

THE CITY OF VERO BEACH ELECTRIC UTILITY

ASSET PURCHASE AND SALE AGREEMENT

BY AND BETWEEN

**CITY OF VERO BEACH, FLORIDA,
AS SELLER**

AND

**FLORIDA POWER & LIGHT COMPANY,
AS BUYER**

Dated as of _____, 2017

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ASSET PURCHASE AND SALE AGREEMENT

This ASSET PURCHASE AND SALE AGREEMENT (the “*Agreement*”), dated as of _____, 2017 (the “*Date of this Agreement*”), is made and entered into by and between the CITY OF VERO BEACH, FLORIDA, 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 together as the “*Parties*.”

WITNESSETH:

WHEREAS, Seller owns and operates an electric utility in the City of Vero Beach, Florida and other portions of Indian River County, Florida, including Indian River Shores, and Seller wishes to exit the electric utility business;

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*”) as part of Seller’s exit strategy from the electric utility business;

WHEREAS, Buyer and Seller desire for Buyer to provide retail electric service to Seller’s electric utility customers, commencing on the Closing Date, as defined below, upon the terms and conditions hereinafter set forth in this Agreement;

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 other retail electric service customers;

WHEREAS, Buyer and Seller intend that in the event that the sale under this Agreement does not occur, under the conditions set forth in Article 10, Seller will sell to Buyer, and Buyer will purchase from Seller, the assets of Seller’s electric utility system located in Indian River Shores, Florida, under the terms of the Partial Sale Agreement, as defined below.

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

ARTICLE 1 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”** means (a) the Real Property owned by Seller and occupied by substations 3, 7, 8, 9, 10, 11, and 20 described in Exhibit U, and (b) any other Real Property owned by Seller and occupied by any of the FPUA Joint Facilities (other than substation 20) that is described in Exhibit U.

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

(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 interests 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 interests. 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) **“Aggregate Environmental Cap”** has the meaning set forth in Section 6.22.

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

(7) **“Airport”** means the City of Vero Beach Municipal Airport.

(8) **“Airport Property Lease Agreements”** means the Airport Substation Lease Agreements and the Airport Warehouse Lease Agreement.

(9) **“Airport Substation Lease Agreements”** means the Airport Substation 5 Lease Agreement and the Airport Substation 6 Lease Agreement.

(10) **“Airport Substation 5 Lease Agreement”** means a lease agreement and memorandum of lease substantially in the form of Exhibit I-1A attached hereto, or such form as may be otherwise agreed by the Parties pursuant to Section 6.4(e) and approved by the FAA or FDOT if required by applicable Law or by the provisions of any applicable contract with or grant from the FAA or FDOT.

(11) **“Airport Substation 6 Lease Agreement”** means a lease agreement and memorandum of lease substantially in the form of Exhibit I-1B attached hereto, or such form as may be otherwise agreed by the Parties pursuant to Section 6.4(e) and approved by the FAA or FDOT if required by applicable Law or by the provisions of any applicable contract with or grant from the FAA or FDOT.

(12) “**Airport Warehouse Property**” means the warehouse and service center facilities (land and building) located within the Airport used in the Business of the Vero Beach Electric Utility as a service center.

(13) “**Airport Warehouse Lease Agreement**” means a lease agreement substantially in the form of Exhibit I-2 attached hereto relating to the Airport Warehouse Property or such form as may be otherwise agreed by the Parties pursuant to Section 6.4(f) and approved by the FAA or FDOT if required by applicable Law or by the provisions of any applicable contract with or grant from the FAA or FDOT, including rent as set forth in Section 2.5.

(14) “**Allocation**” has the meaning set forth in Section 3.5(b).

(15) “**Ancillary Agreements**” means the Airport Property Lease Agreements, the District Sublicenses, ~~the Pole Attachment Agreement for Seller’s Fiber Optic System~~, the Fiber License Agreement, the Substation Easement Agreement, the Substation Equipment Operating and Dismantling Agreement, the Substation License and Access Agreement, the Streetlight Agreement, the Franchise Ordinance, and the Grounding Lease Agreement.

(16) “**Assignment and Assumption Agreement**” means the Assignment and Assumption Agreement between Seller and Buyer substantially in the form of Exhibit A-1 attached hereto.

(17) “**Assignment and Assumption of Easements**” means the assignment of Easements and assumption of responsibilities associated therewith, including the Substation 20 Transmission R/W, between Seller and Buyer substantially in the form of Exhibit A-2 attached hereto.

(18) “**Assumed Contracts**” mean those Seller Contracts set forth on Schedule 1.1(18) as of the Date of this Agreement, including the Real Property Interest Instruments and Intellectual Property Licenses, and those Seller Contracts primarily relating to the Vero Beach Electric Utility arising in the ordinary course consistent with Seller’s Past Practices during the Interim Period to be set forth on amended Schedule 1.1(18).

(19) “**Assumed Liabilities**” has the meaning set forth in Section 2.3.

(20) “**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.

(21) “**Available Proceeds**” means the sum of (i) the total aggregate amount of insurance coverage under all of Seller’s policies of insurance that are applicable to the Acquired

Assets that were damaged or destroyed by the relevant Casualty during the Interim Period, plus (ii) the amount (or value, if provided in the form of property or repair assistance) of assistance that Seller has been provided (or that has been committed to be provided to Seller) in any form (including cash grant, property or repair assistance) by any Person (including the Federal Emergency Management Agency of the United States or any other Governmental Authority) that may be used by Seller to cure such Casualty, plus (iii) the amounts recovered or recoverable by Seller from Customers for storm restoration in accordance with Seller's Past Practice during similar Casualty events.

(22) **"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.

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

(24) **"Bond Release Consideration"** has the meaning set forth in Section 3.4(d).

(25) **"Bond Resolution"** means the City of Vero Beach Master Electric System Revenue Bond Resolution adopted on November 6, 2007, as amended.

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

(27) **"Business Day"** means 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.

(28) **"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.

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

(30) **"Buyer Benefit Plans"** has the meaning set forth in Section 6.10(c).

(31) **"Buyer Fundamental Representations"** means the representations and warranties made in Sections 5.1, 5.2, 5.3(a)(i) and 5.7.

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

(33) **“Buyer’s Phase II Environmental Testing”** has the meaning set forth in Section 6.22(b).

(34) **“Buyer’s Required Regulatory Approvals”** has the meaning set forth in Section 5.3(b).

(35) **“Buyer Union Representative”** means the representative of the labor union that represents the craft or class of Transferred Employees who will be employed by Buyer in positions that are subject to a collective bargaining agreement with Buyer while employed with Buyer after the Closing Date.

(36) **“Capital Expenditure and Maintenance Plan”** means the plan adopted by the Council, which details the maintenance and capital expenditure schedule for the Acquired Assets for the 2017-2018 fiscal year ending September 30, 2018.

(37) **“Casualty”** means an event causing any portion of the Acquired Assets to be damaged or destroyed and requiring in excess of One Million Dollars (\$1,000,000) for repair or replacement of such damaged or destroyed Acquired Assets; provided, however, that any intentional demolition or removal of any Acquired Assets in connection with repair or replacement of such Acquired Assets shall not be considered a Casualty.

(38) **“Casualty Notice”** has the meaning set forth in Section 6.11(a).

(39) **“Closing”** has the meaning set forth in Section 3.1.

(40) **“Closing Date”** has the meaning set forth in Section 3.1.

(41) **“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 applicable Laws.

(42) **“Code”** means the Internal Revenue Code of 1986, as amended.

(43) **“Commercially Reasonable Efforts”** means 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 other than immaterial expenditures which are customary and reasonable in nature in the context of the transactions contemplated by this Agreement.

(44) **“Consumption Period”** has the meaning set forth in Section 6.21(a).

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

(46) **“Council”** means the City Council of Seller.

(47) **“Covered Loss”** means any Losses for which an Indemnifying Party is required to indemnify an Indemnitee pursuant to Section 8.1(a) or Section 8.1(b), as the case may be.

(48) **“Cure Amount”** means the amount of costs that will be required to be paid in order to cure the damage to or destruction of the Acquired Assets resulting from a Casualty.

(49) **“Customer”** means any retail electric service customer of Seller prior to the Closing Date, and, assuming the Closing occurs, of Buyer on or after the Closing Date, within the Service Territory.

(50) **“Customer Deposits”** means the electric utility deposits collected by Seller from its Customers or the portion of deposits collected from customers of electric, water and sewer utility services allocable to the electric service provided by Seller.

(51) **“Customer Service Assets”** means the customer service facilities, equipment and other tangible property and assets used in or for, the Business of the Vero Beach Electric Utility or located on the Real Property, including the facilities, equipment and other tangible property and assets that connect the Distribution Assets to each individual Customer’s Delivery Point, 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(50) but excluding City Hall and related office equipment. For the avoidance of doubt, Customer Service Assets do not include assets used by Seller primarily for its water and sewer utility business, and Seller shall be entitled to keep a copy of any data that is a Customer Service Asset as deemed appropriate by Seller.

(52) **“Date of this Agreement”** has the meaning set forth in the preamble to this Agreement.

(53) **“Deed”** means a special warranty deed substantially in the form of Exhibit C attached hereto.

(54) **“Defeasance Obligations”** means (i) direct obligations of the United States of America, (ii) obligations the timely payment of the principal of and interest on which when due are fully and unconditionally guaranteed by the United States of America, or (iii) obligations which are general obligations backed by the full faith and credit of the United States of America.

(55) **“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.

(56) **“Direct Claim”** has the meaning set forth in Section 8.2(c).

(57) “**Distribution Assets**” means the electric distribution facilities, equipment and other tangible property and assets used in or for, the Business of the Vero Beach Electric Utility, including the facilities, equipment and other tangible property and assets that connect the Transmission Assets to the Customer Service Assets, distribution substation equipment, feeder circuits and associated hardware (including switches and switch gear, regulators, capacitor banks, reclosers, and protective equipment), primary circuits, transformers, secondaries and services, and associated physical assets (including poles, conductors, cables, insulators, metering, and outdoor lights).

(58) “**District**” means the Indian River Farms Water Control District.

(59) “**District Licenses**” means one or more agreements between the District and Seller substantially in the form of Exhibit P attached hereto, or such form as may be otherwise agreed by the Parties pursuant to Section 6.4(c) and approved by the District, that relate to all of the Real Property owned by the District on which any of the Acquired Assets are located as of the Closing Date.

(60) “**District Sublicenses**” means one or more agreements between Buyer and Seller substantially in the form of Exhibit Q attached hereto, or such form as may be otherwise agreed by the Parties pursuant to Section 6.4(c) and approved by the District, that provide for sublicenses with respect to each of the District Licenses to be entered into on the Closing Date.

(61) “**Easements**” means the electrical distribution easements, electrical transmission easements, access easements, aerial easements and other easements owned by Seller and used in (A) the Business of the Vero Beach Electric Utility or (B) the operation or maintenance of the Acquired Assets, including the easements identified in Schedule 1.1(61), other than any easements described in the Franchise Ordinance.

(62) “**Effective Time**” has the meaning set forth in Section 3.1.

(63) “**Electric Utility Accounting Records**” means all financial statements, accounting books, related records and reports of Seller relating to the Business of the Vero Beach Electric Utility.

(64) “**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.

(65) “**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 applicable Law, agreement, understanding or otherwise and whether or not of record.

(66) “**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.

(67) **“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 (i) violation of, or Liability under any Environmental Law, (ii) violation of any Environmental Permit, or (iii) 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 Real Property, the Substation Easement Real Property, or any off-Site location to which Hazardous Substances, or materials containing Hazardous Substances, were sent.

(68) **“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.

(69) **“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 Laws regarding Releases or threatened Releases of Hazardous Substances (including 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, including 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.), and all other Laws analogous to any of the above.

(70) **“Environmental Liabilities”** has the meaning set forth in [Section 6.22\(a\)](#).

(71) **“Environmental Notice”** has the meaning set forth in [Section 6.22\(a\)](#).

(72) **“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 necessary for (i) the Business of the Vero Beach Electric Utility, or (ii) the ownership, use or operation of the Acquired Assets, in each case under clause (i) or (ii), as conducted prior to the Date of this Agreement and as conducted prior to the Closing Date.

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

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

(75) **“Estimated Allocation”** has the meaning set forth in Section 3.5(a).

(76) **“Estimated Closing Adjustments”** has the meaning set forth in Section 3.3(b).

(77) **“Estimated Closing Statement”** has the meaning set forth in Section 3.3(b).

(78) **“Estoppel Certificate”** means a written statement from a Person who is a party other than Seller to an Assumed Contract or Real Property Interest Instrument, as the case may be, which written statement explicitly provides that (i) to the knowledge of the individual providing such statement, Seller is not in default nor does it owe any amounts due (or otherwise specifying such amounts that are due) to such Person under the Assumed Contract, (ii) the individual providing such written statement is authorized to bind the Person and make such written such statement, (iii) Buyer is entitled to rely on such written statement in connection with Buyer’s assumption of the Assumed Contract, and (iv) such Person consents to the assignment and assumption of the Assumed Contract from Seller to Buyer.

(79) **“Excluded Assets”** has the meaning set forth in Section 2.2.

(80) **“Excluded Contracts”** means the FMPA Agreements, the OUC-Vero Beach PPA, Seller Collective Bargaining Agreements, and all other Contracts that are not Assumed Contracts.

(81) **“Excluded Inventory”** means any Inventory of Seller described in Schedule 1.1(81).

(82) **“Excluded Liabilities”** has the meaning set forth in Section 2.4.

(83) **“FAA”** means the Federal Aviation Administration or any successor agency thereto.

(84) **“Federal Communications Commission”** means the United States Federal Communications Commission or any successor agency thereto.

(85) “**Federal Power Act**” means the Federal Power Act, as amended.

(86) “**FERC**” means the Federal Energy Regulatory Commission or any successor agency thereto.

(87) “**FERC Approval**” has the meaning set forth in Section 6.6(c).

(88) “**Fiber License Agreement**” means an agreement substantially in the form of Exhibit L-1 attached hereto, or such form as may be otherwise agreed by the Parties pursuant to Section 6.4(d) and approved by Indian River County and the School District of Indian River County.

(89) “**Fiber Optic System**” means the fiber optic system described on Schedule 1.1(88).

(90) “**FDOT**” means the Florida Department of Transportation or any successor agency thereto.

(91) “**FMPA**” means the Florida Municipal Power Agency.

(92) “**FMPA Agreement Date**” means February 28, 2018 or such later date, but not later than March 30, 2018, selected by Buyer by giving notice thereof to Seller and FMPA, or such date after March 30, 2018, agreed to in writing by Seller and Buyer with notice thereof given to FMPA.

(93) “**FMPA Agreements**” means all of the following Contracts: (i) St. Lucie Project Power Sales Contract dated June 1, 1982, between FMPA and Seller, as amended; (ii) St. Lucie Project Support Contract dated June 1, 1982, between FMPA and Seller, as amended; (iii) the Stanton Project Power Sales Contract, dated January 16, 1984, between FMPA and Seller; (iv) Stanton Project Support Contract dated January 16, 1984, between FMPA and Seller, as amended; (v) Stanton II Project Power Sales Contract executed on or about May 24, 1991, between FMPA and Seller, as amended; (vi) Stanton II Project Support Contract executed on or about May 24, 1991, between FMPA and Seller, as amended; and (vii) that certain All-Requirements Power Supply Project Contract dated October 1, 1996, between FMPA and Seller, as amended.

(94) “**FMPA ARP**” means the FMPA “all requirements project”.

(95) “**FMPA Assigned Agreements**” means the agreements described in clauses (i) through (vii) of the definition of the FMPA Agreements.

(96) “**FMPA Bondholders**” means the holders of revenue bonds issued by FMPA secured by, among other things, the FMPA Agreements.

(97) “**FMPA Members**” means the municipal members of FMPA that are party to any of the FMPA Agreements, and who are required to consent to the FMPA Transfer Agreement.

(98) “**FMPA Transfer Agreement**” means the Transfer Agreements that Seller and FMPA would enter into, if they enter into such Transfer Agreements, with the approval of Buyer, under which, among other matters, at the Closing: (i) Seller would assign to FMPA or the trustee with respect to the FMPA ARP bonds all of Seller’s rights under the FMPA Assigned Agreements; (ii) FMPA would release Seller from all of Seller’s obligations and liabilities to FMPA and the FMPA Members including under all of the FMPA Agreements; and (iii) Seller would pay to FMPA the FMPA Transfer Payment.

(99) “**FMPA Transfer Payment**” means an amount not to exceed \$108 million as determined pursuant to the terms of the FMPA Transfer Agreement.

(100) “**FPL Termination Agreement**” means the Termination of Agreements substantially in the form of Exhibit F attached hereto, which, at the Closing, will terminate (i) the Territorial Boundary Agreement between Buyer and Seller dated June 11, 1980, as amended, approved by the PSC Order dated November 3, 1981 and (ii) that certain Joint Use Agreement, dated July 5, 1956, as supplemented by that certain Supplemental Joint Use Agreement, dated January 29, 1964, in each case between Buyer and Seller, and as the same may have been further amended.

(101) “**FPSC**” means the Florida Public Service Commission or any successor agency thereto.

(102) “**FPSC Approval**” has the meaning set forth in Section 6.6(d).

(103) “**FPUA**” means the Fort Pierce Utilities Authority or any successor electric utility.

(104) “**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, including the property identified as “Substation 20” on the schedule of the Acquired Land in Fee and the Substation 20 Transmission R/W.

(105) “**FPUA Right of First Refusal**” means the right of first refusal with respect to certain of the Acquired Assets granted by Seller to FPUA pursuant to that certain Fort Pierce – Vero Beach Tie-Line Agreement dated May 5, 1992 between Seller and FPUA, as amended.

(106) “**Franchise Ordinance**” means the franchise ordinance agreement substantially in the form of Exhibit E attached hereto.

(107) “**GAAP**” means United States generally accepted accounting principles in effect in the United States from time to time.

(108) “**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.

(109) **“Grounding Equipment”** means the cable casing and other parts of the Fiber Optic System that are used as the grounding for any part of the Acquired Assets.

(110) **“Grounding Lease Agreement”** means an agreement substantially in the form of Exhibit Y attached hereto.

(111) **“Hazardous Substances”** means: (i) any petroleum, asbestos, asbestos-containing material, and urea formaldehyde foam insulation and transformers or other equipment that contains polychlorinated biphenyls; (ii) 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 (iii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

(112) **“Income Tax”** means any Tax (i) based upon, measured by or calculated with respect to net income, profits or receipts (including capital gains Taxes and minimum Taxes), or (ii) based upon, measured by or calculated with respect to multiple bases (including 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 (i), in each case together with any interest, penalties or additions to such Tax.

(113) **“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 under acceptance, letter of credit or similar facilities, (vi) 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; provided, however, that the term “Indebtedness” shall not include any lease that is a capital lease.

(114) **“Indemnifying Party”** has the meaning set forth in Section 8.1(d).

(115) **“Indemnitee”** means either a Seller Indemnitee or a Buyer Indemnitee, as the case may be.

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

(117) **“Intellectual Property”** means the following rights, both statutory and common law rights, if applicable: (i) copyrights, registrations and applications for registration thereof; (ii) trademarks, service marks, trade names, slogans, domain names, business names, logos, trade dress, and registrations and applications for registrations thereof; (iii) 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; (iv) 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 (v) computer programs and other software, including source and object codes.

(118) **“Intellectual Property Licenses”** means those agreements related to Licensed Intellectual Property.

(119) **“Interconnection Points”** mean the points at which Seller’s Transmission Assets connect as of the Date of the Agreement to: (a) Seller’s West Substation, (b) Buyer’s Emerson Substation, and (c) the FPUA Joint Facilities.

(120) **“Interim Period”** has the meaning set forth in Section 6.1(a).

(121) **“Inventory”** means materials, spare parts, supplies, chemicals and other items of inventory used in or for the Business of the Vero Beach Electric Utility including such other items of inventory located in Seller’s warehouses.

(122) **“IRS”** means the United States Internal Revenue Service or any successor agency thereto.

(123) **“Knowledge”** means (i) with respect to Buyer, the actual awareness (after reasonable inquiry of appropriate employees of Buyer) of the corporate officers of Buyer who are charged with responsibility for the particular function relating to the matter of the inquiry and (ii) with respect to Seller, the actual awareness of the City Manager of Seller (after reasonable inquiry of the director of the following departments of Seller: Electric Utilities; Public Works; and Finance), the City Attorney of Seller, and, solely with respect to Airport matters, the director of the Airport.

(124) **“Law”** means any foreign, federal, state or local law, constitutional provision, statute, charter, ordinance or other law, rule, regulation, code (including any zoning code, fire code or health and safety code), or interpretation of any Governmental Authority or any Order of or by any Governmental Authority, including all Environmental Laws and NERC standards, requirements and regulations, applicable to the Business of the Vero Beach Electric Utility or the Acquired Assets.

(125) **“Lease Agreements”** means the Airport Property Lease Agreements, the District Sublicenses, and the Grounding Lease Agreement.

(126) **“Liability”** means any direct or indirect 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, Action asserted or brought against the relevant Person.

(127) **“Licensed Intellectual Property”** means the Intellectual Property described in Schedule 1.1(126).

(128) **“Loss”** or **“Losses”** means any and all damages, fines, fees, penalties, deficiencies, losses, Liabilities, interest, awards, judgments, and expenses (whether or not involving a third party claim), including all Remediation costs, reasonable 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.

(129) **“Material Adverse Effect”** means such changes, effects, conditions, facts, circumstances and events resulting in, or reasonably likely to result in, an adverse effect on the Acquired Assets and the Business of the Vero Beach Electric Utility, in an aggregate amount greater than \$10,000,000.00; provided, however, that no one or more of the following changes, effects, conditions, facts, circumstances or events shall be taken into account in determining whether a Material Adverse Effect has occurred: (i) general economic or political conditions; (ii) conditions generally affecting the industry in which the Business of the Vero Beach Electric Utility operates, including those affecting fuel prices; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any changes in prevailing interest rates; (iv) acts of war (whether or not declared), terrorism or armed hostilities, or the escalation or worsening thereof; (v) any action (or omission of an action) required or permitted by this Agreement or any of the Ancillary Agreements or any action taken (or omitted to be taken) with the written consent of or at the request of Buyer; (vi) any actions taken or caused by Buyer or any of its Affiliates, including any change in Buyer’s policies relating to retention and compensation of or provision of benefits to Buyer’s employees and the Transferred Employees, whether resulting from decisions made by Buyer, regulatory authorities or bargaining with Buyer’s Union Representative; (vii) any changes in applicable Laws or accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof other than Laws adopted by the Council; (viii) the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with Seller or the Business of the Vero Beach Electric Utility; (ix) any Casualty; or (x) any failure by the Business of the Vero Beach Electric Utility to meet any internal or published projections, forecasts or revenue or earnings predictions.

(130) **“Material Seller Contracts”** shall have the meaning set forth in Section 4.13(a).

(131) **“Maximum Uncovered Loss Amount”** means five million dollars (\$5,000,000).

(132) **“NERC”** means the North American Electric Reliability Corporation.

(133) **[Intentionally Deleted]**

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

(135) “**Observers**” has the meaning set forth in Section 6.1(b).

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

(137) “**OUC**” means the Orlando Utilities Commission.

(138) “**OUC Termination Agreement Date**” means January 5, 2018 or such later date, but not later than January 31, 2018, selected by Buyer by giving notice thereof to Seller and OUC, or such date after January 31, 2018, agreed to in writing by Seller and Buyer with notice thereof given to OUC.

(139) “**OUC Termination Agreement**” means the Termination Agreement that Seller and OUC would enter into, if they enter into such Termination Agreement, with the approval of Buyer, under which, among other matters, at the Closing: (i) Seller and OUC would terminate the OUC-Vero Beach PPA; (ii) OUC would release Seller from all of Seller’s obligations and liabilities to OUC including under the OUC-Vero Beach PPA; and (iii) Seller would pay to OUC the OUC Termination Payment.

(140) “**OUC Termination Payment**” means \$20 million.

(141) “**OUC-Vero Beach PPA**” means the First Amended and Restated Agreement for Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management Services dated October 20, 2015 between Seller and OUC and any other agreements between OUC and Seller.

(142) “**Partial Sale Agreement**” has the meaning set forth in Section 10.1.

(143) “**Party**” (and the corresponding term “**Parties**”) has the meaning set forth in the preamble to this Agreement.

(144) “**Permits**” means all permits, licenses, approvals, immunities, entitlements, certificates (including certificates of need), authorizations, registrations, waivers, variances, exemptions, notices, application, and filings, from, to, with or issued by any Governmental Authority, that are material to the Business of the Vero Beach Electric Utility or the Acquired Assets, including certificates of occupancy, operating permits, sign permits, development rights and approvals, zoning, building and safety and health approvals.

(145) “**Permitted Encumbrances**” means, with the exception of the Encumbrances identified on attached Schedule 4.6(a), which shall be satisfied or removed from such Acquired Assets on or before the Closing Date: (i) as to each and every parcel of Acquired Land in Fee, the real property described in the Airport Substation 5 Lease Agreement and Airport Substation 6 Lease Agreement, Substation Easement Real Property, and any other Real Property Interest for which Buyer obtains a Title Commitment, those exceptions to title listed in Schedule 1.1(143), referenced in any of the Title Commitments, or existing due to the provisions of any Real Property Interest Instruments through which Seller holds its Real Property Interests, or matters identified in any Survey or what would have been disclosed by an accurate survey or inspection; (ii) as to each Acquired Asset constituting personal property, or any Real Property

Interest for which Buyer has not obtained a Title Commitment, any Encumbrance of any type or description on or affecting such Acquired Assets, provided that such Encumbrance does not, to Seller's Knowledge, materially interfere with the operation of the Acquired Assets in the ordinary course consistent with Seller's Past Practices prior to the Date of this Agreement. Without limiting the generality of the foregoing, "Permitted Encumbrances" include the following: (i) Encumbrances created by the Electric Utility Bonds that will be released prior to or at the Closing; provided, however, that such Encumbrances shall cease to be Permitted Encumbrances as of the Closing; (ii) statutory liens for Taxes or other governmental charges or assessments not yet delinquent; (iii) statutory liens (including construction, 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); (iv) existing zoning, entitlement, environmental or conservation restrictions 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, to Seller's Knowledge, materially interfere with the Business of the Vero Beach Electric Utility in the ordinary course as conducted prior to the Date of this Agreement; (v) the covenants and restrictions set forth in this Agreement or in any of the Ancillary Agreements; (vi) Encumbrances with respect to the Acquired Assets created by or resulting from the acts or omissions of Buyer; (vii) the rights of any owner of real property where any of the personal property included in the Acquired Assets is located and the conditions or limitations of any real property rights associated with the locations where any of such Acquired Assets may exist; (viii) all matters affecting the Acquired Assets that would be disclosed by an accurate survey or inspection of such Acquired Assets; (ix) the terms of any capital leases; (x) the FPUA Right of First Refusal; and (xi) if Seller, after making a good faith effort, is unable to secure a release or satisfaction of the matter set forth in items number 1 and 3 on Schedule 4.6(a), then the matters set forth in item numbers 1 and 3 on Schedule 4.6(a) shall be treated for purposes of Section 4.6 as a "Permitted Encumbrance."

(146) "**Person**" means a natural person, a corporation, a partnership, a joint venture, 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 Governmental Authority or any other separate legal entity recognized pursuant to applicable Law.

(147) "~~Pole Attachment Agreement~~" means an agreement substantially in the form of ~~Exhibit K attached hereto~~ Agreement has the meaning set forth in Section 6.4(d).

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

(149) "**Post-Closing Consumption Period**" has the meaning set forth in Section 6.21.

(150) **“Post-Closing Statement”** has the meaning set forth in Section 3.3(c).

(151) **“Post-Closing Taxes”** means Taxes, including sales and use taxes on all leases, (other than Transfer Taxes to which Section 6.8(a) applies) attributable to periods (or portions thereof) beginning on or after the Closing Date, determined by closing the books at the Effective Time for purposes of Income Taxes and by pro rating all other Taxes based on the number of days in the period before the Closing Date, on the one hand, and on and after the Closing Date, on the other hand; provided, however, if the Acquired Assets or the Business of the Vero Beach Electric Utility were not subject to a Tax in the hands of Seller but become subject to that Tax in the hands of Buyer, that Tax shall be a Post-Closing Tax in its entirety.

(152) **“Power Plant”** means all facilities and equipment located on the Power Plant Site, other than the Power Plant Substation.

(153) **“Power Plant Site”** means the real property described in Exhibit S.

(154) **“Power Plant Substation Site”** means the real property described in Exhibit S.

(155) **“Pre-Closing Taxes”** means Taxes, including sales and use taxes on all leases, (other than Transfer Taxes to which Section 6.8(a) applies) attributable to periods (or portions thereof) ending before the Closing Date, determined by closing the books at the end of the date immediately preceding the Closing Date for purposes of Income Taxes and by pro rating all other Taxes based on the number of days in the taxable period before and after the Closing Date; provided, however, if the Acquired Assets or the Business of the Vero Beach Electric Utility were not subject to a Tax in the hands of Seller but become subject to that Tax in the hands of Buyer, no portion of that Tax shall be a Pre-Closing Tax.

(156) **“Pre-Closing Consumption Period”** has the meaning set forth in Section 6.21.

(157) **“Prepaid Expenses”** means all expenses incurred by Seller in the operation of the Acquired Assets in accordance with Seller’s Past Practices (excluding pre-payments for tangible assets such as inventory or property, plant and equipment except as provided in Section 3.6(a)(iii), but including prepaid maintenance expense) paid in cash before the Closing and before being incurred for GAAP purposes.

(158) **“Proposed Post-Closing Adjustment”** has the meaning set forth in Section 3.3(c).

(159) **“Public Document”** has the meaning set forth in Section 6.5(a).

(160) **“Purchase Price”** has the meaning set forth in Section 3.2.

(161) **“Radio Licenses”** means the Permits set forth in Schedule 1.1(160).

(162) **“Real Property”** means the Acquired Land in Fee, the Substation Easement Real Property, the real property described in the Airport Property Lease Agreements,

and such other real property rights, interests, and licenses to occupy real property, that are owned by Seller and used by Seller to transmit and distribute electricity or to access or maintain the Vero Beach Electric Utility including the Easements, each as set forth on Schedule 1.1(161), but excluding any rights of way under the Franchise Ordinance.

(163) **“Real Property Interests”** means the interest held by Seller in the Real Property.

(164) **“Real Property Interest Instrument”** means any license, deed, lease, easement, agreement or other instrument creating a Real Property Interest.

(165) **“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.

(166) **“Remediation”** means any action of any kind required by applicable Law to address the presence or Release of Hazardous Substances, including: (i) monitoring, investigation, assessment, treatment, cleanup containment, removal, mitigation, response or restoration work, as well as obtaining any Permits necessary to conduct any such activity; (ii) preparing and implementing any plans or studies for any such activity; and (iii) obtaining a written notice from a Governmental Authority with competent jurisdiction under Environmental Laws, that no material additional work is required.

(167) **“Representatives”** of a Party means the Party and its Affiliates and their directors, officers, employees, agents and advisors (including accountants, counsel, environmental consultants, financial advisors and other authorized representatives).

(168) **“Retained Agreements”** means the District Licenses and the Seller Pole and Antenna Attachment Termination Agreements.

(169) **“Retained Employees”** means all Seller Employees who are employed by Seller as of the date immediately preceding the Closing Date and who do not become Transferred Employees as of the Closing Date.

(170) **“Schedules”** means the schedules attached to this Agreement.

(171) **“Schedule Supplement”** has the meaning set forth in Section 6.9.

(172) **“Seller”** has the meaning set forth in the preamble to this Agreement.

(173) **“Seller Benefit Plans”** has the meaning set forth in Section 4.11(a).

(174) **“Seller Collective Bargaining Agreements”** means the Agreement between Seller and Teamsters Local Union No. 769, dated September 15, 2015, with a term of October 1, 2015 to September 30, 2018, and the Agreement between Seller and Teamsters Local Union No. 769 Technical/Clerical with a term of October 1, 2015 to September 30, 2018.

(175) **“Seller Contracts”** means all Contracts in effect on the Date of this Agreement that are used in or for the Acquired Assets or the Business of the Vero Beach Electric Utility to which Seller is a Party or by which any of the Acquired Assets is bound, including (i) the Real Property Interest Instruments, the Assumed Contracts and the Intellectual Property Licenses, (ii) Contracts associated with the forecasting, modeling, management and operation of the Acquired Assets, (iii) Contracts associated with emergency or wind storm preparedness, and (iv) 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.

(176) **“Seller Defined Benefit Plan”** means the City of Vero Beach General Employee Retirement Plan in effect on the Date of this Agreement, which was frozen as of July 15, 2015.

(177) **“Seller Defined Contribution Plan”** means the City of Vero Beach General Employees’ Defined Contribution Plan in effect on the date of this Agreement.

(178) **“Seller Disclosure Schedules”** means the disclosure schedules of Seller that pertain to Seller’s representations and warranties in Article 4 of this Agreement, delivered concurrently with the execution and delivery of this Agreement and forming a part of this Agreement and any updates to such disclosure schedules.

(179) **“Seller Employee”** means an hourly-paid or salaried employee of Seller, who receives an IRS Form W-2 from Seller and whose work responsibilities involve principally the Business of the Vero Beach Electric Utility.

(180) **“Seller Fundamental Representations”** means the representations and warranties made in Sections 4.1, 4.2, 4.3(a), and 4.20.

(181) **“Seller Indemnitee”** has the meaning set forth in Section 8.1(a).

(182) **“Seller Pole and Antenna Attachment Termination Agreements”** means the agreements to be negotiated and executed by Seller and each Person (other than Buyer) that attaches or uses poles of Seller, including AT&T, Comcast and BellSouth, regarding the termination of such Person’s rights relating to poles of Seller.

(183) **“Seller’s Past Practices”** means the recent historical operation, maintenance and repair practices, methods and actions performed prior to the Date of this Agreement by, or on behalf of, Seller with respect to the Acquired Assets, in a manner complying with applicable Law.

(184) **“Service Territory”** means the area described as Seller’s service territory in the map attached hereto as Schedule 1.1(183).

(185) **“Streetlight Agreement”** means Buyer’s standard form of street lighting agreement that is applicable on the date immediately preceding the Closing Date, along with Buyer’s street lighting rate schedule on file at the FPSC that is effective on the date immediately preceding the Closing Date. For reference purposes only, Exhibit J contains a copy of the Streetlight Agreement that is applicable on the Date of this Agreement. For the avoidance of

doubt, the Streetlight Agreement that is required to be executed under this Agreement may be different than the form attached hereto as Exhibit J.

(186) **“Streetlight Assets”** means all assets of Seller used in or for Seller’s street lighting business including all Seller-owned poles, fixtures, test equipment, brackets, records, conductor (OH & UG), warranties, tools, photocells, relays, conduit, transformers, handholes/splice boxes, connectors/splices, scrap, salvage, ground rods, nuts, bolts, washers, ballasts, shields, poles and any inventory of the foregoing.

(187) **“Substation 20 Transmission R/W”** means the easements or other rights appurtenant to Substation 20 described in Exhibit R attached hereto.

(188) **“Substation Easement Agreement”** means an agreement substantially in the form of Exhibit L-2 attached hereto.

(189) **“Substation Equipment Operating and Dismantling Agreement”** means an agreement substantially in the form of Exhibit L-3 attached hereto.

(190) **“Substation Easement Real Property”** means the real property under the Substation Easement Agreement.

(191) **“Substation License and Access Agreement”** means an agreement substantially in the form of Exhibit L-4 attached hereto.

(192) **“Survey”** means an American Land Title Association (ALTA) survey for each parcel of real property identified as an insured parcel in any of the Title Commitments.

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

(194) **“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.

(195) **“Termination Date”** has the meaning set forth in Section 3.1.

(196) **“Third Party Claim”** has the meaning set forth in Section 8.2(a).

(197) **“Title Commitments”** means the commitments to issue policies of title insurance and the title reports issued by Chicago Title Insurance Company and attached in Schedule 1.1(195) for each and every parcel of Acquired Land in Fee, real property described in

the Airport Substation 5 Lease Agreement and Airport Substation 6 Lease Agreement, the Substation Easement Property, and other Real Property Interests that may be referenced or identified as a parcel or right having been examined or to be insured in any title commitment or title search attached in Schedule 1.1(195).

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

(199) “**Transaction**” has the meaning set forth in the Recitals to this Agreement.

(200) “**Transferable Permits**” means the Environmental Permits and the Non-Environmental Permits that are transferable at the Closing.

(201) “**Transferred Employee Records**” means all records related to Transferred Employees, including the following information, as long as disclosure is not prohibited under the Health Insurance Portability and Accountability Act, the Health Information Technology for Economic and Clinical Health Act, or similar applicable Laws: (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 or evaluations; (ix) employment applications; (x) bonuses; (xi) job history; and (xii) access authorization records.

(202) “**Transferred Employees**” means all Seller Employees whose primary work responsibilities are with respect to the Acquired Assets, who are employed by Seller as of the date immediately preceding the Closing Date and who accept continued employment with Buyer as of the Closing Date.

(203) “**Transfer Taxes**” means any sales, use, value added, excise, stamp, documentary, recording, registration, conveyance, stock transfer, intangible property transfer, personal property transfer, real 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 any payments made in lieu of any such Taxes or governmental charges which become payable in connection with the transactions contemplated by this Agreement.

(204) “**Transmission Assets**” means the electric transmission tangible personal property, excluding real property, used in or for the Business of the Vero Beach Electric Utility or located on the Real Property, including the facilities, equipment and other tangible property and assets that connect 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.

(205) “**Vehicles**” means the vehicles listed in Schedule 1.1(203).

(206) “***Vero Beach Electric Utility***” means the electric utility system of electricity transmission and distribution owned and operated by Seller prior to the Closing Date and, provided that the Closing occurs, owned and operated by Buyer on and after the Closing Date.

(207) “***Warn Act***” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

(208) “***Willful Buyer Breach***” has the meaning set forth in Section 9.2(c).

(209) “***Willful Seller Breach***” has the meaning set forth in Section 9.2(b).

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 12:00:01 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, however, that when a period measured in months commences on a date other than the first day of a calendar month, the period shall run from and including the date on which it starts to and including the date immediately preceding 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) The words “substantially in the form of” or words of similar effect when used with respect to the form of any Ancillary Agreement or other agreement or document that has been included as an Exhibit to this Agreement and that is to be executed

and delivered by the Parties or any third party or third parties, or executed and delivered by one of the Parties or any third party or third parties, in either case after the Date of this Agreement pursuant to, or in order to satisfy, any covenant, obligation or condition set forth in this Agreement shall refer to the applicable form that is attached to this Agreement with such changes as the Parties may otherwise agree are necessary or appropriate, with such agreement to be evidenced by the Parties' execution thereof, including the insertion of mutually agreeable legal descriptions following preparation of a Survey for any applicable real property.

(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) The Parties acknowledge and agree that: (i) this Agreement (A) shall be construed and interpreted as an arms-length contract entered into by parties with equal bargaining power and (B) was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party; (ii) the Parties have agreed to the wording of this Agreement; and (iii) none of the provisions hereof shall be construed against either 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 2 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 Seller's right, title and interest in or to 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 are primarily used by Seller in or for, the Business of the Vero Beach Electric Utility (collectively, the "***Acquired Assets***"); provided, that the Acquired Assets shall specifically include all of Seller's right, title and interest in or to the following property, assets and rights (other than the Excluded Assets):

- (a) the Transmission Assets;
- (b) the Distribution Assets;
- (c) the Customer Service Assets;
- (d) the Inventory;
- (e) the Vehicles;

(f) except for the Inventory and the Vehicles, all machinery, mobile or otherwise, equipment (including computer hardware and communications equipment), tools, works in progress, fixtures, furniture and furnishings and other personal property;

(g) all books, operating records, licensing records, quality assurance records, purchasing records, manuals, standards, 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, whether existing in hard copy or magnetic or electronic form other than books and records set forth in Section 2.2(o) (collectively, the ***“Business Books and Records”***);

(h) the Acquired Land in Fee, and any of Seller’s improvements to the Acquired Land in Fee, together with all of Seller’s rights appurtenant thereto, including related rights of ingress and egress;

(i) the Real Property Interests (other than the Acquired Land in Fee);

(j) the Transferable Permits;

(k) the Assumed Contracts, including any associated unexpired assignable warranties and guarantees from third parties;

(l) Seller’s interest in the FPUA Joint Facilities;

(m) the Streetlight Assets;

(n) any causes of action or Actions and defenses against third parties (including indemnification and contribution) to the extent directly related to any Assumed Liabilities, but excluding any defenses by virtue of sovereign immunity or defenses related thereto that may arise pursuant to F.S. 768.28 or otherwise;

(o) the Transferred Employee Records;

(p) the Electric Utility Accounting Records;

(q) all models and systems used for the forecasting, modeling, management and operation of the Acquired Assets; and

(r) all property, assets and rights, excluding cash and cash equivalents, associated with emergency or wind storm preparedness for the Acquired Assets.

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 any assets not used primarily in the Business of the Vero Beach Electric Utility (or otherwise identified as an Excluded Contract), including the following specific property, assets and rights (the “**Excluded Assets**”), which are hereby specifically excluded from the Transaction and the definition of Acquired Assets herein and which shall remain the property of Seller after the Closing:

- (a) cash and cash equivalents, including bank deposits and accounts;
- (b) customer accounts and notes receivable for periods prior to the Closing Date;
- (c) income, sales, payroll and other receivables and assets relating to Taxes, prior to the Closing Date;
- (d) except as otherwise set forth in Section 6.10, Seller Benefit Plans and any assets thereof;
- (e) refunds, rebates and credits for any period or periods prior to the Closing Date;
- (f) the Excluded Contracts;
- (g) any portion of the Fiber Optic System and associated assets owned by one or more of Seller, Indian River County and the School District of Indian River County;
- (h) the Power Plant real property and improvements thereon;
- (i) the Power Plant Substation, the Power Plant Substation Site real property and improvements thereon;
- (j) the Grand Harbor property owned by Seller and described in Exhibit T;
- (k) Seller’s insurance policies and proceeds thereof and all rights to applicable claims and proceeds thereunder, except as set forth in this Agreement;
- (l) all rights to the Acquired Assets necessary for or used by Seller to provide other municipal or utility functions other than electric service, including those specified on Schedule 2.2(l);
- (m) the Excluded Inventory;
- (n) the Customer Deposits;
- (o) any books and records which Seller is prohibited from disclosing or transferring to Buyer under applicable Law;

(p) all rights to any causes of action or Actions and defenses against third parties (including indemnification and contribution) other than directly related to the Assumed Liabilities;

(q) all real property not listed in Section 2.1 hereof;

(r) any vehicles that are the subject of capital leases as of the Closing;

all rights of Seller under this Agreement, the Ancillary Agreements, the FMPA Transfer Agreement, OUC Termination Agreement, and the Retained Agreements; and

all rights granted to Buyer under the Franchise Ordinance.

Section 2.3 Assumed Liabilities.

At the Closing, Buyer shall deliver to Seller the Assignment and Assumption Agreement pursuant to which Buyer shall assume and agree to pay, perform and discharge when due, all of the Liabilities and obligations specifically listed below, other than the Excluded Liabilities (collectively, “***Assumed Liabilities***”):

(a) all Liabilities arising on or after the Closing Date under (i) the Assumed Contracts and (ii) the Transferable Permits;

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

(c) all Liabilities for (i) Transfer Taxes for which Buyer is liable pursuant to Section 6.8(a) and (ii) Post-Closing Taxes, other than Income Taxes, if any, arising from the transactions contemplated by this Agreement;

(d) all Liabilities pursuant to Section 3.6(c) hereof;

(e) any Liabilities as to which Buyer is liable under the terms of Section 6.11 hereof;

(f) all Liabilities explicitly assumed by Buyer in this Agreement and not otherwise listed in this Section 2.3; and

(g) all other Liabilities and obligations arising out of or relating to Buyer’s ownership of the Acquired Assets or operation of the Vero Beach Electric Utility on or after the Closing Date, including subject to Section 3.6, all Liabilities under the Assumed Contracts and the Transferable Permits arising out of any event, condition, circumstance, act or omission occurring on or after the Closing Date other than as a result of Seller’s breach of any Assumed Contract or Transferable Permit prior to the Closing.

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 hereunder, of Seller except as provided in the last paragraph of this Section:

- (a) any Liabilities in respect of any Excluded Assets;
- (b) all Liabilities under the Assumed Contracts arising out of any breach (or event that would be a breach if not cured) that occurred and has not been cured prior to the Closing Date;
- (c) any Liability under or relating to any Seller Contract that is not an Assumed Contract;
- (d) Seller’s responsibility with respect to the Environmental Liabilities under the terms of Section 6.22 (not to exceed the Aggregate Environmental Cap);
- (e) all Liabilities for Pre-Closing Taxes, including for the avoidance of doubt Income Taxes, if any due by Seller, arising from the transactions contemplated by this Agreement;
- (f) all Liabilities with respect to the Transferred Employees relating to or arising from any event, condition, circumstance, or act or omission of Seller occurring prior to the Closing Date, other than Liabilities specifically assumed by Buyer in Section 2.3(b);
- (g) all Liabilities with respect to the Retained Employees;
- (h) except as otherwise set forth in Section 6.10, all Liabilities relating to any Seller Benefit Plans, or any other plan, program, arrangement or policy of Seller, including accrued sick pay, 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 any such Liability of Seller (i) for the termination or discontinuance of, or Seller’s withdrawal from, any such Benefit Plan (including any multiemployer plan as defined in Section 3(37) of ERISA), (ii) relating to benefits payable under any Seller Benefit Plans, (iii) with respect to noncompliance by Seller with the notice requirements of COBRA under ERISA or the Public Health Service Act, to the extent applicable, (iv) with respect to any noncompliance by Seller 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 by Seller to hire, the employment or services or termination of employment or services by Seller of any individual, including wages, compensation, benefits, affirmative action, personal injury, discrimination, harassment, retaliation, 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 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; 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, including pursuant to Section 3.6(c).

For the avoidance of doubt, the term “*Excluded Liability*” shall not mean any Environmental Liabilities that exceed the limitation on Seller’s responsibility or liability for Environmental Liabilities under Section 6.22.

Section 2.5 Airport Warehouse Lease Agreement.

Subject to Section 6.4(f), commencing on the Closing Date for a period of one calendar year, with annual renewal options for Buyer to extend the term for an additional calendar year not to exceed ten years in the aggregate, Buyer shall lease a portion of the Airport Warehouse Property from Seller on terms and conditions set forth in the Airport Warehouse Lease Agreement, and pay Seller base rent per year, as approved by the FAA, plus applicable Taxes, payable in monthly installments.

**ARTICLE 3
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 and the assumption of the Assumed Liabilities by Buyer shall take place at a closing (the “*Closing*”), to be held at 700 Universe Blvd, Juno Beach, FL 33408, 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 7 of this Agreement has 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 no event will the Closing occur later than December 31, 2018 or such later date pursuant to the terms of Sections 9.1(e), (f), or (g), or such other date as the Parties may mutually agree to in writing or as extended pursuant to Sections 6.11, 6.12 or 9.1 hereof (the “*Termination Date*”). The date of Closing is hereinafter called the “*Closing Date*.” The Closing shall be effective for all purposes as of 12:00:01 a.m. Eastern Time, on the Closing Date (the “*Effective Time*”).

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, the assumption of the Assumed Liabilities and entry into the Ancillary Agreements (including the Franchise Ordinance), Buyer will pay to or for the benefit of Seller in

accordance with Section 3.4 the sum of \$185 million dollars (the “**Purchase Price**”), plus or minus any adjustments to such Purchase Price pursuant to the provisions of Section 3.3 below, subject to the payment requirements set forth in Section 3.4 below.

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 pursuant to Section 3.6;

(ii) The Purchase Price shall be increased by the amount of Prepaid Expenses; and

(iii) The Purchase Price shall be adjusted by the amount of any change to the FMPA Transfer Payment in accordance with the FMPA Transfer Agreement, to the extent approved by Buyer.

(b) No fewer than ten (10) 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) (collectively, the “**Estimated Closing Adjustments**”) together with reasonable supporting information and documentation, which shall include a reasonably detailed explanation of the calculation of the Estimated Closing Adjustments and documentation sufficient to confirm the accuracy of such calculation. The Estimated 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 Estimated Closing Statement.

(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 and any prorations pursuant to Section 3.6(b), to the Purchase Price required by Section 3.3(a) (the “**Proposed Post-Closing Adjustment**”) together with reasonable supporting information and documentation, which shall include a reasonably detailed explanation of the calculation of the Proposed Post-Closing Adjustments and documentation sufficient to confirm the accuracy of such calculation. 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. If Buyer wishes to object to the Proposed Post-Closing Adjustment, Buyer must give notice to Seller of such objection within thirty (30) days after the delivery of the Post-Closing Statement by Seller to Buyer, which objection shall include detailed information for such objections and documentation sufficient to confirm the accuracy of such objections. Seller and Buyer agree to cooperate with one another to provide one another with the information used to prepare the Post-Closing Statement or any objection thereto 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 do not fully resolve such dispute within thirty (30) days after any

objection by Buyer, the Parties shall appoint the Independent Accounting Firm (with the cost of such Independent Accounting Firm to be borne equally by the Parties) within fifteen (15) days after the expiration of such thirty (30) day period to review the remaining dispute regarding the Proposed Post-Closing Adjustment and determine, subject to any prorations pursuant 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 thirty (30) days after such determination, in immediately available funds or in any other manner as reasonably requested by the payee.

Section 3.4 Payment of Purchase Price.

(a) Payment of the Purchase Price shall be made by wire transfer of immediately available funds denominated in U.S. dollars at the Closing in accordance with customary closing procedures and in accordance with the provisions set forth in this Section 3.4 below.

(b) A portion of the Purchase Price shall be deposited in trust under an escrow deposit agreement acceptable to the Parties with an independent escrow agent acceptable to the Parties either in (i) monies in an amount that shall be sufficient, or (ii) Investment Securities (as defined in the Bond Resolution) the principal of and the interest on which when due will provide monies which, together with other monies, if any, deposited in the escrow deposit agreement, shall be sufficient to pay when due the principal or redemption price, if applicable, and interest due and to become due on the Electric Utility Bonds on or prior to the redemption date or maturity date thereof, as the case may be (“*Bond Release Consideration*”); provided, however, the Bond Release Consideration shall not exceed ***\$20.4 million dollars***. The sufficiency of such deposit of monies or non-callable Defeasance Obligations shall be verified by an independent certified public accountant acceptable to the Parties and irrevocable instructions shall be provided under the escrow deposit agreement to the escrow agent thereunder to cause the publication and provision of any required redemption notice in accordance with the Bond Resolution, and there shall be delivered to the Parties opinions of bond counsel to Seller, in a form satisfactory to the Parties, to the effect that the pledge of the Pledged Revenues (as defined in the Bond Resolution), and all covenants, agreements and obligations of Seller to the holders of the Electric Utility Bonds, and all liens, benefits or security under the Bond Resolution with respect to the Electric Utility Bonds, have thereupon ceased, terminated and become void, discharged and satisfied.

(c) Seller may direct Buyer to wire funds on Seller’s behalf directly to FMPA as Seller’s consideration to FMPA under the FMPA Transfer Agreement and to OUC as Seller’s consideration for the OUC Termination Agreement pursuant to procedures acceptable to the Parties, OUC, and FMPA respectively.

(d) Seller may direct Buyer to wire funds not exceeding the balance of the Purchase Price on Seller's behalf to any Person (e.g., Seller's counsel); provided such payment obligation is associated with the Transaction.

(e) The balance of Purchase Price as adjusted by Section 3.3 shall be paid as directed by Seller.

Section 3.5 Allocation of Purchase Price.

(a) At least thirty (30) 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 accordance with Section 1060) will be used for Transfer Tax and for all other Closing document purposes.

(b) A portion of the Purchase Price in the amount of ***\$2 million dollars*** shall be in consideration of the Substation Easement Agreement.

(c) 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 required under 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 Taxes), relating to the Acquired Assets and the Business of the Vero Beach Electric Utility shall be prorated, 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 on the Closing Date (measured in the same units used to compute the item in question, otherwise measured by calendar days):

(i) assessments and other charges (other than Taxes), 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, but excluding any Prepaid Expenses payable by Buyer pursuant to Section 3.3(a)(ii);

(iii) any purchases of Acquired Assets during the six-month period prior to the Closing Date that (A) will have a remaining useful life of more than five years after the Closing Date, (B) exceed \$25,000 per Acquired Asset, and (C) the acquisition of such Acquired Asset has been approved by Buyer, such approval not to be unreasonably withheld, conditioned or delayed;

(iv) rent and all other items (including prepaid services or goods not included in Inventory) payable under any of the Assumed Contracts;

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

(vi) sewer rents and charges for water, telephone, electricity and other utilities for the substations being acquired hereunder;

(vii) fees or charges (other than Taxes) imposed by any Governmental Authority; and

(viii) rent and other items (other than Taxes) payable or receivable 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 as of the date immediately preceding the Closing Date, the prorations shall be based upon the actual amounts accrued through the date immediately prior to the Closing Date or paid for the most recent year (or other appropriate period) for which actual amounts paid are available. Such prorated amounts shall be determined at the same time as the Post-Closing Statement, set forth in Section 3.3(c), as part of the Post-Closing Statement. 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) on 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 Deliverables by Seller.

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

- (a) Deeds for the Acquired Land In Fee, excluding the Substation 20 Transmission R/W, duly executed by Seller and in recordable form;
- (b) The Assignment and Assumption of Easements, duly executed by Seller and in recordable form;
- (c) Each Airport Substation Lease Agreement, together with the related memorandum of such lease, duly executed by Seller and in recordable form;
- (d) The Airport Warehouse Lease Agreement, together with the related memorandum of such lease, duly executed by Seller and in recordable form;
- (e) The District Licenses, each duly executed by the District and Seller and in recordable form;
- (f) The District Sublicenses, each duly executed by Seller and in recordable form;
- (g) The Substation Easement Agreement, duly executed by Seller and in recordable form;
- (h) The Substation Equipment Operating and Dismantling Agreement, duly executed by Seller;
- (i) Releases or satisfactions of Encumbrances, other than Permitted Encumbrances, on the Acquired Assets, arising after the effective date of the Title Commitments (or other action to permit the issuance of a title policy to Buyer without regard to such Encumbrances), if such Encumbrances, to Seller's Knowledge, materially interfere with the Business of the Vero Beach Electric Utility in the ordinary course as conducted prior to the Closing Date;
- (j) Seller's affidavit, substantially in the form of Exhibit D attached hereto;
- (k) The Bill of Sale, duly executed by Seller;
- (l) The Assignment and Assumption Agreement, duly executed by Seller;
- (m) 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, set forth on Schedule 4.3, including the consent of the FMPA Members in the form of binding resolutions by the applicable Governing Authority with respect to each such FMPA Member, the waiver and consent of OUC to the transfer of the FMPA Agreements to which OUC is a third party beneficiary, subject to Section 3.9 below and the release of OUC's third party beneficiary rights under the agreements described in clauses (iii), (iv), (v) and (vi) of the definition of FMPA Agreements;

(n) The Grounding Lease Agreement, together with the related memorandum of such lease, duly executed by Seller and in recordable form;

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

(p) All Retained Agreements, duly executed by Seller and the other parties thereto, as applicable;

(q) Copies, certified by the City Clerk of Seller, of evidence of approval by the Council of the Transaction, this Agreement, the Retained Agreements, the FMPA Transfer Agreement, the OUC Termination Agreement, 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 Council, signed by the Mayor of Seller and attested to by the City Clerk;

(r) A copy of each document required to be delivered by FMPA to Seller at the Closing under the terms of the FMPA Transfer Agreement;

(s) A copy of each document required to be delivered by OUC to Seller at the Closing under the terms of the OUC Termination Agreement;

(t) To the extent available, originals of the Assumed Contracts, the Transferred Employee Records and the Transferable Permits and, if not available, true and correct copies thereof;

(u) 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 and to perform its obligations hereunder, including under Section 6.10, in accordance with this Agreement and where necessary or desirable in recordable form;

(v) [intentionally omitted]

(w) [intentionally omitted] _

(x) A complete list of Seller Employees as of the Closing Date by name and by position; and

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

Section 3.8 Deliverables by Buyer.

At the Closing, Buyer will deliver, or cause to be delivered, the following to Seller or as otherwise provided in Section 3.4:

- to Section 3.3;
- (a) The Purchase Price payable pursuant to Section 3.4, as adjusted pursuant to Section 3.3;
 - (b) The Assignment and Assumption Agreement, duly executed by Buyer;
 - (c) Each Airport Substation Lease Agreement, together with the related memorandum of such lease, duly executed by Buyer and in recordable form;
 - (d) The Airport Warehouse Lease Agreement, together with the related memorandum of such lease, duly executed by Buyer and in recordable form;
 - (e) The District Sublicenses, each duly executed by Buyer and in recordable form;
 - (f) The Assignment and Assumption of Transmission Easements, duly executed by Buyer and in recordable form;
 - (g) The Assignment and Assumption of Distribution Easements, duly executed by Buyer and in recordable form;
 - (h) All other Ancillary Agreements to which Buyer is a party, duly executed by Buyer and in recordable form, where applicable;
 - (i) The Grounding Lease Agreement, together with the related memorandum of such lease, duly executed by Buyer and in recordable form;
 - (j) The Substation Easement Agreement, duly executed by Buyer and in recordable form;
 - (k) The Substation Equipment Operating and Dismantling Agreement, duly executed by Buyer;
 - (l) The waiver and consent of Buyer to the transfer of the FMPA Agreements to which Buyer is a third party beneficiary;
 - (m) The release of Buyer's third party beneficiary rights under the agreements described in clauses (i) and (ii) of the definition of FMPA Agreements;
 - (n) A certificate of the Secretary or any Assistant Secretary of Buyer certifying as to the resolutions adopted by Buyer's board of directors approving the Transaction, this Agreement, and the consummation of the transactions contemplated hereby and thereby (including the execution and delivery hereof and thereof);
 - (o) 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 and instruments contemplated hereby;

(p) A certificate of active status with respect to Buyer, issued by the Secretary of State, Division of Corporations, of the State of Florida;

(q) 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; and

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

Section 3.9 Non-Assignable Contracts and Liabilities.

To the extent that the sale, assignment, transfer, or delivery, or attempted sale, assignment, transfer, or delivery, to Buyer of any Acquired Contract or assumption or attempted assumption of an Assumed Liability would require the consent, authorization, approval or waiver of a third party (including any Governmental Authority) and such consent, authorization, approval or waiver shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, assignment, transfer, or delivery, or attempted sale, assignment, transfer, or delivery, or assumption, or attempted assumption, thereof and, subject to the satisfaction or waiver of the other conditions contained in Article 7, the Closing shall occur notwithstanding the failure to obtain the necessary consent, authorization, approval or waiver of the applicable third party, without any adjustment to the Purchase Price on account thereof. Buyer and Seller shall use Commercially Reasonable Efforts to enter into such arrangements (such as subleasing, sublicensing or subcontracting) to provide to the Parties the economic and operational equivalent, to the extent permitted by applicable Law, of the assignment to Buyer of such Assumed Contract or Assumed Liability, and Buyer's assumption of such Assumed Contract or Assumed Liability effective as of the Effective Time and the performance by Buyer of its obligations with respect thereto. Following the Closing for a period of one calendar year (or such other length of time as may be agreed by the Parties), Seller and Buyer shall use Commercially Reasonable Efforts, and shall cooperate with each other, to obtain any such required consent, authorization, approval or waiver to the assignment or assumption of any such Acquired Contract or Assumed Liability, at which time the arrangements described in this Section 3.9 for any such Acquired Contract or Assumed Liability shall cease and be of no further force or effect.

Section 3.10 Customer Service

At Closing, the Parties shall execute 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 pursuant to Section 6.16.

ARTICLE 4 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 it 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, except as provided in the next paragraph of this Section 4.2, to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and, except as provided in the next paragraph of this Section 4.2, the consummation of the transactions contemplated hereby 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, except as provided in the next paragraph of this Section 4.2, to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller, and assuming that this Agreement constitutes a valid and binding agreement of Buyer, this Agreement constitutes the legal, valid and binding agreement of Seller, enforceable against Seller 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).

Upon the approval by the Council of the Ancillary Agreements, the Retained Agreements and the FMPA Transfer Agreement and OUC Termination Agreement:

(a) Seller will have full power and authority to execute and deliver the Ancillary Agreements, the Retained Agreements and the FMPA Transfer Agreement and OUC Termination Agreement and to consummate the transactions contemplated thereunder;

(b) the execution and delivery of the Ancillary Agreements, the Retained Agreements and the FMPA Transfer Agreement and OUC Termination Agreement and the consummation of the transactions contemplated thereby will be duly and validly authorized by all necessary action required on the part of Seller and no other proceedings on the part of Seller will be necessary to authorize the Ancillary Agreements, the Retained Agreements and the FMPA Transfer Agreement and OUC Termination Agreement or to consummate the transactions contemplated thereunder; and

(c) at the Closing, the Deeds, the Ancillary Agreements, the Retained Agreements and the FMPA Transfer Agreement and OUC Termination Agreement will be duly and validly executed and delivered by Seller and, assuming that this Agreement, the Ancillary Agreements, the Retained Agreements and the FMPA Transfer Agreement and OUC Termination Agreement constitute the valid and binding agreements of Buyer and the counterparties thereto, as the case may be, the Deeds, the Ancillary Agreements, the Retained Agreements and the FMPA Transfer Agreement and OUC Termination Agreement will constitute the legal, valid and binding agreements of Seller, enforceable against Seller in accordance with their terms, except as such 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, and subject to any Permitted Exception, neither the execution and delivery of this Agreement, the Deeds, the Retained Agreements, the Ancillary Agreements or the FMPA Transfer Agreement and OUC Termination Agreement by Seller nor the consummation by Seller of the transactions contemplated hereby or thereby will:

(a) conflict with or result in the breach or violation of any provision of the charter or other organizational or governing documents of Seller;

(b) to the Knowledge of Seller, except as stated in Schedule 4.3 and excluding any Real Property Interest Instrument, 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 material Contract with respect to the Business of the Vero Beach Electric Utility to which Seller is a party or by which Seller or any of the Acquired Assets may be bound, except where the failure to obtain such consent or other action or all of such consents or other actions (or a waiver thereof) at or prior to the Closing would not individually or in the aggregate, result in a Material Adverse Effect;

(c) violate any Law of, or applicable to, Seller which violation or violations would individually or in the aggregate, result in a Material Adverse Effect; or

(d) result in the imposition or creation of an Encumbrance (other than a Permitted Encumbrance) on any Acquired Assets which Encumbrance or Encumbrances, individually or in the aggregate, would create a Material Adverse Effect.

Section 4.4 Reports.

Except as provided in Schedule 4.4, Seller has filed or caused to be filed with the applicable federal, state 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. To the Knowledge of Seller, 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, to Seller's Knowledge, the Acquired Assets are not subject to any liabilities that would be required to be disclosed in the liabilities column of a balance sheet prepared in accordance with GAAP, other than: (a) liabilities reflected in the "Electric Utility" portion of the City of Vero Beach comprehensive annual financial report for

2016, including the notes thereto, as of September 30, 2016, that have not been paid or satisfied; and (b) other liabilities incurred in the ordinary course of the Business of the Vero Beach Electric Utility.

Section 4.6 Real Property, Title and Related Matters.

(a) Schedule 4.6(a) contains a list of all Encumbrances (other than Permitted Encumbrances) relating to or affecting any material Real Property Interest for which Seller will secure a release or satisfaction before Closing.

(b) Based exclusively on the Title Commitments, to Seller's Knowledge, Seller has good and marketable or insurable title to each parcel of Acquired Land in Fee, free and clear of all Encumbrances, except for matters disclosed by the Title Commitments and except for Permitted Encumbrances. Except as set forth on Schedule 4.6(b), Seller has good and valid title to each Acquired Asset constituting tangible personal property or a fixture free and clear of all Encumbrances, except Permitted Encumbrances. Except for the FPUA Right of First Refusal, the Permitted Exceptions, or as set forth on Schedule 4.6(b), there are no outstanding rights, options, agreements or other commitments giving any Person any current or future right to require Seller or, following the Closing, Buyer, to sell or transfer to such Person or to any third Person any interest in any of the Acquired Assets that are material to the Business of the Vero Beach Electrical Utility. To Seller's Knowledge, there are no actual or pending claims against Seller that any of the Acquired Assets encroach or trespass on the rights of another Person.

(c) Except for the District Licenses, to Seller's Knowledge, Seller does not license any Real Property material to the Business of the Vero Beach Electrical Utility.

(d) Seller makes no representation or warranty as to the status of title to any Real Property Interest except as may be set forth in the Deed, and except that Seller has no Knowledge of any failure of its title to any Real Property Interest evidenced by a recorded instrument that would prevent its continued operation of the Business of the Vero Beach Electrical Utility in accordance with Seller's Past Practices.

(e) To Seller's Knowledge, no parcel of Acquired Land in Fee has been abandoned by Seller and each such parcel is in the possession of, under the control of, or beneficially used by Seller in connection with the Business of the Vero Beach Electric Utility.

(f) Seller does not have any Knowledge of receipt by Seller of any written notice of:

(i) except as disclosed in Schedule 4.6(e)(i), any pending or threatened proceedings in eminent domain, for rezoning or otherwise, which would result in a taking or rezoning of any Real Property Interests that would prevent the continued operation of the Business of the Vero Beach Electric Utility in accordance with Seller's Past Practices; or

(ii) any violations on the Acquired Land in Fee or any portion thereof of any material covenants, conditions or restrictions applicable thereto.

(g) Except for amounts payable or receivable as set forth in Schedule 4.6(f) or as set forth in any Lease Agreement or any other financial information delivered to Buyer, there are no other rents, fees, royalties, water or sewer charges, Taxes or assessments or other amounts payable or receivable by Seller in connection with any Real Property or any tenancies, licenses, occupancies or co-tenancies related to any Real Property Interests or any improvements thereon that are Acquired Assets.

(h) Except for Permitted Encumbrances, the Lease Agreements, Seller's retained rights to provide municipal and utility services, and as otherwise disclosed in this Agreement, to Seller's Knowledge, there are no commitments or agreements with any Governmental Authority or public or private utility to grant any rights to use any portion of the Real Property without compensation.

Section 4.7 Operability; Condition of the Vero Beach Electric Utility; Sufficiency of Real Property Interests.

(a) Except for the Excluded Assets, the Acquired Assets constitute all of the material assets, property and rights used in the Business of the Vero Beach Electric Utility on the Date of this Agreement and, except as disclosed in Schedule 4.7, the Acquired Assets are in a condition sufficient to operate the Vero Beach Electric Utility as it was being operated on May 17, 2017 in all material respects.

(b) To Seller's Knowledge, no material Acquired Asset is in need of any material repair or replacement except (i) as disclosed in Schedule 4.7(b), (ii) as may be set forth in the Capital Expenditure and Maintenance Plan, (iii) normal wear and tear, (iv) routine repairs or replacements in the ordinary course consistent with Seller's Past Practices and (v) needed repairs or replacements that would be disclosed by a visual inspection.

Section 4.8 Insurance.

Schedule 4.8 sets forth all of Seller's material insurance policies of property damage, fire, liability, worker's compensation and other forms of insurance relating (but not necessarily exclusively) 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 of this Agreement have been paid, and no written notice of cancellation, non-renewal or termination has been received by Seller with respect to any such policy which was not replaced by a policy or policy having substantially similar coverages prior to the date of such cancellation. All required notices have been sent to insurers to preserve all material claims under the aforementioned insurance policies.

Section 4.9 Environmental Matters.

Except as disclosed in Schedule 4.9:

(a) To Seller's Knowledge, Seller has obtained and holds all material Environmental Permits necessary with respect to the Acquired Land in Fee, the real property described in the Airport Property Lease Agreements and the Business of the Vero Beach Electric Utility, each such Environmental Permit is in full force and effect and 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 such Environmental Permit, and Seller has not failed to make in a timely fashion any application or other filing required for the renewal of any such Environmental Permit which failure would reasonably be expected to result in any Environmental Permit being revoked, terminated, suspended or adversely modified. To Seller's Knowledge, no such Environmental Permit will terminate or be subject to termination or revocation as a result of the transactions contemplated by this Agreement;

(b) To Seller's Knowledge, Seller has not within the last three (3) years received any written notice from any Governmental Authority that any material Real Property Interest, the Substation Easement Real Property, or the Business of the Vero Beach Electric Utility are not or have not been in compliance with, any Environmental Law or any Environmental Permit;

(c) There are no Environmental Claims pending or, to Seller's Knowledge, threatened against Seller with respect to any material Real Property Interest, the Substation Easement Real Property, or the Business of the Vero Beach Electric Utility. Seller does not have Knowledge of any facts or circumstances which are reasonably likely to result in any Environmental Claim against Seller with respect to the Acquired Land in Fee, the real property described in the Airport Property Lease Agreements, the Substation Easement Real Property, or the Business of the Vero Beach Electric Utility;

(d) Within the last three (3) years, to Seller's Knowledge, no Releases of Hazardous Substances have occurred at, from, on or under, and no Hazardous Substances are present on or migrating from, any of the Acquired Land in Fee, the Substation Easement Real Property, or the real property described in the Airport Property Lease Agreements that are reasonably likely to give rise to an Environmental Claim against Seller or require any Remediation.

(e) To Seller's Knowledge: (i) none of the Acquired Land In Fee, the Substation Easement Real Property, or the real property described in the Airport Property Lease Agreements is an Environmental Clean-up Site, and (ii) Seller has not transported or arranged for treatment, storage, handling, disposal or transportation of any Hazardous Substances from the Acquired Land In Fee or the real property described in the Airport Property Lease Agreements to any location which is an Environmental Clean-up Site;

(f) To Seller's Knowledge, there are no (i) underground storage tanks, active or abandoned, or (ii) polychlorinated-biphenyl-containing equipment, located at, on, or under the Acquired Land In Fee, the Substation Easement Real Property, or the real property described in the Airport Property Lease Agreements;

(g) (i) To Seller's Knowledge, there are no Encumbrances (other than Permitted Encumbrances) arising under or pursuant to any Environmental Law with respect to the Acquired Land In Fee, the Substation Easement Property, the real property described in the Airport Property Lease Agreements or the Business of the Vero Beach Electric Utility, and (ii) Seller does not have Knowledge of any facts, circumstances or conditions that are reasonably likely to or result in any Encumbrance (other than Permitted Encumbrances) arising under or

pursuant to any Environmental Law with respect to the Acquired Land In Fee, the Substation Easement Real Property, the real property described in the Airport Property Lease Agreements or relating to the Business of the Vero Beach Electric Utility;

(h) During the past three (3) years, there have been no environmental audits or assessments with respect to the Acquired Land In Fee, the Substation Easement Real Property, the real property described in the Airport Property Lease Agreements or the Business of the Vero Beach Electric Utility by or on behalf of Seller or which are in the possession of Seller which have not been made available to Buyer prior to the execution of this Agreement;

(i) During the past three (3) years, 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 Land In Fee, Substation Easement Real Property, or the real property described in the Airport Property Lease Agreements, or (ii) relating to the Business of the Vero Beach Electric Utility;

(j) Schedule 4.9(j) sets forth all Environmental Permits; and

(k) Seller makes no representations or warranties in respect of Environmental matters in any section of this Agreement other than this Section 4.9.

Section 4.10 Labor Matters.

Schedule 4.10 sets forth all Seller Collective Bargaining Agreements and other written employment agreements that relate to the Seller Employees. True, correct, and complete copies of such Seller Collective Bargaining Agreements and other written employment agreements that pertain to the Seller Employees, including all amendments thereto, have been made available to Buyer as of the Date of this Agreement.

Section 4.11 ERISA; Benefit Plans.

(a) Schedule 4.11(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 made available to Buyer.

(b) All Seller Benefit Plans are governmental plans as defined in Section 3(32) of ERISA and the 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. No Seller Benefit Plan is a "multiemployer plan" as defined in Section 3(37) of ERISA and

Seller has never participated in or made contributions to a multiemployer plan with respect to which any liability remains unsatisfied.

(f) Seller has not made any commitment and will not take any action to establish any new Benefit Plan or modify or amend any Seller Benefit Plan that increases the Total Compensation of Transferred Employees above the Total Compensation of Transferred Employees on the Date of this Agreement, except as required by law and except for increases in Total Compensation in the ordinary course of business consistent with Seller's Past Practices.

Section 4.12 Location of Acquired Assets.

Except as set forth on Schedule 4.12, except for mobile Acquired Assets in transit, and except for Acquired Assets being repaired, all of the material physical Acquired Assets used in the Business of the Vero Beach Electric Utility are located on the Real Property or in the rights of way located in Seller's service territory for the Vero Beach Electric Utility.

Section 4.13 Contracts.

(a) Excluding the Excluded Contracts, Schedule 4.13 sets forth a complete list of the following Seller Contracts, to the extent applicable to the categories set forth in this Section 4.13(a) below, that pertain primarily to the Business of the Vero Beach Electric Utility (the "***Material Seller Contracts***"):

- (i) Contracts for the future purchase, exchange or sale of electricity, energy, capacity or other energy-related products or ancillary services;
- (ii) Contracts for the future transmission of electricity;
- (iii) interconnection Contracts;
- (iv) 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 of 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 any Acquired Assets or with a value of less than \$25,000;
- (v) 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 \$50,000 in the aggregate for Contracts with the same Person;
- (vi) Contracts under which Seller has created, incurred, assumed or guaranteed any outstanding Indebtedness;
- (vii) Attachment Agreements or any Contract granting the right to use, to attach to or of access to, any portion of the Acquired Assets;
- (viii) 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;

(ix) 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

(x) (A) operation, maintenance or management Contracts requiring payments in excess of \$25,000 for each individual Contract or \$50,000 in the aggregate for Contracts with the same Person, or (B) Contracts relating to the purchase or sale of air pollutant emission allowances or credits.

(b) Except for the Excluded Contracts and the Material Seller Contracts, and except as set forth on Schedule 4.13(b), 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 is in full force and effect and, assuming that each Assumed Contract constitutes a legal, valid and binding obligation of the other parties thereto, constitutes a legal, valid and binding obligation of Seller, is enforceable against Seller and, to the Knowledge of Seller, constitutes a legal, valid and binding obligation of the other parties thereto and is enforceable against the other parties thereto, in each case 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 law or at equity).

(d) There are no breaches, violations or defaults under any Assumed Contracts (or any conditions or events 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 other parties thereto), which breaches, violations or defaults, individually or in the aggregate, would create a Material Adverse Effect. To Seller's Knowledge, Seller has not received written notice from any other party to any Assumed Contract that such other party intends to terminate or fail to renew at the end of its term any such Assumed Contract or materially reduce the level of any goods or services to be provided under any such Assumed Contract.

Section 4.14 Legal Proceedings.

Except as described in Schedule 4.14, there is no Action pending or, to Seller's Knowledge, threatened against Seller (a) that seeks to enjoin, prohibit, restrain or make illegal the performance of this Agreement, the Retained Agreements, the FMPA Transfer Agreement and OUC Termination Agreement or any of the Ancillary Agreements or the consummation of any of the transactions contemplated hereby or thereby or (b) with respect to any of the material Acquired Assets or the Business of the Vero Beach Electric Utility. To the Knowledge of Seller, except as set forth on Schedule 4.14, Seller is not subject to any outstanding Order affecting any of the Acquired Assets or the Business of the Vero Beach Electric Utility.

Section 4.15 Non-Environmental Permits; Compliance with Law.

(a) Schedule 4.15(a) sets forth all material Non-Environmental Permits.

(b) To Seller's Knowledge, (i) Seller has obtained and holds all material Non-Environmental Permits necessary for the Business of the Vero Beach Electric Utility, (ii) each such Non-Environmental Permit is in full force and effect, (iii) Seller is in compliance with all of its material obligations thereunder and (iv) there are no proceedings pending or threatened that would reasonably be expected to result in the revocation, termination, suspension, modification or amendment of any of such Non-Environmental Permits, except for any such revocation, termination, modification or amendment as would not create a Material Adverse Effect, and (v) Seller has not failed to make in a timely fashion any application or other filing required for the renewal of any such Non-Environmental Permit which failure would reasonably be expected to result in any such Non-Environmental Permit being revoked, terminated, suspended or adversely modified except for any such failure as would not create a Material Adverse Effect. The Acquired Assets and the Business of the Vero Beach Electric Utility are in compliance in all material respects with all terms, conditions and provisions of all applicable Laws (excluding from this representation Environmental Laws, Tax Laws and ERISA and COBRA Laws) and Non-Environmental Permits, and Seller has not, during the three (3) years prior to the Date of this Agreement, received any written notice from any Governmental Authority that Seller is not or has not been in compliance with, any applicable Law (excluding from this representation the Environmental Laws, Tax Laws and ERISA and COBRA Laws) or any Non-Environmental Permit.

Section 4.16 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 federal agency (other than the FERC) or state of the United States other than the State of Florida, or any municipality (other than Seller) or any political subdivision of the foregoing.

Section 4.17 Tax Matters.

Except as set forth on Schedule 4.17, 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 ending prior to the Closing Date have been timely filed, and all such Tax Returns are complete and accurate in all material respects, and (ii) Seller is not liable to pay, collect, withhold, or remit any Taxes with respect to the Acquired Assets or the Business of the Vero Beach Electric Utility, and, to Seller's Knowledge, has not received any written notice from any Governmental Authority asserting any claim for Taxes. Seller makes no representations or warranties in respect of Tax matters in any section of this Agreement other than this Section 4.17.

Section 4.18 Intellectual Property.

Except as set forth in Schedule 4.18, Seller has ownership of, or a license to use, all of the material Intellectual Property used in the operation of the Acquired Assets or for the Business of the Vero Beach Electric Utility. Except as disclosed on Schedule 4.18, the rights of Seller in the Intellectual Property Licenses are freely assignable to Buyer. Except as set forth in Schedule 4.18, Seller has not received written notice of any claims or demands of any other Person pertaining to any of the Licensed Intellectual Property, and no Action is pending or, to Seller's Knowledge, threatened, which challenges the rights of Seller in respect thereof. Except as set forth in Schedule 4.18, Seller has not granted any rights to any Person in respect of any Licensed Intellectual Property. To Seller's Knowledge, none of the Licensed Intellectual Property that will be assigned to Buyer at the Closing infringes any Intellectual Property of any Person.

Section 4.19 Service Territory.

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

Section 4.20 No Brokers.

No broker, finder or other Person is entitled to any brokerage fee, commission or finder's fee in connection with the transaction contemplated hereby by reason of any action taken by Seller.

**ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows:

Section 5.1 Organization; Qualification.

Buyer is a corporation duly incorporated and validly existing under the laws of the State of Florida and its status is active. 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, except as provided in the next paragraph of this Section 5.2, to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and, except as provided in the next paragraph of this Section 5.2, the consummation of the transactions contemplated hereby 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 or, except as provided in the next paragraph of this Section 5.2, to consummate the transactions contemplated hereby. 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, will constitute 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).

Upon the approval by Buyer's board of directors of the Transaction:

(a) Buyer will have full corporate power and authority to execute and deliver the Ancillary Agreements to which it is a party and to consummate the transactions contemplated thereunder;

(b) the execution and delivery of the Ancillary Agreements to which Buyer will be a party and the consummation of the transactions contemplated thereby will have been duly and validly authorized by all necessary action required on the part of Buyer and no other proceedings on the part of Buyer will be necessary to authorize the Ancillary Agreements to which Buyer is a party or to consummate the transactions contemplated thereunder; and

(c) at the Closing, the Ancillary Agreements to which Buyer is a party will be duly and validly executed and delivered by Buyer and, assuming that this Agreement and the Ancillary Agreements to which Buyer is a party constitute valid and binding agreements of Seller, the Ancillary Agreements to which Buyer is a party will constitute the legal, valid and binding agreements of Buyer, enforceable against Buyer in accordance with their 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 or bylaws of Buyer, (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 Buyer is a party or by which Buyer or any of its assets may be bound, or (iii) violate any Laws applicable to Buyer.

(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, consent or Order is necessary for the consummation by Buyer of the transactions contemplated hereby. Buyer has no Knowledge of any facts or circumstances that make it reasonable to expect that Buyer's Required Regulatory Approvals will not be obtained.

Section 5.4 Availability of Funds.

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

Section 5.5 Legal Proceedings.

There are no Actions pending or, to Buyer's Knowledge, threatened against Buyer that seek to challenge, enjoin, prohibit, restrain or make illegal the performance of this Agreement or Ancillary Agreements or the consummation of any of the transactions contemplated hereby or thereby.

Section 5.6 ~~Certain Agreements.~~ Street Lighting Agreement.

The form of agreement attached as ~~Exhibit K hereto is Buyer's form of pole attachment agreement with Governmental Authorities that is applicable on the Date of this Agreement. The form of agreement attached as~~ Exhibit J hereto is Buyer's form of street lighting agreement that is applicable on the Date of this Agreement.

Section 5.7 No Brokers.

No broker, finder or other Person is entitled to any brokerage fee, commission or finder's fee in connection with the transactions contemplated hereby by reason of any action taken by Buyer.

Section 5.8 Independent Investigation; As Is.

(a) Buyer has conducted its own independent investigation, review and analysis of the Business of the Vero Beach Electric Utility and the Acquired Assets and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Seller for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and the Ancillary Agreements to which it is or will be a party and to consummate the transactions contemplated hereby and thereby, Buyer has relied solely upon its own investigation and physical inspection of the Acquired Assets and the express representations and warranties of Seller set forth in Article 4 of this Agreement; and (b) neither Seller nor any other Person has made and Seller specifically negates and disclaims any representation, warranty, promise, covenant, agreement or guaranty of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to Seller, the Business of the Vero Beach Electric Utility, the Acquired Assets or this Agreement or any Ancillary Agreement, except as expressly set forth in Article 4 of this Agreement.

(b) Buyer acknowledges and agrees that, except as expressly represented by Seller in Article 4, the sale of the Acquired Assets is made in an "as is" "where is" condition and basis and with all faults. It is understood and agreed that the Purchase Price has been negotiated based on the fact that the Acquired Assets are sold by Seller and purchased by Buyer subject to

the foregoing acknowledgement. Without in any way limiting the generality of the foregoing, the sale of the Acquired Assets contemplated hereby is without any warranty other than Seller's express warranties in Article 4 of this Agreement, and those warranties expressly set forth in the Ancillary Agreements, and Seller and Seller's Representatives have made no representations or warranties, they each expressly and specifically disclaim, and Buyer accepts that Seller and Seller's Representatives have disclaimed, any and all representations, guaranties or warranties, express or implied, or arising by operation of law (except Seller's warranties expressly set forth in Article 4 of this Agreement, and those warranties expressly set forth in the Ancillary Agreements), of or relating to: (i) the use, expenses, operation, characteristics or condition of the Acquired Assets, or any portion thereof, including, warranties of suitability, habitability, merchantability, design or fitness for any specific purpose or a particular purpose, or good and workmanlike construction; (ii) the environmental condition of any of the Real Property or contamination by Hazardous Substances, or the compliance of any of the Real Property with any or all regulations or laws relating to health or the Environment, including the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, and the Clean Water Act, each as may be amended from time to time, and including any and all regulations, rules or policies promulgated thereunder; or (iii) the soil conditions, drainage, flooding characteristics, accessibility or other conditions existing in, on, or under any of the Real Property.

ARTICLE 6 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 Seller's duties or obligations under any Law or Permit. Except as described in Schedule 6.1(a), during the period from the Date of this Agreement to the Closing (the "***Interim Period***"), Seller shall (i) operate and maintain the Acquired Assets and conduct the Business of the Vero Beach Electric Utility in the ordinary course consistent with Seller's Past Practices, (ii) use Commercially Reasonable Efforts to preserve and protect in all material respects the Acquired Assets, (iii) maintain the Transferable Permits and (iv) comply, in all material respects, 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 applicable 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 unless such action is consistent with the Capital Expenditure and Maintenance Plan; provided, however, that, if capital expenditures or maintenance with respect to a specific Acquired Asset is not covered in the Capital Expenditure and Maintenance Plan, such Acquired Asset may be sold, transferred, removed, assigned, conveyed, distributed or otherwise disposed of in the ordinary course of the Business of the Vero Beach Electric Utility consistent with Seller's Past Practices;

(ii) except for Permitted Encumbrances (including amendments 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 Assumed Contract, including waiving any material default by, or release, settle or compromise any material claim against, any other party thereto;

(iv) enter into any Contract that would, upon its effectiveness, constitute an Assumed Contract, unless such Contract replaces a comparable Assumed Contract, is terminable without cause upon not more than thirty days' notice and upon such termination, Buyer's liability for such termination would not exceed \$25,000 for such Contract, and \$100,000 in the aggregate, without Buyer's consent, which consent shall not be unreasonably withheld, conditioned or delayed;

(v) enter into any Assumed Contract that is not in the ordinary course of the Business of the Vero Beach Electric Utility consistent with Seller's Past Practices, unless such Contract replaces a comparable Assumed Contract, is terminable without cause upon not more than thirty days' notice and upon such termination, Buyer's liability for such termination would not exceed \$25,000 for such Contract, and \$100,000 in the aggregate, without Buyer's consent, which consent shall not be unreasonably withheld, conditioned or delayed;

(vi) amend or voluntarily terminate prior to the expiration date thereof any Assumed Contract or Transferable Permit, except for an Assumed Contract or Transferable Permit which is replaced by a comparable Contract or Permit or such entry, amendment or termination that is in the ordinary course of the Business of the Vero Beach Electric Utility consistent with Seller's Past Practices;

(vii) 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, unless a cancelled policy is replaced with a policy having substantially similar coverages prior to the date of such cancellation, or fail to maintain such insurance policies with current insurance companies that 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;

(viii) except as required by any applicable Law or GAAP, 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;

(ix) (A) 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, in each case except as required under Seller Collective Bargaining Agreements or in accordance with Seller's Past Practices;

(x) except as required by Law, enter into or amend any Contract that (A) binds Buyer to adopt or implement the terms of any Seller Collective Bargaining Agreement (or any portion thereof) or (B) obligates Buyer to deal with or recognize any union; or

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

(b) During the Interim Period, in the interest of cooperation between Seller and Buyer and Buyer's conducting of diligence on the transactions contemplated hereunder (including the representations and warranties of Seller hereunder) and to plan for and facilitate an orderly and seamless transition from Seller to Buyer at the Closing 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 (the "**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; provided, however, that such Observers and their actions shall not interfere unreasonably with the Business of the Vero Beach Electric Utility and such observation will be done during normal office hours of the Vero Beach Electric Utility. Seller shall use Commercially Reasonable Efforts to provide to the Observers interim furnished office space and utilities at Seller's T&D center, as reasonably necessary to allow Buyer to conduct its transition efforts through the Closing; provided, however, that Buyer shall be responsible for all of the costs relating thereto.

Section 6.2 Access to Information; Reporting.

(a) In addition to the rights granted by Section 6.1(b), during the Interim Period, in the interest of cooperation between Seller and Buyer and Buyer's conducting of diligence on the transactions contemplated hereunder (including the representations and warranties of Seller hereunder) and to plan for and facilitate an orderly and seamless transition from Seller to Buyer at the Closing 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, and (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; 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 during normal office hours of Seller, and (B) Seller need not supply Buyer with any information that Seller is legally prohibited from supplying or that is covered by the attorney work product doctrine or similar doctrine.

(b) During the Interim Period, promptly after obtaining Knowledge thereof, Seller shall notify Buyer in writing of, (i) any Material Adverse Effect that has occurred since the Date of this Agreement, (ii) any unanticipated maintenance or repair of any of the Acquired Assets in an amount greater than \$150,000, (iii) any material emergency condition affecting, or

material unscheduled interruption of, the operation of the Acquired Assets or the Business of the Vero Beach Electric Utility, or (iv) any receipt by Seller's management personnel of a written notice of a violation of any material Law or Permit relating to the Acquired Assets or the Business of the Vero Beach Electric Utility. Any such notice shall be deemed a Schedule Supplement.

(c) Within thirty (30) days after the Date of this Agreement, Seller shall provide to Buyer true, complete and un-redacted copies of all Material Seller Contracts and Transferrable Permits in effect as of such date, and Seller shall provide an update thereto between sixty (60) and ninety (90) days prior to Closing.

Section 6.3 Expenses.

Except to the extent specifically provided herein or in the Contribution Agreement between Buyer and Seller dated August 21, 2017, 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 reasonably necessary, proper or advisable under applicable Laws to consummate and make effective the sale, transfer, conveyance, assignment and delivery of the Acquired Assets, the assumption of the Assumed Liabilities and the exclusion of the Excluded Liabilities pursuant to this Agreement, including taking reasonable action that is within the reasonable control of such Party to satisfy or cause to be satisfied the conditions precedent to the other Party's obligations hereunder, including, subject to the terms of Section 6.6, all regulatory approvals; provided, however, that except for the OUC Termination Payment and the FMPA Transfer Payment by Buyer under Section 3.4, nothing herein shall require either Party to incur more than immaterial expenses or payments in obtaining the agreement of FMPA to the FMPA Transfer Agreement or OUC to the OUC Termination Agreement. To the extent that authorized representatives of the Parties determine that the implementation of any covenant or obligation under this Agreement of a Party is not consistent with, or may be likely to impede, the satisfaction of the conditions precedent to a Party's obligations hereunder, including, subject to the terms of Section 6.6, obtaining all regulatory approvals, the Parties may by mutual written agreement (but without need for any amendment of this Agreement) agree to take alternative actions that the Parties determine are necessary or desirable to ensure satisfaction of the conditions precedent to each Party's obligations hereunder or to otherwise ensure consummation of the transactions contemplated by this Agreement. Except as permitted on Schedule 6.4(a), 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 the Ancillary Agreements or which would

reasonably be expected to cause, or to contribute to causing, the other to receive less favorable regulatory treatment than that sought by the other.

(b) 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), in accordance with the terms of this Agreement, 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.

(c) Seller and Buyer agree to fully support execution of the District Licenses and the District Sublicenses in the forms attached hereto as Exhibits P and Q during the approval process thereof by the District. If the District does not approve one or more provisions of the District Licenses or the District Sublicenses in the forms attached hereto in Exhibits P and Q, then the Parties agree to negotiate in good faith to finalize and obtain approval from the District of revised terms for each unacceptable provision and each other provision affected thereby (but not any of the other provisions) that will give effect, to the fullest extent possible, to the original intention of the Parties as reflected in Exhibits P and Q.

(d) Seller and Buyer agree to fully support execution of the Fiber License Agreement in the form attached hereto as Exhibit L-1 during the approval process thereof by Indian River County and the School District of Indian River County. If Indian River County or the School District of Indian River County does not approve one or more provisions of the Fiber License Agreement in the form attached hereto in Exhibit L-1, then the Parties agree to negotiate in good faith to finalize and obtain approval from Indian River County and the School District of Indian River County of revised terms for each unacceptable provision and each other provision affected thereby (but not any of the other provisions) that will give effect, to the fullest extent possible, to the intention of the Parties as reflected in Exhibit L-1. ~~To the extent that any portion of the Fiber Optic System that is attached to Acquired Assets is owned individually by Indian River County or~~ Prior to the Closing, Buyer and Seller shall exercise Commercially Reasonable Efforts to negotiate an agreement satisfactory to Buyer, Seller, Indian River County and the School District of Indian River County or jointly between them, or jointly among them and Seller, Seller and Buyer agree to fully support execution of one or more Pole Attachment Agreements for Seller's Fiber Optic System in the form attached hereto as Exhibit K, between Buyer and the owner of each segment of such Fiber Optic System during the approval process thereof by Indian River County and the School District of Indian River County, as applicable, regarding the continued attachment, on the poles that are being sold to Buyer under this Agreement, of that portion of the Fiber Optic System that is attached to Seller's electric poles as of the Effective Time (the "Pole Agreement").

(e) Seller and Buyer agree to fully support execution of the Airport Substation Lease Agreements in the forms attached hereto as Exhibits I-1A and I-1B during the approval process thereof, if any, by the FAA or FDOT, including rent as set forth in the definitions of the Airport Substation Lease Agreements. If FAA or FDOT approval of any Airport Substation

Lease Agreement is required by applicable Law or by the provisions of any applicable contract with or grant from the FAA or FDOT and the FAA or FDOT, as applicable, does not approve one or more provisions of the Airport Substation Lease Agreements (including approval of the rent amounts) in the forms attached hereto in Exhibit I-1A or I-1B, then the Parties agree to negotiate in good faith to finalize and obtain approval from the FAA or FDOT, as applicable, of revised terms for each unacceptable provision and each other provision affected thereby (but not any of the other provisions) that will give effect, to the fullest extent possible, to the intention of the Parties as reflected in Exhibits I-1A or I-1B, as applicable. For the avoidance of doubt, if the FAA or FDOT is required by applicable Law or by the provisions of any applicable contract with or grant from the FAA or FDOT to approve an Airport Substation Lease Agreement, Seller shall not be obligated to execute such Airport Substation Lease Agreement unless the form thereof has been approved by the FAA or FDOT, as applicable.

(f) Seller and Buyer agree to fully support execution of the Airport Warehouse Lease Agreement in the form attached hereto as Exhibit I-2 during the approval process thereof, if any, by the FAA or FDOT, including rent as set forth in Section 2.5. If the FAA or FDOT approval of the Airport Warehouse Lease Agreement is required by applicable Law or by the provisions of any applicable contract with or grant from the FAA or FDOT and the FAA or FDOT, as applicable, does not approve one or more provisions (including rent as set forth in Section 2.5) of the Airport Warehouse Lease Agreement in the form attached hereto in Exhibit I-2, then the Parties agree to negotiate in good faith to finalize and obtain approval from the FAA or FDOT, as applicable, of revised terms for each unacceptable provision and each other provision affected thereby (but not any of the other provisions) that will give effect, to the fullest extent possible, to the intention of the Parties as reflected in Exhibit I-2. For the avoidance of doubt, if the FAA or FDOT is required by applicable Law or by the provisions of any applicable contract with or grant from the FAA or FDOT to approve the Airport Warehouse Lease Agreement, Seller shall not be obligated to execute such Airport Warehouse Lease Agreement, unless the form thereof has been approved by the FAA or FDOT, as applicable.

(g) To the extent that any of the Grounding Equipment is owned individually by Indian River County or the School District of Indian River County or jointly between them, or jointly among them and Seller, Seller and Buyer agree to fully support execution of one or more Grounding Lease Agreements, in the form of the Grounding Lease Agreement, between Buyer and the owner of each segment of such Fiber Optic System during the approval process thereof by Indian River County and the School District of Indian River County, as applicable. If the approval of Indian River County or the School District of Indian River County of any Grounding Lease Agreement is required by applicable Law or by the provisions of any applicable contract and Indian River County or the School District of Indian River County, as applicable, does not approve one or more provisions of the Grounding Lease Agreements in the form attached hereto in Exhibit Y, then the Parties agree to negotiate in good faith to finalize and obtain approval from Indian River County or the School District of Indian River County, as applicable, of revised terms for each unacceptable provision and each other provision affected thereby (but not any of the other provisions) that will give effect, to the fullest extent possible, to the intention of the Parties as reflected in Exhibit Y. For the avoidance of doubt, if Indian River County or the School District of Indian River County is required by applicable Law or by the provisions of any applicable contract to approve a Grounding Lease Agreement, Seller shall not be obligated to

execute such Grounding Lease Agreement unless the form thereof has been approved by Indian River County or the School District of Indian River County, as applicable.

(h) Seller agrees to reasonably cooperate if requested by Buyer to resolve any actual or alleged defect in title of an Acquired Asset, whether or not such defect is a covered under a title insurance policy, at Buyer's sole expense.

(i) For the avoidance of doubt, notwithstanding anything to the contrary in this Agreement, Seller shall not be obligated to incur any additional expenses related to the Airport Lease Agreements, Seller Pole and Antenna Attachment Termination Agreements or any other Ancillary Agreement or to satisfy any conditions precedent in Article 7 hereof, other than what is expressly contemplated by this Agreement.

Section 6.5 Public Documents.

(a) 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 under Chapter 119, Florida Statutes. In the event that Seller is requested or required by legal or regulatory authority to disclose any Public Document, Seller shall within three (3) Business 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 confidential or exempt from disclosure under Florida Law; provided, however, that any fees and costs associated with such protective order shall be paid by Buyer, and Buyer shall defend Seller from any and all liability and pay any fees and costs associated with contesting the confidentiality or exemption of any Public Document. 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 reasonably agrees with Buyer's assertion that certain information included in such Public Document is exempt from public disclosure under Florida Law.

(b) Except to the extent otherwise required by Law, the Parties shall not issue any official press release 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 official press release, except for any press release made in order to comply with applicable Law or stock exchange rules.

Section 6.6 Consents; Approvals.

(a) *[Intentionally Omitted.]*

(b) *[Intentionally Omitted.]*

(c) Buyer will have the responsibility for securing approval of the FERC for this transaction under Section 203 of the Federal Power Act (the "**FERC Approval**"). Seller

shall promptly provide Buyer any information requested in regards to such application. In fulfilling their respective obligations set forth in this Section 6.6(c), Seller and Buyer shall use their Commercially Reasonable Efforts. Prior to Buyer's submission of such application with the 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 the 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 the FERC with respect to the application. Buyer shall be solely responsible for the cost of filing this application, any petition for rehearing, or any reapplication. If requested by Buyer, Seller shall intervene in the proceeding before the FERC and shall support the application.

(d) Buyer will have the responsibility for securing approval of the FPSC for: (i) authority under Rule 25-9.044, Florida Administrative Code, to charge Buyer's existing retail electric rates to former Customers of the Vero Beach Electric Utility; (ii) approval of the FPL Termination Agreement under Rule 25-6.0440, Florida Administrative Code; (iii) regulatory accounting matters including treatment of any acquisition adjustment arising from Buyer's purchase of the Acquired Assets as a regulatory asset; and (iv) any other matters for which approval of the FPSC is determined by Buyer to be necessary or advisable to consummate the transactions contemplated by this Agreement (collectively, "*FPSC Approval*"). Prior to Buyer's submission of any application for FPSC Approval, 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). If requested by Buyer, Seller shall intervene in any proceeding before the FPSC and shall support the application at Buyer's sole cost.

(e) Seller and Buyer shall cooperate with each other and, as promptly as practicable after the Date of this Agreement, (i) prepare and make with the Federal Communications Commission and, to the extent not specified in Section 6.6(a) through (d), 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, (ii) effect all necessary applications, notices, petitions and filings, (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 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. Except as otherwise set forth in this Agreement, 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 filings 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.

(f) Buyer shall have the responsibility for securing the transfer, reissuance or procurement of the Transferable Permits effective as of the Closing Date, and for those Transferable Permits that may not be transferred or reissued until after the transfer of ownership of the Acquired Assets, promptly after the Closing Date. Seller shall cooperate, at Buyer's cost, with Buyer's efforts in this regard and assist in any transfer or reissuance of Transferable Permits held by Seller or the procurement of any other Permit when so reasonably requested by Buyer, even after the Closing. 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 Transferable Permit issued to Seller, provided (i) such use is not unlawful, (ii) Buyer continues to make Commercially Reasonable Efforts to obtain a transfer or reissuance of such Transferable Permit after the Closing Date, and (iii) Buyer indemnifies and holds Seller harmless for any Losses, claims or penalties suffered by Seller and pays Seller for any costs or expenses incurred by Seller in connection with such Transferable 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 Effective Time.

Section 6.7 [Intentionally Omitted.]

Section 6.8 Tax Matters.

(a) Buyer shall pay any and all Transfer Taxes in connection with this Agreement and the transactions contemplated hereby, including all required documentary stamp tax on the Deed and all instruments executed by either of the Parties in connection with this Agreement. 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.

(b) 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.

(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.

Section 6.9 Updating Disclosure Schedules.

During the Interim Period, Seller shall promptly (but no later than thirty (30) days after obtaining Knowledge thereof) notify Buyer of any changes or additions to the Seller Disclosure Schedules required by this Agreement with respect to any matter hereafter arising of which it becomes aware after the date hereof which, if existing or occurring on the Date of this Agreement, would have been required to be set forth or described in such Seller Disclosure Schedules (each, a “***Schedule Supplement***”). If the matters disclosed in such Schedule Supplement (or the matters disclosed in such Schedule Supplement together with the matters disclosed in prior Schedule Supplements) have had or are reasonably likely to have a Material Adverse Effect, Buyer has the right to terminate this Agreement under the terms and conditions of Section 9.1(e) (including, without limitation, the notice and cure period provided therein). If Buyer does not terminate this Agreement under the terms and conditions of Section 9.1(e), Buyer shall be deemed to have irrevocably waived any right to (a) terminate this Agreement with respect to such matters (including, without limitation, any later right to terminate this Agreement under the terms and conditions of Section 9.1(e) based solely on such matters disclosed and previously disclosed in prior Schedule Supplements), or (b) fail to consummate the Transaction described in this Agreement based solely on such matters disclosed and previously disclosed in prior Schedule Supplements; provided, however, such matters can be taken into consideration together with any matters which are subsequently disclosed to Buyer, or of which Buyer becomes aware, in determining whether the aggregate breaches of representations or warranties and aggregate matters disclosed in any Schedule Supplements, collectively, constitute a Material Adverse Effect with respect to Section 9.1(e).

Section 6.10 Employees.

(a) Buyer shall offer employment commencing as of the Closing Date to all Seller Employees (i) who are employed by Seller on the date immediately preceding the Closing Date, (ii) who have not previously been terminated for cause by Buyer or any of its Affiliates, and (iii) who meet applicable qualification requirements for the applicable positions with Buyer (which qualification requirements with respect to the Seller Employees will not vary materially from the qualification requirements for other comparable positions within Buyer). Subject to any voluntary separations of Seller Employees from Buyer, Buyer shall continue to employ at least the minimum number of Seller Employees, who accepted Buyer’s offer of employment, for the minimum duration necessary to avoid creating any obligation under the WARN Act on the part of Seller. The Seller Employees as of the Date of this Agreement are set forth on Schedule 6.10(a) by position. Except as otherwise negotiated with the Buyer Union Representative, Total Compensation for Transferred Employees shall be in the aggregate comparable to the Total Compensation provided to similarly situated employees of Buyer. The Parties shall cooperate in preparation of communications materials applicable to the Transferred Employees. Seller agrees to provide to Buyer, within ten (10) Business Days following receipt of a request from Buyer at any time and from time to time during the Interim Period and at Closing, a complete list of Seller Employees by name and by position. Not later than 30 days before the Closing Date, Buyer shall give Seller notice as to which Seller Employees, if any, Buyer has determined are not eligible to receive an offer of employment by Buyer.

(b) Transferred Employees offered positions that are covered by Buyer's collective bargaining agreement shall be provided with employment, Total Compensation and terms and conditions of employment as negotiated with the applicable Buyer Union Representative.

(c) As of the Closing Date, Transferred Employees shall commence participation in the Benefit Plans of Buyer, its ERISA Affiliates or, if applicable, the benefit plans negotiated by the Buyer Union Representative (the "**Buyer Benefit Plans**").

(d) Effective as of the Closing Date, except as otherwise negotiated by Buyer and the Union Representative, Transferred Employees prospectively shall accrue pension benefits under the Buyer Retirement Plan cash balance formula on terms and conditions applicable to similarly situated Buyer employees. Notwithstanding the foregoing, effective as of the Closing Date and except as otherwise negotiated by Buyer and the Union Representative, Transferred Employees will accrue pension credits at the same level as nonbargaining eligible employees of Buyer who have attained at least five (5) years of service.

(e) Subject to any applicable collective bargaining requirements, 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. Seller will use its reasonable best efforts to provide sufficient information to enable Buyer to provide such credits for co-payments and deductibles. To the extent Seller fails to provide such sufficient information, each Transferred Employee shall be responsible for providing written evidence to enable Buyer to provide accurate credit for such co-payments and deductibles.

(f) Subject to any applicable collective bargaining requirements, Transferred Employees shall be granted credit for all service with Seller under all Buyer Benefit Plans in which such Transferred Employees become participants for purposes of eligibility, vesting and service related level (except for purposes of qualifying for Buyer's retiree welfare benefits and benefit accrual under Buyer's defined benefit pension plan). No period of service with Seller may be credited to Transferred Employees under Buyer's defined benefit plan if such period of service forms the basis of a retirement benefit or pension under Seller's Defined Benefit Plan.

(g) 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 are or became entitled to such COBRA continuation coverage during the Interim Period by reason of the occurrence of a qualifying event occurring before the Closing Date. Buyer shall be responsible for providing COBRA continuation coverage only to Transferred Employees and qualified beneficiaries of Transferred Employees for COBRA qualifying events occurring on or after the Closing Date.

(h) 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 including any incurred but unreported claims under the Seller Benefit Plans and Seller shall be responsible for making its required contributions to the Seller

Defined Benefit Plan and Seller Defined Contribution Plan. Subject to any applicable collective bargaining requirements, Buyer will assume liability for all floating holidays, sick days, vacation days and personal days of each Transferred Employee that have accrued but remain unused or unpaid by such Transferred Employee as of the date immediately preceding the Closing Date up to the accrual limits therefor under Buyer's employee policies and procedures for similarly situated employees of Buyer.

(i) Any individual who would have otherwise become a Transferred Employee but who on the date immediately preceding 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, short-term disability or any other authorized leave of absence shall be entitled to become a Transferred Employee once the individual is able to return to active-at-work status, but only if the individual is able to return to active-at-work status within ninety (90) days after the Closing Date; otherwise such individual shall remain a Retained Employee of Seller.

Section 6.11 Casualty.

(a) Casualty During the Interim Period. If a Casualty occurs during the Interim Period, Seller shall give notice to Buyer of such occurrence, within thirty (30) days after such occurrence has ended, and shall include in such notice a detailed estimate of the Cure Amount and an estimate of the Available Proceeds with respect to such Casualty (the "***Casualty Notice***").

(b) Casualty Prior to July 1, 2018. If the Casualty occurs during the Interim Period and the occurrence of the Casualty ends prior to July 1, 2018:

(i) if Seller estimates in the Casualty Notice that the Cure Amount will not exceed the sum of the Maximum Uncovered Loss Amount plus the insurance proceeds with respect to such Casualty (as described in clause (i) of the definition of Available Proceeds) that have been collected or are collectible by Seller, Seller shall repair or replace the Acquired Assets that were damaged or destroyed as a result of the Casualty so that the Vero Beach Electric Utility will operate in accordance with the Seller's Past Practice, and Seller shall bear the risk of recouping any costs associated with such repair or replacement; or

(ii) if Seller estimates in the Casualty Notice that the Cure Amount will exceed the sum of Maximum Uncovered Loss Amount plus the insurance proceeds with respect to such Casualty (as described in clause (i) of the definition of Available Proceeds) that have been collected or are collectible by Seller, Seller may elect in the Casualty Notice either to:

(1) terminate this Agreement, in which event this Agreement will be deemed terminated sixty days after the Casualty Notice has been given unless, during such sixty day period, Buyer gives Seller a notice agreeing to reimburse Seller promptly and hold Seller harmless for the entire amount by which the Cure Amount exceeds the sum of the Maximum Uncovered Loss Amount plus any Available Proceeds actually recovered by Seller during the period prior to the Closing Date (in which event: (A) this Agreement will not be deemed terminated at the end of such sixty day period; (B) Seller shall repair or replace the

Acquired Assets that were damaged or destroyed as a result of the Casualty so that the Vero Beach Electric Utility will operate in accordance with the Seller's Past Practice; and (C) Buyer will reimburse Seller promptly and hold Seller harmless for the entire amount by which the Cure Amount exceeds the sum of the Maximum Uncovered Loss Amount plus any Available Proceeds actually recovered by Seller); or

(2) extend the Closing Date by up to one (1) year after the occurrence of the Casualty has ended to permit Seller to: (A) repair or replace the Acquired Assets that were damaged or destroyed as a result of the Casualty; and (B) attempt to obtain the Available Proceeds.

(iii) If Seller makes an election under Section 6.11(b)(ii)(2): (A) Seller shall repair or replace the Acquired Assets that were damaged or destroyed as a result of the Casualty so that the Vero Beach Electric Utility will operate in accordance with the Seller's Past Practice; (B) the Closing shall occur on the Closing Date as extended by Seller under Section 6.11(b)(ii)(2), provided that all of the other conditions to the Closing have been satisfied or waived in accordance with the terms of this Agreement; and (C) Buyer shall not be responsible for reimbursing Seller or holding Seller harmless for any of the costs of such repairs or replacements.

(iv) If Seller estimates in the Casualty Notice that the Cure Amount will exceed the sum described in Section 6.11(b)(ii), but Seller fails to make an election under Section 6.11(b)(ii)(1) or Section 6.11(b)(ii)(2) in such Casualty Notice, Seller shall be deemed to have elected, and shall be required, to repair or replace the Acquired Assets that were damaged or destroyed as a result of the Casualty so that the Vero Beach Electric Utility will operate in accordance with the Seller's Past Practice, and the Closing shall proceed in accordance with the terms of this Agreement, provided that all of the other conditions to Closing have been satisfied or waived in accordance with the terms of this Agreement, and Seller shall bear the risk of recouping any costs associated with such repair or replacement.

(c) Casualty On or After July 1, 2018. If a Casualty occurs during the Interim Period and the occurrence of the Casualty ends on or after July 1, 2018:

(i) If Seller estimates in the Casualty Notice that the Cure Amount will not exceed the sum of Maximum Uncovered Loss Amount plus the insurance proceeds with respect to such Casualty (described in clause (i) of the definition of Available Proceeds) that have been collected or are collectible by Seller, then Buyer shall have the right to elect, by giving notice to Seller within thirty (30) days after Seller has given the Casualty Notice to Buyer, to either:

(1) extend the Closing Date to permit Seller to: (A) repair or replace the Acquired Assets that were damaged or destroyed as a result of the Casualty; and (B) attempt to obtain the proceeds with respect to such Casualty described in clause (ii) of the definition of Available Proceeds; or

(2) proceed to the Closing under this Agreement, provided that all other conditions to the Closing have been satisfied or waived in accordance with the terms of this Agreement.

(ii) If Seller estimates in the Casualty Notice that that the Cure Amount will exceed the sum of the Maximum Uncovered Loss Amount plus the insurance proceeds with respect to such Casualty (described in clause (i) of the definition of Available Proceeds) that have been collected or are collectible by Seller, then Buyer will have the right to elect, by giving notice to Seller within thirty (30) days after Seller has given Buyer the Casualty Notice, to either:

(1) terminate this Agreement, in which case this Agreement will be deemed to have terminated fifteen (15) days after such notice of termination is given; or

(2) extend the Closing Date to permit Seller to: (A) repair or replace the Acquired Assets that were damaged or destroyed as a result of the Casualty; and (B) exercise good faith reasonable efforts during the period prior to the Closing Date to collect Available Proceeds with respect to such Casualty, in accordance with Seller's Past Practice during similar Casualty events.

(iii) If Buyer makes an election under Section 6.11(c)(i)(1): (A) Seller shall have the right, in its sole discretion, to determine the period of such extension of the Closing Date (such period not to exceed one year); (B) Seller shall repair or replace the Acquired Assets that were damaged or destroyed as a result of the Casualty so that the Vero Beach Electric Utility will operate in accordance with the Seller's Past Practice; and (C) Seller shall exercise good faith reasonable efforts during the period prior to the Closing Date to collect Available Proceeds, in accordance with Seller's Past Practice during similar Casualty events.

(iv) If Buyer makes an election under Section 6.11(c)(i)(2): (A) Seller shall repair or replace the Acquired Assets that were damaged or destroyed as a result of the Casualty so that the Vero Beach Electric Utility will operate in accordance with the Seller's Past Practice; (B) the Closing shall occur on the Closing Date, provided that all of the other conditions to the Closing have been satisfied or waived in accordance with the terms of this Agreement; (C) Seller shall exercise good faith reasonable efforts during the period prior to the Closing Date to collect Available Proceeds, in accordance with Seller's Past Practice during similar Casualty events; and (D) Buyer shall pay, reimburse and hold Seller harmless for the costs of any such repairs or replacements made by Seller that exceed Available Proceeds that have been collected by Seller prior to the Closing Date.

(v) If Buyer makes an election under Section 6.11(c)(ii)(2): (A) Seller shall have the right, in its sole discretion, to determine the period of such extension of the Closing Date (such period not to exceed one year); (B) Seller shall repair or replace the Acquired Assets that were damaged or destroyed as a result of the Casualty so that the Vero Beach Electric Utility will operate in accordance with Seller's Past Practice; (C) Seller shall exercise good faith reasonable efforts during the period prior to the Closing Date to collect the Available Proceeds, in accordance with Seller's Past Practice during similar Casualty events; and (D) Buyer shall pay,

reimburse and hold Seller harmless at Closing for the costs of any such repairs or replacements made by Seller that exceed the Available Proceeds that have been collected by Seller.

(d) Closing Before Repairs Completed. If the Closing occurs, under the terms of Section 6.11(b) or Section 6.11(c), before all of the repairs or replacements have been made to the damaged or destroyed Acquired Assets, then (i) at the Closing, Seller will stop conducting such repairs and replacements and will assign to Buyer all Contracts with respect to such repairs or replacements which have not been completed, or as to which payment in full has not been made by Seller, and Buyer shall assume all of such Contracts as Assumed Liabilities (subject to Buyer's prior approval of such Contracts which approval shall not be unreasonably withheld, conditioned or delayed); (ii) at the Closing, to the extent permitted by applicable Law, Seller shall pay to Buyer any Available Proceeds that have been collected by Seller and that have not been expended by Seller in connection with such repairs and replacements; (iii) at the Closing, Buyer shall pay, reimburse and hold Seller harmless for the costs of any such repairs and replacements made by Seller that exceed the Available Proceeds that have been collected by Seller prior to the Closing Date; (iv) after the Closing, to the extent permitted by applicable Law, Seller shall be entitled to pursue and retain any Available Proceeds for any repairs or replacements expenses incurred by Seller in connection with such Casualty; and (v) Buyer shall be solely responsible for the completion of any remaining repairs or replacements and any and all costs associated with such repairs and replacements.

(e) Right to Inspect. Buyer and Buyer and Buyer's Representatives shall be entitled to inspect and observe any repairs and replacements performed or provided by Seller under this Section 6.11.

(f) Dispute as to Estimate of Cure Amount. If Buyer disputes the estimated Cure Amount set forth in any Casualty Notice, Buyer shall provide Seller with notice of such dispute within thirty (30) days after such Casualty Notice has been given to Buyer and shall include in such notice a detailed breakdown of Buyer's estimate of the Cure Amount with respect to such Casualty. During the fifteen (15) day period after Buyer gives to Seller such dispute notice, Seller and Buyer shall use reasonable efforts to resolve such dispute. If Seller and Buyer have not resolved such dispute during such fifteen (15) day period, then Seller and Buyer shall submit the disputed items related to the estimate of the Cure Amount to a utility consultant reasonably acceptable to Seller and Buyer that has expertise in evaluating casualty losses. The utility consultant shall issue its final decision on the disputed items in writing to Seller and Buyer within thirty (30) days after such disputed items have been submitted to the consultant, and such final decision shall be binding on both Parties as to the estimate of the Cure Amount with respect to the Casualty. Buyer and Seller shall each pay 50% of the engagement fees associated with the consultant. Any dispute under this Section 6.11(g) shall toll the applicable time limits set forth in this Section 6.11 until the resolution of such dispute under this Section 6.11(g).

(g) Available Proceeds. If, after the Closing, the payor of any proceeds (as described in clause (ii) of the definition of Available Proceeds) that have been expended by Seller to make repairs and replacements to any of the Acquired Assets pursuant to a Casualty that occurred during the Interim Period, demands repayment by Seller of all or any portion of such proceeds, Seller shall give notice to Buyer of such demand, and Buyer shall pay, reimburse and hold Seller harmless, promptly after Seller gives such notice to Buyer, for the full amount of such

proceeds that Seller is required to repay except to the extent such repayment demand arises from Seller's willful misconduct.

Section 6.12 Eminent Domain.

If, before the Closing, all or any portion of the Acquired Assets material to the operation of the Business of the Vero Beach Utility is taken by eminent domain or is the subject of a pending taking which has not yet been consummated, Seller shall give notice to Buyer promptly of such taking or pending taking. Seller shall use such Commercially Reasonable Efforts to replace any Acquired Assets subject to the eminent domain action as Seller shall deem reasonably necessary for the continued operation of the Vero Beach Electric Utility in accordance with the Seller's Past Practices. If such portion of the Acquired Assets has a value of five million dollars (\$5,000,000) or greater, and such proceeding or replacement is not substantially completed by the Closing, Buyer may elect, by giving notice thereof to Seller, to: (a) terminate this Agreement; (b) proceed to Closing and receive any condemnation award for the taking; or (c) extend the Closing Date by not more than 12 months in order to permit Seller to replace any Acquired Assets subject to the eminent domain action as Seller shall deem reasonably necessary for the continued operation of the Vero Beach Electric Utility in accordance with the Seller's Past Practices.

Section 6.13 FMPA Transfer Agreement and OUC Termination Agreement.

(a) Commencing on the Date of this Agreement, the Parties shall use Commercially Reasonable Efforts to negotiate the terms of the OUC Termination Agreement including a binding commitment from OUC to execute the OUC Termination Agreement at Closing (in form and substance that is acceptable to Seller and Buyer) in exchange for the OUC Termination Payment. For the avoidance of doubt, nothing in this [Section 6.13\(a\)](#) or elsewhere in this Agreement shall require any payment to OUC with respect to the OUC Termination Agreement except as provided in [Section 3.4\(b\)](#) of this Agreement.

(b) Commencing on the Date of this Agreement, the Parties shall use Commercially Reasonable Efforts to negotiate the terms of FMPA Transfer Agreement with FMPA (in form and substance that is acceptable to Seller and Buyer) in exchange for the FMPA Transfer Payment. For the avoidance of doubt, nothing in this [Section 6.13\(b\)](#) or elsewhere in this Agreement shall require any payment to FMPA with respect to the FMPA Transfer Agreement except for the FMPA Transfer Payment.

Section 6.14 Franchise Ordinance.

Seller shall adopt the Franchise Ordinance prior to the Closing Date. Buyer's obligations under the Franchise Ordinance are a part of the consideration provided to Seller in exchange for this Agreement and the transactions contemplated by this Agreement. Nothing in this Agreement shall be deemed or construed to transfer or assign to Buyer any of Seller's rights under the

Franchise Ordinance or to eliminate or limit any of Buyer's duties or obligations under the Franchise Ordinance.

Section 6.15 Capital Expenditure and Maintenance Plan.

During the Interim Period, Seller agrees to use good faith efforts to comply with the Capital Expenditure and Maintenance Plan, in accordance with the schedule therein.

Section 6.16 Data Conversion.

The Parties shall cooperate with each other to facilitate 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 and format acceptable to Buyer, and at Buyer's sole cost.

Section 6.17 Seller as Customer.

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

Section 6.18 Sale of Real Properties.

Prior to the Closing, Seller shall comply with the City of Vero Beach, Florida Code of Ordinances, Subpart A, Chapter 2, Article VIII, Division 3, Sec. 2-372, relating to the sale of the Acquired Land in Fee contemplated in this Agreement.

Section 6.19 Exclusivity.

Except as expressly permitted by this Agreement, until the Closing or until this Agreement is terminated, Seller will not (a) offer to sell or transfer any of the Acquired Assets to (or offer to enter into any transaction contemplated by this Agreement with) any Person other than Buyer, 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 material Acquired Assets or any transaction contemplated by this Agreement.

Section 6.20 No Seller Changes in Law.

At or prior to the Closing, Seller agrees not to promulgate, enact, adopt, repeal, amend, modify or make effective any Law or resolution, or take or support any action, that would (a) adversely affect Buyer's rights or Seller's obligations in this Agreement or any Ancillary Agreements or (b) adversely affect any of the transactions contemplated by this Agreement or Ancillary Agreements.

Section 6.21 Customer Consumption Allocation and Demand Data.

(a) Seller shall use reasonable efforts to read the meters of all Customers of Seller within one (1) month (reading used for billing) prior to the Closing Date, and Buyer shall use reasonable efforts to read the meters of all such Customers within one (1) month after the Closing Date. The reading obtained by Seller (within one month prior to the Closing Date) shall be included in the Customer data conversion file from Seller to Buyer. Within sixty (60) days after the date on which Buyer reads the last of the meters of such Customers, Buyer shall provide to Seller the date of the first meter reading of each such Customer occurring on or after the Closing Date and a prorated final bill reading (using the allocation method described in this Section 6.21 below). Irrespective of the actual consumption of electricity by a Customer during (a) the period from and including the date of the last meter reading of such Customer occurring prior to the Closing Date to and including the date immediately prior to the Closing Date (the "**Pre-Closing Consumption Period**") and (b) the period from and including the Closing Date to and including the date on which Buyer makes the first meter reading of such Customer on or after the Closing Date (the "**Post-Closing Consumption Period**" and together with the Pre-Closing Consumption Period, the "**Consumption Period**"), the Parties agree to allocate such Customer's bill for the Consumption Period as follows:

(i) Allocation to the Pre-Closing Consumption Period shall be: (A) (i) the total consumption of electricity by each Customer during the Consumption Period *divided by* (ii) the total number of days in the Consumption Period *multiplied by* (B) the total number of days in the Pre-Closing Consumption Period; and

(ii) Allocation to the Post-Closing Consumption Period shall be: (A) (i) the total consumption of electricity by each Customer during the Consumption Period *divided by* (ii) the total number of days in the Consumption Period *multiplied by* (B) the total number of days in the Post-Closing Consumption Period.

(b) Seller shall bill, and be entitled to collect payment from Customers, for electric service provided to Customers prior to the Closing Date and Buyer shall bill, and be entitled to collect payment from Customers, for electric service provided to Customers on and after the Closing Date; provided, however, that, for purposes of this Section 6.21, irrespective of the actual amount of electricity provided by Seller or by Buyer to a Customer during the Consumption Period, Seller shall bill such Customer for the Pre-Closing Consumption Period only for the amount of electricity allocated to the Pre-Closing Consumption Period, under the allocations method in Section 6.21(a) and Buyer shall bill such Customer for the Post-Closing Consumption Period only for the amount of electricity allocated to the Post-Closing Consumption Period under such allocation method.

(c) Notwithstanding Section 6.21(a) and (b), if the FPSC requires Buyer to determine consumption of electricity by Customers during Post-Closing Consumption Period in a manner different than in accordance with Section 6.21(a) and (b), then the allocation between Buyer and Seller of consumption of electricity by Customers during the Consumption Period shall be done with regard to the manner required by the FPSC for Buyer to determine the consumption of electricity by Customers during the Post-Closing Consumption Period.

(d) Buyer shall provide to Seller within sixty (60) days after the Closing Date all demand meter data (which is the maximum metered recorded demand) obtained from Buyer's first meter reading of each commercial and industrial demand Customer on or after the Closing Date. Seller shall be entitled to collect payment from the Customers for such demand charges per Seller's approved rate schedules and billing practices as of the date immediately prior to the Closing Date.

Section 6.22 Environmental Matters.

(a) Except to the extent exacerbated or contributed to by Buyer, Seller agrees to be responsible for any and all Losses of Buyer, and pay and perform when due any and all Liabilities of Buyer:

(i) under Environmental Laws, Environmental Permits or Environmental Claims with respect to the Business of the Vero Beach Electric Utility or the Acquired Assets arising from any event, condition, circumstance, act or omission that occurred prior to the Closing Date; or

(ii) arising from the presence of Hazardous Substances that originated on the Power Plant Substation Site, Acquired Land In Fee or the real property described in the Airport Property Lease Agreements prior to the Closing Date, or the Release of Hazardous Substances at, on, in, under, or migrating from the Power Plant Substation Site, Acquired Land In Fee or the real property described in the Airport Property Lease Agreements prior to the Closing Date (such Losses or Liabilities under Section 6.22(a) and (b) hereof, the "***Environmental Liabilities***");

provided, however, that as an absolute condition to such responsibility and agreement to pay and perform, Buyer must give to Seller notice (the "***Environmental Notice***") of any claim of Environmental Liabilities no later than thirty (30) days prior to the anticipated Closing Date and, solely with respect to any Environmental Liability which Buyer demonstrates occurred subsequent to Buyer's Phase II Environmental Testing, Buyer must give the Environmental Notice prior to the Closing Date, which Environmental Notice, in either case, must contain the estimated total amount of the Environmental Liabilities and a summary of facts then known to Buyer that support such claim; and provided, further, that in no event shall Seller be liable or responsible for any Environmental Liabilities that exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate (the "***Aggregate Environmental Cap***"). Buyer hereby releases Seller from, and Seller shall not be liable or responsible for, any Environmental Liabilities as to which Buyer does not give Seller the Environmental Notice or Environmental Notices prior to the time required in the immediately preceding sentence. Buyer also hereby releases Seller from, and Seller shall not be responsible for, Environmental Liabilities that exceed Five Hundred Thousand

Dollars (\$500,000) in the aggregate. If Buyer reasonably believes that the amount of Environmental Liabilities would reasonably be likely to exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate and Seller disputes that the Environmental Liabilities exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate, Seller shall give notice to Buyer of such dispute within fifteen (15) days after the Environmental Notice has been given and the Parties shall attempt to resolve such dispute by negotiation. If the Parties do not fully resolve such dispute within fifteen (15) days after Seller has given notice to Buyer of such dispute, the Parties shall, within ten (10) days after the expiration of such fifteen (15) day negotiation period, appoint an independent environmental consultant (with the costs of such independent environmental consultant to be borne equally between the Parties) to determine whether the Environmental Liabilities would reasonably be likely to exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate. The Parties agree to cooperate with the independent environmental consultant and provide it with such information as it reasonably requests to enable it to make such determination. The independent environmental consultant shall provide its findings to the Parties no later than twenty (20) days after its appointment. The independent environmental consultant shall act as an expert and not as an arbitrator and shall make findings only with respect to whether the amount of Environmental Liabilities would be reasonably likely to exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate. Notwithstanding anything to the contrary in this Agreement, if the total amount of Environmental Liabilities pursuant to this Section 6.22, is finally determined by the independent environmental consultant to reasonably be likely to exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate, either Party may elect, by giving notice thereof to the other Party as promptly as reasonably possible prior to the anticipated Closing Date, to terminate this Agreement. The limitations on Seller's liability or responsibility for Environmental Liabilities under this Section 6.22 are absolute limitations and will control over any other provisions in this Agreement or the Substation Equipment Operating and Dismantling Agreement that are or may be to the contrary including the provisions of Article 8. The Closing Date shall be extended as reasonably necessary to allow for the progression and completion of the procedures set forth in this Section 6.22.

(b) In order to make a claim against Seller pursuant this Section 6.22, Buyer must have completed its environmental testing, including Phase II environmental testing, on each Real Property location and the Power Plant Substation Site and, if so performed, must have submitted the results of such testing to Seller at least thirty (30) days prior to the Closing Date (collectively, "**Buyer's Phase II Environmental Testing**"). If Buyer has not performed such actions by the within the time periods specified, Buyer shall be deemed to have waived its right to make a claim against Seller under this Section 6.22 with respect to such Real Property location or the Power Plant Substation Site, as applicable.

ARTICLE 7
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 satisfaction at or prior to the Closing of the following conditions precedent (except to the extent waived in writing by Buyer in its sole discretion):

(a) The representations and warranties of Seller (other than the Seller Fundamental Representations) set forth in Article 4 of this Agreement (without regard to any materiality or Material Adverse Effect qualification) shall be true and correct in all respects on and as of the Date of this Agreement and as of the Closing as though made as of the Closing (except for those representations and warranties that address matters only as of a specified date, the truth and correctness of 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 (in determining whether or not a Material Adverse Effect has occurred for purposes of this Section 7.1(a), no matters that have been waived under Section 6.9 shall be taken into account);

(b) The Seller Fundamental Representations (without regard to any Schedule Supplement) shall be true and correct in all respects on and as of the Date of this Agreement and as of the Closing as though made as of the Closing (except for 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) Buyer shall have received all of Buyer's Required Regulatory Approvals, in form and substance satisfactory to Buyer in its reasonable discretion, 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 is reasonably likely to be unsuccessful as to Buyer;

(d) 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 at or prior to the Closing;

(e) Buyer shall have received a certificate from Seller, dated the Closing Date, signed on behalf of Seller by the City Manager, to the effect that, to the Seller's Knowledge, the conditions set forth in Sections 7.1 (a), (b), (c) and (d) have been satisfied;

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

(g) Since the Date of this Agreement, no Material Adverse Effect shall have occurred and be continuing (in determining whether or not a Material Adverse Effect has

occurred for purposes of this Section 7.1(g), no matters that have been waived under Section 6.9 shall be taken into account); and

(h) If Buyer has obtained Title Commitments and surveys for the Acquired Land in Fee and Substation Easement Agreement, the title insurer thereunder being ready, willing and able, at Buyer's cost and expense, to issue (i) title insurance policies, or agreements to issue such policies, in accordance with the Title Commitments, at regular rates, in the amounts identified in the Title Commitments from the title insurer issuing the Title Commitments, 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, (ii) title insurance policies, or agreements to issue such policies, in accordance with the Title Commitments, at regular rates, in the amount identified in the Title Commitments from the title insurer issuing the Title Commitments, insuring that Buyer has good, marketable and insurable leasehold interests in the real property described in the Airport Substation Lease Agreements and good, marketable and insurable easement interest in the real property described in the Substation Easement Agreement, and the right to control, occupy and use such properties, free and clear of Encumbrances other than Permitted Encumbrances, and (iii) Surveys issued to Buyer and the title company secured by Buyer prepared by certified surveyors showing the Acquired Land In Fee and the real property described in the Airport Substation Lease Agreements and Substation Easement Agreement with all physical encumbrances observed and all matters of record that affect the Acquired Land In Fee and the real property described in the Airport Substation Lease Agreements and Substation Easement Agreement, the form and substance of which are satisfactory to Buyer.

Section 7.2 Conditions Precedent to Obligations of Seller.

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

(a) The representations and warranties (other than the Buyer Fundamental Representations) of Buyer set forth in Article 5 of this Agreement (without regard to any materiality or Material Adverse Effect qualification therein) shall be true and correct in all material respects on and as of the Date of this Agreement and as of the Closing as though made as of the Closing (except for those representations and warranties that address matters only as of a specified date, the truth and correctness of which shall be determined as of that specified date);

(b) The Buyer Fundamental Representations shall be true and correct in all respects on and as of the Date of this Agreement and as of the Closing as though made as of the Closing (except for 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) Buyer shall have received the FPSC Approval and FERC Approval and neither of such Approvals shall include any terms or conditions that are disadvantageous to Seller in any material respect;

(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 at or prior to the Closing;

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

(f) Buyer shall have delivered, or caused to be delivered, to Seller at the Closing, Buyer's closing deliverables described in Section 3.8.

Section 7.3 Conditions Precedent to Obligations of Both Parties.

The obligations of Buyer to purchase the Acquired Assets and consummate the other transactions contemplated by this Agreement and of Seller to sell the Acquired Assets and consummate the other transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of the following conditions precedent (except to the extent waived in writing by both Parties in their sole discretion):

(a) 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 to take all Commercially Reasonable efforts that are within its reasonable control 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;

(b) The satisfaction, discharge and payment in full of the Electric Utility Bonds will be accomplished at the Closing upon Buyer's payment of the Bond Reliance Consideration in accordance with Section 3.4(d) and all Encumbrances on the Acquired Assets that serve as security with respect to the Electric Utility Bonds, other than Permitted Encumbrances, will be released as a result thereof;

(c) FMPA's delivery of the FMPA Transfer Agreement in consideration of the FMPA Transfer Payment;

(d) OUC's delivery of the OUC Termination Agreement in consideration of receipt of the OUC Termination Payment;

(e) The execution and delivery of the Pole Agreement executed by Buyer, Seller, the School District of Indian River County and Indian River County; and

(f) ~~(e)~~ The Parties are able to conduct 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 pursuant to Section 6.16.

ARTICLE 8
INDEMNIFICATION AND PAYMENT FOR LOSSES

Section 8.1 Indemnification and Payment for Losses.

(a) Subject to the terms and limitations of this Article 8, from and after the Closing, Buyer shall indemnify, defend and hold harmless Seller and its elected and appointed officials, officers, employees and agents (each, a “***Seller Indemnitee***”) from and against, and pay, reimburse and compensate each Seller Indemnitee for, any and all Covered Losses to the extent resulting from:

(i) Any breach or inaccuracy of any Buyer Fundamental Representation as of the Date of this Agreement or as of the Closing Date as though such representations or warranties were made on the Closing Date, except those representations and warranties that address matters only as of a specified date, the truth and correctness of which shall be determined as of that specified date;

(ii) any breach by Buyer of any covenant or agreement of Buyer contained in this Agreement which, by its terms, contemplates performance on or after the Closing Date;

(iii) any Assumed Liability;

(iv) any Third Party Claim against a Seller Indemnitee with respect to (A) Buyer’s ownership, use or operation of the Acquired Assets or (B) Buyer’s ownership, use or operation of the Vero Beach Electric Utility, in each case under clause (A) or (B), on or after the Closing Date (other than any Loss resulting from any Excluded Asset or Excluded Liability);

(v) any contribution or exacerbation by Buyer of any matter for which Seller has responsibility under Section 6.22;

(vi) any demand or Action relating to public assistance funds awarded to Seller relating to any damage caused by any hurricane or other named storm, to the extent such demand or Action relates to the transfer to or use of such funds by or on behalf of Buyer;

(vii) the presence or Release of Hazardous Substances at, on, in, under, or migrating from the Acquired Land in Fee or the real property described in the Airport Property Lease Agreements on or after the Closing Date or the Substation Equipment Operating and Dismantling Agreement, except for Seller’s responsibility with respect thereto under the terms of Section 6.22 (as limited by the Aggregate Environmental Cap on Seller’s responsibility set forth in Section 6.22(a)); or

(viii) the negligence or intentional misconduct by Buyer’s or Buyer’s Representatives during their due diligence investigations, including the Phase II testing described in Section 6.22 and the activities described in Sections 6.1 and 6.2.

(b) Subject to the terms and limitations of this Article 8 and only to the extent permitted by applicable Law, after the Closing, Seller shall indemnify, defend and hold harmless Buyer and its Affiliates and its and their officers, directors, employees, shareholders and agents (each, a “**Buyer Indemnitee**”) from and against, and pay, reimburse and compensate each Buyer Indemnitee for, any and all Covered Losses to the extent resulting from:

(i) any breach or inaccuracy of any Seller Fundamental Representation as of the Date of this Agreement or as of the Closing Date as though such representations or warranties were made on 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;

(ii) any breach by Seller of any covenant or agreement of Seller contained in this Agreement which, by its terms, contemplates performance on or after the Closing Date;

(iii) any Excluded Asset;

(iv) any Excluded Liability; or

(v) except for limitations on Seller’s liability or responsibility under Section 6.22 or elsewhere in this Agreement, any Third Party Claim against a Buyer Indemnitee with respect to (A) Seller’s ownership, use or operation of the Acquired Assets, or (B) Seller’s ownership, use or operation of the Business of the Vero Beach Electric Utility, in each case under clause (A) or (B), prior to the Closing Date (other than any Loss resulting from any Assumed Liability).

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

(i) none of the representations or warranties contained in this Agreement shall survive the Closing; except that the Seller Fundamental Representations and the Buyer Fundamental Representations shall survive the Closing indefinitely;

(ii) none of the covenants (to the extent such covenants relate to the performance of obligations prior to the Closing) contained in this Agreement shall survive the Closing; provided, however, that this Section 8.1(c)(ii) does not limit any covenant hereunder which, by its terms, contemplates performance on or after the Closing Date; and

(iii) the covenants and obligations of the Parties set forth in this Agreement which, by their terms, contemplate performance on or after the Closing Date, shall survive the Closing until the expiration, if any, of such covenants or obligations in accordance with their respective terms.

(d) The expiration or termination of any covenant or agreement in this Agreement pursuant to Section 8.1(c)(iii) shall not affect the Parties’ obligations under this Section 8.1 if the Indemnitee provided the Person required to provide indemnification, or payment, reimbursement or compensation for Losses under this Article 8 (the “**Indemnifying**”

Party”) with proper notice of the claim or event for which indemnification or payment, reimbursement or compensation for Losses prior to such expiration or termination.

(e) Following the Closing, the rights and remedies of Seller and Buyer under this Article 8 shall be the exclusive remedies with respect to this Agreement except for equitable remedies.

(f) Buyer shall have no rights or remedies against Seller (other than a potential right to terminate under Section 9.1(e)) for any misrepresentation by Seller or a breach of any of Seller’s warranties in Article 4 of this Agreement under the terms of Section 9.1(e).

(g) Buyer shall have no rights or remedies against Seller (other than a potential right to terminate under Section 9.1(g) (and, if applicable, Buyer’s rights pursuant to Section 9.2(b)) and Section 11.13) for any breach of Seller’s covenants which do not survive the Closing, as provided in Section 8.1(c)(ii), under the terms of Section 9.1(g).

(h) Payments by an Indemnifying Party pursuant to Sections 8.1(a) or (b) in respect of any Covered Loss shall be limited to the amount of any Covered Loss that remains after deducting therefrom any insurance proceeds and indemnity, contribution or other similar payment received or reasonably expected to be received by an Indemnitee in respect of such Covered Loss. The Indemnitees shall use their Commercially Reasonable Efforts to recover under insurance policies or indemnity, contribution or other similar agreements for any Covered Losses prior to seeking indemnification or other recovery under Article 8 of this Agreement.

(i) In no event shall any Indemnifying Party be liable to any Seller Indemnitee or Buyer Indemnitee, as the case may be, for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity or diminution of value or any damages based on any type of multiple.

(j) No Losses may be claimed under the terms of Section 8.1(a) or (b) by an Indemnitee to the extent such Losses are included in the calculation of any adjustment to the Purchase Price pursuant to Section 3.3.

(k) Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Covered Loss upon becoming aware of any event or circumstance that would reasonably be expected to, or does, give rise thereto.

Section 8.2 Defense of Claims.

(a) If any Indemnitee has been notified of the assertion of any claim or of the commencement of any Action made or brought by any Person who is not a Party to this Agreement or any Affiliate of a Party to this Agreement or a Representative of any of the foregoing (a “***Third Party Claim***”), including an information document request, against such Indemnitee with respect to which indemnification is to be sought by such Indemnitee from an Indemnifying Party, the Indemnitee shall give the Indemnifying Party reasonably prompt notice thereof, but in any event such notice shall be given within twenty (20) calendar days after the Indemnitee’s having been notified 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, to

the extent then known, of the Covered 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 assume the defense of any Third Party Claim at such Indemnifying Party's expense and by such Indemnifying Party's own counsel; provided, however, 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.

(b) (i) If, after an Indemnitee gives notice to the Indemnifying Party of any Third Party Claim, the Indemnitee is given notice by the Indemnifying Party that the Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in Section 8.2(a), (A) the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof, and (B) subject to Section 8.2(b)(ii), the Indemnifying Party shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnitee. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim.

(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 result in liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification, or payment, reimbursement or compensation for Losses hereunder. If a firm offer is made to settle a Third Party Claim that would result in a 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, or payment, reimbursement or compensation for Losses hereunder and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within twenty (20) calendar days after Indemnifying Party gives such notice to the Indemnitee, the Indemnifying Party, at its election, 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 firm offer of settlement. If the Indemnitee has assumed the defense pursuant to Section 8.2(a), it shall not agree to any settlement without the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Any claim by an Indemnitee on account of a Covered Loss which does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by giving the Indemnifying Party reasonably prompt notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, to the extent then known.

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

(e) Payment, reimbursement or compensation of a Covered Loss shall be made by the Indemnifying Party within thirty (30) days after a final and non-appealable

adjudication of such Indemnifying Party's responsibility for such Covered Loss or such Indemnifying Party's agreement in writing to accept responsibility for such Covered Loss; provided, however, that this Section 8.2(e) shall not be construed to limit or impair the Indemnifying Party's right to dispute its responsibility to indemnify or hold harmless with respect to a Covered Loss, or to assert limitations as to such responsibility, under the terms of this Agreement.

ARTICLE 9 TERMINATION

Section 9.1 Termination.

(a) This Agreement may be terminated at any time prior to the Closing by the mutual written agreement signed by 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 Closing contemplated hereby shall have not occurred on or before the Termination Date; provided, however, that the right to terminate this Agreement under Section 9.1(b)(iii) shall not be available to either 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 the Termination Date.

(c) This Agreement shall terminate if, on or before the FMPA Agreement Date, Seller and FMPA have not entered into the FMPA Transfer Agreement.

(d) This Agreement shall terminate if, on or before the OUC Termination Agreement Date, Seller and OUC have not entered into the OUC Termination Agreement.

(e) Subject to the limitations on the right to terminate this Agreement in Section 6.9, this Agreement may be terminated by Buyer if there have been one or more misrepresentations by Seller or breaches of warranty by Seller as to any representation or warranty contained in Article 4 hereof and such misrepresentations or breaches (individually or in the aggregate) constitute a Material Adverse Effect and are not cured by the earlier of the Closing Date or ninety (90) days after receipt by Seller (or by Buyer in the case of a Schedule Supplement by Seller pursuant to Section 6.9) of notice specifying particularly such misrepresentations or breaches and the amount of any alleged losses with respect thereto. In determining whether a Material Adverse Effect has occurred for purposes of this Section 9.1(e), any such misrepresentations or breaches of warranty by Seller shall be measured without regard to any Material Adverse Effect qualification in Article 4 or any Schedule Supplement. Notwithstanding the foregoing, if Buyer gives Seller notice of such misrepresentations or breaches within ninety (90) days before the Termination Date, Seller may elect, by giving notice to Buyer prior to the Closing Date, to extend the Termination Date by up to ninety (90) days if Seller deems such additional time necessary for it to cure such misrepresentations or breaches of warranty. In the event that the ninety (90) day cure period is applicable under this Section 9.1(e),

and Seller fails, within such ninety (90) days, to cure the applicable misrepresentation or breach, Buyer must exercise its right, under this Section 9.1(e), to terminate this Agreement by giving to Seller notice of such termination within ten (10) days after the end of the ninety (90) day cure period or such right to terminate will be deemed to have been waived.

(f) This Agreement may be terminated by Seller if there have been one or more material misrepresentations or material breaches of warranty as to any representations or warranties contained in Article 5 of this Agreement and such misrepresentations or breaches are not cured prior to the Closing Date. Notwithstanding the foregoing, if Seller gives Buyer notice of such misrepresentations or breaches within ninety (90) days before the Termination Date, Buyer may elect, by giving notice to Seller prior to the Closing Date, to extend the Termination Date by up to ninety (90) days if Buyer deems such additional time necessary for it to cure such misrepresentations or breaches of warranty.

(g) This Agreement may be terminated by either Party if there have been one or more material breaches by the other Party of any covenant or agreement contained in this Agreement and all of such breaches have not been cured prior to the Closing Date. Notwithstanding the foregoing, if either Party gives the breaching Party notice of any such breaches within ninety (90) days before the Termination Date, the breaching Party may elect, by giving notice to the non-breaching Party prior to the Closing Date, to extend the Termination Date by up to ninety (90) days if the breaching Party deems such additional time necessary for it to cure all of such breaches.

(h) Buyer may terminate this Agreement if permitted under the terms of Section 6.9.

(i) Either Party may terminate this Agreement, if permitted to be terminated by such Party, under the terms of Section 6.11.

(j) Buyer may terminate this Agreement if permitted under the terms of Section 6.12.

(k) Either Party may terminate this Agreement, if permitted to be terminated by such Party, under the terms of Section 6.22.

Section 9.2 Effect of Termination.

(a) In the event of a termination of this Agreement by Seller or Buyer pursuant to Section 9.1 (other than Section 9.1(a)) the terminating Party shall give prompt notice of termination to the other Party, and this Agreement shall thereupon be deemed terminated upon the giving of such notice except as otherwise provided in this Agreement as to the date of termination or deemed termination. If this Agreement is terminated pursuant to Section 9.1 (other than a termination under Section 9.1(e) or (f), or (g) because of a Willful Seller Breach or Willful Buyer Breach, as the case may be), this Agreement shall be null and void and neither Party shall have any liability or obligation to the other Party under this Agreement (with respect to such misrepresentation or breach, or otherwise) or as a result of the termination of this Agreement; provided, however, that Buyer's obligations pursuant to Section 8.1(a)(vii) shall survive any such termination. 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 any provision herein to the contrary, if this Agreement is terminated by Buyer pursuant to Section 9.1(e) or (g) because of an intentional and willful misrepresentation or an intentional and willful breach of warranty by Seller under Article 4, or because of an intentional and willful breach of a covenant or agreement by Seller in this Agreement (any of the foregoing being called a “**Willful Seller Breach**”), then, Seller shall pay to Buyer, by wire transfer of immediately available funds the amount of \$5,000,000, which will be the aggregate amount payable by Seller with respect to any and all of such Willful Seller Breaches and will be Buyer’s sole and exclusive remedy as a result of a termination of this Agreement by Buyer pursuant to Section 9.1(e) or (g); provided, however, that nothing in this Section 9.2(b) shall limit Buyer’s rights under Section 11.13; and provided, further, that Buyer’s obligations pursuant to Section 8.1(a)(vii) shall survive any such termination.

(c) Notwithstanding any provision herein to the contrary, if this Agreement is terminated by Seller pursuant to Section 9.1(f) or (g) because of an intentional and willful misrepresentation or an intentional and willful breach of warranty by Buyer under Article 5, or because of an intentional and willful breach of a covenant or agreement by Buyer in this Agreement (any of the foregoing being called a “**Willful Buyer Breach**”), then, Buyer shall pay to Seller, by wire transfer of immediately available funds the amount of \$5,000,000, which will be the aggregate amount payable by Buyer with respect to any and all such Willful Buyer Breaches and will be Seller’s sole and exclusive remedy as a result of termination of this Agreement by Buyer pursuant to Section 9.1(f) or (g); provided, however, that nothing in this Section 9.2(c) shall limit Seller’s rights under Section 11.13; and provided, further, that Buyer’s obligations pursuant to Section 8.1(a)(vii) shall survive any such termination.

(d) Seller and Buyer hereby acknowledge and agree that the fixed amounts payable pursuant to Sections 9.2(b) or (c) will be reasonable liquidated damages as a result of a Willful Buyer Breach or Willful Seller Breach, as the case may be. Such amount is agreed by the Parties and fixed hereunder by the Parties as liquidated damages because of the difficulty of ascertaining the exact amount of such Losses that will actually be sustained by the non-breaching Party as a result of the Willful Buyer Breach or Willful Seller Breach, as the case may be, and the Parties hereby agree that the amounts specified in Sections 9.2(b) and (c), respectively, are a reasonable estimate of the non-breaching Party’s probable Losses (and not a penalty) and that they shall be applicable regardless of the amount of the Losses that the non-breaching Party actually sustains.

**ARTICLE 10
PARTIAL SALE AGREEMENT**

Section 10.1 Execution and Delivery.

Contemporaneously with the execution and delivery of this Agreement, Seller and Buyer have executed and delivered to each other an Asset Purchase Agreement with respect to the sale by Seller, and purchase by Buyer, of the assets of that portion of Seller's electric distribution system located in Indian River Shores, Florida (the "**Partial Sale Agreement**").

Section 10.2 Termination of Partial Sale Agreement.

In the event that the Closing occurs under this Agreement, the Partial Sale Agreement will terminate and be deemed null and void.

Section 10.3 Transaction Under Partial Sale Agreement.

In the event that:

(a) the Closing under this Agreement does not occur on or before the Termination Date; or

(b) this Agreement is terminated;

and the termination of this Agreement is not the result of a Willful Buyer Breach or Willful Seller Breach, then the transaction under the Partial Sale Agreement will proceed pursuant to the terms and conditions of the Partial Sale Agreement.

**ARTICLE 11
MISCELLANEOUS PROVISIONS**

Section 11.1 Amendment and Modification.

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

Section 11.2 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. 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.

Section 11.3 Third Party Beneficiaries.

This Agreement is intended solely for the benefit of the Parties and their respective successors or permitted assigns, and is not intended by the Parties to confer third-party beneficiary rights upon any other Person, including 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 11.4 Notices.

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

(a) If to Seller, to:

City of Vero Beach
1053 20th Place
Vero Beach, FL 32960
Attention: City Manager

with copies to:

City of Vero Beach
1053 20th Place
Vero Beach, FL 32960
Attention: City Attorney

-and-

Nathaniel L. Doliner, Attorney at Law
Carlton Fields
P.O. Box 3239
Tampa, FL 33601
(if by mail)

-or-

4221 West Boy Scout Boulevard
Tampa, FL 33607
(if by other than mail)

-and-

if to Buyer, to:

Florida Power & Light Company
700 Universe Boulevard EMT/JB
Juno Beach, FL 33408
Attention: EMT Contracts Department

with a copy to:

Florida Power & Light Company
700 Universe Boulevard JB/Law
Juno Beach, FL 33408
Attention: General Counsel

A notice delivered personally or by courier, under the terms of this Section, will be deemed given when received. A notice sent by mail will be deemed given five (5) days after mailing in accordance with this Section.

Section 11.5 Seller Disclosure Schedules.

The Seller Disclosure Schedules shall be arranged in separate parts corresponding to the numbered and lettered sections in Article 4 hereof. The information disclosed in any schedule of the Seller Disclosure Schedules shall be deemed to be a representation of Seller as if set forth in Article 4 hereof. Disclosure of any matter in the Seller Disclosure Schedule shall not constitute an admission or raise any inference that such matter constitutes a violation of Law or an admission of liability or facts supporting liability.

Section 11.6 Assignment.

Neither this Agreement nor any right, interest or obligation hereunder may be assigned or delegated by either Party without the prior written consent of the other Party, except that, from and after the Closing, Buyer may (without the consent of Seller) assign this Agreement or assign or delegate 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 Affiliates, but no such assignment shall release Buyer of its obligations under this Agreement. Subject to this Section 11.6, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

Section 11.7 Governing Law; Venue; and No Jury Trial.

(a) 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 matters of validity, construction, effect, performance and remedies.

(b) 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 CIRCUIT 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.

(c) 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 11.8 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 11.9 Schedules and Exhibits.

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

Section 11.10 Entire Agreement.

This Agreement and the Ancillary Agreements, including the Exhibits, Schedules, documents, certificates and instruments referred to herein or therein, including the Partial Sale Agreement, 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 agreements and understandings and all contemporaneous oral negotiations, representations, warranties, commitments and understandings including (a) that certain Letter of Intent dated May 16, 2017, 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 (except for the Contribution Agreement described in this Section above).

Section 11.11 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 between the Parties, or imposes a trust, partnership or fiduciary duty, obligation or liability on or with respect to the Parties.

Section 11.12 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 the transaction described in this Agreement 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 either Party.

Section 11.13 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. For the avoidance of doubt, if a Party seeks and is granted specific performance of the obligations of a breaching Party under this Agreement and the Closing occurs in the manner contemplated by this Agreement, then rather than the non-breaching Party terminating this Agreement under Section 9.2(b) or Section 9.2(c), as the case may be, then the breaching Party shall not be obligated to make the payments contemplated by Sections 9.2(b) or Section 9.2(c), as the case may be.

Section 11.14 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 from this Agreement and in lieu of such illegal, invalid or unenforceable provision, Seller and Buyer shall negotiate in good faith to restore insofar as practicable the benefits to each party that were affected by such holding and to include 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.

Section 11.15 Radon Gas.

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

[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: _____

(Seal)

ATTEST:

CITY OF VERO BEACH, FLORIDA

Tammy K. Bursick
City Clerk

Laura Moss
Mayor

(City Seal)

ADMINISTRATIVE REVIEW
(For Internal Use Only—Sec. 2-77 COVB Code)

~~Approved~~ Reviewed and approved as to form and legal Approved as conforming to municipal
policy: policy: (exclusive of final exhibits,
sufficiency: schedules, and attachments):

Wayne R. Coment
City Attorney

James R. O'Connor
City Manager

Document comparison by Workshare Compare on Thursday, October 19, 2017
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| Document 2 ID | interwovenSite://TPADOCS/dbCarlton01/112105074/15 |
| Description | #112105074v15<dbCarlton01> - MASTER_FPL Vero Beach Purchase Agreement Negotiation Draft |
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