreement and the transactions contemplated hereby. Buyer and Seller will file, to the extent required by applicable Law, all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and, if required by applicable Law, will each join in the execution of any such Tax Returns or other documentation. To the extent Buyer and Seller cannot agree with respect to any item to be included on such Tax Return , such dispute shall be resolved in the manner provided for in Section 6.8(d) below.

(b) With respect to Taxes to be prorated in accordance with Section 3.6 of this Agreement, Buyer shall prepare and timely file all Tax Returns required to be filed after the Closing with respect to the Acquired Assets, if any, and shall duly and timely pay all such Taxes shown to be due on such Tax Returns. Buyer's preparation of any such Tax Returns shall be subject to Seller's approval (not to be unreasonably withheld, delayed or conditioned) to the extent that such Returns relate to any period, allocation or other amount, if any, for which the Seller is responsible. Buyer shall make such Tax Returns and all schedules and working papers supporting such Tax Returns available for Seller's review and approval no later than thirty (30) Business Days prior to the due date for filing such Tax Return. Seller shall respond no later than ten (10) Business Days prior to the due date for filing such Tax Return. Subject to Section 6.8(d), not less than five (5) Business Days prior to the due date of any such Tax Return, Seller shall pay to Buyer its proportionate share of the amount shown as due on such Tax Return as determined in accordance with Section 3.6 of this Agreement. In the event Buyer and Seller cannot agree as to the preparation or the reporting of any material item on a Tax Return to be filed by Buyer, the dispute shall be settled in the manner provided by Section 6.8(d) and the cost of such Independent Accounting Firm shall be borne equally by the Parties; provided, that if the Independent Accounting Firm has not made a determination as of the date that such Tax Return is required to be filed, such Tax Return required to be filed by Buyer may be filed by Buyer in a manner consistent with Buyer's position, and such Tax Return required to be filed by Seller may be filed by Seller in a manner consistent with Seller's position; provided, further, that with respect to any such Tax Return that is filed prior to a determination by the Independent Accounting Firm, Seller and Buyer shall take all commercially reasonable steps to amend such Tax Return, if necessary, to reflect any material determination made by the Independent Accounting Firm.

(c) Each of the Parties shall provide the other with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to Liability for Taxes or effectuating the terms of this Agreement, and each will retain and provide the requesting Party with any records or information which may be relevant to such return, audit or examination, proceedings or determination. Any information obtained pursuant to this Section 6.8(c) or pursuant to any other Section hereof providing for the sharing of information or review of any Tax Return or other schedule relating to Taxes shall be kept confidential by the Parties hereto, except to the extent such information is required to be disclosed by Law.

(d) In the event that a dispute arises between Seller and Buyer as to the preparation or the reporting of any material item on a Tax Return to be filed by Buyer or the allocation of such Taxes between Seller and Buyer, the Parties shall attempt in good faith to resolve such dispute, and any agreed amount shall be paid to the appropriate Party within ten (10) Business Days of the date on which the Parties reach agreement. If a dispute is not resolved within thirty (30) days of a Party having provided the other Party written notice of a dispute, the Parties shall submit the dispute for determination and resolution to the Independent Accounting Firm, which shall be instructed to determine and report to the Parties in writing, within thirty (30) days after such submission, upon such disputed amount, and such written report shall be final, conclusive and binding on the Parties. The Independent Accounting Firm shall act as an expert and not as an arbitrator and shall make findings only with respect to the remaining disputes so submitted to it (and not by independent review). Notwithstanding anything in this Agreement to the contrary, the fees and expenses of the Independent Accounting Firm in resolving the dispute shall be borne equally by Buyer and Seller. Any payment required to be made as a result of the resolution of the dispute by the Independent Accounting Firm shall be made within ten (10) days after such resolution, together with any interest determined by the Independent Accounting Firm to be appropriate. Submission of a dispute to the Independent Accounting Firm shall not relieve any Party from any obligation under this Agreement to timely file a Tax Return or pay a Tax.

Section 6.9 Updating Disclosure Schedules.

Prior to the Closing Date, Seller shall promptly (but no later than thirty (30) days after obtaining Knowledge thereof) notify Buyer of any changes or additions to the Schedules required by this Agreement with respect to any matter hereafter arising which, if existing or occurring at the date of this Agreement, would have been required to be set forth or described in such Schedules. No notice made pursuant to this Section shall be deemed to cure any breach of any representation or warranty made in this Agreement unless the Parties agree thereto in writing.

Section 6.10 Employees. **[SUBJECT TO ONGOING DILIGENCE, REVIEW AND REVISION BY FPL AND SELLER.]**

(a) Subject to any good faith bargaining requirements, commencing as of the Closing Date, Buyer shall offer employment on terms and conditions substantially identical to the terms and conditions of employment with Seller immediately prior to the Closing Date, to all

Seller Employees whose primary work responsibilities are with respect to the Acquired Assets and who are actively employed as of the Closing Date, which Seller Employees are set forth on Schedule 6.10(a), as amended between the date of this Agreement and the Closing Date to reflect any changes in the identities of work force personnel.

(b) Except as Buyer and any Unrepresented Transferred Employee or Converted Represented Transferred Employee may otherwise mutually agree and subject to Buyer's employee policies and procedures, for the period commencing on the Closing Date and ending twenty-four (24) months thereafter, Buyer shall provide Unrepresented Transferred Employees and Converted Represented Transferred Employees with Total Compensation which in the aggregate is comparable to the Total Compensation provided to such Transferred Employees immediately prior to the Closing Date.

(c) Except as otherwise negotiated by the Buyer and the Union Representative and subject to any applicable collective bargaining agreement, for the period commencing on the Closing Date and ending twenty-four (24) months thereafter, Buyer shall provide Represented Transferred Employees and Converted Unrepresented Transferred Employees with employment, Total Compensation and terms and conditions of employment as negotiated with the Union Representative.

(d) As of the Closing Date, all Transferred Employees shall cease to be eligible for active participation in the Seller Benefit Plans and shall commence participation (if applicable eligibility requirements are satisfied) in the Benefit Plans of Buyer, its ERISA Affiliates or, if applicable, the benefit plans negotiated by the Union Representative (***"Buyer Benefit Plans"***).

(e) Except as otherwise negotiated by the Buyer and the Union Representative, with respect to Buyer Benefit Plans that are employee welfare benefit plans as defined in Section 3(1) of ERISA, Buyer shall (i) waive all waiting periods with respect to the Transferred Employees, and (ii) provide each Transferred Employee with credit for any co-payments and deductibles for claims incurred during the plan year of the applicable Buyer Benefit Plan in which the Closing Date falls.

(f) Except as otherwise negotiated by the Buyer and the Union Representative, all Transferred Employees shall be granted credit for all service with Seller under all Buyer Benefit Plans in which such Transferred Employees become participants. The service credit given is for purposes of eligibility, vesting and service related level of benefits.

(g) Except as otherwise negotiated by the Buyer and the Union Representative, effective as of the Closing Date, Buyer shall amend its defined benefit plan to provide Transferred Employees with a benefit equal to a Transferred Employee's accrued benefit under the Seller Defined Benefit Plan as of the Closing Date. Seller will provide records to Buyer within ninety (90) days following the Closing Date setting forth the calculations of each Transferred Employee's accrued benefit under the Seller Defined Benefit Plan as of the Closing Date. Buyer shall assume the obligation and liability to provide to all Transferred Employees accrued benefits under the Seller Defined Benefit Plan based on the benefit formula in the Seller Defined Benefit Plan and utilizing a projected benefit obligation methodology (the "***Assumed***

Pension Liability") via a tax-qualified plan of the Buyer ("***Buyer's Retirement Plan***"). With respect to each Transferred Employee, Buyer's Retirement Plan shall be designed to recognize all service with the Seller for purposes of eligibility, vesting and benefit accrual, and for purposes of any early retirement or retirement-type subsidy or ancillary benefit (such as retiree welfare benefits). The Assumed Pension Liability shall (i) be fully vested, (ii) include all optional forms of benefits under the Seller Defined Benefit Plan, (iii) include a provision for a disability benefit corresponding to the disability benefit under the Seller Defined Benefit Plan, and (iv) include a provision for a death benefit corresponding to the death benefit under the Seller Defined Benefit Plan. To the extent the Seller Defined Benefit Plan is required, under Law, to distribute any assets to any Transferred Employees, Buyer shall make corresponding adjustments to the accrued benefit of any such Transferred Employee under the Buyer's Retirement Plan, and provide a make-whole payment to the Seller Defined Benefit Plan for the amounts of distributions to Transferred Employees. Buyer shall indemnify Seller for any Liabilities relating to the Assumed Pension Liability.

(h) Except as otherwise negotiated by the Buyer and the Union Representative, effective as of the Closing Date, Buyer shall provide to the Transferred Employees a benefit substantially identical to the supplemental insurance plan for retirees provided by the Seller as described in Section 23.06 of the Seller's Collective Bargaining Agreement, whereby the retiree's health insurance premium payment would be subsidized by the Buyer by a percentage multiplied by years of service of the retiree who was a Transferred Employee.

(i) Seller shall be responsible for extending COBRA continuation coverage, or its equivalent, to former Seller Employees and qualified beneficiaries of such former Seller Employees who become or became entitled to such COBRA continuation coverage on or before the Closing Date by reason of the occurrence of a qualifying event on or before the Closing Date, including those for whom the Closing Date occurs during their COBRA election period. Buyer shall be responsible for providing COBRA continuation coverage only to Transferred Employees and qualified beneficiaries of such employees for COBRA qualifying events occurring after the Closing Date.

(j) Seller shall remain responsible for paying Transferred Employees for: (a) all salary, wages, and Seller Benefit Plan benefits, and (b) all workers' compensation, disability benefits, or life insurance benefits for which entitlement to payment is based upon events occurring prior to the Closing Date including any incurred but unreported claims under the Seller Benefit Plans, except that Buyer will assume Seller's obligations to Transferred Employees for all vacation time, floating holidays, sick days, personal days and bonuses for Transferred Employees that have accrued but remain unpaid as of the Closing Date.

(k) Any individual who is otherwise a Transferred Employee but who on the Closing Date is not actively at work due to a leave of absence covered by the Family and Medical Leave Act or similar state or local Law, or due to any other authorized leave of absence, shall remain an employee of Seller and not become a Transferred Employee.

Section 6.11 Risk of Loss; Insurance.

(a) On or prior to the Closing, Buyer shall not bear any risk of loss or

damage to the property included in the Acquired Assets. Seller shall replace or repair any damage to the Acquired Assets consistent with Seller's Past Practices (taking into account the Vero Beach Power Plant Expectations) and the Capital Expenditure and Maintenance Plan, except as otherwise provided in paragraphs (b) or (c) below.

(b) If, before the Closing, all or any portion of the Acquired Assets is taken by eminent domain or is the subject of a pending taking which has not been consummated, Seller shall notify Buyer promptly in writing of such fact, and Seller shall replace such portion of the Acquired Assets with reasonably comparable assets (such replacement to be reasonably satisfactory to Buyer), taking into account the Vero Beach Power Plant Expectations. If such replacement is not completed by the Closing, , then Seller may elect by written notice to Buyer to extend the deadline for Closing by up to an additional [24] months ("Closing Extension") in order for Seller to replace such Acquired Assets. If on or before the end of such Closing Extension, Seller replaces all or substantially all of such Acquired Assets, Buyer will be required to purchase the Acquired Assets pursuant to the terms of this Agreement assuming all other closing conditions are met. If Buyer is unable to replace all or substantially all of such Acquired Assets prior to the Closing Extension, then Buyer may either (i) elect to proceed to Closing (with no Purchase Price Adjustment and no liability of Seller with respect to the replacement of such Acquired Assets), or (ii) terminate this Agreement pursuant to Section 9.1(g).

(c) If, before the Closing, all or any portion of the Acquired Assets is damaged or destroyed by fire or other casualty, Seller shall notify Buyer promptly in writing of such fact, and Seller shall cure such damage or destruction to a condition reasonably comparable to their prior condition (such cure to be reasonably satisfactory to Buyer), taking into account the Vero Beach Power Plant Expectations. If such cure is not completed by the Closing, [_____], Seller may elect by written notice to Buyer to extend the deadline for Closing by up to an additional [24] months ("Closing Extension") in order for Seller to cure such damage or destruction. If on or before the end of such Closing Extension, Seller cures all or substantially all of such damage or destruction, Buyer will be required to Close assuming all other closing conditions are met. If Buyer is unable to cure all or substantially all of such damage or destruction prior to the Closing Extension, then Buyer may either (i) elect to proceed to Closing (with no Purchase Price Adjustment and no liability of Seller with respect to the cure of such damage or destruction), or (ii) then Buyer may terminate this Agreement pursuant to Section 9.1(g).

(d) During the Interim Period, Seller shall continue to pay all premiums for insurance policies described in Schedule 4.9, and Seller shall not amend in any material respect or cancel or fail to maintain any such insurance policies with the current insurance companies or their successors or other financially responsible insurance companies in such amounts and against such risks and losses as are currently maintained. Prior to the Closing Date, Seller shall use Commercially Reasonable Efforts to purchase an extended reporting period of at least three (3) years on all claims-made policies included in Schedule 4.9 to allow for the reporting of any claims that may have taken place prior to the Closing Date that have yet to be reported. After the Closing Date, Seller further agrees to cooperate with Buyer concerning any and all incurred but not reported liability claims that may have taken place prior to the Closing Date covered by Seller's insurance as listed in Schedule 4.9, and Seller agrees to cooperate in the resolution of any pending or disputed property damage claims and shall cause their insurers to do the same.

Section 6.12 Assumed Contracts; Ancillary Agreement.

(a) Seller shall obtain any consents required to assign the Assumed Contracts, the Intellectual Property Licenses and the Transferable Permits to Buyer.

(b) At Closing and effective immediately after Closing, Buyer and Seller shall enter into the Ancillary Agreements.

Section 6.13 OUC Agreement and FMPA Entitlements.

(a) As promptly as practicable after the Effective Date but no later than the Closing Date, Seller shall, at Seller's sole cost as acceptable to Seller in its sole and absolute discretion, secure the mutual, voluntary termination of the OUC Agreement by Seller and OUC effective no later than the Closing Date. [***Reserved***]

(b) As promptly as practicable after the Effective Date but no later than the Closing Date, Seller shall, at Seller's sole cost as acceptable to Seller in its sole and absolute discretion, secure the mutual, voluntary termination of the St. Lucie Unit No. 2 Capacity and Energy Sales Contract by Seller and all other parties thereto effective no later than the Closing Date. [***Reserved***]

(c) As promptly as practicable after the Effective Date but no later than the Closing Date, Seller shall, at Seller's sole cost as acceptable to Seller in its sole and absolute discretion, (i) **[assign the FMPA Agreements]** to one or more Persons (***"FMPA Entitlement Assignment"***), (ii) obtain the written approval of FMPA and the **[relevant trustees]** for the FMPA Entitlement Assignment and the **[transfer of the applicable Acquired Assets to Buyer]** in form and substance reasonably satisfactory to Seller and Buyer and (iii) obtain the written approval of OUC for the FMPA Entitlement Assignment as it relates to the Stanton Contracts in form and substance reasonably satisfactory to Seller and Buyer. [***Reserved***]. **[NOTE: NEED TO DETERMINE WHAT NEEDS TO HAPPEN WITH RESPECT TO THE ALL REQUIREMENTS CONTRACT]**

Section 6.14 Separation of Seller Assets.

To the extent that the Acquired Assets need to be severed or separated from other Seller property, assets or rights, Seller shall perform and pay for such severance or separation at Seller's cost not to exceed **$10,000**.

Section 6.15 Revenue from Attachment Agreement.

Until the **twentieth (20th)** anniversary of the Closing Date, Buyer shall pay Seller an amount equal to the Attachment Agreements Net Revenue received by Buyer during any twelve (12) month period following the Closing Date by the last day of the month following such period. ~~**[NOTE: IN THE ALTERNATIVE, AN NPV OF THE NET REVENUES COULD BE PAID AT CLOSING] [City to decide]**~~

Section 6.16 Capital Expenditure and Maintenance Plan; Spare Parts.

(a) Prior to the Closing Date, Seller agrees to perform the activities described in the Capital Expenditure and Maintenance Plan in accordance with the schedule therein. The value (as set forth in the Capital Expenditure and Maintenance Plan) of each such activity not performed in accordance with such schedule by the Closing Date shall reduce the Purchase Price on a dollar-for-dollar basis; except to the extent that the [_____] of Buyer in consultation with Seller agrees in writing that such activity is not required to be performed. If Seller desires to incur any capital expenditure that materially improves the Acquired Assets and is not (x) described in the Capital Expenditure and Maintenance Plan or required to comply with any applicable Law or Permit or (y) a repair, replacement or cure required under Section 6.11, and Seller desires to increase the Purchase Price therefor, Seller shall notify Buyer of the cost of such capital expenditure, of its desire to increase the Purchase Price by such cost and of the expected material improvement to the Acquired Assets (such notice being, the ***"Capital Improvement Notice"***). If Buyer expressly approves such capital expenditure and expressly agrees to increase the Purchase Price by such cost by notice to Seller referencing this Section 6.16(a), (i) Seller shall be entitled to perform the work necessary to execute, and incur the cost for, such capital expenditure, and (ii) if after completion of such work, the Acquired Assets are materially improved as described in the Capital Improvement Notice, the Purchase Price shall be increased by an amount equal to Seller's costs incurred to execute such capital expenditure, except that such amount shall not exceed the cost described in the Capital Improvement Notice, without Buyer's written consent. All Seller Contracts for such work shall become Assumed Contracts, except that the price payable under such Contracts shall remain the obligation of Seller. Notwithstanding any provision herein to the contrary, the Purchase Price shall not be increased due to Seller's incurrence of any capital or other expenditure, expect as set forth in clause (ii) above.

(b) Prior to the Closing Date, Seller shall at all times maintain an inventory of Spare Parts; provided that Seller shall have the right to use Spare Parts in the ordinary course of the Business of the Vero Beach Electric Utility consistent with Seller's Past Practices but shall be required to purchase replacement Spare Parts upon such use taking into account the Vero Beach Power Plant Expectations.

Section 6.17 Customer Data Conversion.

[NOTE: NEED TO BETTER DESCRIBE WHAT IS NEEDED FROM CAYENTA] [Buyer shall (with the cooperation of Seller) engage Cayenta [ ] to convert Seller's Customer data to a format useable by Buyer as reasonably determined by Buyer.] The Parties shall cooperate with each other to facilitate the an orderly and seamless transition from Seller to Buyer of the information systems, computer applications and processing of data for Buyer to commence conducting the Business of the Vero Beach Electric Utility as of the Closing Date in the manner acceptable to Buyer.

Section 6.18 Seller as Customer.

Seller shall be a retail electric service customer of Buyer commencing with the Closing Date. Seller shall be responsible for providing, prior to the Closing Date, all metering and other equipment necessary for Buyer to measure Seller's consumption of electricity at each facility or other structure of Seller (other than Acquired Assets) requiring electric service.

Section 6.19 Vero Beach Electric Utility Bonds.

[At the Closing, Seller shall have set aside from the Purchase Price proceeds in escrow under an escrow deposit agreement acceptable to Buyer with an independent trustee acceptable to Buyer an amount sufficient, as verified by an independent certified public accountant, to defease, in the opinion of bond counsel for Seller the Vero Beach Electric Utility Bonds in accordance with the applicable Bond Resolution and such escrow deposit agreement and to discharge the Bond Resolution. Such amount shall be invested in U.S. Treasury Securities structured to pay principal of and interest on Vero Beach Electric Utility Bonds as the same become due on the next call date following the Closing. [At Closing, Seller shall cause all Encumbrances on Acquired Assets securing the Vero Beach Electric Utility Bonds to be released.- ***this is not how bonds are defeased***]. Promptly on or after the Closing, Seller shall cause all Encumbrances on Seller revenue securing the Vero Beach Electric Utility Bonds to be released.] **[NOTE: FPL TO VERIFY THIS PROCESS WITH ITS BOND COUNSEL]**

Section 6.20 Reserved

Section 6.21 Exclusivity.

Except as expressly permitted by this Agreement, Seller will not, directly or indirectly, or through an official, employee, representative or by or through the use of any other conduit (including any other Person), (a) offer to sell or transfer any of the Acquired Assets (or offer to enter into any transaction contemplated by this Agreement with) any Person, or (b) request, solicit or otherwise encourage inquiries, proposals or offers from, or participate in any discussions or negotiations with, any Person other than Buyer with respect to the sale or transfer of any of the Acquired Assets or any transaction contemplated by this Agreement.

Section 6.22 No Seller Changes in Law.

On or prior to the Closing Date, Seller agrees not to promulgate, enact, adopt, repeal, amend, modify or make effective any Law, or take or support any action, that would adversely affect any of the transactions contemplated by this Agreement or the Business of the Vero Beach Electric Utility.

Section 6.23 Customer Deposits.

[NOTE: PARTIES TO ADDRESS CUSTOMER DEPOSITS].

Section 6.24 Customer Consumption Allocation.

(a) Seller shall use reasonable efforts to read the meters of all Customers of Seller within one (1) month prior to the Closing Date, and Buyer shall use reasonable efforts to read the meters of all former Customers of Seller within one (1) month after the Closing Date. Within [__] days after the Closing Date, Seller shall provide to Buyer the date of the last meter reading of each Customer occurring prior to the Closing Date, and within [__] days after the date that Buyer reads the last of the meters of the former Customers of Seller, Buyer shall provide to Seller the date of the first meter reading of each former Customer of Seller occurring on and after the Closing Date. Irrespective of the actual consumption of electricity by a Customer during (a)

the period (the ***"Pre-Closing Consumption Period"***) from and including the date of the last meter reading of such Customer occurring prior to the Closing Date and (b) the period (the ***"Post-Closing Consumption Period"*** and together with the Pre-Closing Consumption Period, the ***"Between Meter Readings Period"***) from and including the date of the first meter reading of such Customer occurring on or after the Closing Date, the Parties agree to allocate to the Pre-Closing Consumption Period and the Post-Closing Consumption Period a percentage of the actual consumption of electricity by each Customer during the Between Meter Readings Period pursuant to the following formulas (for the avoidance of doubt, the sum of the percentages allocated to the Pre-Closing Consumption Period and the Post-Closing Consumption Period of a particular Customer must equal 100%):

(i) Allocation to the Pre-Closing Consumption Period shall be: the sum of the Consumption Allocation Percentages applicable to each day in the Pre-Closing Consumption Period, divided by the sum of the Consumption Allocation Percentages applicable to each day in the Between Meter Readings Period; and

(ii) Allocation to the Post-Closing Consumption Period shall be: the sum of the Consumption Allocation Percentages applicable to each day in the Post -Closing Consumption Period, divided by the sum of the Consumption Allocation Percentages applicable to each day in the Between Meter Readings Period. **[NOTE: FPL REVIEWING WHETHER A STRAIGHT LINE ALLOCATION IS APPROPRIATE GIVEN HISTORICAL DIFFERENCES IN CONSUMPTION FROM MONTH TO MONTH DUE TO WEATHER]**

(b) The Parties agree that Seller (and not Buyer) shall bill, and be entitled to collect payment from Customers, for electric service provided to Customers prior to the Closing Date and that Buyer (and not Seller) shall bill, and be entitled to collect payment from Customers, for electric service provided to Customers on and after the Closing Date; provided that, in determining the amount of electricity consumed by a particular Customer that was provided by Seller or by Buyer during the Between Meter Readings Period for such Customer, the Parties agree that, irrespective of the actual amount of electricity provided by Seller or by Buyer during the Between Meter Readings Period, the amount of electricity provided by Seller shall be the amount of electricity deemed to be consumed by such Customer during the Pre-Closing Consumption Period as determined by this Section, and the amount of electricity provided by Buyer shall be the amount of electricity deemed to be consumed by such Customer during the Post-Closing Consumption Period as determined by this Section. **[NOTE: PARTIES NEED TO DISCUSS WHETHER FPL SHOULD BILL FOR THE PRE-CLOSING CONSUMPTION PERIOD AND REMIT PAYMENT TO VERO WHEN RECEIVED DUE TO DIFFICULTIES IN TRANSITIONING FROM VERO'S BILLING SYSTEM TO FPL'S]**

Section 6.25 Real Property Rights.

On or prior to Closing, Seller shall obtain Long Term Real Property Interests with respect to all real property in, upon or over which any Transmission Assets or Distribution Assets are located. Seller shall provide Buyer reasonable notice of any meeting with a potential grantor or counterparty to any Long Term Real Property Interest and use reasonable effort to permit Buyer

or any Representative thereof to attend such meeting. **[NOTE: PARTIES TO DISCUSS HOW TO GET FPL THE REAL PROPERTY RIGHTS NEEDED]**

ARTICLE VII
CONDITIONS PRECEDENT

Section 7.1 Conditions Precedent to Obligations of Buyer.

The obligations of Buyer to purchase the Acquired Assets and to consummate the other transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following conditions precedent (except to the extent waived (in whole or in part) in writing by Buyer in its sole discretion):

(a) The representations and warranties (other than the Seller Fundamental Representations) of Seller set forth in this Agreement (without regard to any materiality or Material Adverse Effect qualification therein) shall be true and correct in all respects on and as of the Effective Date and on and as of the Closing Date as though made on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the truth and correctness which shall be determined as of that specified date), except for such failures to be true and correct which would not reasonably be expected to constitute, individually or in the aggregate, a Material Adverse Effect.

(b) The Seller Fundamental Representations shall be true and accurate in all respects on and as of the Effective Date and on and as of the Closing Date as though made on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the truth and correctness which shall be determined as of that specified date).

(c) Seller shall have satisfied all of its obligation under Section 6.13 and has:

(i) secured the mutual, voluntary termination of the OUC Agreement effective no later than the Closing Date;

(ii) secured the mutual, voluntary termination of the St. Lucie Unit No. 2 Capacity and Energy Sales Contract by Seller and all other parties thereto effective no later than the Closing Date; and

(iii) (A) **[assigned the FMPA Agreements]** to one or more Persons;

(B) has obtained the written approval of FMPA and the **[relevant trustees]** for such assignment and the **[transfer of the applicable Acquired Assets to Buyer]** in form and substance reasonably satisfactory to Buyer; and

(C) has obtained the written approval of OUC for such assignment of **[the FMPA Agreements]** as it relates to the Stanton Contracts in form and

substance reasonably satisfactory to Buyer; **[NOTE: NEED TO DETERMINE WHAT NEEDS TO HAPPEN WITH RESPECT TO THE ALL REQUIREMENTS CONTRACT]**

(d) No preliminary or permanent injunction or other Order by any Governmental Authority (other than Seller) which restrains or prevents the consummation of the transactions contemplated hereby shall have been issued and remain in effect (each Party agreeing to cooperate in all efforts to have any such injunction or Order lifted) and no Law shall have been enacted by any Governmental Authority which prohibits the consummation of the transactions contemplated hereby;

(e) Buyer shall have received all of Buyer's Required Regulatory Approvals, in form and substance reasonably satisfactory to Buyer and such approvals shall be in full force and effect and either (i) shall be final and non-appealable or (ii) if not final and non-appealable, shall not be subject to the possibility of appeal, review or reconsideration which, in the reasonable opinion of Buyer, is likely to be successful;

(f) Seller shall have performed and complied in all material respects with the covenants and agreements contained in this Agreement which are required to be performed and complied with by Seller on or prior to the Closing Date or during the Interim Period;

(g) Buyer shall have received a certificate from the City Manager of Seller, dated the Closing Date, to the effect that, to such person's knowledge, the conditions set forth in this Sections 7.1 (a), (b) and (f) have been satisfied by Seller;

(h) Seller shall have delivered, or caused to be delivered, to Buyer at the Closing, Seller's closing deliveries described in Section 3.7;

(i) Since the Effective Date, no Material Adverse Effect shall have occurred and be continuing;

(j) Seller shall have delivered to Buyer reasonably satisfactory evidence of (i) the satisfaction, discharge and payment in full of the Vero Beach Electric Utility Bonds in accordance with Section 6.19 and **[ANY EXCLUDED LIABILITIES THAT SHOULD BE DESCRIBED]**; and (ii) release of all Encumbrances on the Acquired Assets (other than Permitted Encumbrances);

(k) Buyer has received approval from the FPSC to charge Seller's Customers the same rates for retail electric service as Buyer charges its other electric utility customers;

(l) Buyer shall have secured, at Buyer's cost and expense, (i) title insurance policies, insurable at regular rates, in an amount satisfactory to Buyer, from a title insurance company authorized to do business in the State of Florida, insuring that Buyer has good, marketable and insurable title to the Acquired Land in Fee and the right to control, occupy and use the Acquired Land in Fee, free and clear of Encumbrances other than Permitted Encumbrances, and (ii) American Land Title Association (ALTA) surveys issued to Buyer and the title company secured by Buyer prepared by certified surveyors showing the Acquired Land In Fee with all physical encumbrances observed and all matters of record that affect the Acquired Land In Fee, the form and substance of which are satisfactory to Buyer; and

(m) Buyer shall have received such other documents, and certificates as Buyer, or its counsel, shall reasonably request for conveying title to Acquired Assets by written notice to Seller given not less than ten (10) days prior to the Closing Date.

Section 7.2 Conditions Precedent to Obligations of Seller.

The obligation of Seller to sell the Acquired Assets and to consummate the other transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following conditions precedent (except to the extent waived (in whole or in part) in writing by Seller in its sole discretion):

(a) The representations and warranties (other than the Buyer Fundamental Representations) of Buyer set forth in this Agreement (without regard to any materiality or Material Adverse Effect qualification therein) shall be true and correct in all respects on and as of the Effective Date and on and as of the Closing Date as though made on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the truth and correctness which shall be determined as of that specified date), except for such failures to be true and correct which would not reasonably be expected to constitute, individually or in the aggregate, a Material Adverse Effect.

(b) The Buyer Fundamental Representations shall be true and accurate in all respects on and as of the Effective Date and on and as of the Closing Date as though made on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the truth and correctness which shall be determined as of that specified date).

(c) No preliminary or permanent injunction or other Order by Governmental Authority (other than Seller) which restrains or prevents the consummation of the transactions contemplated hereby shall have been issued and remain in effect (each Party agreeing to use its Commercially Reasonable Efforts to have any such injunction or Order lifted) and no Law shall have been enacted by any state or federal government or Governmental Authority (other than Seller) which prohibits the transactions contemplated hereby;

(d) Buyer shall have performed and complied with in all material respects the covenants and agreements contained in this Agreement which are required to be performed and complied with by Buyer on or prior to the Closing Date or during the Interim Period;

(e) Buyer has received approval from the FPSC to charge Seller's Customers the same rates for retail electric service as Buyer charges its other electric utility customers and at rates lower than the rates charged by Seller to its Customers at Closing;

(f) Seller shall have received a certificate from an authorized officer of Buyer, dated the Closing Date, to the effect that, to such person's knowledge, the conditions set forth in this Sections 7.2 (a), (b) and (d) have been satisfied by Buyer; and

(g) OUC and FMPA shall have entered into and delivered written agreements enabling Seller to have:

(i) secured the mutual, voluntary termination of the OUC Agreement effective no later than the Closing Date, at a cost acceptable to Seller in its sole and absolute discretion;

(ii) secured the mutual, voluntary termination of the St. Lucie Unit No. 2 Capacity and Energy Sales Contract by Seller and all other parties thereto effective no later than the Closing Date, at a cost acceptable to Seller in its sole and absolute discretion; and

(iii) (A) **[assigned the FMPA Agreements]** to one or more Persons, at a cost acceptable to Seller in its sole and absolute discretion;

(B) has obtained the written approval of FMPA and the **[relevant trustees]** for such assignment and the **[transfer of the applicable Acquired Assets to Buyer]** in form and substance reasonably satisfactory to Buyer, at a cost acceptable to Seller in its sole and absolute discretion; and

(C) has obtained the written approval of OUC for such assignment of **[the FMPA Agreements]** as it relates to the Stanton Contracts in form and substance reasonably satisfactory to Buyer, at a cost acceptable to Seller in its sole and absolute discretion; **[NOTE: NEED TO DETERMINE WHAT NEEDS TO HAPPEN WITH RESPECT TO THE ALL REQUIREMENTS CONTRACT]**

(h) Buyer shall have delivered, or caused to be delivered, to Seller at the Closing, Buyer's closing deliveries described in Section 3.7.

(i) Buyer shall have obtained all requisite regulatory approvals for the rates it will charge all Customers in the Service Territory and shall after the Closing Date commence charging all Customers in the Service Territory rates for their use of electricity at Buyer's market rates to its other customers in the State of Florida, which market rates shall be less than those rates charged by Seller to such Customers prior to the Closing.

ARTICLE VIII
INDEMNIFICATION

Section 8.1 Indemnification.

(a) From and after the Closing, Buyer shall, on an After-Tax Basis, indemnify, defend and hold harmless Seller and its Counsel and employees (each, a ***"Seller Indemnitee"***) from and against any and all Losses (each, an ***"Indemnifiable Loss"***), asserted against or suffered by any Seller Indemnitee relating to, resulting from or arising out of:

(i) any breach of any covenant (including any indemnification covenant) or agreement of Buyer contained in this Agreement;

(ii) any Assumed Liability (other than any Excluded Liability);

(iii) any Assigned Contract (other than any Loss relating to, resulting from or arising out of any Excluded Liability); or

(iv) any Third Party Claim against a Seller Indemnitee arising out of or in connection with (A) Buyer's ownership, use or operation of the Acquired Assets or (B) Buyer's performance of the Business of the Vero Beach Electric Utility, in each case under clause (A) or (B), following the Closing Date (other than any Loss relating to, resulting from or arising out of any Excluded Asset or Excluded Liability).

(b) From and after the Closing, Seller shall, on an After-Tax Basis, indemnify, defend and hold harmless Buyer and its Affiliates and its and their officers, directors, members, employees, shareholders and agents (each, a ***"Buyer Indemnitee"***) from and against any and all Indemnifiable Losses asserted against or suffered by any Buyer Indemnitee relating to, resulting from or arising out of:

(i) any breach of any covenant (including any indemnification covenant) or agreement of Seller contained in this Agreement;

(ii) any Excluded Liability;

(iii) any Excluded Asset;

(iv) any Third Party Claim against a Buyer Indemnitee arising out of or in connection with (A) Seller's ownership, use or operation of the Acquired Assets, or (B) the Business of the Vero Beach Electric Utility, in each case under clause (A) or (B), on or prior to the Closing Date (other than any Loss relating to, resulting from or arising out of any Assumed Liability or incurred in the ordinary course of business);

– {NOTE: Seller is not willing to indemnify FP&L for OUC or FMPA post-closing; OUC and FMPA will only have claims against FP&L if FP&L assumes obligations or commitments to OUC and / or FMPA. In any agreements with OUC and FMPA we can identify City obligations and FP&L obligations, if any.}; or

(v) any demand claim or Action relating to public assistance funds awarded to Seller relating to any hurricane or other named storm.

(c) Notwithstanding anything in this Agreement to the contrary:

(i) the representations and warranties contained in this Agreement shall not survive the Closing;

(ii) the Parties to this Agreement shall have no liability for Losses under Section 8.1(a) or 8.1(b) after sixty (60) days after the the expiration of the applicable statute of limitations applicable to contracts except with respect to covenants which, by their nature or terms, are to be performed during and/or after such period; **[NOTE: SURVIVAL ANY REAL ESTATE COVENANTS TO BE DISCUSSED WITH OVERALL RESOLUTION OF REAL ESTATE RIGHTS TO BE TRANSFERRED]**

(d) The rights of the Buyer to indemnification or any other remedy under this Agreement shall not be impacted or limited by any knowledge that the Buyer may have acquired, or could have acquired, on or after the Effective Date. Seller hereby acknowledges that,

regardless of any investigation made (or not made) by or on behalf of the Buyer, regardless of the results of any such investigation and regardless of any knowledge that the Buyer may have acquired or could have acquired, Buyer has entered into this Agreement (and the Closing if occurring) in express reliance upon the representations, warranties, covenants and agreements of the Seller made in this Agreement and the indemnification and other remedies of Buyer under this Agreement. Neither Seller nor Buyer shall have any obligation to indemnify the other for any breaches of representations and warranties made in this Agreement because such representations and warranties shall not survive the Closing.

(e) The expiration or termination of any covenant or agreement shall not affect the Parties' obligations under this Section 8.1 if the Indemnitee provided the Person required to provide indemnification under this Agreement (the ***"Indemnifying Party"***) with proper notice of the claim or event for which indemnification is sought prior to such expiration, termination or extinguishment.

(f) Except for intentional fraud or to the extent otherwise provided in Article IX or in Section 6.8(d), the rights and remedies of Seller and Buyer under this Article VIII are exclusive and in lieu of any and all other rights and remedies which Seller and Buyer may have under this Agreement or otherwise for monetary relief after the occurrence of the Closing with respect to any breach of or failure to perform any covenant, or agreement set forth in this Agreement. Notwithstanding any provision in this Agreement to the contrary, each Party shall have the express right to collect amounts payable under this Agreement pursuant to legal action and each Party shall have the right to seek the remedy of specific performance with respect to the Closing.

Section 8.2 Defense of Claims.

(a) If any Indemnitee receives notice of the assertion of any claim or of the commencement of any claim, action, or proceeding made or brought by any Person who is not a Party to this Agreement or any Affiliate of a Party to this Agreement (a ***"Third Party Claim"***), including but not limited to an information document request or a notice of proposed disallowance issued by the IRS relating to a matter covered by Section 6.8, with respect to which indemnification is to be sought from an Indemnifying Party, the Indemnitee shall give such Indemnifying Party reasonably prompt written notice thereof, but in any event such notice shall not be given later than twenty (20) calendar days after the Indemnitee's receipt of notice of such Third Party Claim. Such notice shall describe the nature of the Third Party Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnifying Party will have the right to participate in or, by giving written notice to the Indemnitee, to elect to assume the defense of any Third Party Claim at such Indemnifying Party's expense and by such Indemnifying Party's own counsel, provided that the counsel for the Indemnifying Party who shall conduct the defense of such Third Party Claim shall be reasonably satisfactory to the Indemnitee. The Indemnitee shall cooperate in good faith in such defense at such Indemnitee's own expense. If an Indemnifying Party elects not to assume the defense of any Third Party Claim, the Indemnitee may compromise or settle such Third Party Claim over the objection of the Indemnifying Party, which settlement or compromise shall conclusively establish the Indemnifying Party's Liability pursuant to this Agreement; provided, however, that the Indemnitee provides written notice to

the Indemnifying Party of its intent to settle and such notice reasonably describes the terms of such settlement at least ten (10) Business Days prior to entering into any settlement.

(b) (i) If, within twenty (20) calendar days after an Indemnitee provides written notice to the Indemnifying Party of any Third Party Claims, the Indemnitee receives written notice from the Indemnifying Party that such Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in Section 8.2(a), the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnifying Party shall fail to take reasonable steps necessary to defend diligently such Third Party Claim within twenty (20) calendar days after receiving notice from the Indemnitee that the Indemnitee believes the Indemnifying Party has failed to take such steps, the Indemnitee may assume its own defense and the Indemnifying Party shall be liable for all reasonable expenses thereof.

(ii) Without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld, conditioned or delayed, the Indemnifying Party shall not enter into any settlement of any Third Party Claim which would lead to Liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder. If a firm offer is made to settle a Third Party Claim without leading to Liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within twenty (20) calendar days after its receipt of such notice, the Indemnifying Party shall be relieved of its obligations to defend such Third Party Claim and the Indemnitee may contest or defend such Third Party Claim. In such event, the maximum Liability of the Indemnifying Party as to such Third Party Claim will be the amount of such settlement offer plus reasonable costs and expenses paid or incurred by Indemnitee up to the date of said notice.

(c) Any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim (a ***"Direct Claim"***) shall be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable, but in any event such notice shall not be given later than twenty (20) calendar days after the Indemnitee becomes aware of such Direct Claim, and the Indemnifying Party shall have a period of twenty (20) calendar days within which to respond to such Direct Claim. If the Indemnifying Party does not respond within such twenty (20) calendar day period, the Indemnifying Party shall be deemed to have accepted such claim. If the Indemnifying Party rejects such claim, the Indemnitee will be free to seek enforcement of its right to indemnification under this Agreement.

(d) The amount of any Indemnifiable Loss shall be reduced to the extent that the Indemnitee receives any insurance proceeds with respect to an Indemnifiable Loss. If the amount of any Indemnifiable Loss, at any time subsequent to the making of an indemnity payment in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by, from or against any other entity, the amount of such reduction, less any costs, expenses or premiums incurred in connection therewith (together with interest thereon from the date of payment thereof

to the date or repayment at the "prime rate" as published in *The Wall Street Journal*) shall promptly be repaid by the Indemnitee to the Indemnifying Party.

(e) A failure to give timely notice as provided in this Section 8.2 shall not affect the rights or obligations of any Party hereunder except if, and only to the extent that, as a result of such failure, the Party which was entitled to receive such notice was actually prejudiced as a result of such failure.

Section 8.3 Offset.

Buyer shall have the right to offset, on a dollar for dollar basis, any portion of any payment to be made under Article III against any amount payable by Seller under this Article VIII.; provided that Buyer shall offset any such amounts against the last scheduled installment payment(s) of the Financed Amount due to Seller, if any portion of the Purchase Price is treated at Seller's option as the Financed Amount pursuant to Section 3.4.

ARTICLE IX
TERMINATION

Section 9.1 Termination.

(a) This Agreement may be terminated at any time prior to the Closing Date by mutual written consent of Seller and Buyer.

(b) This Agreement may be terminated by Seller or Buyer, if (i) any federal or state court of competent jurisdiction shall have issued an Order permanently restraining, enjoining or otherwise prohibiting the Closing, and such Order, shall have become final and nonappealable; (ii) any Law shall have been enacted or issued by any Governmental Authority (other than Seller) which, directly or indirectly, prohibits the consummation of the Closing; or (iii) the **conditions precedent contained in Section 7.1 with respect to Buyer and the conditions precedent contained in Section 7.2 with respect to Seller have not been fulfilled or waived as provided therein and the** Closing contemplated hereby shall have not occurred on or before the Termination Date~~)~~; provided, that the right to terminate this Agreement under this Section 9.1(b)(iii) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date.

(c) This Agreement may be terminated by Buyer if any of Buyer's Required Regulatory Approvals shall have been denied or shall have been granted but are not in form and substance reasonably satisfactory to Buyer.

(d) This Agreement may be terminated by Buyer if there has been one or more violations or breaches by Seller of any representation or warranty contained in this Agreement and such violation(s) or breach(es) (individually or in the aggregate) constitutes a Material Adverse Effect and is not cured by the earlier of the Closing Date or ninety (90) days, if such violation or breach is capable of ~~bieng~~**being** cured within such 90-day period, after receipt by Seller (or by Buyer in the case of notice by Seller pursuant to Section 6.9) of written notice specifying particularly such violation(s) or breach(es). Notwithstanding the foregoing, if Buyer

gives Seller such notice of a violation or breach by Seller of any such representation or warranty within 6 months before the deadline for Closing, Seller may elect by written notice to Buyer prior to the Closing Date to extend the deadline for Closing by up to six (6) additional months if Seller deems such additional time necessary for it to cure such violations or breaches of its representations and warranties.

(e) This Agreement may be terminated by Seller if there has been one or more violations or breaches by Buyer of any representation or warranty contained in this Agreement and such violation(s) or breach(es) (individually or in the aggregate) constitutes a Material Adverse Effect and is not cured by the earlier of the Closing Date or ninety (90) days, if such violation or breach is capable of ~~bieng~~**being** cured within such 90-day period, after receipt by Buyer of written notice specifying particularly such violation(s) or breach(es). Notwithstanding the foregoing, if Seller gives Buyer such notice of a violation or breach by Seller of any such representation or warranty within 6 months of the deadline for Closing, Buyer may elect by written notice to Seller prior to the Closing Date to extend the deadline for Closing by up to six (6) additional months if Buyer deems such additional time necessary for it to cure such violations or breaches of its representations and warranties.

(f) This Agreement may be terminated by a Party if there has been one or more material breaches by the other Party of any covenant or agreement contained in this Agreement and such breach(es) is not cured by the other Party within one hundred and twenty (120) days after receipt by the breaching Party of written notice specifying particularly such breach(es). If such initial written notice is delivered to the other Party within 120 days of the deadline for Closing, the deadline for Closing shall be extended by 120 days.

(g) This Agreement may be terminated by Buyer in accordance with the provisions of Sections 6.11(b) or (c).

Section 9.2 Effect of Termination.

(a) In the event of termination of this Agreement by Seller or Buyer pursuant to Section 9.1, written notice thereof shall promptly be given by the terminating Party to the other Party, and this Agreement shall thereupon terminate. Notwithstanding the foregoing, if this Agreement terminates pursuant to Section 9.1, this Agreement shall be null and void and neither Party shall have any liability or obligation to the other Party under this Agreement or as a result of the termination hereof. If this Agreement is terminated as provided herein, all filings, applications and other submissions made to any Governmental Authority shall, to the extent practicable, be withdrawn from the Governmental Authority to which they were made.

(b) Notwithstanding the existence of any violation or breach by a Party of its representations, warranties or covenants included in this Agreement prior to Closing, if the other Party elects to proceed to Closing, such violations or breaches shall be deemed waived and there shall be no liability to the other Party for such violations or breaches of its representations, warranties or covenants.

(c) Notwithstanding any provision herein to the contrary, if this Agreement is terminated by Seller pursuant to Section 9.1(e) or (f) or if the Closing does not occur because the

Federal Trade Commission or the Department of Justice deny approval of the Transaction under the HSR Act by determining that the Transaction violates U.S. antitrust laws, then, in any such case, Buyer shall pay Seller, by wire transfer of immediately available funds within three (3) Business Days following the date of such termination an amount equal to the [transaction costs] incurred by Seller not to exceed $4,000,000.

ARTICLE X
MISCELLANEOUS PROVISIONS

Section 10.1 Amendment and Modification.

This Agreement may not be amended, modified or supplemented, except by written agreement of Seller and Buyer.

Section 10.2 Waiver of Compliance; Consents.

Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not invalidate this Agreement, nor shall such waiver be deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement. Except as otherwise provided herein, the failure of a Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights. A waiver by a Party of the performance of any covenant, condition, representation or warranty of the other Party shall not invalidate this Agreement, nor shall such waiver be construed as a waiver of any other covenant, condition, representation or warranty. A waiver by a Party of the time for performing any act shall not constitute a waiver of the time for performing any other act or the time for performing an identical act required to be performed at a later time. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

Section 10.3 Third Party Beneficiaries.

(a) Except for the provisions of Article VIII which are intended to be for the benefit of the Persons identified therein, the terms and provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person, including without limitation any employee or any beneficiaries or dependents thereof. No provision of this Agreement shall create any third party beneficiary rights in any employee or former employee of Seller (including any beneficiary or dependent thereof) in respect of continued employment or resumed employment, and no provision of this Agreement shall create any rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any employee benefit plan or arrangement except as expressly provided for thereunder.

Section 10.4 Notices.

All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by overnight courier or registered or certified mail (return receipt requested), postage prepaid, to the recipient Party at its address (or at such other address for a Party as shall be specified by like notice; provided, however, that notices of a change of address shall be effective only upon receipt thereof):

(a) If to Seller, to:

City of Vero Beach

Attention: **City Manager**

with a copy to:

Attention: **City Attorney**

(b) if to Buyer, to:

Attention: _____

with a copy to:

Attention: _____

Section 10.5 Assignment.

Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Party, except that, from and after the Closing, Buyer may (without the consent of any other Party) assign this Agreement or all or any portion of Buyer's rights, interests or obligations hereunder to any Affiliate of Buyer or any Person providing financing to Buyer or any of its their Affiliates, but no such assignment shall

release Buyer of its obligations under this Agreement. Subject to this Section 10.5, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

Section 10.6 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without giving effect to conflict of law principles) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies. THE PARTIES HERETO AGREE THAT VENUE IN ANY AND ALL ACTIONS AND PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE IN THE COURT OF THE STATE OF FLORIDA IN ~~[LEON]~~**INDIAN RIVER** COUNTY, FLORIDA, WHICH COURT SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE AND THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING. SERVICE OF PROCESS MAY BE MADE IN ANY MANNER RECOGNIZED BY SUCH COURT. ~~EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.~~ THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT, AND SHALL SURVIVE THE CLOSING OR TERMINATION OF THIS AGREEMENT.

Section 10.7 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 10.8 Schedules and Exhibits.

Except as otherwise provided in this Agreement, all Exhibits and Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement.

Section 10.9 Entire Agreement.

This Agreement and the Ancillary Agreements, including the Exhibits, Schedules, documents, certificates and instruments referred to herein or therein, embody the entire agreement and understanding of the Parties hereto in respect of the transactions contemplated by this Agreement and shall supersede all previous oral and written and all contemporaneous oral negotiations, commitments and understandings including, without limitation, (a) that certain Letter of Intent dated May 6, 2011, between Seller and Buyer, as amended, and (b) all documents or communications, whether oral, written or electronic, submitted or made by (i) Buyer or any of its representatives to Seller or any of its representatives or (ii) Seller or any of its representatives to Buyer or any of its representatives, in connection with the sale process that occurred prior to the execution of this Agreement or otherwise in connection with the negotiation and execution of this Agreement.

Section 10.10 No Joint Venture.

Nothing in this Agreement creates or is intended to create an association, trust, partnership, joint venture or other entity or similar legal relationship among the Parties, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to the Parties.

Section 10.11 Change in Law.

If and to the extent that any Laws (other than Laws of Seller) that govern any aspect of this Agreement shall change, so as to make any aspect of this transaction unlawful, then the Parties agree to make such modifications to this Agreement as may be reasonably necessary for this Agreement to accommodate any such legal or regulatory changes, without materially changing the overall benefits or consideration expected hereunder by any Party.

Section 10.12 Specific Performance.

Each Party acknowledges and agrees that the other Party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each Party agrees that the other Party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in addition to any other remedy to which it may be entitled, at law or in equity.

Section 10.13 Severability.

If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

FLORIDA POWER & LIGHT COMPANY

By: _____

Name: _____

Title: _____

ATTEST:

_____
Tammy K. Vock
City Clerk

(City Seal)

Approved as to form and legal sufficiency:

_____
Wayne R. Coment
Acting City Attorney

Approved as to technical requirements:

_____

CITY OF VERO BEACH, FLORIDA

_____
Pilar Turner
Mayor

Approved as conforming to municipal policy:

_____
James R. O'Connor
City Manager

Approved as to technical requirements:

_____