

**ASSET PURCHASE AND SALE AGREEMENT**

between

**JEA**  
(as Seller)

and

[•]  
(as Purchaser)

[and

[•]  
(as Guarantor)]<sup>1</sup>

dated

[•]

**THIS DRAFT IS FOR DISCUSSION PURPOSES ONLY AND IS NOT LEGALLY BINDING IN ANY RESPECT. NO BINDING OBLIGATION WILL ARISE (AS A RESULT OF ANY COURSE OF DEALING OR OTHERWISE) UNLESS AND UNTIL A FINAL ASSET PURCHASE AND SALE AGREEMENT IS DULY EXECUTED AND DELIVERED BY ALL PERSONS NAMED AS PARTIES.**

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<sup>1</sup> Note to Respondent: To the extent that Purchaser is a special purpose vehicle or otherwise not a creditworthy entity with sufficient resources to consummate the transactions contemplated by this Agreement, a creditworthy entity with satisfactory resources is to be included herein as Purchaser's guarantor. See Section 8.13.

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## **ASSET PURCHASE AND SALE AGREEMENT**

This Asset Purchase and Sale Agreement (this “Agreement”), dated [•], is made and entered into by and between JEA, a body politic and corporate (“Seller”), [•], a [•] (“Purchaser”), and [•], a [•] (“Guarantor”). Seller, Purchaser, [and Guarantor] are each referred to herein as a “Party” and together herein as the “Parties”. Capitalized terms used herein but not defined in the text hereof shall have the respective meanings set forth in Annex A.

- A. Seller is engaged in the business of owning, operating, and managing the electric, water, and sewer utility systems, and certain gas lines, in the City of Jacksonville, Florida and surrounding environs (including Clay, Duval, Nassau, St. Johns, and Baker counties) (collectively, “Northeast Florida”) to provide such services to customers located in Northeast Florida (the “Business”).
- B. Seller desires to enter into this Agreement to (i) give the Business the strategic flexibility to adapt to a once-in-a-generation, industry-wide transformation to help improve lives in the Northeast Florida community, (ii) maximize the quality and scope of services provided to customers of the Business while maintaining long-term affordability for all of its customers, and (iii) enhance the environmental stewardship capabilities of the Business.
- C. Seller wishes to sell and assign to Purchaser, and Purchaser wishes to purchase and assume from Seller, substantially all the assets and liabilities of the Business, on the terms and subject to the conditions set forth herein.
- D. Seller and Purchaser acknowledge that the consummation of the transactions contemplated by this Agreement are subject to receipt of (i) the requisite approval by the City Council with respect to such transactions, including the terms of Section 8.13 as provided herein (the “City Council Approval”),<sup>2</sup> and (ii) the voter referendum approving such transactions, including the terms of Section 8.13 as provided herein, following the City Council Approval, as contemplated by Section 21.04(p) of the Jacksonville Florida Code of Ordinances (the “City Referendum Approval” and, together with the City Council Approval, the “Required Public Approvals”).

In consideration of the mutual covenants, representations, warranties, and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **ARTICLE I PURCHASE AND SALE**

**Section 1.01 Purchase and Sale of Assets.** Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, assign, transfer, convey, and deliver to Purchaser, and Purchaser shall, without setoff, deduction, or counterclaim, purchase and acquire from Seller, free and clear of all Encumbrances (except for Permitted Encumbrances), all of Seller’s right, title, and interest as of the Closing in, to, and under all of the assets, properties, and rights, of every kind and nature, whether real, personal or mixed, tangible or intangible, wherever located, and whether now existing or hereafter acquired, which are used or held for use in connection with, or otherwise relating to, the Business, other than the Excluded Assets (collectively, the “Purchased Assets”), including the following:

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<sup>2</sup> Note to Draft: The Office of General Counsel is continuing to analyze timing of signatures relative to this requirement. In the interest of time, this draft is provided to Respondents prior to completion of this analysis.

- (a) all Electric System Assets;
- (b) all St. Johns River Power Park System Assets;
- (c) all Bulk Power Supply System Assets;
- (d) all Water and Sewer Assets;
- (e) all District Energy Assets;
- (f) the aggregate amount, as of the Closing, of such cash balances specifically identified in column C of the sample statement of Seller (included for illustrative purposes), dated September 30, 2019, set forth in Schedule 1.01(f) hereto (the “Transferred Cash Balances”) (it being understood and agreed by the Parties, for the avoidance of doubt, that the actual amount to be transferred to Purchaser shall be the aggregate amount of those cash balances existing as of the Closing);
- (g) all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts, stored gas, coal inventory, and other inventories (“Inventory”);
- (h) all Contracts relating to the Business or by which Seller or the Purchased Assets may be bound (including all Community Commitment Contracts), other than the Excluded Contracts (the “Assigned Contracts”);
- (i) all Business IP Rights;
- (j) all Tangible Personal Property;
- (k) all Real Property;
- (l) all Transferable Permits;
- (m) any and all causes of Action and defenses against third parties (including with respect to 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;
- (n) all prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums, and fees to the extent related to any of the Purchased Assets or the Assumed Liabilities;
- (o) all of Seller’s rights under warranties, indemnities, and all similar rights against third parties to the extent related to any of the Purchased Assets or the Assumed Liabilities;
- (p) all insurance benefits, including rights and proceeds, arising from or relating to any of the Purchased Assets or the Assumed Liabilities;
- (q) all models and systems used for the forecasting, modeling, management, and operation of the Business;

(r) all ownership and other rights with respect to all Employee Benefit Plans, including those set forth in Schedule 1.01(r) (the “Transferred Employee Benefit Plans”), and any trusts or other assets attributable thereto (and any corresponding assets owned or set aside to fund or finance benefits under such plans) (“Benefit Plan Assets”), except for the Excluded Employee Benefit Plans and any Benefit Plan Assets relating thereto;

(s) all employee-related files or records of the Transferred Employees to the extent permitted under applicable Law or Contract;

(t) originals or, where not available, copies of all books and records of the Business, including books of account, ledgers, and general, financial, and accounting records, machinery and equipment maintenance files, purchasing records, manuals, 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, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records, and data, sales material and records, and marketing and promotional surveys, in each case to the extent in Seller’s possession or control (“Books and Records”); *provided* that Seller may retain a copy of all Books and Records and any other records and documents as may reasonably be required by Seller at any time after the Closing in connection with the Excluded Assets, the Excluded Liabilities, any Action, preparation of any Tax Return, or otherwise in connection with any Tax matters, governmental investigations, or audits of, or compliance with applicable Law or this Agreement, by Seller or its Affiliates;

(u) all bank accounts of Seller, other than the Excluded Bank Account(s);

(v) all decommissioning funds; and

(w) all goodwill and the going concern value of the Business.

**Section 1.02 Excluded Assets.** Notwithstanding anything to the contrary in this Agreement, Purchaser is not acquiring any right, title, or interest in, to, or under the following properties, assets, and rights (collectively, the “Excluded Assets”), which are hereby excluded from the definition of Purchased Assets and shall remain the property of Seller after the Closing:

(a) the assets, properties, and rights specifically set forth on Schedule 1.02(a);

(b) any ROFR Assets, to the extent that any of the ROFR Rights applicable to such ROFR Assets are exercised prior to the Closing;

(c) all cash and cash equivalents (including any cash received as a result of the exercise of ROFR Rights applicable to any ROFR Asset), except for the Transferred Cash Balances (the “Excluded Cash”);

(d) the Excluded Bank Account(s);

(e) the Excluded Contracts;



(f) all ownership and other rights with respect to the Employee Benefit Plans set forth in Schedule 1.02(f) (the “Excluded Employee Benefit Plans”) and any Benefit Plan Assets relating thereto;

(g) all employee-related files or records of the employees of Seller who are not Transferred Employees, and, in the case of Transferred Employees, such files or records that are not permitted to be transferred under applicable Law or Contract;

(h) any Confidential Communications; and

(i) all rights which accrue or will accrue to Seller under this Agreement and the Ancillary Documents.

**Section 1.03 Assumed Liabilities.** At the Closing, Purchaser shall execute and deliver to Seller the Assignment and Assumption Agreement, pursuant to which Purchaser shall assume and agree to pay, perform, and discharge, when due, all of the Liabilities of Seller relating to the Business, whether arising before, on, or after the Closing (other than the Excluded Liabilities) and all Liabilities arising out of or relating to Purchaser’s ownership or operation of the Business or the Purchased Assets after the Closing (collectively, the “Assumed Liabilities”).

**Section 1.04 Excluded Liabilities.** Notwithstanding anything to the contrary in this Agreement, Purchaser shall not assume or be obligated to pay, perform, or discharge the following Liabilities (the “Excluded Liabilities”), with all of such Excluded Liabilities remaining the responsibility of Seller:

(a) any Liabilities to the extent relating to or arising out of the assets, properties, and rights specifically set forth on Section 1.02(a);

(b) any Liabilities to the extent relating to or arising out of the Excluded Contracts;

(c) any Liabilities of Seller arising, whether before or after the Closing, under or in connection with any Excluded Employee Benefit Plans;

(d) any Liabilities to the extent covered by the City of Jacksonville’s self-insurance pool related to coverage for worker’s compensation, automobile liability, and general liability; and

(e) any other Liabilities specifically allocated to or retained by Seller pursuant to the express terms of this Agreement or the Ancillary Documents.

**Section 1.05 Purchase Price.** In consideration for the sale, assignment, transfer, conveyance, and delivery to Purchaser of the Purchased Assets, Purchaser shall assume the Assumed Liabilities and, in accordance with Section 1.06, pay (the aggregate amount of such payment, collectively, the “Purchase Price”)<sup>3</sup> (a) to or for the benefit of Seller, at the Closing, the amount of \$[•] (the “Base Purchase Price”)<sup>4</sup> minus the sum of (1) the Seller Closing Indebtedness, (2) the Seller Transaction Expenses, (3) the ROFR Asset Amount (but only to the extent that the ROFR Rights applicable to such ROFR Assets are exercised prior to the Closing), (4) the Retention Escrow Amount, and (5) Customer Distribution Amount (the

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<sup>3</sup> Note to Draft: The gross proceeds must meet or exceed the following minimum requirements: (i) greater than \$3 billion to the City of Jacksonville, net of debt defeasance and repayment, and (ii) greater than \$400 million of value distributed to customers with electric, water, sewer and irrigation accounts.

<sup>4</sup> Note to Draft: To reflect a valuation date as of September 30, 2020.

resulting amount under this subpart (a), the “Closing Payment”); (b) to or for the benefit of the holders of the JEA Bonds, at the Closing, the JEA Bond Release Consideration in accordance with Section 1.06(b); (c) to the holders of the Additional Debt, at the Closing, the amount required to satisfy the Additional Debt Amount in accordance with Section 1.06(c); (d) to the applicable payees of the Seller Transaction Expenses, at the Closing, the Seller Transaction Expenses in accordance with Section 1.06(d); (e) to the Escrow Agent for the beneficiaries of such escrow, at the Closing, the Retention Escrow Amount in accordance with Section 1.06(e); and (f) to, or for the benefit of, the applicable customers of the Business, at the Closing, the Customer Distribution Amount in accordance with Section 1.06(f).

**Section 1.06 Payment of Purchase Price.** At the Closing:

(a) Purchaser shall pay the Closing Payment to Seller in cash by wire transfer of immediately available funds to one or more bank accounts designated in writing by Seller (the “Excluded Bank Account(s)”). Seller shall designate the Excluded Bank Account(s), the dollar amount payable, wire instructions, and any other information necessary to effect payment thereof at least two (2) Business Days in advance of Closing.

(b) Purchaser shall, as directed by Seller, cause a portion of the amount deducted from the Base Purchase Price with respect to the Seller Closing Indebtedness pursuant to Section 1.05(1) to be deposited into each applicable bond fund relating to each series of bonds set forth in Section 1.06(b) of the Seller Disclosure Letter (the “JEA Bonds”) outstanding under the applicable bond resolutions, as amended or supplemented, that are set forth in Section 1.06(b) of the Seller Disclosure Letter (the “Bond Resolutions”), in such amounts that shall in each case be sufficient to pay and redeem such JEA Bonds or, at Seller’s election, to cause a defeasance of such JEA Bonds, as the case may be (the “JEA Bond Release Consideration”). The sufficiency of such deposit of monies and the amount of the JEA Bond Release Consideration shall be verified by an independent certified public accountant, acting as an expert and not an arbitrator, that is acceptable to Purchaser and Seller. Seller shall cause instructions to be given on or prior to the Closing Date to the trustees under and in accordance with the Bond Resolutions to provide a notice of redemption or defeasance, as applicable, to the holders of the JEA Bonds, and Seller shall cause to be delivered to Purchaser and Seller on or prior to the Closing Date opinions of bond counsel to Seller, in the form set forth in Exhibit A hereto (the “Bond Counsel Opinion”), to the effect that the pledge of the pledged accounts and revenues, and all covenants, agreements, and obligations of Seller to the holders of the JEA Bonds, and all liens, benefits, or security under the JEA Bonds, have ceased, terminated, and become void, discharged, and satisfied upon deposit of the JEA Bond Release Consideration at the Closing Date as aforesaid and that the actions contemplated by this Agreement will not have an adverse effect on the exclusion of interest on the JEA Bonds from gross income of the holders thereof for federal income tax purposes. Any JEA Bond Release Consideration and interest earned thereon not used to repay or defease the JEA Bonds shall be paid over to Seller.

(c) Purchaser shall, as directed by Seller, cause the Additional Debt Amount to be paid in cash by wire transfer of immediately available funds to pay off all amounts with respect to the Seller Closing Indebtedness (other than with respect to the JEA Bonds) to the bank accounts of such Persons designated in writing by Seller, and in accordance with the applicable Pay-Off Letters. Seller shall designate such bank accounts, the recipients of such payments, the dollar amount payable, wire instructions, and any other information necessary to effect payment thereof at least two (2) Business Days in advance of the Closing.

(d) Purchaser shall, as directed by Seller, cause such amounts that are required to pay off all Seller Transaction Expenses to be paid in cash by wire transfer of immediately available funds to the bank accounts of such Persons designated by Seller. Seller shall designate in writing

such bank accounts, the recipients of such payments, the dollar amount payable, wire instructions, and any other information necessary to effect payment thereof at least two (2) Business Days in advance of the Closing.

(e) Purchaser shall deposit with the Escrow Agent on behalf of the escrow beneficiaries, by wire transfer of immediately available funds the Retention Escrow Amount in an escrow account (the “Retention Escrow Account”), which shall be held by the Escrow Agent and administered in each case in accordance with the terms of the Escrow Agreement, and used to compensate the Retention Bonus Recipients in each case in accordance with the terms of the Retention Agreements, and in connection therewith:<sup>5</sup>

(i) At the Closing, Seller shall provide Purchaser with a written schedule (a “Retention Bonus Recipient Schedule”) that sets forth for each Retention Bonus Recipient the amount of such individual’s Retention Payment. No later than five (5) Business Days after each of the first and second anniversaries of the Closing Date (each, a “Retention Bonus Anniversary Date”), Purchaser shall deliver to Seller an updated Retention Bonus Recipient Schedule (the “Updated Recipient Schedule”), that discloses (x) whether each individual listed therein is actively employed with Purchaser or an affiliate or whether the employment of such individual has been terminated and (y) if the employment of such individual has been terminated, the date and reason for termination; and

(ii) Following delivery of the Updated Recipient Schedule by Purchaser, Seller and Purchaser shall promptly (but in any event within two (2) Business Days of such delivery date) deliver a joint written instruction authorizing and directing the Escrow Agent to release the aggregate amount of such earned Retention Payments from the Escrow Account to the employer of the applicable Retention Payment Recipients, and such employer shall pay the full amount of such Retention Payments to the applicable Retention Payment Recipients (subject to applicable tax withholding). Any Retention Payments that are forfeited pursuant to the Retention Agreements or otherwise remain in the Escrow Account shall be for the account of Seller, and, within thirty (30) days of each applicable Retention Bonus Anniversary Date, Seller and Purchaser (or one of its Affiliates) shall deliver a joint written instruction authorizing and directing the Escrow Agent to release the aggregate amount of such forfeitures to the City of Jacksonville.

(f) Purchaser shall cause the Customer Distribution Amount to be [**credited**]<sup>6</sup> to the accountholders who are customers of the Business as of the Closing (each a “Customer Accountholder” and, collectively, the “Customer Accountholders”) in the following amounts: (i) \$[•] for each electric Customer Accountholder, (ii) \$[•] for each water Customer Accountholder, (iii) \$[•] for each sewer Customer Accountholder, and (iv) \$[•] for each reusable water Customer Accountholder. Seller shall provide a list of customer accounts for such payment, and the amount to be paid, at least one (1) Business Day in advance of the Closing. Promptly following the Closing, Purchaser shall deliver a written certificate to Seller certifying that the Customer Accountholders have received a [**credit**] in accordance with this Section 1.06(f).

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<sup>5</sup> Note to Draft: The Escrow Agreement will provide that any amounts remaining from the Retention Escrow Amount after all Retention Payments are made will be distributed to Seller, along with any accrued interest. The Escrow Agreement will also provide that forfeited Retention Payments will be released to Seller in accordance with Section 1.06(e)(ii).

<sup>6</sup> Note to Respondent: Parties to discuss a tax efficient manner of delivering the Customer Distribution Amount for the benefit of the Customer Accountholders.

(g) In making any of the payments required by Section 1.06(b), Section 1.06(c), and/or Section 1.06(d), Purchaser may use available cash on hand of Seller as a source to the extent permitted by Law and government finance and accounting policies applicable to Seller; *provided* that the amounts to be deducted from the Base Purchase Price for Seller Closing Indebtedness and/or Seller Transaction Expenses (as applicable) pursuant to Section 1.05 shall be reduced on a dollar for dollar basis corresponding with such use of available Seller cash.

**Section 1.07 Cash Reconciliation.**

(a) No earlier than three (3) Business Days prior to the Closing, Seller shall deliver to Purchaser an updated Schedule 1.01(f).

(b) No later than ten (10) Business Days after the Closing, Purchaser shall deliver to Seller bank statements and such other supporting information as may reasonably be requested by Seller to evidence to Seller's reasonable satisfaction the Excluded Cash (if any) in each of the bank accounts assigned to Purchaser by Seller pursuant to Section 1.01(u) as of the Closing, taking into account any Seller cash on hand applied towards and used as a source pursuant to Section 1.06(g) for the payments required by Section 1.06(b), Section 1.06(c), and/or Section 1.06(d) (the "Cash Statement"). Purchaser shall pay an amount in cash equal to the value of any such Excluded Cash to Seller (the "Excluded Cash Payment"), by wire transfer of immediately available funds, to the Excluded Account(s) within two (2) Business Days of the delivery of the Cash Statement to Seller.

(c) Purchaser shall provide to Seller and its Representatives, at all reasonable times upon notice during normal business hours of Purchaser, reasonable access to examine the work papers of the personnel preparing the Cash Statement and the books, records, and personnel of the Business relating to the Cash Statement and to discuss the preparation of the Cash Statement with the personnel who participated in such preparation, in each case in such a manner as to not unreasonably interfere with the normal operations of the Business.

(d) Unless Seller notifies Purchaser in writing that it disagrees with any aspect of the Cash Statement (the "Objection Notice") within thirty (30) days after receipt of the Cash Statement (which Objection Notice shall include Seller's objections, proposed revisions, and the basis therefor, in each case in reasonable detail (the "Disputed Matters")), then the amounts set forth in the Cash Statement shall become final and binding on the Parties. If Seller timely provides an Objection Notice to Purchaser, then Purchaser and Seller will use commercially reasonable efforts to resolve promptly any Disputed Matters. All items other than Disputed Matters shall be deemed to be agreed and shall be final and binding for the purposes of this Section 1.07. Any Disputed Matters not resolved by Purchaser and Seller within fifteen (15) days after Purchaser's receipt of the Objection Notice (the "Remaining Disputed Matters") shall be submitted in writing to and resolved by [•] (the "Accounting Firm"). No later than ten (10) days after the engagement of the Accounting Firm, as evidenced by its written acceptance by email or otherwise to the Parties (the "Accounting Firm Engagement Date"), Purchaser, on the one hand, and Seller, on the other hand, shall each submit a brief to the Accounting Firm (with a copy to the other Party) setting forth their respective positions regarding the Remaining Disputed Matters. The Accounting Firm shall render its decision resolving the dispute within thirty (30) days after the Accounting Firm Engagement Date. If additional briefings, a hearing, or other information is required by the Accounting Firm, the Accounting Firm shall give notice thereof to the Parties as soon as practicable before the expiration of such thirty (30) day period, and the Parties shall promptly respond so as to minimize any delay in the decision date.

(e) The Accounting Firm shall not be entitled to consider any items or matters other than the Remaining Disputed Matters. The Accounting Firm shall be instructed to render its decision in accordance with the terms hereof and shall deliver a written report to Purchaser and Seller which sets forth its specific determinations with respect to the Remaining Disputed Matters, which shall be based solely on written materials submitted by Purchaser and Seller and solely on this Section 1.07 and the definitions and section references relating hereto and not on the basis of an independent review. The scope of the disputes to be resolved by the Accounting Firm shall be limited to correcting mathematical errors and determining whether the items and amounts in dispute were determined in accordance with this Agreement, and the Accounting Firm is not to make any other determination. The determination of the Accounting Firm for any of the Remaining Disputed Matters cannot, however, be in excess of, nor less than, the greatest or lowest value, respectively, claimed for that particular item in the Cash Statement, in the case of Purchaser, or in the Objection Notice, in the case of Seller. Each of Purchaser and Seller agrees that, absent manifest error, they shall be bound by the determination of the Remaining Disputed Matters by the Accounting Firm and such determination shall not be subject to appeal or further review (and judgment may be entered in accordance with Section 8.10 upon the written determination of the Accounting Firm). The Cash Statement, as accepted by Seller, as agreed upon by Purchaser and Seller, or as determined by the Accounting Firm pursuant to this Section 1.07(e), shall be used to determine, as of the Closing, a final calculation of the Excluded Cash (the “Reconciled Excluded Cash”). To the extent that the Reconciled Excluded Cash exceeds the amount of the Cash Payment, Purchaser shall pay an amount in cash equal to the value of the Reconciled Excluded Cash *less* the Cash Payment to Seller. Such payment shall be made by wire transfer of immediately available funds to the Excluded Account(s) within two (2) Business Days of the final calculation of Reconciled Excluded Cash.

(f) Each Party shall authorize its accountants to disclose work papers generated by such accountants in connection with preparing and reviewing the calculations specified in this Section 1.07; *provided* that such accountants shall not be obligated to make any work papers available, except in accordance with such accountants’ disclosure procedures and then only after the non-client party has signed a customary agreement relating to access to such work papers in form and substance acceptable to such accountants.

(g) The costs of any dispute resolution pursuant to this Section 1.07, including the fees and expenses of the Accounting Firm and of any enforcement of the determination thereof, shall be borne by Seller and Purchaser in inverse proportion as they may prevail on the matters resolved by the Accounting Firm, which proportionate allocation shall be calculated on an aggregate basis based on the relative dollar values of the amounts in dispute and shall be determined by the Accounting Firm at the time the determination of such firm is rendered on the merits of the matters submitted. The fees and disbursements of the Representatives of each Party incurred in connection with the preparation or review of the Cash Statement and preparation or review of any Objection Notice, as applicable, shall be borne by such Party.

## **ARTICLE II CLOSING**

**Section 2.01 Closing.** On the terms and subject to the conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “Closing”) shall take place remotely via the exchange of signature pages, at 10:00 a.m., Eastern Time, on the date that is no earlier than the [•] ([•]) Business Day after all of the conditions to Closing set forth in Article VI are either satisfied or waived (other than those conditions which, by their terms, are to be satisfied or waived at the Closing, but subject

to the satisfaction or waiver of such conditions), unless Seller consents in writing to an earlier date,<sup>7</sup> or at such other time, date, or place as Seller and Purchaser may mutually agree upon in writing. The date on which the Closing actually occurs is referred to herein as the “Closing Date”.

**Section 2.02 Closing Deliverables.**

(a) At the Closing, Seller will deliver, or cause to be delivered, the following to Purchaser:

(i) a bill of sale in the form of Exhibit B hereto (the “Bill of Sale”) duly executed by Seller, transferring the Tangible Personal Property included in the Purchased Assets to Purchaser;

(ii) an assignment and assumption agreement in the form of Exhibit C hereto (the “Assignment and Assumption Agreement”)<sup>8</sup> duly executed by Seller, effecting the assignment to and assumption by Purchaser of the Purchased Assets and the Assumed Liabilities;

(iii) with respect to the Owned Real Property, one or more quitclaim deeds in the form of Exhibit D hereto (each, a “Deed”), duly executed and acknowledged by Seller;

(iv) with respect to the Other Real Property Interests, one or more quitclaim deeds in the form of Exhibit E hereto (each, a “Quitclaim Deed - Easements”), duly executed by Seller;

(v) with respect to the BJP Parcels, one or more quitclaim deeds for real property, which shall contain use restrictions in favor of the Seller and the City of Jacksonville, in the form of Exhibit F hereto (each, a “Quitclaim Deed – BJP Parcels”), duly executed by Seller;

(vi) the Escrow Agreement, duly executed by Seller and the Escrow Agent;

(vii) the Transmission Agreement, duly executed by Seller;

(viii) the Distribution Services Agreement, duly executed by Seller;

(ix) the Systems Coordination Agreement, duly executed by Seller;

(x) the Billing and Collections Agreement, duly executed by Seller;

(xi) the Franchise Agreement, duly executed by the City of Jacksonville;

(xii) the Territorial Agreement, duly executed by Seller;

(xiii) with respect to the Other Real Property Interests (other than any easements appurtenant to any Owned Real Property), one or more quit claim assignments in form and

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<sup>7</sup> Note to Draft. A certain market bid window is expected to be necessary for the securities required in connection with the defeasance of the bonds.

<sup>8</sup> Note to Draft. A separate Assignment and Assumption of Lease Agreement may be required for Seller’s new headquarters building.

substance reasonably satisfactory to Purchaser and Seller (each, a “Real Property Interest Assignment”), duly executed and acknowledged by Seller;

(xiv) [evidence reasonably satisfactory to the Title Company, Seller, and Purchaser that St. Johns County, Florida has released or waived its exclusive right to purchase and first right of refusal under the St. Johns Agreement, with respect to the water and wastewater utility systems owned by Seller and located in St. Johns County, Florida (the “St. Johns County ROFR Rights”)];

(xv) [evidence reasonably satisfactory to the Title Company, Seller, and Purchaser that Nassau County, Florida has released or waived its exclusive right to purchase and first right of refusal under the Nassau Agreement with respect to the water and wastewater utility systems owned by Seller and located in Nassau County, Florida (the “Nassau County ROFR Rights”)];

(xvi) [evidence reasonably satisfactory to the Purchaser and Seller that the Scherer Unit No. 4 Participants (as defined therein), as applicable, have released or waived their right to purchase and first right of refusal under the Scherer Agreement with respect to Seller’s ownership rights in Scherer Unit No. 4, the Additional Unit Common Facilities, the Plant Scherer Common Facilities and in the Plant Scherer Coal Stock (each as defined in the Scherer Agreement) (the “Scherer ROFR Rights”)];

(xvii) [evidence reasonably satisfactory to the Title Company, Seller, and Purchaser that the Jacksonville Port Authority has released or waived its right of first refusal under the SJRPP Blount Island Agreement, with respect to the Premises (as defined therein) (the “SJRPP Blount Island ROFR Rights”)];

(xviii) the closing certificate contemplated by Section 6.02(a)(iii) and Section 6.02(b);

(xix) a copy of the Pay-Off Letter(s);

(xx) a certificate pursuant to Treasury Regulations Section 1.4445-2(b);

(xxi) copies of all Governmental Authority consents, waivers, and approvals obtained by Seller with respect to the transfer of the Purchased Assets to Purchaser, or the consummation of the transactions contemplated by this Agreement as set forth on Schedule 2.02(a)(xxi);

(xxii) copies of documentation evidencing City Council Approval and City Referendum Approval; and

(xxiii) a statement from the City of Jacksonville pursuant to F.S. 180.301, to the effect that this Agreement, the Ancillary Documents, and the transactions contemplated hereby and thereby are in the public interest.

(b) At the Closing, Purchaser will deliver, or cause to be delivered, the following to Seller:

(i) the Purchase Price paid in the manner set forth in Section 1.06;

- (ii) the Assignment and Assumption Agreement, duly executed by Purchaser;
- (iii) the Escrow Agreement, duly executed by Purchaser;
- (iv) the Transmission Agreement, duly executed by Purchaser;
- (v) the Distribution Services Agreement, duly executed by Purchaser;
- (vi) the Systems Coordination Agreement, duly executed by Purchaser;
- (vii) the Billing and Collections Agreement, duly executed by Purchaser;
- (viii) the Franchise Agreement, duly executed by Purchaser;
- (ix) the Territorial Agreement, duly executed by Purchaser;
- (x) the closing certificate contemplated by Section 6.03(a)(iii), Section 6.03(b), and Section 6.03(d);<sup>9</sup>
- (xi) a certificate of the Secretary or any Assistant Secretary of Purchaser certifying as to the resolutions adopted by Purchaser's board of directors approving the transactions contemplated in this Agreement and in the Ancillary Documents (including the execution and delivery hereof and thereof);
- (xii) a certificate of the Secretary or any Assistant Secretary of Purchaser identifying the name and title and bearing signatures of the officers of Purchaser authorized to execute and deliver this Agreement and the other agreements and instruments contemplated hereby;
- (xiii) a certificate of active status with respect to Purchaser, issued by the Secretary of State, Division of Corporations, of the State of Florida;
- (xiv) a certificate of good standing or similar, issued with respect to Purchaser, by the Secretary of State of Purchaser's jurisdiction of formation and dated not more than ten (10) Business Days prior to Closing; and
- (xv) all such other instruments of assumption as are reasonably required in order for Purchaser to assume the Assumed Liabilities and give effect to the transactions contemplated by and in accordance with this Agreement, in form and substance reasonably satisfactory to Seller, that are specified by written notice to Purchaser no later than [•]<sup>10</sup> prior to the Closing.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as set forth in (a) the reports, schedules, forms, statements and other documents filed for the Business with, or published to, EMMA and publicly available after June 30, 2016 and prior to the date

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<sup>9</sup> Note to Draft: Certain regulatory approvals that are to be obtained may also necessitate that Purchaser deliver a certificate certifying receipt thereof.

<sup>10</sup> Note to Draft: To correspond to the period specified in Section 2.01.



of this Agreement (excluding any disclosures of factors or risks contained or references therein under the captions “Forward-Looking Statements” or “Associated Risks”) or (b) the disclosure letter delivered by Seller to Purchaser concurrently with the execution of this Agreement (the “Seller Disclosure Letter”), Seller hereby represents and warrants to Purchaser as follows:

**Section 3.01 Organization and Qualification of Seller.** Seller is a body politic and corporate duly created and established under the Laws of the State of Florida and has all requisite power and authority to own, lease or operate the material properties and material assets now owned, leased or operated by it and to carry on the Business as presently conducted.

**Section 3.02 Authority of Seller.** Seller has all requisite body politic power and authority to enter into this Agreement and the Ancillary Documents to which Seller is a party, to carry out its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. Subject to obtaining the City Council Approval and the City Referendum Approval, the execution and delivery by Seller of this Agreement, the performance by Seller of its obligations hereunder and the consummation by Seller of the transactions contemplated hereby have been duly authorized by all requisite body politic action on the part of Seller. This Agreement has been duly executed and delivered by Seller and, assuming the due authorization, execution and delivery by Purchaser, constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, subject to bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium or similar laws affecting creditors’ rights generally, sovereign immunity (to the extent applicable) and by general principles of equity, whether considered in a proceeding in equity or law (such laws and principles, collectively, the “Enforceability Exception”). When each Ancillary Document to which Seller is or will be a party has been duly executed and delivered by Seller, assuming due authorization, execution and delivery by each other party thereto, such Ancillary Document will constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms, subject to the Enforceability Exception.

**Section 3.03 Consents and Approvals; No Violations.** Assuming the truth and accuracy of the representations and warranties of Purchaser set forth in Section 4.03, no filing with or notice to, and no consent or approval of, any Governmental Authority is required on the part of Seller for the execution, delivery and performance by Seller of this Agreement or any Ancillary Document to which Seller is a party or the consummation by Seller of the transactions contemplated hereby or thereby, except: (a) those as a result of any facts or circumstances relating to Purchaser or any of its Affiliates or their respective businesses, (b) the authorizations or approvals listed on Section 3.03 of the Seller Disclosure Letter, or (c) any permit, declaration, filing, authorization, registration, consent or approval, the failure to make or obtain would not reasonably be expected to have, individually or in the aggregate, a JEA Material Adverse Effect. Assuming compliance with the items described in clauses (a) and (b) of the preceding sentence, neither the execution, delivery or performance by Seller of this Agreement or any Ancillary Document to which Seller is a party, nor the consummation by Seller of the transactions contemplated hereby or thereby will (i) conflict with or result in any breach or violation of any provision of its Organizational Documents, (ii) result in a breach or violation of, or constitute (with or without due notice or lapse of time or both) a default, or give rise to the creation of any Encumbrance (except for Permitted Encumbrances) on the Purchased Assets, or any right of termination, amendment, cancellation or acceleration under any of the terms, conditions or provisions of any Contract or any Permit of the Business (except with respect to any Contracts or Permits that are Excluded Assets), or (iii) violate any Law applicable to the Business or the Purchased Assets, except, in the case of clauses (ii) or (iii), for breaches, violations, defaults, Encumbrances or rights of termination, amendment, cancellation or acceleration that would not reasonably be expected to have, individually or in the aggregate, a JEA Material Adverse Effect.

**Section 3.04 Financial Statements.** Seller has made available to Purchaser copies of the audited financial statements consisting of the combining statement of net position of the Business as at

September 30, 2019 and September 30, 2018 and the combining statements of revenues, expenses and changes in net position and combining statements of cash flows in each of the years ending September 30, 2019 and September 30, 2018 (the “Audited Financial Statements”). The Audited Financial Statements (i) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, except as may be indicated in the notes thereto, (ii) have been prepared in all material respects in accordance with the books and records of Seller, and (iii) fairly present, in all material respects, the financial condition of the Business as of the respective dates they were prepared and the results of the operations of the Business for the periods then ended. The combining statement of net position of the Business as of September 30, 2019 is referred to herein as the “Balance Sheet” and the date thereof as the “Balance Sheet Date.”

**Section 3.05 Undisclosed Liabilities.** The Business does not have any material Liability of a type required to be reflected on a balance sheet prepared in accordance with GAAP of any nature relating to the Business at or as of the Closing Date, except for (a) Liabilities reflected or reserved against in the Audited Financial Statements or the notes thereto, (b) Liabilities disclosed in filings publicly available on EMMA prior to the date of this Agreement, (c) Liabilities incurred in the ordinary course of business since the Balance Sheet Date, (d) Liabilities required, contemplated or permitted to be incurred under this Agreement or the Ancillary Documents, (e) Liabilities that are Excluded Liabilities or otherwise relate to Excluded Assets, or (f) Liabilities that have not, and would not reasonably be expected to have, individually or in the aggregate, a JEA Material Adverse Effect.

**Section 3.06 Absence of Certain Changes or Events.** Except as contemplated by this Agreement, since the Balance Sheet Date through the date of this Agreement, (a) the Business has been conducted in all material respects in the ordinary course of business, except for actions taken or not taken (i) that are necessary in order to consummate the transactions contemplated by this Agreement and the Ancillary Documents, or (ii) with respect to any operational emergencies (including any restoration or other measures (including adjustments to rates) in response to any act of terrorism, hurricane, tornado, ice storm, tsunami, flood, earthquake, or other natural disaster or weather-related event, circumstance, or development), equipment failures, property damage, outages, or threats to the health or safety of natural Persons, (b) Seller has not taken any action which, if taken after the execution and delivery of this Agreement, would have required the prior consent of Purchaser pursuant to Section 5.01 and (c) there has not occurred any JEA Material Adverse Effect. Purchaser acknowledges that there may be disruption to the operation of the Business as a result of the announcement by Seller of the ITN Process (and there may be further disruption to the Business as a result of the execution of this Agreement, including as a result of the identity of Purchaser, and the consummation of the transactions contemplated hereby), and Purchaser agrees that any such disruption does not and shall not constitute a breach of this Section 3.06.

**Section 3.07 Title to and Sufficiency of Purchased Assets.** Excluding the Real Property, Seller has good and valid title to, or a valid license to or leasehold interest in, the Purchased Assets, except for Permitted Encumbrances. The Purchased Assets and the rights granted to Purchaser under this Agreement, together with the Ancillary Documents, include all of the material assets, properties and rights owned, licensed or leased by Seller that are used in and necessary to conduct the Business in all material respects as conducted at the Closing or as conducted by Seller as of the date of the Balance Sheet. Notwithstanding anything herein to the contrary, nothing in this Section 3.07 shall be deemed to address any infringement, misappropriation or violation of any Intellectual Property Rights of any Person.

**Section 3.08 JEA Material Contracts.**

(a) Section 3.08(a) of the Seller Disclosure Letter sets forth, as of the date of this Agreement, a list of each of the following contracts and agreements to which Seller is a party (such

contracts and agreements, excluding the Employee Benefit Plans, the “JEA Material Contracts”):

(i) each material Contract, ordinance, or other grant of any municipal, town or county franchise to the Business (the “Franchises”);

(ii) all Contracts that individually involve expenditures by the Business in excess of \$10,000,000 in the twelve (12) months preceding the date of this Agreement and that in each case have a remaining term following the Closing of longer than one year, to the extent that any obligations under such Contracts will remain unsatisfied as of the Closing;

(iii) all Contracts that individually involve the receipt of payments by the Business in excess of \$10,000,000 in the 12 months preceding the date of this Agreement and that in each case have a remaining term following the Closing of longer than one year, to the extent that any obligations under such Contracts will remain unsatisfied as of the Closing;

(iv) all Contracts for, or relating to, Indebtedness of the Business in excess of \$20,000,000;

(v) all Contracts that obligate Seller to dispose of or acquire (or grant to any Person any right or option to acquire) any Purchased Assets for consideration in each case in excess of \$10,000,000, other than in the ordinary course of the Business;

(vi) all Contracts containing covenants applicable to Seller (A) prohibiting Seller from competing in any line of business or with any Person or in any geographic area or (B) requiring Seller to use any supplier or third party for all or substantially all of any of its material requirements;

(vii) all partnership, joint venture and similar Contracts providing for the formation, creation, operation, management or control of any partnership or joint venture with a third party in which Seller owns a voting or economic interest;

(viii) any contract with any Service Provider providing for annual compensation in excess of \$250,000, including contracts with respect to employment, secondment, severance, separation, change in control or retention, in each case, to the extent not otherwise disclosed in Section 3.12(a) of the Seller Disclosure Letter; and

(ix) any collective bargaining agreement or other contract with any labor union.

(b) Except as would not reasonably be expected to have, individually or in the aggregate, a JEA Material Adverse Effect, (i) each JEA Material Contract is a legal, valid and binding obligation of Seller and, to the knowledge of Seller, each counterparty, and is in full force and effect, subject to the Enforceability Exceptions, and (ii) neither Seller nor, to the knowledge of Seller, any other party thereto, is in breach of, or in default under, any such JEA Material Contract. As of the date of this Agreement, to the knowledge of Seller, Seller has not received written notice of any actual or alleged breach of, or default under, or of any termination or non-renewal of, any JEA Material Contract, except in each case as would not have a JEA Material Adverse Effect.

**Section 3.09 Legal Proceedings.** As of the date of this Agreement, there are no Actions existing, pending or, to the knowledge of Seller, threatened in writing against Seller relating to the Business or the Purchased Assets, and there are no Orders outstanding against Seller relating to the Business or the Purchased Assets, in each case, that would reasonably be expected to have a JEA Material Adverse Effect or would reasonably be expected to result in the issuance of an Order restraining, enjoining or otherwise prohibiting or materially delaying the transactions contemplated by this Agreement.

**Section 3.10 Compliance with Law, Orders and Permits.** Seller holds all material permits, licenses, approvals, registrations, franchises, certificates, clearances, variances, exemptions and other authorizations of all Governmental Authorities necessary for the lawful operation of the Business as presently conducted, or is authorized to conduct the Business under permits held by other Persons as described in Section 3.10 of the Seller Disclosure Schedule (all such material permits, licenses, etc., collectively, “Permits”). The Business is in compliance with all Laws, Orders and Permits applicable to the Business and the Purchased Assets, except for violations which would not, individually or in the aggregate, reasonably be expected to have a JEA Material Adverse Effect.

**Section 3.11 Real Property.**

(a) Section 3.11(a) of the Seller Disclosure Letter sets forth, as of the date of this Agreement, a list of all Material Owned Real Property and Material Leased Real Property. Except as would not reasonably be expected, individually or in the aggregate, to have a JEA Material Adverse Effect, based exclusively on the Title Commitments, to the knowledge of Seller, Seller has on the date of this Agreement (and at the Closing will have) fee simple title to the Owned Real Property and valid leasehold interests in the Leased Real Property subject to the terms and conditions of the Leases, free and clear of all Encumbrances except for Permitted Encumbrances and the Encumbrances listed on Section 3.11(a) of the Seller Disclosure Letter.

(b) Seller has not leased or otherwise granted to any Person any material right to use or occupy the Owned Real Property (or any portion thereof) other than in the ordinary course of business or that does not materially interfere with the present use of the Owned Real Property, taken as a whole. Seller has not subleased, assigned or otherwise granted to any Person any material right to use or occupy the Leased Real Property (or any portion thereof) or the Other Real Property Interests (or any portion thereof) other than in the ordinary course of business or that does not materially interfere with the present use of the Owned Real Property, taken as a whole.

(c) To the knowledge of Seller, each Lease and each of the Other Real Property Interests are valid, binding, and enforceable in accordance with their terms, and in full force and effect (subject to the Enforceability Exception) except as would not reasonably be expected to have, individually or in the aggregate, a JEA Material Adverse Effect, subject in each case to Permitted Encumbrances. To the knowledge of Seller, (1) Seller has received no written notice that it is in breach or default under any Lease or any agreement evidencing or granting the Other Real Property Interests, and (2) no event has occurred or circumstances exist which, with the delivery of notice, passage of time or both, would constitute such a breach or default, in each case, that would reasonably be expected to have a JEA Material Adverse Effect.

(d) To the knowledge of Seller, Seller has not received any written notice of (i) material violations of building codes or zoning ordinances or other governmental or regulatory

Laws affecting the Real Property, (ii) existing pending or threatened condemnation proceedings affecting the Real Property, or (iii) existing, pending or threatened zoning, building code or other moratorium proceedings or similar matters which would in each reasonably be expected to materially and adversely impair the use of the Real Property as currently used, in each case, that would reasonably be expected to have a JEA Material Adverse Effect.

**Section 3.12 Employee Benefit Plans.**

(a) Section 3.12(a) of the Seller Disclosure Letter sets forth a list of each (i) material employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)), (ii) governmental plan (as defined in Section 3(32) of ERISA) and (iii) other plan, contract, agreement, arrangement or policy providing for (A) compensation, severance benefits, bonuses, profit-sharing or other forms of incentive compensation, (B) vacation, holiday, sickness or other time-off, (C) health, medical, dental, disability, life, accidental death and dismemberment, employee assistance, educational assistance, relocation or fringe benefits or perquisites, including post-employment benefits, and (D) deferred compensation, defined benefit or defined contribution, retirement or pension benefits, in each case, pursuant to which Seller currently has any obligation with respect to any current or former Service Provider (collectively, the “Employee Benefit Plans”). Seller has made available to Purchaser a true and complete copy of each Employee Benefit Plan and all material amendments thereto.

(b) To the knowledge of Seller: (i) each Employee Benefit Plan has been maintained in all material respects in accordance with its terms and the requirements of applicable Law, (ii) the Business has performed all material obligations required to be performed by it under any Employee Benefit Plan and is not in any material respect in default under or in violation of any Employee Benefit Plan, (iii) no material Action (other than claims for benefits in the ordinary course) is pending or threatened in writing with respect to any Employee Benefit Plan by any current Service Provider, (iv) no events have occurred with respect to any Employee Benefit Plan that could result in the assessment of any excise tax against the Business and (v) no Employee Benefit Plan is subject to ERISA.

(c) Except as set forth on Section 3.12(c) of the Seller Disclosure Letter, no Employee Benefit Plan provides any post-retirement medical, dental or life insurance benefits to any current or former Service Provider (other than coverage mandated by applicable Law).

(d) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby (either alone or together with any other event) will entitle any member of the executive management team of the Business listed on Section 3.12(d) of the Seller Disclosure Letter to any material payment or benefit or accelerate the time of payment or vesting of any material compensation or benefits, in either case under any Employee Benefit Plan.

(e) The representations and warranties contained in this Section 3.12 are the sole and exclusive representations and warranties of Seller with respect to the Employee Benefit Plans.

**Section 3.13 Labor and Employee Matters.**

(a) Employees of the Business as of the date of this Agreement are not subject to any labor or collective bargaining Contracts with respect to the Business other than the Collective Bargaining Agreements listed in Section 3.13(a) of the Seller Disclosure Letter, and to the knowledge of Seller, as of the date of this Agreement, there are no organizing activities or collective bargaining arrangements that could affect the Business pending or under discussion with any labor organization.

(b) To the knowledge of Seller, the Business is in compliance with all applicable Laws regarding employment, discrimination, and harassment in employment, except as would not have or reasonably be expected to have a JEA Material Adverse Effect, and, to the knowledge of Seller, Seller has not during the last twelve (12) months engaged in any unfair labor practice.

(c) The representations and warranties contained in this Section 3.13, Section 3.08(a)(viii) and Section 3.12(a) are the sole and exclusive representations and warranties of Seller with respect to labor and employee matters.

**Section 3.14 Taxes.** All material Tax Returns required to have been filed with respect to the Business or the Purchased Assets have been timely filed (taking into account any extension of time to file granted or obtained), and such Tax Returns have been duly and accurately prepared in all material respects. All Taxes shown to be payable on such Tax Returns have been paid and all other material Taxes required to be paid with respect to the Business or the Purchased Assets have been timely paid, in each case, except for Taxes being contested in good faith by appropriate proceedings. No deficiency for any material amount of Tax has been asserted or assessed by a Governmental Authority in writing with respect to the Business or the Purchased Assets that has not been satisfied by payment, settled, or withdrawn. There are no Tax liens on the Business or the Purchased Assets, other than Permitted Encumbrances. This Section 3.14 contains the sole and exclusive representations and warranties of Seller with respect to Taxes.

**Section 3.15 Environmental Matters.** Except for such matters that would not reasonably be expected to have, individually or in the aggregate, a JEA Material Adverse Effect:

(a) To the knowledge of Seller, all Environmental Permits that are necessary for the operation of the Business as it is currently being operated have been obtained or timely applied for and are in full force and effect, and the Business is in compliance with the requirements of all applicable Environmental Laws.

(b) Except for matters that have been fully resolved, to the knowledge of Seller, the Business is not subject to any consent decree, agreement, or Order with any Governmental Authority arising under Environmental Laws, nor has Seller received, with respect to the Business or the Purchased Assets, any written notice or report regarding any actual or alleged violation of Environmental Laws, or any Liabilities or potential Liabilities, including any investigatory, remedial, or corrective obligations, arising under Environmental Laws.

(c) To the knowledge of Seller, there is and has been no Release from, in, on, or beneath any of the Real Property (except as permitted pursuant to Environmental Laws or Environmental Permits) that would reasonably be expected to form the basis for any Environmental Claims against Seller with respect to the Business or the Purchased Assets.

(d) To the knowledge of Seller, there are no Environmental Claims existing, pending or threatened in writing against Seller with respect to the Business or the Purchased Assets.

(e) To the knowledge of Seller, Seller has made available to Purchaser copies of all Phase I and Phase II environmental assessments prepared within the last three (3) years that are in its possession that describe environmental matters that would reasonably be expected to be material to the Business or the Purchased Assets.

This Section 3.15 contains the sole and exclusive representations and warranties of Seller with respect to environmental matters.

**Section 3.16 Insurance.** Except as would not reasonably be likely, individually or in the aggregate, to have a JEA Material Adverse Effect, (a) the Business and the Purchased Assets are insured with reputable insurers, or are self-insured by Seller, against such risks and in such amounts as Seller reasonably has determined to be prudent and consistent with industry practice, (b) each such policy is in full force and effect, and (c) to the knowledge of Seller, no written notice of cancellation, termination or nonrenewal (other than written notices of non-renewals received in the ordinary course of business) has been received by Seller with respect to any such insurance policy.

**Section 3.17 Information Security.** Seller has taken such steps that are consistent with Prudent Utility Practice to protect the material information technology systems currently used in the Business (the “IT Systems”). The Business has in place such disaster recovery plans, procedures and facilities for the IT Systems and has taken such steps to safeguard the security of the IT Systems that are in each case consistent with Prudent Utility Practice. To the knowledge of Seller, there have been no unauthorized intrusions or breaches of the security of the IT Systems for the twelve months prior to the date of this Agreement that had, or would reasonably be expected to have, individually or in the aggregate, a JEA Material Adverse Effect. This Section 3.17 contains the sole and exclusive representations and warranties of Seller with respect to information security matters.

**Section 3.18 Intellectual Property.** Section 3.18 of the Seller Disclosure Letter sets forth, as of the date of this Agreement, a list of patents, patent applications, trademark registrations and applications, copyright registrations and applications, and domain names owned by Seller and used in the Business as currently conducted (collectively, “Business IP Rights”). To the knowledge of Seller, the Business IP Rights are owned free and clear of all Encumbrances other than Permitted Encumbrances. As of the date of this Agreement, to the knowledge of Seller, there are no claims against the Business by any third party alleging that the Business is infringing any Intellectual Property Rights of a third party in any material respect. As of the date of this Agreement, to the knowledge of Seller, (a) the conduct of the Business as currently conducted does not infringe any Intellectual Property Rights of any third party, and (b) no third party is infringing any material Business IP Rights. This Section 3.18 and Section 3.08(a) contain the sole and exclusive representations and warranties of Seller with respect to intellectual property matters.

**Section 3.19 Certain Business Practices.** To the knowledge of Seller, as of the date of this Agreement, none of the officers, directors, or employees of the Business (a) has made or agreed to make any contribution, payment or gift (including a gift of entertainment) to, or accepted or received any contributions, payments or gifts (including gifts of entertainment) from, any government official, government employee, political party or agent of a political party or any candidate for any federal, state, local or foreign public office, where either the contribution, payment or gift or the purpose thereof was illegal under applicable Law, (b) has engaged in or otherwise participated in, assisted or facilitated any transaction that is prohibited under any applicable sanctions or related trade restrictions imposed by the United States Department of the Treasury’s Office of Foreign Assets Control or any other agency of the

United States Government or (c) has violated in any material respect the United States Foreign Corrupt Practices Act of 1977, the United States Federal Procurement Integrity Act or any comparable applicable Law, including such applicable Laws dealing with bribery, corruption or improper or illegal payments, gifts or gratuities to any individual or government official, government employee, political party or agent of a political party or any candidate for any federal, state, local or foreign public officer, or money laundering.

**Section 3.20 Brokers.** Seller will be solely responsible for the fees and expenses of any broker, finder or investment banker entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller prior to the Closing.

**Section 3.21 No Other Representations or Warranties.** Except for the representations and warranties expressly set forth in this Article III neither Seller nor any other Person on behalf of Seller has made or makes, and Seller hereby expressly disclaims and negates, any other express or implied representation or warranty whatsoever (whether at Law or in equity) with respect to Seller, its Affiliates, the Business or the Purchased Assets or any matter relating to any of them, including their affairs, the condition, value or quality of the assets, liabilities, financial condition or results of operations, or with respect to the accuracy or completeness of any other information made available to Purchaser, its Affiliates or any of their respective Representatives by, or on behalf of, Seller, and any such representations or warranties are expressly disclaimed. Without limiting the generality of the foregoing, except as expressly set forth in this Agreement, neither Seller nor any other Person on behalf of Seller has made or makes, any representation or warranty, whether express or implied, with respect to any projections, forecasts, estimates or budgets made available to Purchaser, its Affiliates or any of their respective Representatives of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of Seller, the Business or the Purchased Assets (including the reasonableness of the assumptions underlying any of the foregoing), whether or not included in any management presentation or in any other information made available to Purchaser or any of its Affiliates, or any of their respective Representatives or any other Person, and that any such representations or warranties are expressly disclaimed.

#### ARTICLE IV

#### REPRESENTATIONS AND WARRANTIES OF PURCHASER [AND GUARANTOR]

Except as set forth in the disclosure letter delivered by Purchaser [**and Guarantor**] to Seller concurrently with the execution of this Agreement (the "Purchaser Disclosure Letter"), Purchaser represents and warrants to Seller as follows:

**Section 4.01 Organization and Qualification of Purchaser [and Guarantor].** [(a)] Purchaser is a [•] duly organized, validly existing and in good standing under the Laws of the State of [•] and has all requisite power and authority to own, lease or operate its properties and assets and to carry on its business as currently conducted. Purchaser is duly qualified or licensed to transact business and is in good standing (if applicable) in each jurisdiction in which the property and assets it owns, leases or operates, or the nature of the business it conducts, makes such qualification or licensing necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Purchaser Material Adverse Effect. [(b) **Guarantor is a [•] duly organized, validly existing and in good standing under the Laws of the State of [•] and has all requisite power and authority to own, lease or operate its properties and assets and to carry on its business as currently conducted. Guarantor is duly qualified or licensed to transact business and is in good standing (if applicable) in each jurisdiction in which the property and assets it owns, leases or operates, or the nature of the business it conducts, makes such qualification or licensing necessary, except where the failure to**



**be so duly qualified or licensed and in good standing would not have a Purchaser Material Adverse Effect.]**

**Section 4.02 Authority of Purchaser [and Guarantor].** Purchaser [and Guarantor each] has all requisite corporate power and authority to enter into this Agreement and the Ancillary Documents to which Purchaser [or Guarantor (as applicable)] is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Purchaser [or Guarantor (as applicable)] of this Agreement and any Ancillary Document to which Purchaser [or Guarantor (as applicable)] is a party, the performance by Purchaser [or Guarantor (as applicable)] of its obligations hereunder and thereunder and the consummation by Purchaser [and Guarantor] of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of Purchaser [and Guarantor]. This Agreement has been duly executed and delivered by Purchaser [and Guarantor] and, assuming due authorization, execution and delivery by Seller, constitutes a legal, valid and binding obligation of Purchaser [and Guarantor] enforceable against Purchaser [and Guarantor] in accordance with its terms, subject to the Enforceability Exception. When each Ancillary Document to which Purchaser [or Guarantor (as applicable)] is or will be a party has been duly executed and delivered by Purchaser [or Guarantor (as applicable)], assuming due authorization, execution and delivery by each other party thereto, such Ancillary Document will constitute a legal and binding obligation of Purchaser [or Guarantor (as applicable)] enforceable against it in accordance with its terms, subject to the Enforceability Exception.

**Section 4.03 Consents and Approvals; No Violations.** Assuming the truth and accuracy of the representations and warranties of Seller set forth in Section 3.03, no filing with or notice to, and no consent or approval of, any Governmental Authority is required on the part of Purchaser [or Guarantor] for the execution, delivery and performance by Purchaser [or Guarantor] of this Agreement or any Ancillary Document to which Purchaser [or Guarantor] is a party or the consummation by Purchaser of the transactions contemplated hereby or thereby, except (a) the authorizations or approvals listed on Section 4.03 of the Purchaser Disclosure Letter, or (b) any permit, declaration, filing, authorization, registration, consent or approval, the failure to make or obtain would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect. Assuming compliance with the items described in clauses (a) through (b) of the preceding sentence, neither the execution, delivery or performance by Purchaser [or Guarantor] of this Agreement or any Ancillary Document to which Purchaser [or Guarantor] is a party, nor the consummation by Purchaser [or Guarantor] of the transactions contemplated hereby or thereby will (i) conflict with or result in any breach or violation of any provision of its respective Organizational Documents, (ii) result in a breach or violation of, or constitute (with or without due notice or lapse of time or both) a default, or any right of termination, amendment, cancellation or acceleration under any of the terms, conditions or provisions of any contract, agreement or other instrument binding on Purchaser [or Guarantor], or (iii) violate any Law or Order applicable to Purchaser [or Guarantor] or its properties or assets, except, in the case of clauses (ii) or (iii), for breaches, violations, defaults, or rights of termination, amendment, cancellation or acceleration that would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

**Section 4.04 Legal Proceedings.** There are no Actions pending or, to Purchaser's knowledge, threatened against or by Purchaser [or Guarantor] that challenge or seek to prevent, enjoin, prohibit, restrain or otherwise delay, make illegal, or adversely effect the performance of this Agreement or the Ancillary Documents or the consummation of any of the transactions contemplated hereby or thereby. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

**Section 4.05 [Financial Capability] // [Financing].**<sup>11</sup> [Purchaser will have at the Closing sufficient funds immediately available to it through corporate funds, credit facilities and access to capital markets to pay the full Purchase Price at the Closing and to enable Purchaser to timely perform all of its obligations (including payment of all expenses and other amounts payable pursuant to the terms hereof) under this Agreement and the Ancillary Documents and to otherwise consummate the transactions contemplated by this Agreement in accordance with the terms hereof. Purchaser has delivered to Seller audited **[consolidated]** balance sheets for each of Purchaser **[and Guarantor]** as of [•] and [•], and audited **[consolidated]** statements of income and cash flows for the first years then ended. Such financial statements and notes thereto, if any, fairly present in all material respects the **[consolidated]** financial condition, results of operations and cash flows of each of Purchaser **[and Guarantor]** as of such dates for the periods then ended in accordance with GAAP applied by Purchaser **[and Guarantor (as applicable)]** during the periods covered thereby in a manner consistent with the preparation of Purchaser’s **[and Guarantor’s (as applicable)]** audited, **[consolidated]** balance sheets as of [•]. In no event shall the receipt or availability of any funds or financing by Purchaser or any of its Affiliates or any other financing or other transactions be a condition to any of Purchaser’s obligations hereunder.] //

(a) [Purchaser has provided to Seller a true, complete and correct copy of a commitment letter (including a true, complete and correct copy of any “market flex” provisions therein) (the “Debt Financing Commitment”), pursuant to which certain lender(s) have committed, subject to the terms and conditions set forth therein, to lend the amounts set forth therein in immediately available funds to provide debt financing to Purchaser to consummate the transactions contemplated by this Agreement and the Ancillary Documents (such debt financing, the “Debt Financing”). Purchaser has delivered to Seller a true, complete and correct copy of an executed commitment letter (the “Equity Financing Commitment”), dated as of the date hereof, and of which Seller is a third-party beneficiary of to the extent set forth therein (pursuant to which [•], has committed, subject to the terms and conditions set forth therein, to provide equity financing in immediately available funds to Purchaser in the amount set forth therein for purposes of funding the transactions contemplated by this Agreement and the Ancillary Documents (such equity financing the “Equity Financing”).

(b) The amount of the Equity Financing, together with the Debt Financing, is all of the financing required for Purchaser to timely consummate the transactions contemplated by this Agreement and the Ancillary Documents, and is sufficient to enable Purchaser to pay the Purchase Price and all related fees, costs and expenses in connection with the transactions contemplated by this Agreement and the Ancillary Documents (including any fees incurred in connection with the Financing) (the Debt Financing Commitment and the Equity Financing Commitment together, the “Commitment Letters,” and the Debt Financing and the Equity Financing together, the “Financing”). As of the date hereof, no Commitment Letter has been amended or modified, no such amendment or modification is contemplated or the subject of any discussions, and no commitment contained in the Commitment Letters has been withdrawn or rescinded in any respect.

(c) The obligations of the parties committing to fund under the Commitment Letters are not subject, directly or indirectly, to any condition, other than the conditions expressly set forth in the Commitment Letters. The execution, delivery and performance of each Commitment Letter by Purchaser and each other Person party thereto, and the consummation of the transactions contemplated thereby, have been duly and validly authorized by all requisite action by Purchaser and each other Person party thereto, and no other proceedings on the part of Purchaser and each other Person party thereto are necessary to authorize the execution, delivery or performance of such

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<sup>11</sup> Note to Respondent: Please provide either the Financial Capability representation and warranty or the Financing representation and warranty, as applicable.

Commitment Letter by Purchaser and each other Person party thereto. As of the date hereof, each Commitment Letter is in full force and effect and is the valid, binding and enforceable obligation of the parties thereto.

(d) As of the date hereof, no event has occurred, and Purchaser has no reason to believe that any event has occurred, which, with or without notice, lapse of time or both, would constitute a default or a breach under the Commitment Letters, or otherwise permit the respective committing parties to withdraw, rescind or not fulfill their respective commitments under the Commitment Letters. Purchaser is not aware of any fact event or other occurrence that makes any of the representations of Purchaser in any of the Commitment Letters inaccurate in any respect. Purchaser has no reason to believe that any of the conditions to the Financing as contemplated by the Commitment Letters will not be satisfied on a timely basis or that the Financing contemplated by the Commitment Letters will not be made available on the Closing Date. There are no side letters or other agreements, arrangements or understandings (written or oral, binding or not binding) relating to the Financing. There are no fees, expenses reimbursement obligations or other amounts that are required to be paid by Purchaser prior to Closing under or in respect of the Commitment Letters, and Purchaser will pay any and all such fees as they become due. There are no conditions precedent or other contingencies related to the obligation of [•] to fund or invest, as applicable, the full amount (or any portion) of the Equity Financing, other than as expressly set forth in the Equity Financing Commitment as in effect on the date hereof.

(e) Notwithstanding this Section 4.05 or any other provision of this Agreement, Purchaser affirms that it is not a condition to Closing or to any of its other obligations under this Agreement (including consummating the transactions contemplated herein) that Purchaser obtain financing for or related to any of the transactions contemplated herein (including receipt of all or any portion of the proceeds of the Financing).

**Section 4.06 Solvency.** Purchaser is Solvent as of the date of this Agreement. Immediately after giving effect to the transactions contemplated by this Agreement [ , **including the Financing and the use of proceeds thereof,**] the payment of the Purchase Price and the payment of all related fees and expenses, Purchaser and its subsidiaries, will be Solvent. For purposes of this Section 4.06, the term “Solvent” with respect to any Person means that, as of any date of determination, (a) such Person shall be able to pay their respective liabilities, including contingent and other liabilities, as they mature, (b) the amount of the fair saleable value of the assets of such Person exceeds, as of such date, the value of all liabilities of such Person, including contingent and other liabilities, as of such date, and (c) such Person will have, as of such date, adequate capital for the operation of the business in which they are engaged or proposed to be engaged following such date. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated by this Agreement with the intent to hinder, delay or defraud either present or future creditors of Purchaser.

**Section 4.07 No Foreign Ownership.**<sup>12</sup> No foreign government, agency of a foreign government, or representative of a foreign government; no business enterprise or other entity organized, chartered or incorporated under the Laws of any country other than the United States or its territories; nor any Person who is not a citizen or national of the United States (each a “Foreign Interest”), (a) individually or in the aggregate with other Foreign Interests, owns or has a beneficial ownership of five percent (5%) or more of Purchaser or if Purchaser does not issue equity, indirectly or directly, subscribed for five percent (5%) or more of Purchaser’s total capital commitment, or (b) has the power, direct or indirect, whether or not exercised, and whether or not exercisable through the ownership of Purchaser, by contractual

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<sup>12</sup> Note to Respondent: Respondent to provide any fulsome qualifying disclosure with respect to this rep. in the Purchaser Disclosure Letter.

arrangements or other means, to determine, direct or decide matters affecting the management, operations or important decisions of Purchaser. Purchaser, directly or indirectly through subsidiaries and/or Affiliates, does not own ten percent (10%) or more of any Foreign Interest. Purchaser acknowledges the restrictions that affiliation with or significant influence by a Foreign Interest may put on the prospects of the Business, and shall fully comply with the law with respect to mitigation of any such affiliation or influence of such Foreign Interest. Purchaser further acknowledges that Seller shall not have liability for any breach of any representation or warranty to the extent such breach results from Purchaser or any of its Affiliates having any direct or indirect foreign ownership.

**Section 4.08 Anti-Money Laundering Compliance.** None of the funds used by Purchaser to pay the Purchase Price or any other amounts payable hereunder (a) has been or will be directly or indirectly derived from, or related to, any activity that contravenes any Law, including anti-money laundering Laws, applicable to Purchaser, and (b) shall cause Seller to be in violation of any Laws applicable to Purchaser that relate to the prohibition of money laundering and/or financing of terrorism or other crimes.

**Section 4.09 Brokers.** Purchaser will be solely responsible for the fees and expenses of any broker, finder or investment banker entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Purchaser prior to the Closing.

**Section 4.10 Independent Investigation; As-Is; Non-Reliance.**

(a) PURCHASER ACKNOWLEDGES, AGREES, WARRANTS AND REPRESENTS, ON BEHALF OF ITSELF AND ITS AFFILIATES, THAT IT (I) IS AN INFORMED AND SOPHISTICATED PURCHASER WITH SUCH KNOWLEDGE AND EXPERIENCE IN EVALUATING THE MERITS AND RISKS OF THE TRANSACTIONS CONTEMPLATED HEREIN THAT IT IS CAPABLE OF EVALUATING THE MERITS AND RISKS AND THAT IT HAS ENGAGED EXPERT ADVISORS EXPERIENCED IN THE EVALUATION OF SIMILAR TRANSACTIONS, (II) HAS CONDUCTED ITS OWN INDEPENDENT INVESTIGATION, REVIEW AND ANALYSIS OF THE BUSINESS AND THE PURCHASED ASSETS, AND HAS EVALUATED SUCH DOCUMENTS, INFORMATION AND OTHER MATERIAL AS IT HAS DEEMED NECESSARY TO ENABLE IT TO MAKE AN INFORMED AND INTELLIGENT DECISION AND BASED THEREON, HAS FORMED AN INDEPENDENT JUDGMENT CONCERNING, THE PURCHASED ASSETS, ASSUMED LIABILITIES, CONDITION, OPERATIONS AND PROSPECT OF THE BUSINESS, (III) HAS BEEN FURNISHED WITH OR GIVEN FULL ACCESS TO SUCH INFORMATION ABOUT THE BUSINESS AND THE PURCHASED ASSETS AS IT AND ITS REPRESENTATIVES HAVE REQUESTED, (IV) 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 PURPOSES (V) HAS HAD SUCH TIME AS IT DEEMS NECESSARY AND APPROPRIATE TO FULLY AND COMPLETELY REVIEW AND ANALYZE THE DOCUMENTS, INFORMATION AND OTHER MATERIALS PROVIDED, AND (VI) HAS BEEN PROVIDED AN OPPORTUNITY TO ASK QUESTIONS OF SELLER WITH RESPECT TO SUCH DOCUMENTS, INFORMATION AND OTHER MATERIALS AND HAS RECEIVED FULL ANSWERS TO SUCH QUESTIONS. PURCHASER ACKNOWLEDGES AND AGREES THAT IN MAKING ITS DECISION TO ENTER INTO THIS AGREEMENT AND THE ANCILLARY DOCUMENTS TO WHICH IT IS OR WILL BE A PARTY AND TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, PURCHASER HAS RELIED SOLELY UPON ITS OWN INVESTIGATION AND PHYSICAL INSPECTION OF THE PURCHASED ASSETS AND THE EXPRESS REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN ARTICLE III OF THIS AGREEMENT.

(b) PURCHASER ACKNOWLEDGES, AGREES, WARRANTS AND REPRESENTS, ON BEHALF OF ITSELF AND ITS AFFILIATES, THAT, EXCEPT AS EXPRESSLY REPRESENTED BY SELLER IN ARTICLE III, THE SALE OF THE PURCHASED ASSETS IS MADE ON AN "AS IS" "WHERE IS" CONDITION AND

BASIS AND WITH ALL FAULTS, AND WITHOUT ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN NEGOTIATED BASED ON THE FACT THAT THE PURCHASED ASSETS ARE SOLD BY SELLER AND PURCHASED BY PURCHASER SUBJECT TO THE FOREGOING ACKNOWLEDGEMENT.

(c) PURCHASER ACKNOWLEDGES, AGREES, WARRANTS AND REPRESENTS, ON BEHALF OF ITSELF AND ITS AFFILIATES, THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE III, NEITHER SELLER NOR ANY OTHER PERSON ON BEHALF OF SELLER HAS MADE OR MAKES, AND PURCHASER HAS NOT RELIED UPON, ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER (WHETHER AT LAW OR IN EQUITY) WITH RESPECT TO SELLER, ITS AFFILIATES, THE BUSINESS THE PURCHASED ASSETS OR ANY MATTER RELATING TO ANY OF THEM INCLUDING THEIR AFFAIRS, ASSETS, LIABILITIES, FINANCIAL CONDITION OR RESULTS OF OPERATIONS, OR WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF ANY OTHER INFORMATION MADE AVAILABLE TO PURCHASER, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE REPRESENTATIVES BY, OR ON BEHALF OF, SELLER, AND ANY SUCH REPRESENTATIONS OR WARRANTIES ARE EXPRESSLY DISCLAIMED. PURCHASER ACKNOWLEDGES ON BEHALF OF ITSELF AND ITS AFFILIATES AND AGREES THAT NEITHER SELLER NOR ANY OTHER PERSON ON BEHALF OF SELLER HAS MADE OR MAKES, AND PURCHASER HAS NOT RELIED UPON, ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROJECTIONS, FORECASTS, ESTIMATES OR BUDGETS MADE AVAILABLE TO PURCHASER, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE REPRESENTATIVES OF FUTURE REVENUES, FUTURE RESULTS OF OPERATIONS (OR ANY COMPONENT THEREOF), FUTURE CASH FLOWS OR FUTURE FINANCIAL CONDITION (OR ANY COMPONENT THEREOF) OF SELLER, THE BUSINESS OR THE PURCHASED ASSETS (INCLUDING THE REASONABLENESS OF THE ASSUMPTIONS UNDERLYING ANY OF THE FOREGOING), WHETHER OR NOT INCLUDED IN ANY MANAGEMENT PRESENTATION OR IN ANY OTHER INFORMATION MADE AVAILABLE TO PURCHASER OR ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE REPRESENTATIVES OR ANY OTHER PERSON, AND THAT ANY SUCH REPRESENTATIONS OR WARRANTIES ARE EXPRESSLY DISCLAIMED. PURCHASER ACKNOWLEDGES ON BEHALF OF ITSELF AND ITS AFFILIATES THAT THERE ARE INHERENT UNCERTAINTIES IN PROJECTIONS, FORECASTS, ESTIMATES OR BUDGETS AND IT TAKES FULL RESPONSIBILITY FOR MAKING ITS OWN EVALUATION OF THE ADEQUACY AND ACCURACY OF ANY SUCH PROJECTIONS, FORECASTS, ESTIMATES OR BUDGETS (INCLUDING THE REASONABLENESS OF THE ASSUMPTIONS UNDERLYING ANY OF THE FOREGOING). PURCHASER (I) IS NOT AWARE OF AND HAS NO REASON TO BELIEVE THAT ANY OF THE REPRESENTATIONS OR WARRANTIES SET FORTH IN THIS AGREEMENT ARE UNTRUE, INCOMPLETE OR INACCURATE IN ANY RESPECT AND (II) IS NOT AWARE OF ANY FACT, MATTER, CIRCUMSTANCE, EVENT OR CONDITION THAT DIRECTLY OR INDIRECTLY (WITH OR WITHOUT NOTICE OR LAPSE OF TIME, OR BOTH) COULD FORM THE BASIS OF OR OTHERWISE RESULT IN A BREACH OF ANY OF THE REPRESENTATIONS OR WARRANTIES SET FORTH IN THIS AGREEMENT.

**Section 4.11 No Other Representations and Warranties.** Except for the representations and warranties expressly set forth in this Article IV and Section 8.13(b)(iii) neither Purchaser nor any other Person on behalf of Purchaser has made, and Purchaser hereby expressly disclaims and negates, any other express or implied representation or warranty whatsoever (whether at law (including at common law or by statute) or in equity) with respect to Purchaser or any matter relating to Purchaser, including its affairs, assets, liabilities, financial condition or results of operations, or with respect to the accuracy or completeness of any other information made available to Seller, its Affiliates or any of their respective Representatives by, or on behalf of, Purchaser, and any such representations or warranties are expressly disclaimed.

**ARTICLE V  
COVENANTS**

**Section 5.01 Conduct of Business Prior to the Closing.**

(a) Seller covenants and agrees that from the date of this Agreement until the earlier of the Termination Date and the Closing, except as (i) permitted or required by this Agreement or consented to in writing by Purchaser (which consent shall not be unreasonably withheld, conditioned, or delayed), (ii) required by applicable Law (including as may be requested or compelled by any Governmental Authority) or Permit, (iii) set forth in Section 5.01(a) of Seller Disclosure Letter, (iv) related to the purchase of inventory, or the entry into or performance under fuel contracts or hedging arrangements, in each case, in the ordinary course of Business, (v) required, in Seller's sole and absolute discretion, to respond to operational emergencies (including any restoration or other measures (including adjustments to rates) in response to any act of terrorism, hurricane, tornado, ice storm, tsunami, flood, earthquake, or other natural disaster or weather-related event, circumstance, or development), equipment failures, property damages, outages, or threats to the health or safety of natural Persons, or (vi) a result of any disruption arising from the announcement by Seller of the ITN Process and any modifications thereto, the execution of this Agreement (including as a result of the identity of Purchaser), and the consummation of the transactions contemplated hereby, Seller (A) shall use its commercially reasonable efforts, based on Prudent Utility Practice, to conduct the Business in the ordinary course of business in all material respects and preserve substantially intact its present Business organization and operations and preserve its material relationships with its customers and suppliers and other Persons with whom the Business has significant business dealings and (B) shall not (it being acknowledged and agreed that, if any action is expressly permitted by any of the following subsections, such action shall be expressly permitted under this Section 5.01):

(1) Organizational Documents. Adopt any change to its Organizational Documents (other than changes that would have an immaterial effect on the transactions contemplated by this Agreement).

(2) No Dissolution. Adopt a plan of complete or partial liquidation or dissolution of the Business.

(3) Mergers. Merge or consolidate the Business with any other Person.

(4) Acquisitions; Investments. Except with respect to capital expenditures permitted by subsection (6) below, make any acquisition (including by merger, consolidation, or otherwise) of the capital stock, equity securities, membership interests, or assets of any other Person, or make any loan, advance, or capital contribution to, or investment in, any other Person, in each case outside of the ordinary course of business, except for any such transaction (I) pursuant to existing Contracts (or Contracts that are permitted to be entered into, amended, or renewed pursuant to subsection (6) below) or (II) as to which the value or purchase price of any such transaction is not in excess of \$15,000,000.

(5) No Dispositions. Sell, dispose of, transfer, or lease any of the material Purchased Assets, except (I) pursuant to existing Contracts (or Contracts that are permitted to be entered into, amended, or renewed pursuant to subsection (6) below), (II) for any disposition as to which the sale price is not in excess of \$15,000,000, (III) for sales of obsolete assets, or (IV) for asset retirements or disposals in the ordinary course of business.

(6) Capital Expenditures. Make any capital expenditures in excess of \$15,000,000 in the aggregate per calendar quarter, except for expenditures that are (I) in the ordinary course of business or (II) pursuant to existing Contracts (or Contracts that are permitted to be entered into, amended, or renewed pursuant to subsection (12) below).

(7) Indebtedness. Other than under existing credit facilities, incur or guarantee any Indebtedness, or guarantee any other obligation of any Person, except for Indebtedness (I) incurred in the ordinary course of business, (II) pursuant to existing Contracts (or Contracts that are permitted to be entered into, amended or renewed pursuant to subsection (6) above), or (III) in an amount not in excess of \$20,000,000 in the aggregate.

(8) Accounting. Make any material changes with respect to accounting policies or procedures, with respect to the Purchased Assets and Assumed Liabilities, except as required by (I) applicable Law, (II) changes in GAAP (or any interpretation thereof), or (III) as required by a Governmental Authority or quasi-Governmental Authority (including the Financial Accounting Standards Board).

(9) Insurance. Permit any material insurance coverage with respect to the Business to terminate or lapse without replacing such policy with substantially comparable coverage, to the extent such coverage is available on commercially reasonable terms.

(10) Tax Matters. (I) Make or change any material Tax election, (II) change Seller's method of accounting for Tax purposes, (III) file any material amended Tax Return, or (IV) consent to any extension or waiver of the limitation period applicable to any claim or assessment with respect to material Taxes, in each case with respect to the Purchased Assets and Assumed Liabilities.

(11) Benefits. Except as contemplated by the Employee Benefit Plans or the Retention Agreements, (I) materially increase the compensation, bonus, pension, welfare, severance, or other benefits of, pay any bonus, incentive, or retention payments to, or make any equity awards to any non-union official, manager, contractor, or employee of the Business, except for increases in base salary or payment of merit or other bonuses in the ordinary course of business, (II) establish, adopt, materially amend, or terminate any Employee Benefit Plan, (III) take any action to accelerate the vesting or payment of compensation or benefits under any Employee Benefit Plan, (IV) change in any material respect any actuarial or other assumptions used to calculate funding obligations with respect to any Employee Benefit Plan, the manner in which contributions to such plans are made, or the basis on which such contributions are determined, except as may be required by GAAP, or (V) hire or terminate without cause any official, manager, or any employee with annual base compensation in excess of \$150,000, other than any such hire that is a replacement hire to fill a vacant position.

(12) Material Contracts. Except in the ordinary course of business, (I) enter into any Contract that would have been a JEA Material Contract had it been entered into prior to the date of this Agreement, (II) amend or modify in a material manner any JEA Material Contract (other than extensions, renewals, or amendments at the end of a term or as otherwise expressly required thereunder, or on overall terms no less favorable in the aggregate to Seller than the terms of the existing JEA Material Contract), or (III) terminate any JEA Material Contract.

(13) Settlement of Claims. Except with respect to any pending Action against the Business, settle or compromise any Action against the Business, other than settlements or compromises that (I) involve the payment by Seller of monetary damages not exceeding \$20,000,000 in the aggregate for all such settlements in a calendar year or (II) would not impose or require non-monetary actions or relief that would not reasonably be expected to be material and adverse to the Business, taken as a whole.

(14) Agree, authorize, or commit to do any of the foregoing actions.

(b) For the avoidance of doubt, the Parties agree that (i) Seller has exclusive responsibility for the Business prior to the Closing and (ii) nothing in this Agreement is intended to give Purchaser a right to control or direct Seller's operation of the Business or the Purchased Assets.

**Section 5.02 Notification of Certain Matters.** From the date hereof until the Closing, each Party shall promptly notify the other Party in writing of any fact, change, condition, circumstance, or occurrence of any event of which it becomes aware that will, or is reasonably likely to, result in any of the conditions set forth in Article VI of this Agreement becoming incapable of being satisfied.

**Section 5.03 Access to Information; Retention of Books and Records.**

(a) From the date of this Agreement until the earlier of the Termination Date and the Closing, Seller shall use commercially reasonable efforts to, upon reasonable prior notice, provide to Purchaser, at Purchaser's expense, under the supervision of Seller's personnel and/or its Representatives, and during normal business hours, reasonable access to the books and records of Seller related to the management and operations of the Business and the Purchased Assets. Notwithstanding the foregoing, Seller shall not be required to use commercially reasonable efforts to provide such access if doing so would be reasonably likely to (i) cause a violation or breach of or default under, or give a third party the right to terminate or accelerate any rights under, any Contract, (ii) result in the loss of a legal privilege of Seller (*provided* that Seller will use commercially reasonable efforts to put in place such arrangements (including common interest and/or joint defense agreements, if applicable) that would permit the sharing of such information without the loss of such privileges, to the extent feasible), (iii) cause any competitive harm to Seller or expose Seller or its Affiliates to a risk of Liability, (iv) constitute a violation of applicable Law or fiduciary duty, or (v) unreasonably disrupt the normal operation of the Business. Seller shall not be required to permit any invasive environmental investigation or sampling, including a Phase II environmental assessment. All information made available pursuant to this Section 5.03(a) shall be treated as "Evaluation Material" pursuant to the terms of the Confidentiality Agreement, and Purchaser acknowledges and agrees that the terms and conditions of the Confidentiality Agreement (x) remain in full force and effect through the date of Closing and (y) apply to this Agreement, except, in each case, as otherwise expressly set forth herein.

(b) From the Closing until the seventh (7<sup>th</sup>) anniversary thereof, Purchaser shall retain all books, records, and other documents that are Purchased Assets, and make the same available for inspection and copying by Seller and its Affiliates (at Seller's or its Affiliates expense, as applicable) during normal business hours of the Business, upon reasonable request and notice, as may be reasonably required by Seller or its Affiliates in connection with the Excluded Assets, the Excluded Liabilities, any Action, preparation of any Tax Return, or otherwise in connection with any Tax matters, governmental investigations, or audits of, or compliance with Law by, Seller or its Affiliates. Notwithstanding the foregoing, Purchaser shall not be required to use commercially reasonable efforts to provide such access if doing so would be reasonably likely to (i) cause a



violation or breach of or default under, or give a third party the right to terminate or accelerate any rights under, any Contract, (ii) result in the loss of a legal privilege of Purchaser (*provided* that Purchaser will use commercially reasonable efforts to put in place such arrangements (including common interest and/or joint defense agreements, if applicable) that would permit the sharing of such information without the loss of such privileges, to the extent feasible), (iii) cause any material competitive harm to Purchaser or expose Purchaser or its Affiliates to a risk of material Liability, (iv) constitute a violation of applicable Law or fiduciary duty, or (v) unreasonably disrupt the normal operation of the Business. All information made available to Seller or any of its Affiliates pursuant to this Section 5.03(b) shall be treated as confidential information of Purchaser and Seller shall not disclose such information to any third party without the prior consent of Purchaser (not to be unreasonably withheld, delayed, or conditioned), except in connection with the purposes set forth in this Section 5.03(b).

(c) If, at any time from and after the Closing, Seller is requested pursuant to the public record requirements of the Florida Public Records Law (F.S. 119) to provide copies of any books, records, or other documents relating to the Business to another Person, Seller shall promptly notify Purchaser of such request. Upon receipt of such notification from Seller, Purchaser shall promptly respond to such public record request for and on behalf of Seller in accordance with the requirements of Florida Public Record Law (F.S. 119). Purchaser shall indemnify and hold harmless Seller and any of its Affiliates, and their respective Representatives, from and against any and all Losses suffered or incurred as a result of any failure by Purchaser to comply with this Section 5.03(c).

**Section 5.04 Employees and Employee Benefits.**

(a) Not less than fifteen (15) Business Days prior to the Closing, subject to Section 5.04(b), Purchaser (or an Affiliate) shall offer employment on terms and conditions (including duties, aggregate value of compensation and benefits, and geographic location) substantially the same (and in any event no less favorable) to those in place prior to the Closing to all of Seller's employees, including employees on short-term disability, long-term disability, or other approved leaves of absence. Each such offer of employment shall be effective as of the Closing Date (except for those employees who are on short-term disability, long-term disability, or other approved leaves of absence, in which case the offer of employment shall be effective as of the Transfer Date). Employees of Seller who accept employment with Purchaser (or an Affiliate) for periods on and following the Closing are referred to herein as the "Transferred Employees", and the date on which such Transferred Employee commences employment with Purchaser is referred to herein as the "Transfer Date". Seller shall terminate the employment of the then-employed employees of the Business effective as of 12:01 AM on the Closing Date (the "Employment Termination Time"), and, except in the case of Accrued Leave transferred to and assumed by Purchaser (or an Affiliate) for Transferred Employees, by no later than the first regularly scheduled payroll date of the Business following the Employment Termination Time, Purchaser (or an Affiliate) shall pay out all salary, wages, bonus, commission, and other remuneration (including accrued but unused paid time off) due such terminated employees of the Business (including Transferred Employees) for service through the Employment Termination Time. For the avoidance of doubt, for purposes of the Retention Agreements, the termination of employment of the employees of Seller contemplated in this Section 5.04(a) shall not constitute an Involuntary Termination (as defined in the Retention Agreements), whether or not the employee of Seller accepts employment with Purchaser (or an Affiliate).

(b) Not less than fifteen (15) Business Days prior to the Closing Date, Purchaser (or an affiliate) shall provide employment offer letters describing the wage rate, leave accrual

rate/balance (including Accrued Leave transferred), retirement contribution, job assignment, and supervisor for each Seller bargaining unit member covered by the Collective Bargaining Agreements, each in accordance with the terms provided in the Collective Bargaining Agreements (the “CBA Employment Terms”), with such CBA Employment Terms becoming effective under Purchaser for those bargaining unit members that have elected to remain employed as of 12:01 AM on the Closing Date.

(c) Purchaser (or an Affiliate) shall provide each Transferred Employee, for a period of three (3) years following the Closing, with (i) an annual base salary or base wage rate, as applicable, and cash incentive compensation opportunities that are no less favorable than the annual base salary or base wage rate, as applicable, and cash incentive compensation opportunities provided to such Transferred Employee by Seller immediately prior to the Closing and (ii) other compensation and employee benefits that are substantially similar in the aggregate to the other compensation and employee benefits provided to such Transferred Employee by Seller or the City of Jacksonville, as applicable, immediately prior to the Closing, but excluding any change of control or retention incentives. If during such three (3) year period, a Transferred Employee incurs an Involuntary Termination (as defined in the Retention Agreements, with all references to JEA or the JEA Group therein being replaced with Purchaser or its Affiliate, as applicable), all unpaid amounts and benefits that would be due and payable by Purchaser (or its Affiliate) to such Transferred Employee in accordance with the foregoing clauses (i) and (ii) (if such Transferred Employee had continued as an employee of Purchaser or its Affiliate, as applicable, for the remainder of such three (3) year period), shall be due and payable by Purchaser to such Transferred Employee as severance within fifteen (15) Business Days following such Transferred Employee’s termination date. For the avoidance of doubt, but subject to Purchaser’s obligations under the applicable Collective Bargaining Agreements, effective at the Closing, Purchaser (or an Affiliate) shall establish, adopt, or enter into incentive, retention, and employment plans, programs, agreements, and arrangements on the terms set forth on Exhibit G hereto (the “Post-Closing Employee Benefit Plans”),<sup>13</sup> and Purchaser (or an Affiliate) shall be solely responsible for administering and satisfying all obligations under the Post-Closing Employee Benefit Plans on and following the Closing.

(d) With respect to any employee benefit plan maintained by Purchaser (or an Affiliate) in which any Transferred Employee will participate effective as of his or her Transfer Date, Purchaser (or an Affiliate) will recognize all service of such Transferred Employee with Seller or its Affiliates (including any predecessor entity of Seller or its Affiliates) as if such service were with Purchaser (or any of its Affiliates), for purposes of determining eligibility to participate, vesting, and benefit accruals in any benefit plan in which such Transferred Employees may be eligible to participate on or after the Closing, except to the extent that such credit would result in a duplication of benefits with respect to the same period of services.

(e) Purchaser shall, or shall cause its applicable Affiliate to, cause its third-party insurance providers or third party administrators to (i) waive any pre-existing conditions, actively at work requirements, and waiting periods, to the extent such pre-existing condition, actively at work requirements, and waiting periods did not apply to or had been satisfied by Transferred Employees under a comparable plan covering such Transferred Employees prior to the Closing, and (ii) cause such plans to honor any expenses incurred by the Transferred Employees and their beneficiaries under similar plans of Seller during the calendar year in which the Closing occurs for purposes of satisfying applicable deductible, co-insurance, and maximum out-of-pocket expenses.

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<sup>13</sup> Note to Respondent: Purchaser to propose parameters of Post-Closing Employee Benefit Plans.

(f) Purchaser shall, or shall cause its applicable Affiliate to, pay the first installment of the Retention Payments to the Retention Bonus Recipients within thirty (30) days following the Closing Date.

(g) Purchaser and Seller hereby agree to follow the alternate procedure for United States employment Tax withholding as provided in Section 5 of Rev. Proc. 2004-53, I.R.B. 2004-34. Accordingly, Seller shall have no United States employment Tax reporting responsibilities, and Purchaser and its Affiliates shall have full United States employment Tax reporting responsibilities, for each Transferred Employee subject to United States employment Taxes on and following such Transferred Employee's Transfer Date, to the extent provided under such Rev. Proc. 2004-53.

(h) For the avoidance of doubt, Purchaser shall be responsible for any Liability under the Worker Adjustment and Retraining Notification Act of 1988 or similar state or local law in connection with any "plant closing" or "mass layoff," as each term is defined therein, affecting any site of employment or facility of the Business that occurs after the Closing Date.

(i) Nothing contained herein, express or implied: (i) shall be construed to establish, modify, or terminate any benefit plan, program, agreement, or arrangement; or (ii) shall alter or limit the ability of Seller or to establish, amend, modify, or terminate any benefit plan, program, agreement, or arrangement.

**Section 5.05 Public Announcements.** The initial press release or press releases regarding this Agreement and the transactions contemplated by this Agreement and the Ancillary Documents, shall be in a form mutually acceptable to Seller and Purchaser, and thereafter Seller and Purchaser each shall consult with each other, and shall provide each other with a reasonable opportunity to review and comment upon, in each case to the extent reasonably practicable, prior to issuing any press releases or otherwise making public announcements or public disclosures with respect to this Agreement and the Ancillary Documents or the transactions contemplated hereby or thereby, except as otherwise required by (a) applicable Law, (b) provided for in the ITN Process, or (c) with respect to Seller's communications with the City Council. Seller and Purchaser understand and acknowledge that all written communications in connection with the transactions contemplated by this Agreement and the Ancillary Documents are public record under the Florida Public Records Law (F.S. 119), unless otherwise exempt. Purchaser acknowledges and agrees that Seller's consent to any release hereunder may be subject to the prior approval of the Office of the General Counsel of the City of Jacksonville.

**Section 5.06 [Financing].**<sup>14</sup>

(a) Without limiting the generality of Purchaser's obligations under Section 5.13, Purchaser shall use its reasonable best efforts to arrange and obtain the Financing on the terms and conditions described in the Commitment Letters on or prior to Closing and, without limiting the foregoing, Purchaser shall (i) maintain in effect the Commitment Letters, (ii) comply with all of Purchaser's obligations thereunder, (iii) satisfy (and if unable to so satisfy, use reasonable best efforts to obtain the waiver of) on a timely basis all conditions within Purchaser's control applicable to Purchaser obtaining the Financing, and (iv) enter into definitive agreements with respect to the Financing reflecting terms and conditions no less favorable to Purchaser with respect to conditionality than those contained in the Commitment Letters, so that such agreements are in effect no later than the Closing. In the event that all of the conditions set forth in Section 6.01 and Section 6.02 have been satisfied or waived, Purchaser shall use reasonable best efforts to cause the funding

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<sup>14</sup> Note to Respondent: Include if applicable.

on the Closing of the full amount of the Financing (or such lesser amount as may be required to consummate the transactions contemplated by this Agreement), and shall enforce all of its rights under the Commitment Letters, including, if necessary to comply with Section 8.11 hereof, commencing and diligently pursuing Actions against the Financing Sources. Without limiting the generality of the preceding two sentences, Purchaser shall give Seller prompt notice: (A) if Purchaser or any of its Affiliates breaches or defaults under or deviates from the terms of, or becomes aware of any other party's breach or default under or deviation from the terms of, the Commitment Letters or any definitive document related to the Financing, and (B) of the receipt by it of any written notice or other written communication from any Person with respect to any actual or alleged breach, default, termination, or repudiation by any party of the Commitment Letters or any definitive document related to the Financing.

(b) Prior to the Closing, neither Purchaser nor any of its Affiliates shall amend, modify, supplement, replace, or agree to any waiver or consent under the Commitment Letters without the prior written consent of Seller, if such amendment, modification, supplement, replacement, or waiver would (i) reduce the aggregate amount of the Financing below an amount sufficient to satisfy the payment obligations of Purchaser in cash at the Closing under this Agreement, including by changing the amount of fees to be paid or original issue discount of the Debt Financing, unless such amount is replaced with an amount of new cash debt or cash equity financing or Purchaser and its Affiliates have sufficient other available sources of cash to satisfy such obligations and have furnished evidence thereof satisfactory to Seller in its reasonable discretion or (ii) impose new or additional conditions to the Financing, otherwise directly or indirectly expand, amend, or modify any of the conditions to the Financing, or otherwise expand, amend, modify, or waive any provision of the Commitment Letters in a manner that, in each case, would reasonably be expected to (A) delay, prevent, or impair the funding or the availability of all or any portion of the Financing at Closing or delay, prevent, or impede the satisfaction of the conditions to obtaining the Financing at Closing, (B) adversely affect the ability of Purchaser to enforce its rights against the Financing Sources or any other parties to the Commitment Letters or the definitive agreements with respect thereto, or (C) adversely affect the ability of Purchaser to timely consummate the transactions contemplated hereby. In the event that new commitment letters are entered into in accordance with any amendment, replacement, supplement, or other modification of the Commitment Letters permitted pursuant to this Section 5.06(b), Purchaser shall promptly deliver to Seller a true, complete, and accurate copy thereof.

(c) If the funds with respect to all or any portion of the Financing expire or are terminated, withdrawn, repudiated, or rescinded for any reason, or all or any portion thereof becomes unavailable on the terms and conditions and at the times contemplated in the Commitment Letters, Purchaser shall (i) promptly notify Seller in writing thereof and the reasons therefor, (ii) use reasonable best efforts to promptly arrange and obtain, at its sole expense, substitute financing sufficient to enable Purchaser to consummate the transactions contemplated by this Agreement on terms and conditions no less favorable in the aggregate to Purchaser with respect to conditionality than the terms and conditions contemplated in the Commitment Letters (the "Substitute Financing"), and (iii) use reasonable best efforts to obtain new commitment letters that provide for such Substitute Financing and, promptly after execution thereof, deliver to Seller true, complete, and correct copies thereof; *provided* that any such Substitute Financing shall not, without the prior written consent of Seller, (A) reduce the aggregate amount of the Financing below an amount sufficient to satisfy the payment obligations of Purchaser in cash at the Closing under this Agreement, including by changing the amount of fees to be paid or original issue discount of the Debt Financing, unless such amount is replaced with an amount of new cash debt or cash equity financing or Purchaser and its Affiliates have sufficient other available sources of cash to satisfy such obligations and have furnished evidence thereof satisfactory to Seller in its reasonable

discretion, (B) impose new or additional conditions to the Financing or otherwise directly or indirectly expand, amend, or modify any of the conditions to the Financing, or (C) otherwise expand, amend, modify, or waive any provision of the Commitment Letters in a manner that would reasonably be expected to (1) delay, prevent, or impair the funding or the availability of all or any portion of the Financing at Closing or delay, prevent, or impede the satisfaction of the conditions to obtaining the Financing at Closing, (2) adversely affect the ability of Purchaser to enforce its rights against the Financing Sources or any other parties to the commitment letters or the definitive agreements with respect thereto, or (3) adversely affect the ability of Purchaser to timely consummate the transactions contemplated hereby. Upon obtaining any commitment for any such Substitute Financing, such financing shall automatically be deemed to be a part of the “Financing” (and the Debt Financing or Equity Financing, as applicable), and each commitment letter or agreement for such Substitute Financing shall be deemed a “Commitment Letter” (and the “Debt Financing Commitment” or “Equity Financing Commitment”, as applicable).

(d) Purchaser acknowledges and agrees that Purchaser’s obligations under this Agreement, including, without limitation, its obligation to consummate the Closing upon satisfaction of the conditions set forth in Section 6.01 and Section 6.02 hereof, are not conditioned in any manner upon Purchaser obtaining all or any portion of the Financing, any Substitute Financing, or any other financing.]

**Section 5.07 [Financing Assistance].**<sup>15</sup>

(a) Prior to the Closing, Seller shall provide, and shall cause its Representatives to provide, such cooperation as is customary for Financing transactions of the type contemplated by the transactions set forth herein and as may be reasonably requested by Purchaser to assist Purchaser and its Representatives in connection with consummating the Debt Financing, including: (i) providing to Purchaser and the Debt Financing Sources from time to time financial and other pertinent information regarding the Business as is reasonably requested in writing by Purchaser or the Debt Financing Sources; (ii) using reasonable best efforts to facilitate the pledge of collateral in connection with the Debt Financing (but which shall not in any event be effective prior to the Closing); (iii) assisting with the preparation of customary closing documentation; (iv) providing any reasonable “know your customer” information required by the Debt Financing Commitment at least five (5) Business Days prior to the Closing; (v) providing information, as reasonably necessary, that will assist Purchaser with the preparation of the pro forma consolidated balance sheet and related pro forma consolidated statements of income and cash flows of Purchaser to the extent required by the Debt Financing Commitment; *provided, however*, that: (A) Seller shall not be required to pay any commitment or other fee or incur any Liability or obligation in connection with the Financing; (B) nothing in this Section 5.07 shall require any action that would conflict with or violate Seller’s Organizational Documents, the ITN Process, or any applicable Law or result in the contravention of, or that would reasonably be expected to result in a violation or breach of, or a default under, any contract to which Seller is a party, (C) no document or certificate shall be executed and/or delivered by Seller except in connection with, and contingent upon, the Closing, (D) no Liability shall be imposed on Seller or any of its Affiliates or their respective Representatives in connection with the Debt Financing, and (E) in no circumstances will Seller be required to deliver or cause the delivery of any legal opinions or any certificate as to solvency or any other certificate related to the Debt Financing.

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

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<sup>15</sup> Note to Respondent: Include if applicable.

(i) Purchaser shall, promptly upon request by Seller, reimburse Seller for all out-of-pocket costs, fees, and expenses incurred by Seller, its Affiliates, or their respective Representatives in connection with such cooperation;

(ii) Purchaser shall indemnify and hold harmless Seller and any of its Affiliates, and their respective Representatives, from and against any and all Losses suffered or incurred by any of them in connection with Seller's or its Affiliates' cooperation and assistance with respect to the Financing or the provision of any information utilized in connection therewith;

(iii) any cooperation pursuant to this Section 5.07 will be conducted in such manner as not to interfere unreasonably with the conduct of the Business; and

(iv) Seller will not be required to disclose or permit disclosure of any information if such disclosure would, in Seller's judgment, violate applicable Law or the provisions of any Contract to which Seller or its Affiliates is bound or jeopardize any attorney-client or other legal privilege.

(c) Notwithstanding anything to the contrary in this Agreement, the Parties agree that this Section 5.07 sets forth Seller's sole obligations with respect to the Financing.]

**Section 5.08 Disclosure Letter Updates.** On or prior to the earlier of the Termination Date or the Closing, Seller may (but shall have no obligation to) notify Purchaser of any changes or additions to the Seller Disclosure Letter with respect to any fact, matter, event, condition, or circumstance of which Seller becomes aware of after the date of this Agreement which (a) could result in a condition to Closing not being satisfied or (b) if existing or occurring on the date hereof, might constitute or lead, or might have constituted or led, to a misrepresentation or breach of a representation or warranty to be set forth or described in the Seller Disclosure Letter (each, a "Schedule Supplement"). No Schedule Supplement shall be deemed to avoid or cure any misrepresentation or breach of warranty or constitute an amendment of any representation, warranty, or statement in this Agreement; *provided* that, if such Schedule Supplement relates to a fact, matter, event, condition, or circumstance that would permit Purchaser to terminate this Agreement as a result of such information so disclosed and Purchaser does not exercise such termination right within five (5) days of receipt of the Schedule Supplement, then such supplemental information shall constitute an amendment of the representation, warranty, or statement to which it relates and Purchaser shall have irrevocably waived any right to (i) terminate this Agreement with respect to such matters and (ii) refuse to consummate the transactions contemplated herein and in the Ancillary Documents. In addition to the foregoing, Seller shall have the right (but not the obligation) to update the Seller Disclosure Letter (A) to disclose any fact, matter, event, condition, or circumstance that is not material that occurred in the ordinary course and did not involve or result from a violation of Law, or failure to perform or comply with any covenant or agreement of Seller contained in this Agreement, and (B) otherwise, with the consent of Purchaser (which consent shall not be unreasonably withheld, conditioned, or delayed), to reflect matters that, individually and in the aggregate, are not material, and such updated Seller Disclosure Letter shall in each case constitute an amendment of the representation, warranty, or statement to which it relates for purposes of Section 7.01(c).

**Section 5.09 Further Assurances and Post-Closing Cooperation.**

(a) Following the Closing, each of the Parties shall use commercially reasonable efforts to execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the Ancillary Documents;

*provided* that Purchaser shall be solely responsible for any notices of, and other applicable documents or instruments relating to, the transfer of real property to any third parties required under any documents relating to the real property or otherwise, including permits, licenses, leases, and submerged land leases.

(b) From and after the Closing, except as would be reasonably expected to materially impair, or interfere with, the operation of Purchaser's business, if and for so long as Seller is contesting or defending against any Action arising in connection with (i) the transactions contemplated under this Agreement or the Ancillary Documents or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving the Business or the Purchased Assets (other than an action brought by Seller against Purchaser [**or Guarantor**] under the terms of this Agreement or in connection with the transactions contemplated hereby), Purchaser shall and shall cause its Affiliates to reasonably cooperate with Seller and its counsel in connection with such Action, make reasonably available Purchaser and its Affiliates' respective Representatives, and provide such witnesses and testimony and, subject to any applicable confidentiality restrictions, access to its books and records as is reasonably requested by Seller in connection with such Action. Seller shall reimburse Purchaser for all reasonable and documented out-of-pocket expenses incurred by Purchaser in providing such cooperation.

**Section 5.10 D&O Insurance and Indemnification.**

(a) From and after the Closing, Purchaser agrees that all rights to indemnification, advancement of expenses, and exculpation of each former and present director or officer of Seller and each person who served as a director, officer, member, trustee, or fiduciary of another Person if such service was at the request or for the benefit of Seller (each, together with such person's heirs, executors, and administrators, a "Seller Indemnified Party"), against all claims, losses, liabilities, damages, judgments, inquiries, fines, and reasonable fees, costs, and expenses, including attorneys' fees and disbursements, incurred in connection with any Action with respect to matters, existing or occurring at or prior to the Closing (including this Agreement and the transactions contemplated hereby), arising out of or pertaining to the fact that the Seller Indemnified Party is or was an officer or director of Seller or is or was serving at the request or for the benefit of Seller as a director, officer, member, trustee, or fiduciary of another Person, whether asserted or claimed prior to, at, or after the Closing, as provided in Exhibit H hereto) and as in effect on the date of this Agreement or in any agreement to which Seller is a party, shall be assumed by Purchaser and continue in full force and effect in accordance with their terms, and Purchaser shall comply with all such terms. For a period of no less than six (6) years after the Closing, Purchaser, to the fullest extent permitted under applicable Law, shall cause the Organizational Documents of Purchaser (or such documents of any successor to the business of Purchaser) to contain provisions regarding exculpation, indemnification, and advancement of expenses that are at least as favorable as the exculpation, indemnification, and advancement of expenses provisions contained in the Organizational Documents of Seller in effect as of immediately prior to the Closing, and during such six-year period shall not amend, repeal, or otherwise modify any such provisions in any manner that would adversely affect the rights thereunder of any individual who immediately prior to the Closing was a Seller Indemnified Party; *provided, however*, that all rights to indemnification in respect of any actual or threatened Action made within such period shall continue until the disposition of such Action or resolution of such Action.

(b) For a period of no less than six (6) years after the Closing, Purchaser shall indemnify and hold harmless (and advance funds in respect of the foregoing) each Seller Indemnified Party to the fullest extent permitted under applicable Law against any Losses in

connection with any actual or threatened Action arising out of or pertaining to the fact that the Seller Indemnified Party is or was an officer or director of Seller or is or was serving at the request of, or for the benefit of, Seller as a director, officer, member, trustee, or fiduciary of another Person, whether asserted or claimed prior to, at, or after the Closing. Purchaser shall use reasonable best efforts to assist the Seller Indemnified Party in the defense of any such Action; *provided, however*, that Purchaser shall only be required to indemnify and hold harmless, or advance expenses to, a Seller Indemnified Party if and to the same extent such Seller Indemnified Party is entitled to indemnification or advancement as of the date of this Agreement by Seller pursuant to (i) its Organizational Documents or (ii) any indemnification agreement between Seller and such Seller Indemnified Party.

(c) Prior to the Closing, Purchaser shall obtain and fully pay the premiums for a non-cancellable extension of the directors' and officers' liability coverage of Seller's (i) existing directors' and officers' insurance policy, (ii) existing fiduciary liability policy, and (iii) policies that require a period of extended coverage as a result of this Agreement or the transactions contemplated hereby (clauses (i) through (iii), collectively, the "D&O Insurance"), in each case for a claims reporting or discovery period of up to six (6) years from and after the Closing with respect to any claim related to any period of time at or prior to the Closing from Seller's current D&O Insurance carriers or one or more insurance carriers with the same or better credit rating as Seller's current D&O Insurance carriers with respect to directors' and officers' insurance policies in an amount and scope at least as favorable as the D&O Insurance; *provided, however*, that (x) in no event shall Purchaser be required to expend for such policies pursuant to this sentence an aggregate amount in excess of 300% of the last annual premium paid by Seller prior to the date hereof in respect of such coverage and (y) if the aggregate premium of such insurance coverage exceeds such amount, Purchaser shall obtain a policy in accordance with this sentence, and such policy shall provide the greatest coverage available with respect to matters occurring prior to the Closing, for a cost not exceeding such amount.

(d) In the event that Purchaser or any of its successors or assigns (i) consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties, rights, and other assets to any Person, then, and in each such case, Purchaser shall cause the successors and assigns of Purchaser, as the case may be, to succeed to or assume the applicable obligations of such Party set forth in this Section 5.10.

(e) The provisions of this Section 5.10 shall survive the Closing, are intended to be for the benefit of, and will be enforceable by, each indemnified or insured person hereunder (including the Seller Indemnified Parties), his or her heirs and his or her Representatives (who shall, for the avoidance of doubt, be deemed third-party beneficiaries of this Agreement for purposes of this Section 5.10) and are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such person may have by Contract, at Law, or otherwise.

**Section 5.11 Filings; Approvals; Cooperation.**

(a) Seller and Purchaser will, and will cause their respective Affiliates to, cooperate with each other and use best efforts to (i) negotiate, prepare, and file as promptly as practicable following the date of this Agreement all necessary applications, notices, petitions, and filings and execute all agreements and documents, to the extent required by applicable Law or Order in connection with the execution, delivery, and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby (including



the Required Regulatory Approvals in accordance with the Regulatory Approval Plan<sup>16</sup> and the information and documentation set forth on Schedule 5.11(a)), and (ii) obtain the consents, approvals, and authorizations of all Governmental Authorities to the extent required by applicable Law or Order in connection with the execution, delivery, and performance of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby (including the Required Regulatory Approvals). Each Party will, and will cause its Affiliates to, consult and cooperate with the other Party as to the appropriate timing of all such filings and notifications, furnish to the other Party such necessary information and reasonable assistance as may be requested in connection with the preparation of such filings, and respond promptly to any requests for additional information made in connection therewith by any Governmental Authority. To the extent permitted under applicable Law, each of Seller and Purchaser will have the right to review in advance all applications, notices, petitions, and filings made or furnished by the other Party or any of its Affiliates in connection with the transactions contemplated hereby.

(b) Purchaser and Seller, acting reasonably and in good faith, will coordinate regarding (i) the preparation and making of any applications and filings (including the content, terms, and conditions of such applications and filings) with any Governmental Authority, (ii) the resolution of any investigation or other inquiry of any Governmental Authority, (iii) the process for obtaining any consents, registrations, approvals, permits, and authorizations of any Governmental Authority (including the Required Regulatory Approvals), and (iv) the making or discussing of any and all proposals relating to any regulatory commitments of Purchaser, Seller, their respective Affiliates, or businesses, or with any Governmental Authority, or its staff, intervenors, or customers, in each case, in connection with the execution, delivery, and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby. Purchaser and Seller, acting reasonably and in good faith, will coordinate with respect to the scheduling and conduct of all meetings with Governmental Authorities in connection with the transactions contemplated by this Agreement and the Ancillary Documents (including the Required Regulatory Approvals); *provided, however*, that to the fullest extent practicable and permitted by Law, in connection with any communications, meetings, or other contacts, oral or written, with any Governmental Authority in connection with the transactions contemplated by this Agreement and the Ancillary Documents, each of Seller and Purchaser shall (and will cause its Affiliates to): (i) inform the other Party in advance of any such communication, meeting, or other contact which such Party or any of its Affiliates proposes or intends to make, including the subject matter, contents, intended agenda, and other aspects of any of the foregoing; (ii) consult and cooperate with the other Party, and take into account the comments of the other Party, in connection with any of the matters covered by this Section 5.11; (iii) permit representatives of the other Party to participate to the maximum extent possible in any such communications, meetings, or other contacts; (iv) promptly notify the other Party of any oral communications with any Governmental Authority relating to any of the foregoing; and (v) promptly provide the other Party with copies of all written communications with any Governmental Authority relating to any of the foregoing. Nothing in this Section 5.11(b) will apply to or restrict communications or other actions by a Party with or with respect to any Governmental Authority in connection with its business in the ordinary course of business.

(c) Without limiting the foregoing, Purchaser and Seller shall not, and shall cause their respective Affiliates not to, take any action, or omit or fail to take any action, or refrain from taking any action, that could reasonably be expected to adversely affect, prejudice, or increase the risk of

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<sup>16</sup> Note to Respondent: Please include a plan (with timing and expected actions for each Governmental Authority) that Purchaser anticipates implementing for purposes of obtaining the Required Regulatory Approvals.

not obtaining or making, or the timing of obtaining or making, any consent or approval contemplated by this Section 5.11, including (i) acquiring any asset, property, business, or Person (by way of merger, consolidation, share exchange, investment, or other business combination, asset, stock, or equity purchase, or otherwise) from any Person (other than, in the case of Purchaser, from Seller), (ii) making any filing or public announcement, (iii) failing to adequately respond to, address, or ameliorate any adverse event, change, or condition affecting such Person's business, assets, or reputation or its financial or other resources, or (iv) commencing, settling, or compromising an Action. In furtherance of and without limiting any of Purchaser's covenants and agreements under this Section 5.11, Purchaser shall, and shall cause its respective Affiliates to, use best efforts to take, or cause to be taken, any and all steps and to make, or cause to be made, any and all undertakings necessary to avoid or eliminate each and every impediment asserted by any Governmental Authority in connection with obtaining the approvals contemplated by this Section 5.11 so as to enable the Closing to occur as promptly as practicable, including (A) agreeing to conditions imposed by, or taking any action required by, any Governmental Authority, (B) opposing or defending through litigation on the merits, including appeals, any Action asserted by any Person, including any Governmental Authority, that seeks to or could prevent, prohibit, impede, interfere with, or delay the consummation of the Closing, including any such action as is reasonably necessary to overturn any Order preventing or enjoining the transactions contemplated pursuant to this Agreement and the Ancillary Documents, (C) proposing, negotiating, committing to, and effecting, by consent decree, hold separate order, or otherwise, the sale, divestiture, licensing, or disposition of any assets or business of Purchaser or its Affiliates or any Purchased Assets, including entering into customary ancillary agreements relating to any such sale, divestiture, licensing, or disposition, and the entrance into such other arrangements, as necessary or advisable, in order to avoid the entry of, and the commencement of litigation seeking the entry of, or to effect the dissolution of, any injunction or other Order in any Action that would otherwise have the effect of materially delaying or preventing the consummation of the transactions contemplated by this Agreement, (D) agreeing to such limitations on conduct or actions by Purchaser and its Affiliates after the Closing as may be required in order to obtain satisfaction of the Closing conditions set forth in Section 6.01(a) and Section 6.01(b) prior to the Outside Date, and (E) agreeing to take any other action as may be required by a Governmental Authority in order to effect each of the following: (1) obtaining all approvals contemplated by this Section 5.11 as soon as reasonably practicable and in any event before the Outside Date, (2) avoiding the entry of, or having vacated, lifted, dissolved, reversed, or overturned, any Order, whether temporary, preliminary, or permanent, that is in effect that prohibits, prevents, or restricts consummation of, or impedes, interferes with, or delays, the Closing, and (3) effecting the expiration or termination of any waiting period that would otherwise have the effect of preventing, prohibiting, or restricting consummation of the Closing or impeding, interfering with, or delaying the Closing. Notwithstanding anything in this Agreement to the contrary, the entry into any settlement with a Governmental Authority or intervenor by, or the filing with any Governmental Authority or the publication of any document containing any commitments regarding an approval contemplated by this Section 5.11 of, any Party or their Affiliates must be mutually agreed between Seller and Purchaser; *provided* that nothing in this sentence shall modify or diminish any of Seller's or Purchaser's obligations under this Section 5.11.

(d) Notwithstanding anything to the contrary in this Agreement or in the Ancillary Documents, Purchaser shall be responsible for the payment all filing fees, as well as any other out-of-pocket fees, costs and expenses incurred in connection with any and all applications, notices, petitions, and filings with any Governmental Authority.

**Section 5.12 Consents.** Prior to the Closing, Seller shall, at Purchaser's sole cost, reasonably cooperate with Purchaser to the extent requested by Purchaser to obtain any necessary consents and

approvals required from third parties in connection with the consummation of the transactions contemplated by this Agreement under the JEA Material Contracts, Permits, or agreements related to Material Owned Real Property or Material Leased Property in order to assign to Purchaser any such Purchased Assets; *provided, however*, that neither Seller nor its Affiliates shall have any obligation to make any payments or incur any Liability to obtain any such consent or approval. Without in any way limiting Seller's obligations to obtain the consent or approval of any third party expressly required by the terms of this Agreement, to the extent that the assignment hereunder by Seller to Purchaser of any such Purchased Asset is not permitted or is not permitted without the consent of another Person, then, notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed to constitute or require an assignment of any such Purchased Asset if such consent is not given or obtained. If any such consent is not obtained or if such assignment is not permitted irrespective of consent, after the Closing, Seller shall (if reasonably requested by Purchaser) cooperate with Purchaser with the intention of entering into such legally permissible arrangements with Purchaser (including subleasing, sublicensing, or subcontracting) on mutually agreeable terms to provide Purchaser with rights and benefits of any such Purchased Assets which are not so assigned by Seller to Purchaser at the Closing. Purchaser agrees that Seller shall not have any Liability to Purchaser arising out of or relating to the failure to obtain any such consent that may be required in connection with the transactions contemplated by this Agreement or the Ancillary Documents or because of any circumstances resulting therefrom. Purchaser further agrees that, subject to Seller's compliance with Section 2.02(a), no representation, warranty, or covenant of Seller herein shall be breached or deemed breached, and no condition shall be deemed not satisfied, as a result of (i) the failure to obtain any such consent or any circumstances resulting therefrom or (ii) any Action commenced or threatened by or on behalf of any Person arising out of or relating to the failure to obtain any such consent or any circumstances resulting therefrom. Purchaser shall reimburse Seller for any out-of-pocket expenses reasonably incurred by Seller in connection with such cooperation contemplated by this Section 5.12, which reimbursement shall be due and payable by Purchaser to Seller upon demand.

**Section 5.13 Reasonable Best Efforts.** Without limiting Purchaser's obligations under Section 5.11(c) and any other applicable provisions of this Agreement, Purchaser shall, and shall cause its respective Affiliates to, use reasonable best efforts to cause the transactions contemplated by this Agreement and the Ancillary Documents to be consummated as promptly as practicable and no such Person will take, or permit such Person's Affiliates to take, any action intended to, or that would reasonably be expected to, prevent, impede, or delay the Closing.

**Section 5.14 Customer and Community Commitments.**

(a) After the Closing, Purchaser shall uphold, abide by, and effect the Contracts set forth on Exhibit I (collectively, the "Community Commitment Contracts"), and the commitments set forth in Section [•] of the Franchise Agreement.

(b) For a period of three years from the date of Closing, Purchaser shall provide base rate stability for all customers of the Business.<sup>17</sup>

**Section 5.15 ROFR Actions.** Prior to the Closing, Seller will deliver written notice to (i) Nassau County in accordance with the right of first refusal requirements in Section 5.2 of the Nassau Agreement, (ii) St. Johns County in accordance with the right of first refusal requirements in Section 5.2 of the St. Johns Agreement, (iii) Florida Power & Light Company in accordance with the right of first refusal requirements in Section 6(c) of the Scherer Agreement, and (iv) the Jacksonville Port Authority in accordance with the

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<sup>17</sup> Note to Respondent: The parameters around rate stability will be discussed and documented prior to execution of this Agreement.

right of first refusal requirements in Section 5 of the SJRPP Blount Island Agreement, in each case in accordance with the specific timing requirements set forth in each such agreement.

**Section 5.16 Termination of TEA.** Prior to the Closing, Seller shall take such actions as it deems necessary and desirable to withdraw from, and cease its membership and any ownership or other interest in, TEA (the “TEA Interest”), and, for the avoidance of doubt, the Parties acknowledge and agree that the TEA Interest shall be excluded from, and not form part of, the Purchased Assets.

**Section 5.17 Operational Readiness.** Between the date of execution of this Agreement and the Closing Date, Seller and Purchaser agree to perform the transition related activities set forth in Schedule 5.16 hereto, in accordance with the schedule set forth therein.<sup>18</sup>

## **ARTICLE VI CONDITIONS TO CLOSING**

**Section 6.01 Conditions to Obligations of All Parties.** The obligation of each Party to effect the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any or all of which may be waived jointly by the Parties, in whole or in part, to the extent permitted by applicable Law):

- (a) The Required Regulatory Approvals shall have been obtained;
- (b) The Required Public Approvals shall have been obtained;
- (c) No Order of any Governmental Authority shall be in effect, and no Law shall have been enacted or adopted, that enjoins, prohibits, or makes illegal consummation of the transactions contemplated by this Agreement.

**Section 6.02 Conditions to Obligations of Purchaser.** The obligation of Purchaser to effect the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any or all of which may be waived exclusively by Purchaser, in whole or in part):

- (a) (i) the representations and warranties of Seller set forth in Article III, other than Section 3.01, Section 3.02, and Section 3.20 (without giving effect to any materiality or “JEA Material Adverse Effect” qualifications set forth therein, other than such limitations and qualifiers set forth in Section 3.06 and Section 3.08 (including the word “material” in “Material Contracts”)), shall be true and correct as of the Closing as though made on and as of such date and time (unless made as of a specified date, in which case such representations and warranties shall be true and correct as of such specified date), except where the failure of any such representations and warranties to be true and correct in the aggregate have not had, and would not have, a JEA Material Adverse Effect; (ii) the representations and warranties set forth in Section 3.01, Section 3.02, and Section 3.20 shall be true and correct in all respects, if qualified by materiality, or in all material respects, if not so qualified, as of the Closing as though made on and as of such date and time (unless made as of a specified date, in which case such representations and warranties shall be true and correct as of such specified date); and (iii) Purchaser shall have received at the Closing a certificate signed by an authorized officer of Seller to the effect that such officer has read this

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<sup>18</sup> **Note to Respondent:** The transition activities will be discussed and documented prior to execution of this Agreement.

Section 6.02(a) and, to the knowledge of Seller, the conditions set forth in this Section 6.02(a) have been satisfied.

(b) Seller shall have performed and complied in all material respects with all covenants required to be performed or complied with by it under this Agreement on or prior to the Closing, and Purchaser shall have received at the Closing a certificate signed by an authorized officer of Seller to that effect.

(c) Purchaser shall have received the Bond Counsel Opinion and the independent public accountant's report referenced in Section 1.06(b).

(d) Seller shall have received and provided Purchaser with a copy of pay-off letter(s) from such applicable holders of Seller's Borrowed Indebtedness, along with evidence reasonably satisfactory to Purchaser that all Encumbrances (other than Permitted Encumbrances) on the Purchased Assets securing such Indebtedness will be discharged upon the payment thereof (the pay-off letter(s) and such evidence, collectively, the "Pay-Off Letter(s)").

**Section 6.03 Conditions to Obligations of Seller.** The obligation of Seller to effect the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any or all of which may be waived exclusively by Seller, in whole or in part):

(a) (i) the representations and warranties of Purchaser set forth in Article IV, other than Section 4.01, Section 4.02, and Section 4.09 (without giving effect to any materiality or "Purchaser Material Adverse Effect" qualifications set forth therein), shall be true and correct as of the Closing as though made on and as of such date and time (unless made as of a specified date, in which case such representations and warranties shall be true and correct as of such specified date), except where the failure of any such representations and warranties to be true and correct have not had, and would not have or reasonably be expected to have, a Purchaser Material Adverse Effect; (ii) the representations and warranties set forth in Section 4.01, Section 4.02, and Section 4.09 shall be true and correct in all respects, if qualified by materiality, or in all material respects, if not so qualified, as of the Closing as though made on and as of such date and time (unless made as of a specified date, in which case such representations and warranties shall be true and correct as of such specified date); and (iii) Seller shall have received at the Closing a certificate signed by an authorized officer of Purchaser to the effect that such officer has read this Section 6.03(a) and the conditions set forth in this Section 6.03(a) have been satisfied.

(b) Purchaser shall have performed and complied in all material respects with all covenants required to be performed or complied with by it under this Agreement on or prior to the Closing, and Seller shall have received at the Closing a certificate signed by an authorized officer of Purchaser to that effect.

(c) Seller shall have received the Bond Counsel Opinion and the independent public accountant's report referenced in Section 1.06(b).

(d) Purchaser shall have complied with all of its obligations under Section 5.04 that require performance (in whole or in part) on or prior to the Closing, including having made the offers of employment contemplated by Section 5.04(a) and implementing the Post-Closing Employee Benefit Plans contemplated by Section 5.04(c) and Seller shall have received at the Closing a certificate signed by an authorized officer of Purchaser to that effect.

**Section 6.04 Opportunity to Cure.** Purchaser shall promptly deliver written notice to Seller of any breach of a representation, warranty, covenant, or agreement of Seller causing either Section 6.02(a) or Section 6.02(b) to not be satisfied and, upon receipt of such notice, Seller shall have forty five (45) days to cure such breach. If there are fewer than forty five (45) days prior to the Outside Date, the Outside Date shall be automatically extended to accommodate the full forty five (45) day period.

**Section 6.05 Frustration of Closing Conditions.** A Party may not rely on the failure of any condition set forth in this Article VI to be satisfied if such Party's failure to act in compliance with the provisions of this Agreement has been a principal cause of, or resulted in, the failure of the Closing to occur.

## **ARTICLE VII TERMINATION**

**Section 7.01 Termination.** This Agreement may be terminated, and the transactions contemplated herein abandoned, at any time prior to the Closing:

- (a) by the mutual written consent of Seller and Purchaser;
- (b) by either Seller or Purchaser:

(i) If the Closing has not been consummated within [•] days of the date of this Agreement; *provided* that if the only condition that has not been satisfied or waived at such time (other than the conditions set forth in Article VI that by their nature are to be satisfied at the Closing, where such conditions would be capable of being satisfied at such time if the Closing were to occur at such time) is the condition in Section 6.01(a), and Purchaser is continuing to make good faith efforts to satisfy such condition and perform its obligations hereunder at that time and it is reasonably likely that such condition will be satisfied within a further [•] months, then such date shall, with the consent of Seller, be extended for such further period of up to [•] months (the "Outside Date"); *provided* that the right to terminate this Agreement pursuant to this subsection (b)(i) shall not be available to any Party whose failure to act in compliance with the provisions of this Agreement has been a principal cause of the failure of the Closing to occur on or prior to the Outside Date.

(ii) If any Law or Order, issued by a Governmental Authority with competent jurisdiction, permanently restrains, enjoins, renders illegal, or otherwise prohibits, directly or indirectly, consummation of the transactions contemplated by this Agreement, and such Law or Order shall have become final and non-appealable; *provided* that the right to terminate this Agreement pursuant to this subsection (b)(ii) shall not be available to any Party (A) that failed to use its reasonable best efforts to contest such Order prior to it becoming permanent (if such Party had the right to contest such Order) or (B) whose failure to act in compliance with the provisions of this Agreement has been a principal cause of the issuance of such Law or Order.

(iii) If the City Referendum Approval is not obtained; *provided* that the right to terminate this Agreement pursuant to this subsection (b)(iii) shall not be available to any Party whose failure to act in compliance with the provisions of this Agreement has been a principal cause of the failure to obtain such City Referendum Approval.

(c) by Purchaser by written notice to Seller if a material misrepresentation or breach of any of the representations or warranties of Seller shall have occurred or if Seller has materially breached any covenant or agreement on the part of Seller, as the case may be, set forth in this

Agreement, such that the condition to Closing set forth in Section 6.02(a) or Section 6.02(b) would not be satisfied; *provided* that Purchaser is not then in breach of this Agreement so as to cause any of the conditions to Closing set forth in Section 6.01, Section 6.03(a), or Section 6.03(b) not to be satisfied.

(d) by Seller by written notice to Purchaser if a misrepresentation or breach of any of the representations or warranties of Purchaser shall have occurred or if Purchaser has breached any covenant or agreement on the part of Purchaser, as the case may be, set forth in this Agreement, such that the condition to Closing set forth in Section 6.03(a) or Section 6.03(b) would not be satisfied; *provided* that Seller is not then in material breach of this Agreement so as to cause any of the conditions to Closing set forth in Section 6.01, Section 6.02(a), or Section 6.02(b) not to be satisfied.

**Section 7.02 Notice and Effect of Termination.**

(a) A Party terminating this Agreement pursuant to Section 7.01 (other than Section 7.01(a)) shall deliver a written notice to the other Party setting forth the specific basis for such termination and the specific provision of Section 7.01 pursuant to which this Agreement is being terminated. A valid termination of this Agreement pursuant to Section 7.01 (other than Section 7.01(a)) shall be effective upon receipt by the non-terminating Party of the foregoing written notice delivered in accordance with Section 8.03. In the event of the termination of this Agreement in accordance with this Article VII, all obligations under this Agreement shall terminate and shall be void and of no further force or effect and there shall be no liability on the part of Seller or Purchaser to each other for or as a result of such termination; *provided, however*, and notwithstanding anything in the foregoing to the contrary, that (i) [Section 5.07(b),] this Section 7.02, the provisions set forth in the second sentence of Section 8.01, and the Confidentiality Agreement shall survive the termination of this Agreement and the Parties may have further liability with respect thereto and (ii) if such termination results from the Willful Breach by a Party or a material failure of a Party to perform its obligations under this Agreement, then such Party shall be fully liable for any Losses incurred or suffered by the other Party as a result of such Willful Breach or material failure to perform.

(b) If:

(i) either Seller or Purchaser terminates this Agreement pursuant to Section 7.01(b)(i) (and, in the case of Purchaser terminating, Seller would have been entitled to terminate pursuant to such provision) and, at the time of such termination, either of the conditions set forth in Section 6.01(a) or, due to a Regulatory Restraint, Section 6.01(c) shall not have been satisfied;

(ii) either Seller or Purchaser terminates this Agreement pursuant to Section 7.01(b)(ii) due to a Regulatory Restraint (and, in the case of Purchaser terminating, Seller would have been entitled to terminate pursuant to such provision); or

(iii) Seller terminates this Agreement pursuant to Section 7.01(d) due to a failure by Purchaser to perform its covenants or agreements pursuant to Section 5.11 or Section 5.13,

then Purchaser shall pay to Seller by wire transfer of immediately available funds to the account designated by Seller a fee in cash equal to \$[•],<sup>19</sup> which payment shall be made (x) prior to or concurrently with such termination of this Agreement by Purchaser or (y) no later than two (2) Business Days after the date of the applicable termination by Seller.

(c) If:

(i) either Seller or Purchaser terminates this Agreement pursuant to Section 7.01(b)(i) (and, in the case of Purchaser terminating, Seller would have been entitled to terminate pursuant to such provision) and, at the time of such termination, either of the conditions set forth in Section 6.01(b), as it relates to a City Referendum Approval, or, due to a failure to obtain a City Referendum Approval, Section 6.01(c) shall not have been satisfied;

(ii) either Seller or Purchaser terminates this Agreement pursuant to Section 7.01(b)(ii) due to the failure to obtain a City Referendum Approval (and, in the case of Purchaser terminating, Seller would have been entitled to terminate pursuant to such provision); or

(iii) either Seller or Purchaser terminates this Agreement pursuant to Section 7.01(b)(iii) (and, in the case of Purchaser terminating, Seller would have been entitled to terminate pursuant to such provision),

then Purchaser shall pay to Seller by wire transfer of immediately available funds to the account designated by Seller a fee in cash equal to \$[•],<sup>20</sup> which payment shall be made (x) prior to or concurrently with such termination of this Agreement by Purchaser or (y) no later than two (2) Business Days after the date of the applicable termination by Seller.

(d) For the avoidance of doubt, (i) if a fee is actually paid by Purchaser to Seller pursuant to Section 7.02(b), then no additional fee shall be payable by Purchaser to Seller pursuant to Section 7.02(c), and (ii) if the requirements for payment of a fee by Purchaser to Seller are satisfied under both Section 7.02(b) and Section 7.02(c), then Purchaser shall pay the higher fee required by Section 7.02(b) (and, if such fee is actually paid, shall not also be required to pay the fee under Section 7.02(c)).

(e) If Purchaser fails to pay the fee required pursuant to Section 7.02(b) or Section 7.02(c), as applicable, on or prior to the date such amount is due hereunder, and, in order to obtain such payment, Seller commences an Action that results in a judgment against Purchaser for the payment of such fee pursuant to Section 7.02(b) or Section 7.02(c), as applicable, Purchaser shall pay, or cause to be paid, to Seller interest on such amount at an annual rate equal to the prime rate (as reported by *The Wall Street Journal* or, if not reported therein, a reasonably selected alternative source specified in writing by Seller) in effect on the date such amount was originally due hereunder, which shall accrue from such date through the date such payment is actually delivered to Seller or its designee, plus the reasonable and documented out-of-pocket costs, fees, and

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<sup>19</sup> Note to Respondent: To be at least 5% of Net Proceeds. “Net Proceeds” means the Purchase Price less the JEA Bond Release Consideration.

<sup>20</sup> Note to Respondent: To be at least 1% of Net Proceeds.



expenses (including reasonable attorneys' fees and expenses) incurred by Seller in connection with such Action.

(f) The Parties acknowledge that the agreements contained in this Section 7.02 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the Parties would not enter into this Agreement.

## **ARTICLE VIII MISCELLANEOUS**

**Section 8.01 Survival.** The respective representations, warranties, covenants, and agreements of Seller, Purchaser[, and Guarantor] contained in this Agreement and any instrument or certificate delivered pursuant hereto (except as otherwise expressly set forth therein) shall terminate at, and not survive, the Closing; *provided* that this Section 8.01 shall not limit (a) any covenant or agreement of any of the Parties that by its express terms requires performance after the Closing or reimbursement of fees, costs, or expenses (which covenant or agreement shall survive the Closing in accordance with its terms until fully performed) or (b) any of the covenants and agreements of the Parties in Section 5.03(b) (*Access to Information; Retention of Books and Records*), Section 5.04 (*Employees and Employee Benefits*), Section 5.05 (*Public Announcements*), [Section 5.07(a)(B) and (C) (*Financing Assistance*)], Section 5.09 (*Further Assurances and Post-Closing Cooperation*), Section 5.10 (*D&O Insurance and Indemnification*), and Section 5.14 (*Customer and Community Commitments*) (which covenants and agreements shall survive the Closing in accordance with their respective terms until fully performed). Except for Article VIII, Section 7.02 (*Notice and Effect of Termination*), and related defined terms, no representations, warranties, covenants, or agreements of any of Seller, Purchaser[, or Guarantor] contained in this Agreement or any instrument or certificate delivered pursuant hereto (except as otherwise expressly set forth therein) shall survive the termination of this Agreement. The Confidentiality Agreement shall (x) survive termination of this Agreement in accordance with its terms and (y) terminate as of the Closing.

**Section 8.02 Expenses.** Except as otherwise expressly provided herein (including in [Section 5.07(a) (*Financing Assistance*)], Section 5.11 (*Filings; Approvals; Cooperation*), Section 5.12 (*Consents*), and Section 8.16 (*Transfer Taxes*)), whether or not the Closing occurs, all costs and expenses, including fees and disbursements of counsel, financial advisors, and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring, or required to incur, such costs and expenses; *provided* that, notwithstanding anything to the contrary, Purchaser will be solely responsible for payment of (a) all filing fees in connection with any Required Regulatory Approval, and (b) all other filing, recording, transfer, or other fees or charges of any nature payable pursuant to any provision of Law or any Order or Franchise in connection with the sale, transfer, and assignment of the Purchased Assets and the Assumed Liabilities; *provided, however*, that neither Party will be responsible for any penalties or other conditions imposed on the other Party pursuant to any Required Regulatory Approval or any Required Public Approval.

**Section 8.03 Notices.** Any notice, request, instruction, or other document to be given hereunder by any Party to the others shall be in writing and delivered personally or sent by (a) registered or certified mail, postage prepaid, (b) email, or (c) overnight courier:

If to Seller:

c/o the Office of the General Counsel  
117 W. Duval Street, Suite 480  
Jacksonville, Florida 32202  
Attention: General Counsel  
E-mail: [•]

with a copy (which shall not constitute notice) to:

Pillsbury Winthrop Shaw Pittman LLP  
31 West 52<sup>nd</sup> Street, New York, NY 10019-6131  
Attention: Stephen B. Amdur  
Jarrod D. Murphy  
E-mail: stephen.amdur@pillsburylaw.com  
jarrod.murphy@pillsburylaw.com

If to Purchaser:

[•]  
Attention: [•]  
E-mail: [•]

with a copy (which shall not constitute notice) to:

[•]  
Attention: [•]  
E-mail: [•]

or to such other persons or addresses as may be designated in writing by the Party to receive such communication as provided above. Any notice, request, instruction, or other document given as provided above shall be deemed given to the receiving party (i) upon actual receipt, if delivered personally; (ii) three (3) Business Days after deposit in the mail, if sent by registered or certified mail; (iii) upon receipt, if sent by email and received by 5:00 pm (Eastern Time), on a Business Day (otherwise the next Business Day) (*provided* that, if given by email, such notice, request, instruction, or other document shall be followed up within one (1) Business Day by dispatch pursuant to one of the other methods described herein); or (iv) on the next Business Day after deposit with an overnight courier, if sent by an overnight courier.

#### **Section 8.04 Rules of Construction.**

(a) *Construction.* Each Party acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this Agreement and that it has executed the same with the advice of said independent counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement and the documents referred to herein, and any and all drafts relating thereto exchanged between the Parties shall be deemed the work product of the Parties and may not be construed against any Party by reason of its preparation. Accordingly, any rule of Law or any legal decision that would require interpretation of any ambiguities in this Agreement against any Party that drafted it is of no application and is hereby expressly waived.

(b) *Interpretation.* All references in this Agreement to Schedules, Articles, Sections, and clauses refer to the corresponding Schedules, Articles, Sections, and clauses of this Agreement, unless expressly provided otherwise. The table of contents and headings appearing at the beginning of any Articles, Sections, or clauses of this Agreement are for convenience only, do not constitute any part of such Articles, Sections, or clauses, and shall be disregarded in construing the language contained therein. The words “this Agreement,” “herein,” “hereby,” “hereunder,” “hereof,” and words of similar import refer to this Agreement as a whole and not to any particular subdivision, unless expressly so limited. The words “this Article,” “this Section,” “this clause,” and words of similar import refer only to the Article, Section, or clause hereof in which such words occur. The word “including” (in its various forms) means “including, without limitation.” Pronouns in masculine, feminine, or neuter genders shall be construed to state and include any other gender, and words, terms, and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa, unless the context otherwise expressly requires. Unless the context otherwise requires, all defined terms contained herein shall include the singular and plural and the conjunctive and disjunctive forms of such defined terms, and shall have the defined

meanings when used in any document made or delivered pursuant hereto, unless otherwise defined therein. References to any Person include the successors and permitted assigns of that Person. When calculating the period of time before which, within which, or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. Unless the context otherwise requires, all references to a specific time shall refer to Eastern Time. References to any applicable Law refer to such applicable Law as amended, modified, supplemented, or replaced from time to time (and, in the case of statutes, includes any rules and regulations promulgated under such statute) and references to any section of any Law include any successor to such section, unless otherwise specifically indicated. The phrases “provided,” “delivered,” or “made available,” when used herein, mean that the information or materials referred to have been physically or electronically delivered to the applicable Party (including information or materials that have been posted to an on-line “virtual data room” established by or on behalf of one of the Parties or documents or other information available in EMMA, in each case, on or prior to the date that is one (1) Business Day prior to the date hereof or the date of the Schedule Supplement, as applicable). Unless the context otherwise requires, all references to days means calendar days. Unless otherwise specifically indicated, any reference herein to “dollar(s)” or “\$” means U.S. dollars.

(c) **Disclosure Letters.** The Seller Disclosure Letter and the Purchaser Disclosure Letter are hereby incorporated and made a part hereof. Seller may include in the Seller Disclosure Letter items that are not material in order to avoid any misunderstanding, and such inclusion, or any references to dollar amounts herein or in the Seller Disclosure Letter, shall not be deemed to be an acknowledgment or representation that such items are material, to establish any standard of materiality, or to define further the meaning of such terms for purposes of this Agreement or otherwise.

**Section 8.05 Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 8.06 Entire Agreement.** This Agreement, the Ancillary Documents, and the Confidentiality Agreement constitute the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter, including all documents or communications, whether oral, written, or electronic, submitted or made by Seller or any of its Representatives in connection with the sale process that occurred prior to the execution of this Agreement or otherwise in connection with the negotiation and execution of this Agreement.

**Section 8.07 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party may assign or delegate its rights or obligations hereunder without the prior written consent of the other Party. No assignment shall relieve the assigning Party of any of its obligations hereunder.

**Section 8.08 No Third-Party Beneficiaries.** Except as provided in Section 5.10 (D&O Insurance and Indemnification), Section 5.04(c) (Employee and Employee Benefits) Section 5.14 (Customer and Community Commitments), and Section 8.13 (Release), this Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or

implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 8.09 Amendment and Modification; Waiver.** This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each of the Parties; *provided* that such amendment, modification or supplement is in accordance with the intent of this Agreement. The Parties acknowledge and agree that any amendment, modification, or supplement to this Agreement (including pursuant to Section 8.05) that substantively affects a material term or condition of this Agreement may require the approval of City Council under applicable Law. No waiver by any Party of any of the provisions hereof shall be effective, unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**Section 8.10 Governing Law; Submission to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Florida, without reference to conflicts of laws principles that would result in the application of the laws of any other jurisdiction. ANY ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY SHALL BE IN THE CIRCUIT COURT OF THE STATE OF FLORIDA IN DUVAL COUNTY, WHICH COURT SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE AND THE PARTIES IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT IN ANY SUCH ACTION. SERVICE OF PROCESS, SUMMONS, NOTICE, OR OTHER DOCUMENT DELIVERED IN ACCORDANCE WITH SECTION 8.03 HEREOF SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION BROUGHT IN SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY ACTION IN SUCH COURT AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN SUCH COURT THAT ANY SUCH ACTION BROUGHT IN SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

**Section 8.11 Specific Performance.** The Parties agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy at law or in equity, and the Parties hereby waive any requirement for the posting of any bond or similar collateral in connection therewith. Each Party agrees that it will not oppose the granting of an injunction, specific performance, and other equitable relief on the basis that (a) the other Party has an adequate remedy at law or (b) an award of specific performance is not an appropriate remedy for any reason at law or equity.

**Section 8.12 [Guarantee.**

(a) In consideration of Seller's execution and delivery of this Agreement and the Ancillary Documents and its agreement to perform the transactions contemplated herein and therein, and as a material inducement of such execution, delivery, and performance, Guarantor irrevocably guarantees the full, complete and timely performance of and compliance with all of the covenants, agreements, obligations and other Liabilities of Purchaser set forth in this Agreement and the Ancillary Documents (the "Obligations") (subject to any limitations set forth herein or therein). Guarantor acknowledges and agrees that the obligations of Guarantor hereunder shall not be released or discharged, in whole or in part, or otherwise affected by: (i) the failure or delay of

Seller to assert any claim or demand or to enforce any right or remedy against Purchaser or Guarantor; (ii) any change in the time, place or manner of payment of the Obligations or any rescission, waiver, compromise, consolidation or other amendment or modification of any of the terms or provisions of this Agreement (other than amendments to the Obligations) or any other agreement evidencing, securing or otherwise executed in connection with the Obligations; (iii) the addition, substitution or release of any Person now or hereafter liable for any Obligations or otherwise interested in the transactions contemplated by this Agreement and the Ancillary Documents made in accordance with the terms thereof; (iv) any change in the corporate existence, structure or ownership of Seller or any other Person now or hereafter liable with respect to the Obligations; (v) any lack of legality, validity or enforceability of the Obligations or this Agreement, in each case in accordance with its terms; or (vi) the adequacy of any other means Seller may have of obtaining repayment of the Obligations. To the fullest extent permitted by applicable Law, Guarantor hereby expressly waives any and all rights or defenses arising by reason of any applicable Law which would otherwise require any election of remedies by Seller. The Liability of Guarantor hereunder is absolute and unconditional, irrespective of any circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor. Without limiting the generality of the foregoing, the Liability of Guarantor shall not be affected by (i) the liquidation or dissolution of, or the merger or consolidation of Purchaser with or into any Person or any sale or transfer by Purchaser of all or any part of its property or assets, or (ii) the bankruptcy, receivership, insolvency, reorganization or similar proceedings involving or affecting Purchaser. The Liability of Guarantor shall be direct and not conditional or contingent on the pursuit of remedies against Purchaser. Seller may, at its option, proceed in the first instance against the Guarantor to collect any Liability of Purchaser hereunder without first proceeding against Purchaser. This separate guarantee of the Guarantor shall be a continuing separate guarantee, and the above consent and waiver of the Guarantor shall remain in full force and effect until all of the Liabilities of Purchaser hereunder and under the Ancillary Documents are discharged and paid in full. This guarantee shall run to and for the benefit of Seller, and each of its legal representatives, successors and assigns. Guarantor acknowledges and agrees that this guarantee shall be binding upon Guarantor and its respective personal Representatives.

(b) Prior to the three (3) year anniversary of the Closing Date, Purchaser shall not (and Guarantor shall cause Purchaser not to) wind up, liquidate, dissolve, amalgamate, make an assignment for the benefit of creditors, enter into or become subject to any bankruptcy or insolvency action or proceeding, or otherwise enter into or consummate any recapitalization or other business combination transaction, except with the prior written consent of Seller (such consent not to be unreasonably withheld or delayed).]

**Section 8.13 Release.**

(a) Notwithstanding anything to the contrary in this Agreement and, effective as of the Closing, Purchaser, on behalf of itself and each of its Affiliates and its and their respective successors and assigns (collectively, the “Purchaser Releasing Parties”) (i) releases, acquits, and forever discharges the Seller Released Parties from any and all Actions, rights, costs, losses, expenses, or compensation, of whatsoever kind or nature, in contract or in tort, at law or in equity, that any such Purchaser Releasing Party might have in each case arising out of anything done, omitted, suffered, or allowed to be done, omitted, or suffered by any Seller Released Party, including pursuant to any agreement, understanding, representation, or promise by, between, or among any Seller Released Party, on the one hand, and any Purchaser Releasing Party, on the other hand, in each case whether heretofore or hereafter accrued or unaccrued and whether foreseen or unforeseen or known or unknown, including any claim for indemnification, contribution, or other relief, any claim relating to the valuation or prospects of the Business, or any claim relating to any

inducement to enter into this Agreement, in each case to the extent related to matters or events occurring prior to the Closing (collectively, the “Purchaser Released Matters”); *provided* that, notwithstanding the foregoing, Purchaser Released Matters shall not include (A) any claims pursuant to, and in compliance with, Section 8.11 to specifically enforce any covenants or agreement of Seller in this Agreement to the extent such covenant or agreement, by its terms, expressly contemplates performance after the Closing Date, or (B) any claims pursuant to, and in compliance with, any Ancillary Document to enforce any covenant or agreement in such Ancillary Document to the extent that such covenant or agreement, by its terms, expressly contemplates performance after the Closing Date, and (ii) agrees never to commence or participate in a manner adverse to any Seller Released Party in any Action based in whole or in part upon any Purchaser Released Matters, and (iii) acknowledges and agrees that it has provided this release, on behalf of itself and the other Purchaser Releasing Parties, voluntarily, with the intention of fully and finally extinguishing all Purchaser Released Matters.

(b) Purchaser, on behalf of itself and with respect to the Purchaser Releasing Parties, without limiting the provisions of Section 8.13(a):

(i) acknowledges that this release shall apply to all unknown or unanticipated results of any action of any Seller Released Party, as well as those known and anticipated;

(ii) acknowledges and agrees that the Purchaser Releasing Parties may hereafter discover claims or facts in addition to or different from those that they now know or believe to exist with respect to the subject matter of this release and which, if known or suspected at the time of executing this release, may have materially affected this Agreement, but nevertheless expressly accept and assume the risk of such possible differences in fact, agree that this release shall be and remain effective, notwithstanding any such differences, and hereby waive any rights, claims, or causes of action that might arise as a result of such different or additional claims or facts and acknowledge that they understand the significance and potential consequence of such a release of unknown claims; and

(iii) represents that this release is executed voluntarily with full knowledge of its significance and legal effect, consents that the claims released hereunder be construed as broadly as possible, and acknowledges and agrees that no Purchaser Releasing Party has relied, in whole or in part, on any statements or representations made by or on behalf of the Seller Released Parties in connection herewith or otherwise. Any breach of this covenant by a Purchaser Releasing Party shall be deemed a breach of this Agreement by Purchaser.

**Section 8.14 Legal Representation.** Purchaser, on behalf of itself and its Affiliates, acknowledges and agrees that Seller’s Counsel and City’s Counsel have acted as counsel for Seller and its Affiliates, as applicable, and that Seller reasonably anticipates that Seller’s Counsel and City’s Counsel, as applicable, will continue to represent Seller and/or its Affiliates in future matters. Accordingly, Purchaser, on behalf of itself and its Affiliates, expressly consents to: (a) Seller’s Counsel and City’s Counsel representation of Seller and/or its respective Affiliates, as applicable, in any post-Closing matter in which the interests of Purchaser, on the one hand, and Seller or its respective Affiliates, on the other hand, are adverse, including any matter relating to the transactions contemplated by this Agreement or any disagreement or dispute relating thereto, and whether or not such matter is one in which Seller’s Counsel or City’s Counsel may have previously advised Seller or its Affiliates, as applicable, and (b) the disclosure by Seller’s Counsel or City’s Counsel to Seller or its Affiliates, as applicable, of any information learned by Seller’s Counsel or City’s Counsel in the course of its representation of Seller or its Affiliates, as

applicable, whether or not such information is subject to attorney-client privilege or Seller's Counsel's or City's Counsel's duty of confidentiality. Furthermore, Purchaser, on behalf of itself and its Affiliates, (1) irrevocably waives any right it may have to discover or obtain information or documentation relating to the representation of Seller and/or its Affiliates by Seller's Counsel or City's Counsel in the transactions contemplated hereby, to the extent that such information or documentation was privileged as to Seller and/or its respective Affiliates ("Confidential Communications"), and (2) agrees that (i) the privilege with respect to such Confidential Communications shall remain with Seller following the Closing such that, without limiting Seller's right to such privilege, Seller alone shall have and maintain the right to waive the privilege, (ii) if Seller's former officers or managers leave any emails or other documents (both electronic or otherwise) that contain Confidential Communications on the Business's servers, such occurrence shall not constitute a waiver of the attorney-client privilege or any other privilege applicable to such documents, and (iii) to the extent any emails or other documents (either electronic or otherwise) containing any Confidential Communications are included in the computer server(s) of the Business or are otherwise within the records of the Business following the Closing, it will, upon discovery of any such documents, permanently delete or destroy all such emails or other documents containing such Confidential Communication and not review, disclose, or otherwise use such documents or the Confidential Communications for any purpose. Purchaser, on behalf of itself and its Affiliates, further covenants and agrees that each shall not assert any claim against Seller's Counsel or City's Counsel in respect of legal services provided to the Business by Seller's Counsel or City's Counsel in connection with this Agreement or the transactions contemplated hereby. If and to the extent that, at any time subsequent to Closing, Purchaser or any of its Affiliates shall have the right to assert or waive any attorney-client privilege with respect to any communication between Seller or its Affiliates and any Person representing them that occurred at any time prior to the Closing, Purchaser, on behalf of itself and its Affiliates, shall be entitled to waive such privilege only with the prior written consent of Seller's Counsel or City's Counsel (as applicable) and Seller.

**Section 8.15** **BULK SALES OR TRANSFER LAWS.** PURCHASER HEREBY WAIVES COMPLIANCE BY SELLER WITH THE PROVISIONS OF THE BULK SALES OR TRANSFER LAWS OF ALL APPLICABLE JURISDICTIONS.

**Section 8.16** **Transfer Taxes.** All transfer, documentary, sales, use, stamp, registration, value added, and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Documents (including any real property transfer Tax and any other similar Tax) shall be borne by Purchaser without regard to which party files and pay such Taxes and fees or is required by any Governmental Authority to file and pay such Taxes and fees.

**Section 8.17** **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. Delivery of an executed signature page of this Agreement by facsimile, e-mail, or other customary means of electronic transmission shall be deemed to have the same legal effect as delivery of a manually executed counterpart hereof.

[SIGNATURE PAGE FOLLOWS]

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

JEA

By \_\_\_\_\_

Name: [•]

Title: [•]

[PURCHASER]

By \_\_\_\_\_

Name: [•]

Title: [•]



**ANNEX A**

**DEFINED TERMS**

The following terms have the meanings specified or referred to in this Annex A:

- “Accounting Firm” has the meaning set forth in Section 1.07(d).
- “Accounting Firm Engagement Date” has the meaning set forth in Section 1.07(d).
- “Accrued Leave” means all accrued and unpaid hours of vacation, personal hours, or days earned and sick leave applicable to the Transferred Employees as of the Closing Date relating to the period prior to the Closing.
- “Action” means any claim, action, cause of action, demand, directive, lawsuit, appeal, arbitration, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, whether civil, criminal, administrative, regulatory, or otherwise, and whether at law or in equity, in each case, by or before a Governmental Authority.
- “Additional Debt” means the Seller Closing Indebtedness (other than with respect to the JEA Bonds).
- “Additional Debt Amount” means an amount equal to the amount of the Seller Closing Indebtedness less the JEA Bond Release Consideration.
- “Affiliates” means, as to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” (including, with its correlative meanings, “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.
- “Agreement” has the meaning set forth in the Preamble.
- “Ancillary Documents” means the Transmission Agreement, the Distribution Services Agreement, the Systems Coordination Agreement, the Billing and Collections Agreement, the Franchise Agreement, the Territorial Agreement, and the other agreements, instruments and documents required to be delivered at the Closing.
- “Assigned Contracts” has the meaning set forth in Section 1.01(h).
- “Assignment and Assumption Agreement” has the meaning set forth in Section 2.02(a)(ii).
- “Assignment of BJP Parcels Agreement” has the meaning set forth in Section 2.02(a)(v).
- “Assignment of Easements Agreement” has the meaning set forth in Section 2.02(a)(iv).
- “Assumed Liabilities” has the meaning set forth in Section 1.03.
- “Audited Financial Statements” has the meaning set forth in Section 3.04.
- “Balance Sheet” has the meaning set forth in Section 3.04.

- “Balance Sheet Date” has the meaning set forth in Section 3.04.
- “Base Purchase Price” has the meaning set forth in Section 1.05.
- “Benefit Plan Assets” has the meaning set forth in Section 1.01(r).
- “Bill of Sale” has the meaning set forth in Section 2.02(a)(i).
- “Billing and Collections Agreement” means that certain Billing and Collections Agreement, between Seller and Purchaser, in the form attached hereto as Exhibit J.
- “BJP Parcels” means the parcels of land designated on Exhibit A and Exhibit B of the CSV Ordinances (as defined in the Exhibit I) in connection with the Better Jacksonville Plan.
- “Bond Counsel Opinion” has the meaning set forth in Section 1.06(b).
- “Bond Resolutions” has the meaning set forth in Section 1.06(b).
- “Books and Records” has the meaning set forth in Section 1.01(t).
- “Borrowed Indebtedness” means Indebtedness of the type set forth in subsection (a), (b) and (c) of the definition thereof.
- “Bulk Power Supply System Assets” means Seller’s interests in the electric generating plants and transmission lines within the City of Jacksonville and outside the State of Florida authorized by Chapter 80-513, Laws of Florida, Special Acts of 1980, as more fully described on Annex B hereto.
- “Business” has the meaning set forth in Recital A.
- “Business Day” means any date, except a Saturday, Sunday, or federal holiday and any day which is a legal holiday under the law of the State of Florida or a day on which banking institutions located in the State of New York are authorized or required by Law to close.
- “Business IP Rights” has the meaning set forth in Section 3.18.
- “Cash Statement” has the meaning set forth in Section 1.07(a).
- “CBA Employment Terms” has the meaning set forth in Section 5.04(b).
- “City Council” means the City Council of the City of Jacksonville’s consolidated government.
- “City Council Approval” has the meaning set forth in Recital D.
- “City’s Counsel” means (a) attorneys in the Office of General Counsel of the City of Jacksonville, and (b) [•].
- “City Referendum Approval” has the meaning set forth in Recital D.
- “Closing” has the meaning set forth in Section 2.01.
- “Closing Date” has the meanings set forth in Section 2.01.

- “Closing Payment” has the meaning set forth in Section 1.05.
- “Collective Bargaining Agreements” means those collective bargaining agreements set forth in Section 3.13(a) of the Seller Disclosure Letter.
- [**“Commitment Letters” has the meaning set forth in Section 4.05.**]
- “Community Commitment Contracts” has the meaning set forth in Section 5.14(a).
- “Confidential Communications” has the meaning set forth in Section 8.14.
- “Confidentiality Agreement” means that certain confidentiality letter agreement, dated [•], 2019, between Seller and [**Purchaser // Purchaser’s Affiliate**].
- “Contract” means, with respect to Seller and the Business, all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures, and all other agreements, commitments, and legally binding arrangements, in each case in written form.
- “Customer Accountholders” has the meaning set forth in Section 1.06(f).
- “Customer Distribution Amount” means the sum of (a) the number of electric Customer Accountholders *multiplied by* \$500, *plus* (b) the number of water Customer Accountholders *multiplied by* \$300, *plus* (c) the number of sewer Customer Accountholders *multiplied by* \$180, *plus* (d) the number of reusable water Customer Accountholders *multiplied by* \$100.
- [**“Debt Financing” has the meaning set forth in Section 4.05.**]
- [**“Debt Financing Commitment” has the meaning set forth in Section 4.05.**]
- “Deed” has the meaning set forth in Section 2.02(a)(iii).
- “Delivery Point” means the point on the Electric Customer’s premises where Seller’s wires connect to Electric Customer’s electric meter.
- “Disputed Matters” has the meaning set forth in Section 1.07(d).
- “Distribution Assets” means the electric distribution facilities, equipment, and other tangible property and assets used in or for the Business, including the facilities, equipment, and other tangible property and assets that connect the Transmission Assets to the Electric 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).
- “Distribution Services Agreement” means that certain Distribution Services Agreement, between Seller and Purchaser, in the form attached hereto as Exhibit K.
- “District Energy Assets” means the chilled water plants, including chillers and cooling towers, distribution piping, and equipment, as more fully described on Annex C hereto.
- “D&O Insurance” has the meaning set forth in Section 5.10(c).

- “Electric Customer” means any electric service customer of the Business prior to the Closing Date.
- “Electric Customer Service Assets” means the customer service facilities, equipment, and other tangible property and assets used in or for the Business or located on the Real Property, including the facilities, equipment, and other tangible property and assets that connect the Distribution Assets to each individual Electric Customer’s Delivery Point, Electric Customer/premise/account data, historical consumption information, meters, remote metering equipment, and equipment needed to access the meters.
- “Electric System Assets” means, collectively, the Generation Assets, Transmission Assets, and Distribution Assets.
- “EMMA” means the Electronic Municipal Market Access system and the EMMA Continuing Disclosure Service of the Municipal Securities Rulemaking Board.
- “EMMA Documents” means all documents filed by Seller in connection with the Business and publicly available on EMMA from and after June 30, 2016.
- “Employee Benefit Plans” has the meaning set forth in Section 3.12(a).
- “Employment Termination Time” has the meaning set forth in Section 5.04(a).
- “Encumbrances” means any mortgage, pledge, security interest, encumbrance, lien, or charge. For the avoidance of doubt, the term “Encumbrance” shall not be deemed to include any license of Intellectual Property Rights.
- “Enforceability Exception” has the meaning set forth in Section 3.02.
- “Environmental Claims” means any written Action, Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging actual or potential liability of any kind or nature (including liability, responsibility, or Losses for the costs of enforcement proceedings, investigations, cleanup, corrective action, governmental response, removal, or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification, and injunctive relief) arising under any Environmental Law, including those arising out of, based on, or resulting from: (a) the presence or Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any environmental Permit.
- “Environmental Laws” means any applicable Laws and any applicable Order or binding agreement with any Governmental Authority, as in effect on the date hereof: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety in relation to exposures to Hazardous Materials in the environment, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal, or remediation of any Hazardous Materials. The term “Environmental Law” includes, where applicable, the following (including their implementing regulations and any state analogs and any applicable and binding remediation or other standard established by any Governmental Authority pursuant to the same): CERCLA; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by

the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and Chapters 373, 376, and 403, Florida Statutes and regulations promulgated thereunder in Titles 40 and 62, Florida Administrative Code.

- “Environmental Permits” means any material Permit obtained or required to be obtained pursuant to Environmental Law.
- [**“Equity Financing” has the meaning set forth in Section 4.05.]**
- [**“Equity Financing Commitment” has the meaning set forth in Section 4.05.]**
- “ERISA” has the meaning set forth in Section 3.12.
- “Escrow Agent” means [•].
- “Escrow Agreement” means that certain escrow agreement, in the form attached hereto as Exhibit L.
- “Excluded Assets” has the meaning set forth in Section 1.02.
- “Excluded Bank Account(s)” has the meaning set forth in Section 1.06(a).
- “Excluded Cash” has the meaning set forth in Section 1.02(c).
- “Excluded Cash Payment” has the meaning set forth in Section 1.07(b).
- “Excluded Contracts” means the Contracts set forth on Schedule A(1).
- “Excluded Employee Benefit Plans” has the meaning set forth in Section 1.02(f).
- “Excluded Liabilities” has the meaning set forth in Section 1.04.
- [**“Financing” has the meaning set forth in Section 4.05.]**
- [**“Financing Sources” means those agents, arrangers, lenders, and other Persons that have committed to provide or otherwise entered into agreements in connection with the Debt Financing (including, with respect to the Debt Financing, any lead arranger, any arranger or any lender, the “Debt Financing Sources”) or the Equity Financing in connection with the transactions contemplated hereby and any joinder agreements, credit agreements, or other definitive documentation relating thereto, in each case, solely in their capacity as such, together with their respective Affiliates and their and their respective Affiliates’ officers, directors, partners, members, employees, controlling persons, agents, trustees, administrators, managers, advisors, and representatives and their respective successors and assigns.]**
- “Foreign Interest” has the meaning set forth in Section 4.07.
- “Franchise Agreement” means that certain Franchise Agreement, between the City of Jacksonville and Purchaser, in the form attached hereto as Exhibit M, with such other modifications as may be agreed upon by the City Council, Seller and Purchaser.

- “Franchises” has the meaning set forth in Section 3.08(a)(i).
- “GAAP” means United States generally accepted accounting principles as promulgated by the Governmental Accounting Standards Board and as in effect from time to time.
- “Generation Assets” means the generating plants and related facilities, including boilers, turbine generators, auxiliary equipment, and systems related to the start-up, operation, maintenance, control, supply, or shutdown, as more fully described on Annex D hereto.
- “Governmental Authority” means any federal, state or local, domestic or foreign governmental or regulatory authority, agency, commission, body, arbitrator, court, regional reliability entity, or any other legislative, executive, or judicial authority.
- [**“Guarantor” has the meaning set forth in the Preamble.**]
- “Hazardous Materials” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral, or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form or condition, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls; and (c) any other material, substance, or waste that is regulated, or to which liability or standards of conduct may be imposed, under any Environmental Law.
- “Indebtedness” means, with respect to any Person, and without duplication, all Liabilities, including all obligations in respect of principal, penalties, fees, premiums, and accrued interest, of such Person for (a) borrowed money (including amounts outstanding under overdraft facilities), (b) evidenced by bonds, debentures, notes, or similar instruments, (c) all obligations of such Person evidenced by letters of credit or similar facilities, to the extent drawn upon by the counterparty thereto, (d) for contractual obligations relating to interest rate protection, swap agreements, and collar agreements, in each case, to the extent payable if such contractual obligation is terminated at the Closing, and (e) all guarantees or other assumptions of liability for any of the foregoing for any other Person.
- “Intellectual Property Rights” means (a) trade names, trademarks and service marks, domain names, trade dress and similar rights, and applications to register any of the foregoing; (b) patents and patent applications; (c) copyrights (whether registered or unregistered) and applications for registration; and (d) confidential and proprietary information, including trade secrets and know-how.
- “Inventory” has the meaning set forth in Section 1.01(g).
- “ITN Process” means Section 2.0 of Seller’s Invitation to Negotiate #127-19 for Strategic Alternatives.
- “IT Systems” has the meaning set forth in Section 3.17.
- “JEA Bonds” has the meaning set forth in Section 1.06(b).
- “JEA Bond Release Consideration” has the meaning set forth in Section 1.06(b).
- “JEA Material Adverse Effect” means any event, circumstance, development, condition, occurrence, state of facts, change, or effect that, individually or in the aggregate with any other event, circumstance, development, condition, occurrence, state of facts, change, or effect, has a material adverse effect on

the Business and Purchased Assets, taken as a whole; *provided, however*, that none of the following shall constitute or be taken into account in determining whether a JEA Material Adverse Effect has, would, or could occur: (1) events, circumstances, developments, conditions, occurrences, state of facts, changes, or effects in regional, national, or international political conditions or in general economic, business, regulatory, political, or market conditions or in national or international financial, banking, or securities markets (including any disruption thereof or changes in interest or exchange rates); (2) events, circumstances, developments, conditions, occurrences, state of facts, changes, or effects that generally affect any industry or geographic area in which the Business operates; (3) events, circumstances, developments, conditions, occurrences, state of facts, changes, or effects in the market for (including the price of) commodities or changes in the electric, generation, transmission, or distribution industries, or the water, sewer, water treatment, and water cooling industries; (4) events, circumstances, developments, conditions, occurrences, state of facts, changes, or effects arising in connection with any hurricane, tornado, ice storm, tsunami, flood, earthquake, drought, or other weather-related event, circumstance, or development, natural disasters, calamities, acts of nature, epidemics, fires, other acts of God, hostilities, acts of war, sabotage or terrorism, or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism, or military actions; (5) the effect of any action taken by Purchaser or its Affiliates with respect to the transactions contemplated by this Agreement or with respect to the Business or Purchased Assets; (6) the effect of any changes, including changes of interpretation, in GAAP or applicable Law; (7) the failure of the Business to meet any internal or published projections, forecasts or revenue or earnings predictions; (8) the effect of taking any action contemplated by this Agreement or with the prior written consent of Purchaser; or (9) any effect resulting from the negotiation, execution, pendency, consummation, or public announcement of this Agreement, including by (i) reason of the identity of Purchaser, (ii) the initiation of litigation by any Person with respect to this Agreement or the transactions contemplated hereby, or (iii) any of the foregoing on any relationships, contractual or otherwise, with customers, suppliers, distributors, collaboration partners, employees, or regulators; *provided, however*, that any event, circumstance, development, condition, occurrence, state of facts, change, or effect described in clauses (1), (2), (3), (4), and (6) of this definition shall be taken into account in determining whether a JEA Material Adverse Effect has occurred to the extent it has a disproportionate adverse effect on the Business and Purchased Assets, taken as a whole, compared to other similarly situated participants operating in the industries within the geographical areas in which the Business operates and then only to the extent of such disproportionate impact.

- “JEA Material Contracts” has the meaning set forth in Section 3.08(a).
- “knowledge” means, (a) with respect to Seller, the actual knowledge of the individuals listed on Schedule A(2), after making reasonable inquiry of their direct reports with respect to the particular matter in question, and (b) with respect to Purchaser, the actual knowledge of the individuals listed on Schedule A(3), after making reasonable inquiry of their direct reports with respect to the particular matter in question.
- “Law” means any federal, state, local, or foreign law, statute, ordinance, common law, or any rule, regulation, legally binding standard, judgment, Order, arbitration award, agency requirement, or Permit of any Governmental Authority.
- “Leased Real Property” means each parcel of real property subject to a Lease made to Seller and used in or necessary for the conduct of the Business as currently conducted (together with all rights, title and interest of Seller, if any, in and to any leasehold improvements relating thereto, to the extent of Seller’s interest therein).

- “Leases” mean all leases, subleases, licenses, concessions, and other agreements (whether written or oral), including all amendments, extensions, renewals, and other agreements with respect thereto, in each case, for the use or occupancy of real property, pursuant to which Seller holds any Leased Real Property.
- “Liabilities” means liabilities, obligations, or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, or otherwise.
- “Losses” means losses, damages, Liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.
- “Material Leased Real Property” means [•].
- “Material Owned Real Property” means [•].
- “Nassau Agreement” means that certain Nassau County/JEA Water and Wastewater Interlocal Agreement, dated December 17, 2001, between Nassau County and Seller.
- “Nassau County ROFR Rights” means has the meaning set forth in Section 2.02(a)(xv).
- “Northeast Florida” has the meaning set forth in Recital A.
- “Obligations” has the meaning set forth in Section 8.12(a).
- “Objection Notice” has the meaning set forth in Section 1.07(d).
- “Outside Date” has the meaning set forth in Section 7.01(b)(i).
- “Order” means any binding order, directive, writ, judgment, injunction, decree, stipulation, determination, or award entered by or with any Governmental Authority.
- “Organizational Documents” means (a) with respect to a corporation, the charter, articles, or certificate of incorporation, as applicable, and bylaws thereof, (b) with respect to a limited liability company, the certificate of formation or organization, as applicable, and the operating or limited liability company agreement thereof, (c) with respect to a partnership, the certificate of formation and the partnership agreement, and (d) with respect to any other Person, the organizational, constituent, and/or governing documents and/or instruments of such Person.
- “Other Real Property Interests” means easements, licenses, and other interests in real property, other than the Owned Real Property and the Leased Real Property, that are used in or necessary for the Business as currently conducted (together with all of Seller’s rights and privileges appurtenant thereto).
- “Owned Real Property” means each parcel of real property owned in fee by Seller and used in or necessary for the conduct of the Business as currently conducted (together with all buildings, fixtures, structures, and improvements situated thereon and all easements, rights-of-way and other rights and privileges appurtenant thereto).
- “Party” or “Parties” has the meaning set forth in the Preamble.



- “Pay-Off Letters” has the meaning set forth in Section 6.02(d).
- “Permits” has the meaning set forth in Section 3.10.
- “Permitted Encumbrances” means, collectively, the following: (a) those items set forth in Section 3.07 of the Seller Disclosure Letter; (b) mechanics’, carriers’, workmen’s, repairmen’s, or other like liens arising or incurred in the ordinary course of business or for amounts that are not delinquent by more than sixty (60) days, or the validity or amount of which are being contested in good faith by appropriate proceedings, or pledges, deposits, or other liens securing the performance of bids, trade contracts, leases, or statutory obligations (including workers’ compensation, unemployment insurance, or other social security legislation); (c) all matters disclosed by the Title Commitments, matters of public record, and any zoning, entitlement, conservation restriction, and other land use and environmental regulations promulgated by Governmental Authorities; (d) other than with respect to Owned Real Property, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business; (e) Encumbrances for Taxes or assessments that are not delinquent (or which may be paid without interest or penalties) or the validity or amount of which is being contested in good faith by appropriate proceedings; (f) Encumbrances created by the JEA Bonds; (g) Encumbrances that have been placed by any developer, landlord, or other third party on any Leased Real Property or Other Real Property Interests; (h) all matters that an accurate survey or physical inspection of the Real Property would disclose that, individually or in the aggregate, do not prohibit or materially interfere with the current operation of the Real Property; (i) deed restrictions limiting the use of the Real Property to non-residential uses; (j) all exceptions, restrictions, easements, imperfections of title, charges, rights-of-way, and other Encumbrances that, to the knowledge of Seller, do not materially interfere with the present use of the Purchased Assets in the Business, taken as a whole; (k) any conveyance, transfer, or lease of any oil, gas, or mineral rights and profits, rights, and appurtenances relating thereto; (l) the covenants or restrictions set forth in this Agreement or the Ancillary Documents; (m) Encumbrances with respect to the Purchased Assets created by or resulting from the acts or omissions of Purchaser (including any Encumbrances granted at the Closing in connection with any financing by Purchaser of the transactions contemplated hereby); (n) in the case of any Leased Real Property, the terms and conditions of the applicable Lease; (o) for any Real Property for which Purchaser has not obtained a Title Commitment, any Encumbrance affecting such Real Property, *provided* that such Encumbrance does not, to the knowledge of Seller, materially interfere with the present use of the Purchased Assets in the Business, taken as a whole; (p) non-exclusive licenses of Intellectual Property rights granted in the ordinary course of business, (q) Encumbrances disclosed in the Financial Statements or any schedules to this Agreement; or (r) any other Encumbrances arising in the ordinary course of business and not incurred in connection with the borrowing of money by Seller or for its benefit.
- “Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association, or other entity.
- “Post-Closing Employee Benefit Plans” has the meaning set forth in Section 5.04(c).
- “Prudent Utility Practices” means any of the practices, methods and acts engaged in or accepted by a significant portion of the electrical utility, water and wastewater utility, and gas utility industry (as applicable) in the United States at the time the decision was made or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with applicable Law, regulation, permits, codes,

standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practices is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods, or acts.

- “Purchased Assets” has the meaning set forth in Section 1.01.
- “Purchaser” has the meaning set forth in the Preamble.
- “Purchaser Disclosure Letter” has the meaning set forth in Article IV.
- “Purchaser Material Adverse Effect” means any circumstances, developments, changes, events, effects, or occurrences that have a material adverse effect on the ability of Purchaser to consummate or that would prevent or materially impede, interfere with or delay the consummation by Purchaser of the transactions contemplated herein prior to the Outside Date.
- “Purchase Price” has the meaning set forth in Section 1.05.
- “Purchaser Releasing Parties” has the meaning set forth in Section 8.13(a).
- “Purchaser Released Matters” has the meaning set forth in Section 8.13(a).
- “Real Property” means, collectively, the Owned Real Property, the Leased Real Property, and the Other Real Property Interests.
- “Reconciled Excluded Cash” has the meaning set forth in Section 1.07(e).
- “Real Property Interest Assignment” has the meaning set forth in Section 2.02(a)(xiii).
- “Regulatory Approval Plan” means Purchaser’s plan for obtaining the Required Regulatory Approvals as set forth in Exhibit N.
- “Regulatory Restraint” means a Law or Order contemplated by Section 6.01(c) that arises in connection with the Required Regulatory Approvals or in connection with the assertion of any Governmental Authority, other than those set forth on Schedule A(4), that such Governmental Authority’s approval is required in connection with the transactions contemplated by this Agreement or the Ancillary Documents (except for any assertion arising as a result of a breach by Seller of the first sentence of Section 3.03).
- “Release” means any actual release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing, or allowing to escape or migrate into or through the environment (including ambient air (indoor or outdoor), soil gas, surface water, groundwater, land surface, or subsurface strata or within any building, structure, facility, or fixture).
- “Remaining Disputed Matters” has the meaning set forth in Section 1.07(d).
- “Representatives” means, in respect of any Person, the officers, directors, employees, consultants, agents, advisors (including legal and financial), controlled Affiliates, financing sources, and other representatives of such Person and its subsidiaries.

- “Required Regulatory Approvals” means the consents, filings, and approvals listed on Schedule A(5) and, with respect to the HSR Act (if applicable), the expiration or termination of any applicable waiting period.
- “Required Public Approvals” has the meaning set forth in Recital D.
- “Retention Agreement” means each Employee Protection and Retention Program Agreement with JEA and the employees of Seller (the “Retention Bonus Recipients”) listed on and in the amounts indicated on Schedule A(6) hereto that provide for a retention bonus that, in each case, is payable 1/3<sup>rd</sup> at Closing, 1/3<sup>rd</sup> on the first Retention Bonus Anniversary Date, and 1/3<sup>rd</sup> on the second Retention Bonus Anniversary Date, in each case, conditioned on the Retention Bonus Recipient’s employment through the applicable payment date (subject to certain exceptions set forth therein).
- “Retention Bonus Anniversary Date” has the meaning set forth in Section 1.06(e)(i).
- “Retention Bonus Recipient Schedule” has the meaning set forth in Section 1.06(e)(i).
- “Retention Escrow Account” has the meaning set forth in Section 1.06(e).
- “Retention Escrow Amount” means an amount equal to \$[•], which such amount will be used to fund post-Closing payments under the Retention Agreements on each of the Retention Bonus Anniversary Dates.
- “Retention Payments” means the payments due pursuant to the Retention Agreements.
- “ROFR Assets” means the assets and/or interests owned by JEA, as referenced in the St. Johns Agreement, the Nassau Agreement, the SJRPP Blount Island Agreement and the Scherer Agreement, as applicable.
- “ROFR Asset Amount” means the amount actually received in cash (net of expenses) by Seller with respect to the sale of the applicable ROFR Assets in accordance with the ROFR Rights.
- “ROFR Rights” means the St. Johns County ROFR Rights, the Nassau County ROFR Rights, the SJRPP Blount Island ROFR Rights and/or the Scherer ROFR Rights, as applicable.
- “Schedule Supplement” has the meaning set forth in Section 5.08.
- “Scherer Agreement” means that certain Plant Robert W. Scherer Unit Number Four Amended and Restated Purchase and Ownership Participation Agreement, among Georgia Power Company, Florida Power & Light Company and Jacksonville Electric Authority (a predecessor entity to Seller), dated December 31, 1990.
- “Scherer ROFR Rights” has the meaning set forth in Section 2.02(a)(xvi).
- “Seller” has the meaning set forth in the Preamble.
- “Seller Closing Indebtedness” means Seller’s Indebtedness as of immediately prior to the Closing.
- “Seller Transaction Expenses” means (a) all of the unpaid fees and expenses owed and that remain unpaid as of the Closing by Seller to its attorneys, accountants, financial advisors, consultants,

professionals, and other advisors in connection with the transactions contemplated herein and (b) one half of the fees and expenses of the Escrow Agent.

- “Seller Disclosure Letter” has the meaning set forth in Article III.
- “Seller Indemnified Party” has the meaning set forth in Section 5.10(a).
- “Seller Released Parties” means (a) Seller and its Affiliates (including the City of Jacksonville, the City Council, and the Office of the Mayor), (b) each current, former, and future holder of any equity, voting, partnership, limited liability company, or other interest, controlling person, subsidiary, director, officer, employee, member, manager, general or limited partner, stockholder, agent, attorney, representative, affiliate, heir, assignee, or successor of Seller or any of its Affiliates, and (c) each current, former, and future holder of any equity, voting, partnership, limited liability company, or other interest, controlling person, subsidiary, director, officer, employee, member, manager, general or limited partner, stockholder, agent, attorney, representative, affiliate, heir, assignee, or successor of any of the foregoing Persons in clause (i) or (ii).
- “Seller’s Counsel” means: (i) Pillsbury Winthrop Shaw Pittman LLP, (ii) Foley & Lardner LLP, (iii) Holland & Knight LLP, (iv) Greenberg Traurig, LLP, (v) the Radey Law Firm, (vi) Pennington, P.A., (vii) Hopping Green & Sams, P.A., (viii) Carlton Fields, P.A., and (ix) Milam Howard Nicandri Gillam & Renner, P.A.
- “Service Provider” means any director, officer, employee, or individual independent contractor of the Business.
- “SJRPP Blount Island Agreement” means that certain Agreement, dated December 19, 1986, between the Jacksonville Port Authority and JEA, as amended by the First Amendment to such Agreement, date September 6, 1994.
- “SJRPP Blount Island ROFR Rights” has the meaning set forth in Section 2.02(a)(xvii).
- “Solvent” has the meaning set forth in Section 4.06.
- “St. Johns Agreement” means that certain St. Johns County/JEA Water and Wastewater Interlocal Agreement, dated July 20, 1999, between St. Johns County and Seller.
- “St. Johns County ROFR Rights” has the meaning set forth in Section 2.02(a)(xiv).
- “St. Johns River Power Park System Assets” means the coal- and petcoke-fired steam electric generating station, located on an approximately 1,900-acre site in the northeast section of the City of Jacksonville and consists of two units, as more fully described on Annex E hereto.
- [**“Substitute Financing” has the meaning set forth in Section 5.06(c).**]
- “Systems Coordination Agreement” means that certain Systems Coordination Agreement, between Seller and Purchaser, in the form attached hereto as Exhibit O.
- “Tangible Personal Property” means all buildings, furniture, fixtures, equipment, machinery, tools, vehicles, office equipment, supplies, computer hardware, telephones, and other tangible personal property.

- “Taxes” means all federal, state, local, foreign, and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal) (including payments in lieu of taxes), real property gains, windfall profits, customs, duties, or other taxes, fees, assessments, or charges in the nature of a Tax, together with any interest, additions, or penalties with respect thereto and any interest in respect of such additions or penalties.
- “Tax Returns” means any return, declaration, report, claim for refund, information return or statement, or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.
- “TEA” means The Energy Authority, Inc., a Georgia nonprofit corporation, that operates as a municipal power marketing and risk management joint venture, headquartered in Jacksonville, Florida.
- “TEA Interest” has the meaning set forth in Section 5.16.
- “Termination Date” means the actual date of termination pursuant to the provisions of Article VII.
- “Territorial Agreement” means that certain Territorial Agreement, between Seller and Purchaser, in the form attached hereto as Exhibit P.
- “Title Company” means Fidelity National Title Insurance Company.
- “Title Commitments” means those commitments to issue title policies issued by the Title Company as described on Schedule A(7) and those commitments obtained by Purchaser with respect to any of the Real Property.
- “Transaction Expenses Consideration” has the meaning set forth in Section 1.06(d).
- “Transfer Date” has the meaning set forth in Section 5.04(a).
- “Transferable Permits” means the Permits (including Environmental Permits) that are transferable to the Purchaser at the Closing.
- “Transferred Cash Balance” has the meaning set forth in Section 1.01(f).
- “Transferred Employee Benefit Plans” has the meaning set forth in Section 1.01(r).
- “Transferred Employees” has the meaning set forth in Section 5.04(a).
- “Transmission Agreement” means that certain Transmission Agreement, between Seller and Purchaser, in the form attached hereto as Exhibit Q.
- “Transmission Assets” means the electric transmission Tangible Personal Property, and real property, used in or for the electric transmission Business or located on the Real Property, including the facilities, equipment, and other tangible property and assets that connect the Distribution Assets to transmission 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 even recorders, annunciators, relay vaults, substation fencing, transmission lines, conductors, transmission line structures and poles, and control buildings.

- “Updated Recipient Schedule” has the meaning set forth in Section 1.06(e)(i).
- “Water and Sewer Assets” means the water and wastewater Tangible Personal Property and real property used in or for the water and wastewater Business or located on the Real Property, including facilities, equipment, and other tangible property and assets used for (a) the provision of potable water (including, water treatment plants, repump facilities, active water supply wells, water distribution mains and water storage capacity), (b) the collection and treatment of wastewater (including, wastewater treatment plants, pumping stations, low pressure sewer units, gravity sewers and force mains, and the biosolid processing facility), (c) the treatment and distribution of reclaimed water (including, plants, pumps, and piping), and (d) such other tangible property and assets that connect the foregoing to the Water Customer Service Assets.
- “Water Customer Service Assets” means [•].
- “Willful Breach” means a material breach that is a consequence of an act undertaken or a failure to take an act by the breaching party with the knowledge that the taking of such act or the failure to take such act would, or would reasonably be expected to, be a material breach of this Agreement, regardless of whether breaching was the object of the act or failure to act.

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**Annex B**

**Bulk Power Supply System Assets**

1. Scherer Unit 4
  - a. JEA's 23.64% ownership interest in Scherer Unit 4, one of four coal-fired steam units located at the Robert W. Scherer Electric Generating Plant ("Plant Scherer") on a 12,000-acre site near the Ocmulgee River approximately three miles east of Forsyth, Georgia.
  - b. JEA's proportionate ownership interest in (i) certain common facilities shared by Units 3 and 4 at Plant Scherer, (ii) certain common facilities shared by Units 1, 2, 3 and 4 at Plant Scherer, and (iii) an associated coal stockpile.
  - c. JEA's proportionate ownership interest in substation and switchyard facilities related to Plant Scherer.
2. Power Park
  - a. JEA's ownership interest in the Power Park, a coal- and petcoke-fired steam electric generating station located in the northeast section of the City of Jacksonville, that is in the process of being decommissioned.

**Annex C**

**District Energy Assets**

[•]



**Annex D**

**Generation Assets**

The generating facilities are located at four plant sites - the J. Dillon Kennedy Generating Station (“Kennedy”), the Northside Generating Station (“Northside”), the Brandy Branch Generating Station (“Brandy Branch”) and the Greenland Energy Center (“GEC”).

The electric generating facilities consist of the following types of units: a dual residual fuel oil/gas fired steam turbine generator unit, four diesel-fired combustion turbine (“CT”) generating units, seven dual-fueled (gas/diesel) generator units, a steam turbine generator unit (provided by heat recovery steam generators serving from two of the seven combustion turbine generator units), and two petroleum coke (“petcoke”) and coal-fired circulating fluidized bed (“CFB”) steam turbine-generator units.

In particular:

- a. Northside consists of three Units. Northside Units 1 and 2 which burns petcoke and coal (at times supplemented by natural gas). Northside Unit 3, a steam unit, which burns residual fuel oil and natural gas, and four CTs at Northside burn diesel.
- b. Kennedy units are dual-fueled with diesel as backup. The Kennedy CTs 7 and 8 burn natural gas.
- c. Brandy Branch units are dual-fueled with diesel as backup. The Brandy Branch CTs 1, 2 and 3 burn natural gas. Brandy Branch steam turbine 4 is a steam turbine generator that is part of a combined cycle unit that uses waste heat from Brandy Branch CTs 2 and 3
- d. The GEC CTs 1 and 2 burn natural gas with diesel as backup.

**Annex E**

**St. Johns River Power Park System Assets**

[•]

**Schedule 1.01(r)**

**Transferred Employee Benefit Plans**

1. JEA 457 Deferred Compensation Plan
2. JEA 401(a) Defined Contribution Retirement Plan
3. St. Johns River Power Park System Employees' Retirement Plan (SJRPP)
4. JEA Supplemental Employee Retirement Plan (SERP)
5. Retiree Employee Welfare Plan
6. Active Employee Welfare Plans:
  - a. medical (PPO, HDHP w/ HSA, HMO w/ HRA)
  - b. health care FSA
  - c. dependent care FSA
  - d. wellness program
  - e. dental & vision
  - f. life & AD&D
  - g. STD & LTD
  - h. employee assistance
  - i. hospital indemnity, cancer & accident plans
  - j. legal plan

**Schedule 1.02(a)**

**Certain Excluded Assets**

[None.]

**Schedule 1.02(f)**

**Excluded Employee Benefit Plans**

1. The City of Jacksonville General Employees Retirement Plan
2. The City of Jacksonville General Employees Defined Contribution Plan

**Schedule 5.11(a)**

**Statutory Materials**

1. All documents and information contemplated by F.S. 180.301, F.S. 125.3401, and F.S. 189.054, including:
  - a. The most recent available income and expense statement for the Business;
  - b. The most recent available balance sheet for the Business, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon;
  - c. A statement of the existing rate base of the Business for regulatory purposes;
  - d. The physical condition of the Business facilities being purchased, sold, or subject to a wastewater facility privatization contract;
  - e. The reasonableness of this Agreement, the Ancillary Agreements and the terms and conditions provided herein and therein;
  - f. The impacts of this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby on utility customers, both positive and negative;
  - g. Any additional investment required and the ability and willingness of Purchaser to make that investment;
  - h. The terms and conditions on which Purchaser will provide capital investment and financing or a combination thereof for contemplated capital replacements, additions, expansions, and repairs.
  - i. The alternatives to this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby, and the potential impact on utility customers if this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby is not made; and
  - j. The ability of Purchaser to provide and maintain high-quality and cost-effective utility service.

**Schedule 5.16**

**Transition Related Activities**

[To be discussed]

**Schedule A(1)**

**Excluded Contracts**

1. Amended and Restated Power Purchase Agreement, dated December 31, 2014, between JEA and the Municipal Electric Authority of Georgia.<sup>21</sup>
2. Proprietary Information Agreement, dated September 15, 2015, between JEA and the Municipal Electric Authority of Georgia.

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<sup>21</sup> **Note to Draft:** The treatment of and approach towards Liabilities with respect to this Excluded Contract to be discussed with Purchaser.



**Schedule A(2)**

**Seller Knowledge Parties**

1. Aaron Zahn
2. Melissa Dykes
3. Herschel Vinyard
4. Ryan Wannemacher
5. Jonathan Kendrick
6. Shawn Eads

**Schedule A(3)**

**Purchaser Knowledge Parties**

[Respondent to propose this list]

**Schedule A(4)**

**Regulatory Restraint**

[•]

**Schedule A(5)**

**Required Regulatory Approvals**

1. Approval from the Federal Energy Regulatory Commission (“**FERC**”) for (i) the transfer of JEA’s FERC-jurisdictional transmission and generation assets as required by Federal Power Act Section 203, 16 U.S.C. § 824b, and (ii) the transfer of any FERC-jurisdictional transmission or generation agreements, and for any tariff or tariff-related filings that Purchaser must make, pursuant to Federal Power Act Section 205, 16 U.S.C. § 824d, and any other applicable laws or FERC regulations.
2. Approval by the Federal Communication Commission (“**FCC**”) for transfer of FCC-jurisdictional licenses, pursuant to 47 U.S.C. § 310(d) or other applicable statutes or regulations.
3. Approval from the Florida Public Service Commission (“**FPSC**”) of the Franchise Agreement and Territorial Agreement, and approval of Purchaser’s proposed rates and tariff for electric service, pursuant to applicable Florida law and regulation.
4. The granting to Purchaser of a Certificate of Authority from the FPSC, and approval of Purchaser’s proposed rates and tariff for water and wastewater service, pursuant to applicable Florida law and regulation.
5. **[FPSC (Gas) Approval (if applicable)]**
6. If notification is required under the Hart-Scott Rodino (“**HSR**”) Act, 15 U.S.C. 18a(a), expiration of the waiting period under the HSR Act, 15 U.S.C. 18a(b).
7. **[CFIUS Approval (if applicable)]**

**Schedule A(6)**

**Retention Bonus Recipients**

(See attached)

**Schedule A(7)**

**Title Commitments**

(See attached)

**Exhibit I**

**Community Commitment Contracts**

1. Interagency Agreement, dated March 22, 2016, between the City of Jacksonville and JEA, as amended by the First Amendment, dated February 28, 2019.
2. Agreement Regarding the Interoperable P25 Radio System, dated July 2, 2013, between the City of Jacksonville and JEA.
3. Agreement Concerning JEA’s Northside Repowering Project, dated June 15, 1999, between the Sierra Club Northeast Florida Group and JEA.
4. JEA’s Preservation Project,<sup>22</sup> established August 10, 1999, with the commitments set forth on such date, and supplemented by the commitments set forth on July 8, 2003.
5. The Water/Wastewater 2016 Septic Tank Phase Out Program City of Jacksonville and JEA, as supplemented by the Septic Tank Phase-Out Prioritization 2019 matrix of costs.
6. Seminole Road Neighborhood Assessment Program:
  - a. Ordinance 2011-592-E, enacted October 11, 2011, that established the 1800 block Seminole Road Neighborhood Assessment Program for the purpose of converting electric, telephone, cable and communication lines from overhead to underground with an estimated cost of \$9,703.30 per property within the 1800 Block Seminole Road Neighborhood Assessment Program; and related actions.
  - b. Ordinance 2013-161-E, enacted April 9, 2013, approving the final costs of underground utility installation improvements for the 1800 Block Seminole Road Neighborhood Assessment Program, and related actions.
  - c. Exhibit 1 – Final Special Assessment Roll for 1800 Block Seminole Road – Neighborhood Assessment Program
7. Ortega Point North Neighborhood Assessment Program:
  - a. Petition Underground Power and Communications Program Area, Ortega Point North Neighborhood, dated May 16, 2019
  - b. Ordinance 2019-376-E, enacted June 25, 2019, establishing a Neighborhood Assessment Program for the Ortega Point North Neighborhood for underground power and communications improvements, and related actions.
8. Ordinance 2019-321-E, enacted June 11, 2019, (i) amending the Neighborhood Assessment Program to update statutory references and clarify procedures and to provide for use of certain fees, (ii) amending the Underground Power and Communication Program Area to update procedures and requirements and establish a water, sewer and reclaimed water program area, and (iii) amending the special revenue and trust accounts chapter of the Ordinance Code related to Public Works,

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<sup>22</sup> Note to Draft: This contains the conservation easements.

Utilities and Infrastructure to create a new section regarding a Neighborhood Assessment Program Fee Trust Fund.

9. Ordinance 92-605-430 and Ordinance 92-606-431, enacted June 9, 1992, that rezoned Island 3, 4, 20 and 21 in Clapboard Creek from Public, Government Use (PBF-1) to Conservation (CSV) (the “CSV Ordinances”).

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