

ORDINANCE NO. 2020 – [•]¹²

AN ORDINANCE OF THE CITY OF JACKSONVILLE, FLORIDA, GRANTING TO [•] AN ELECTRIC, WATER AND WASTEWATER UTILITY FRANCHISE; ESTABLISHING TERMS AND CONDITIONS RELATING THERETO; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, JEA, an independent agency of the City of Jacksonville, Florida owns and operates an electric, water and wastewater utility in Duval County, Florida, and has entered into an Asset Purchase and Sale Agreement, dated [•], 2020, pursuant to which Newco has agreed to acquire substantially all of the assets and liabilities of JEA’s Business (as defined therein) (the “Purchase Agreement”), not including that certain Amended and Restated Power Purchase Agreement dated as of December 31, 2014 (the “Vogtle PPA”) between JEA and the Municipal Electric Authority of Georgia, which will be retained by JEA and pursuant to which JEA is obligated to purchase all of the energy and capacity generated by Project J (as defined in the Vogtle PPA) for the first 20 years of its operation and make certain other payments as set forth in the Vogtle PPA; and

WHEREAS, the City and Newco desire for Newco to provide service to JEA’s electric, water and wastewater utility customers, commencing on the Closing Date (as defined in the Purchase Agreement); and

WHEREAS, in connection with the purchase of such utility assets and the assumption of certain associated liabilities pursuant to the Purchase Agreement, JEA and Newco have agreed that, on or prior to the Closing Date, the City will adopt that certain Franchise Agreement attached as Exhibit A (the “Franchise Agreement”) to provide for the payment of fees by Newco to the City effective on and after the Closing

¹ **Note:** This draft remains subject to the ongoing review of the Office of the General Counsel of the City of Jacksonville and, as such, may require further modifications.

² Note to Draft: It is contemplated that the ordinance approving the franchise agreement may be an omnibus ordinance that also approves the sale to Newco, the continuation of Legacy JEA as a “utilities system” as defined in the JEA Charter, the partial delegation by JEA of its “exclusive” authority to provide utility services to Newco, findings required by Section 183.01, *Florida Statutes*, and related matters. However, this draft ordinance is limited to the approval of the Franchise Agreement.

Date in exchange for the exclusive right and privilege of supplying retail electricity (except as reserved to JEA), water and waste water services, and other utility-related services incidental thereto (collectively, “Utility Services”), within the City, pursuant to the terms and conditions set forth in such Franchise Agreement; and

WHEREAS, the City owns and will own certain streets, avenues, alleys, wharves, bridges, public thoroughfares, public grounds, and rights-of-way within the City municipal incorporated boundaries; and

WHEREAS, the City Council finds that grant of the franchise described in the Franchise Agreement and the provisions thereof are in the public interest and serve a municipal purpose,

BE IT ORDAINED by the Council of the City of Jacksonville:

Section 1. Recitals. The preceding recitals are (i) true and correct and incorporated herein and (ii) form the purpose and legislative intent of the Franchise Agreement.

Section 2. Grant of Franchise. The City grants to Newco, its successors and assigns, a franchise to provide Utility Services to the City, and its successors, any and all other Customers, and other persons beyond the city limits of the City, on the terms and subject to the conditions set forth in the Franchise Agreement.

Section 3. Reservation of Powers to JEA. JEA will retain the powers set forth in Chapter 21 of the City Charter for the sole and limited purposes of receiving and supplying energy under the Vogtle PPA to Customers and otherwise satisfying its obligations thereunder.

Section 4. Filing with Clerk. As a condition precedent to the effectiveness of this Ordinance, Newco will file its acceptance hereof by delivering a signed copy of the Franchise Agreement to the City Clerk within thirty (30) days after the adoption of this Ordinance.

Section 5. Effective Date. This Ordinance will become effective upon signature by the Mayor or upon becoming effective without the Mayor’s signature; *provided*, the effective date of the Franchise Agreement will be the Closing Date (as defined in the Purchase Agreement).

Form Approved:

[DRAFT]

Office of General Counsel

**Exhibit A
Franchise Agreement**

FRANCHISE AGREEMENT

between

THE CITY OF JACKSONVILLE

and

[NEWCO]

dated as of

[•]

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 FRANCHISE AGREEMENT IS DULY EXECUTED AND DELIVERED BY ALL PERSONS NAMED AS PARTIES.

TABLE OF CONTENTS

ARTICLE I FRANCHISE 1

ARTICLE II TERM 2

ARTICLE III NEWCO RESPONSIBILITIES 2

ARTICLE IV JEA RETAINED RIGHTS AND POWERS 3

ARTICLE V VOGTLE PPA 4

ARTICLE VI FRANCHISE FEE 4

ARTICLE VII NON-INTERFERENCE..... 4

ARTICLE VIII INDEMNIFICATION..... 5

ARTICLE IX INSURANCE..... 5

ARTICLE X RATES 6

ARTICLE XI RETAIL COMPETITION 6

ARTICLE XII RENEWABLE ENERGY COMMITMENT 6

ARTICLE XIII ALTERNATIVE WATER CAPACITY 6

ARTICLE XIV COMMUNITY OBLIGATIONS..... 6

ARTICLE XV BREACH BY NEWCO 8

ARTICLE XVI PROHIBITION ON TRANSFERS 8

ARTICLE XVII RIGHT OF FIRST REFUSAL 8

ARTICLE XVIII ANNEXATION 9

ARTICLE XIX RECORDS; AUDIT RIGHTS 9

ARTICLE XX MISCELLANEOUS..... 10

Annexes

Annex A – Defined Terms

FRANCHISE AGREEMENT³

This FRANCHISE AGREEMENT (this “Agreement”), dated [•], is made and entered into by and between the City of Jacksonville, Florida (the “City”) and [•], a [•] (“Newco”). The City and Newco 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. JEA, an independent agency of the City owns and operates an electric, water and wastewater utility in Duval County, Florida, and has entered into an Asset Purchase and Sale Agreement, dated [•], 2020, pursuant to which Newco has agreed to acquire substantially all of the assets and liabilities of JEA’s Business (as defined therein) (the “Purchase Agreement”), not including the Vogtle PPA, which will be retained by JEA.
- B. The City and Newco desire for Newco to provide service to JEA’s electric, water and wastewater utility Customers, commencing on the Effective Date.
- C. As part of the transactions contemplated by the Purchase Agreement, JEA and Newco desire that, on or prior to the Effective Date, the City will adopt this Agreement to provide for the payment of fees by Newco to the City effective on and after the Effective Date in exchange for the exclusive right and privilege of supplying retail electricity (except as reserved to JEA), water and waste water services, and other utility-related services incidental thereto (collectively, “Utility Services”), within the City, pursuant to the terms and conditions set forth herein.

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 FRANCHISE

Section 1.01 Subject to Article IV, the City grants Newco the exclusive franchise, right and privilege (“Franchise”) of providing the Utility Services within the Franchise Area on the terms and subject to the conditions set forth herein. In connection therewith, and except as reserved by JEA, the City grants Newco the exclusive license, right and privilege to construct, erect, operate, maintain, repair and remove in, under, upon, along, over and across the Rights-of-Way throughout all of the Franchise Area, in accordance with Newco’s customary practice with respect to construction, operation and maintenance of the following:

- (a) electric light and power facilities, including without limitation, conduits, poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to Newco’s electric generation, transmission and distribution operations;
- (b) potable water facilities, including without limitation, wells, pipes, pumps, and related water generation and distribution operations; and

³ **Note:** This draft remains subject to the ongoing review of the Office of the General Counsel of the City of Jacksonville and, as such, may require further modifications.

(c) wastewater collection and treatment facilities, including without limitation, pumping stations, gravity sewer lines, lift stations, wastewater pipes and wastewater treatment plants.

Section 1.02 The City may terminate the license and rights granted herein as to a specific highway, road or other right-of-way, or portion thereof, if such highway, road or other right-of-way is closed, abandoned, vacated, discontinued or reconstructed.

Section 1.03 Newco will not create any obstruction or condition that is, or may become, knowingly dangerous to the traveling public in the City and will notify the City before performing any work in City Rights-of-Way, unless work is of an emergency nature, and in which case notification should be as soon as practicable.

Section 1.04 Newco will promptly repair any damage or injury to any highway, road or other right-of-way to which this Agreement is applicable, which is caused by reason of the exercise of the rights and powers granted hereunder. Further, Newco will restore such highway, road, or other right-of-way to a condition at least equal to that which existed immediately prior to the infliction of such damage or injury.

Section 1.05 If the City widens, repairs or reconstructs any highway, road or other right-of-way that is subject to this Agreement, Newco will relocate or remove any component of its Utility System affected thereby at no cost to the City; *provided, however*, in the absence of an emergency, Newco will be provided at least thirty (30) days advance written request to move or remove such lines. Whenever reasonable the City will attempt to minimize relocations.

Section 1.06 All work performed by Newco, its employees, agents, or contractors, pursuant to this Agreement will be performed in a good and workmanlike manner utilizing best engineering practices. All excavations or damage caused by Newco by reason of such work will, within a reasonable time and as nearly as practicable after such excavation or damage, be repaired by Newco to as good as condition as before the time of such excavation or damage.

ARTICLE II TERM

The term of the Franchise will be for a period commencing on the Effective Date and ending on the later of the 20th anniversary of the Effective Date or the expiration or termination of JEA's obligations under the Vogtle PPA. For the duration of this Agreement, no portion of the Franchise Area may be served by either JEA or Newco in any manner contrary to this Agreement.

ARTICLE III NEWCO RESPONSIBILITIES

In exercising the rights and privileges granted in the Franchise, Newco will have the responsibilities and obligations incumbent upon public utilities in Florida, including the obligation to:

Section 3.01 Own, manage and operate the Utility Systems within and without the City of Jacksonville in accordance with Prudent Utility Practices, and do business as a public utility.

Section 3.02 Make such capital investments in the Business from time to time as is required by Prudent Utility Practices.

Section 3.03 Fix, pledge to establish or establish, levy, regulate, impose and collect rates, assessments, fees and charges for the use or benefit of the utilities systems and to alter and amend same from time to time, in accordance with applicable state and federal laws and regulations;

Section 3.04 Ensure rates and charges made, demanded, or received for any service rendered, or to be rendered by it, and each rule and regulation of Newco, will be fair and reasonable and provided on a nondiscriminatory and non-preferential basis;

Section 3.05 Enter upon any lands, public or private, necessary to provide the Utility Services and acquire for the use of the utilities systems by grant, purchase, gift, devise, condemnation by eminent domain proceedings, exchange, lease or in any other manner, all property, real or personal, or any estate or interest therein, without limitation, used in connection with the ownership, operation and maintenance of the Utility Systems;

Section 3.06 As to the Electric Utility System:

(a) Furnish to each Person seeking electricity service reasonably sufficient, adequate, and efficient service upon terms as required by the FPSC;

(b) Construct and maintain electric facilities on, over and across or under the public rights of way as needed to furnish electric service;

(c) Have access to install and maintain the necessary facilities from a point of delivery on Newco's electric lines to a point at which these lines terminate; and

(d) Plan, finance, sponsor, otherwise participate in projects, systems, programs or measures to promote or implement electric conservation and efficiency, power conditioning and load management.

Section 3.07 As to the Water and Wastewater Utility System:

(a) Furnish to each Person seeking potable water, irrigation water and wastewater treatment service reasonably sufficient, adequate, and efficient service upon terms as required by the FPSC;

(b) Sell water and wastewater services at wholesale and retail to any Person or entity, public or private, within the City and service territory;

(c) Construct, improve, maintain, own and operate wells, water and wastewater pipelines, pumps, wastewater treatment facilities and related facilities and structures on, over and across or under the public rights of way as needed to provide water and wastewater services; and

(d) Plan, finance, sponsor, otherwise participate in projects, systems, programs or measures to promote or implement water conservation and efficiency.

**ARTICLE IV
JEA RETAINED RIGHTS AND POWERS**

JEA will retain all of its rights and powers set forth in Chapter 21 of the City Charter for the sole and limited purposes of receiving and supplying energy under the Vogtle PPA to Customers and otherwise satisfying its obligations thereunder. JEA will have the obligation to deliver power received under the

Vogtle PPA on an as available basis, coordinate delivery of the power with Newco, and pay Newco for (a) the transmission services, and (b) the billing and collection services provided by Newco. For the avoidance of doubt, JEA will not pay Newco for distribution services. JEA will retain the right to charge Customers monthly on a pass-through basis for the actual costs incurred by JEA under and relating to the Vogtle PPA (regardless of whether Vogtle units 3 and 4 are generating power during the period for which the costs are incurred) including administrative and associated ancillary costs, for delivering power thereunder or otherwise. Newco will contract with JEA to provide transmission, distribution, billing and collection services in connection with the delivery and sale of the power received under the Vogtle PPA. JEA will be solely responsible for determining the rates, tariffs, and other charges for each electricity customer class.

**ARTICLE V
VOGTLE PPA**

Section 5.01 The energy received by JEA under the Vogtle PPA will be sold by JEA and distributed to Customers by Newco pursuant to the Transmission Agreement and the Distribution Agreement. In connection therewith and as further consideration for the grant of the Franchise, Newco agrees to provide billing and collection services pursuant to the Billing and Collections Services Agreement.

Section 5.02 With respect to the energy received from JEA under the Vogtle PPA, Newco will be responsible for coordinating system dispatch, providing load balancing services, providing back-up power in the event power is not available under the Vogtle PPA, and providing all other required capabilities and services (including ancillary services) needed to ensure adequate service to electricity Customers and reliable operation of the electrical grid. In connection therewith and as further consideration for the grant of the Franchise, Newco agrees to provide system coordination services pursuant to the Systems Coordination Agreement. Any back-up power will be sourced and supplied by Newco at its expense with costs passed to Customers and not included in line item charges under the Billing and Collections Services Agreement.

**ARTICLE VI
FRANCHISE FEE**

As a consideration for this Franchise, Newco will pay to the City, commencing ninety (90) days after the Effective Date and continuing each month thereafter for the remainder of the term of this Franchise (and for two months thereafter due to the lag between collection and payment by Newco), an amount which added to the amount of all licenses, excises, fees, charges, and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property), levied or imposed by the City against Newco's property, business, or operations and those of its subsidiaries during Newco's monthly billing period ending sixty (60) days prior to each such payment, will equal three percent (3%) of Newco's Base Revenues for the monthly billing period ending sixty (60) days prior to each such payment, and in no event will payment for the rights and privileges granted herein exceed six percent (6%) of such revenues for any monthly billing period of Newco.

**ARTICLE VII
NON-INTERFERENCE**

The facilities of Newco will be installed, located or relocated so as to not unreasonably interfere with traffic over the Rights-of-Way or with reasonable egress from and ingress to abutting property. To avoid such conflicts, the location or relocation of all facilities will be made as representatives of the City may prescribe in accordance with the City's reasonable rules and regulations with reference to the placing and maintaining in, under, upon, along, over and across said Rights-of-Way; *provided, however*, that such rules or regulations (a) will not prohibit the exercise of Newco's right to use said public Rights-of-Way for

reasons other than unreasonable interference with motor vehicular traffic; (b) will not unreasonably interfere with Newco’s ability to furnish reasonably sufficient, adequate and efficient electric service to all of its Customers; and (c) will not require the relocation of any of Newco’s facilities installed before or after the Effective Date in the Right-of-Way unless or until widening or otherwise changing the configuration of the paved portion of any Right-of-Way used by motor vehicles causes such installed facilities to unreasonably interfere with motor vehicular traffic. Such rules and regulations will recognize that above-grade facilities of Newco installed after the Effective Date should be installed near the outer boundaries of the Right-of-Way to the extent possible. When any portion of a public Right-of-Way is excavated by Newco in the location or relocation of any of its facilities, the portion of the Right-of-Way so excavated will within a reasonable time be replaced by Newco at its expense and in at least as good condition as it was at the time of such excavation. The City will not be liable to Newco for any cost or expense in connection with any relocation of Newco’s facilities required under subsection (c) of this Article, except, however, Newco will be entitled to reimbursement of its costs from others as may be provided by law.

**ARTICLE VIII
INDEMNIFICATION**

In consideration of the franchise rights and privileges granted to Newco by this Agreement, Newco hereby agrees to indemnify and hold harmless the City, JEA and their respective officers, agents and employees from and against any Action, caused by or arising out of Newco’s negligent construction, operation or maintenance of the Utility Systems, breach of this Agreement or misconduct, whether by acts or omissions of Newco, its employees, agents, contractor, licensees, or sublessees, including all reasonable costs, attorneys’ fees (including mediation, arbitration and appellate fees), expenses and liabilities incurred by the City in connection with any such Action including the investigation thereof, and the defense of any Action brought thereon and any order, judgment or decree which may be entered in any such Action or as a result thereof. Provided, Newco shall not be liable under this Article VIII for any Actions arising out of injury, loss of life or damage to persons or property caused by or arising out of the gross negligence, strict liability, intentional torts, criminal acts, or manifest error of the City, JEA or their respective officers, agents, or employees. Nothing in this Agreement shall be construed to affect in any way the City’s or JEA’s rights, privileges, and immunities under the doctrine of “sovereign immunity” and as set forth in Section 768.28, Florida Statutes (2019). The provisions of this Article VIII shall survive the expiration or earlier termination of this Agreement.

**ARTICLE IX
INSURANCE**

Newco will maintain through the term of this Agreement insurance, or if self-insured sufficient financial resources to self-insure the City, in the minimum amounts of:

- (a) \$1,000,000 for bodily injury or death to a person;
- (b) \$3,000,000 for bodily injury or death resulting from a single incident;
- (c) \$100,000 for property damage arising from a single incident;
- (d) \$1,000,000 for commercial general liability;
- (e) Worker’s compensation insurance as required by statute; and
- (f) \$1,000,000 for all other types of liability, including cyber liability, employer’s liability, commercial crime, and professional liability (E&O).

Every such insurance policy shall contain a provision whereby every company executing the same shall obligate itself to notify the City's Risk Management Division, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective.

**ARTICLE X
RATES**

All rates and rules and regulations established by Newco from time to time will be subject to such regulation as may be provided by law. This Agreement will control line extension, and service area issues over all lands within City's territorial limits. All Customers located within or outside the territorial limits of the City will be treated equally and there will be no differentiation as regards to rates and charges for Customers located within or outside the City.

**ARTICLE XI
RETAIL COMPETITION**

In any instance in which a direct or indirect consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them) which authorizes Retail Wheeling is that a Customer located within the Franchise Area obtains energy from an alternative Electric Energy Provider, (a) the energy that JEA otherwise would have delivered to any such Customer shall be reallocated to the remaining Customers in the Franchise Area; (b) JEA will continue to charge such Customer for the fixed charges relating to the Vogtle PPA on the same basis as it would have done if the Customer were not obtaining service from an alternative Electric Energy Provider; and (c) the charges contemplated in clause (b) will be treated as a wire charge that cannot be bypassed and will be billed and collected by Newco pursuant to the terms of the Billing and Collections Services Agreement.

**ARTICLE XII
RENEWABLE ENERGY COMMITMENT**

As further consideration for grant of the Franchise, Newco agrees to provide the City and the Duval County Public School System with energy sourced from 100% renewable sources by January 1, 2030 at a cost not to exceed the then-applicable tariff rates. On-site solar, storage and renewable energy resources may be a component of meeting this commitment and are preferred but are not part of the required.

**ARTICLE XIII
ALTERNATIVE WATER CAPACITY**

As further consideration for grant of the Franchise, Newco agrees to provide Customers not less than forty (40) million gallons per day of alternatively sourced water capacity on or before January 1, 2035. Such alternative water supply shall include identifying new sources for drinking water or irrigation. Examples include: direct or indirect reuse (water purification), surface water, desalination, surficial aquifer irrigation wells, storm water harvesting for irrigation, or aquifer recharge. The cost of this additional service may be recoverable through FPSC approved rates.

**ARTICLE XIV
COMMUNITY OBLIGATIONS**

As further consideration for grant of the Franchise, Newco agrees to assume the obligations of JEA or otherwise commit to the community under the following programs:

Section 14.01 Septic Tank Phase-out Program. Established pursuant to Ordinance No. 2016 – [•], the City and JEA agreed to partner on the prioritization and allocation of funding to replace septic tank systems with wastewater lines and connections (and companion potable water lines and connections, where applicable). Newco will assume JEA’s obligations under such ordinance and match the City’s funding with capital for septic tank phase-out on a 1:1 basis. The cost of this program may be recoverable through FPSC approved rates.

Section 14.02 Voluntary Conversion Program. Established pursuant to Ordinance No. [•], this program allows neighborhoods seeking to convert electric utilities from overhead to underground and/or sewer infrastructure on a voluntary, customer-paid basis financed through a special assessment on the property tax bill. Newco will assume JEA’s obligations under such ordinance and match the City’s funding of overhead to underground conversion on a 1:1 basis. The cost of this program may be recoverable through FPSC approved rates.

Section 14.03 JSEB/MBE Commitment. The City promotes the use of small, emerging and local businesses for procurement of goods and services through its JSEB Program. Newco will continue to procure goods and services from registered certified Jacksonville Small and Emerging Businesses to the extent practical to do so, in a manner consistent with JEA’s historical support of the JSEB Program. Newco will encourage and support the procurement of goods and services from minority and women-owned businesses, to the extent practical to do so.

Section 14.04 Endowment for ALICE Customers. Newco will coordinate with the United Way of Northeast Florida on the administration of the “JEA ALICE Endowment” to support ALICE™ customers located within the Franchise Area.

Section 14.05 Volunteerism. JEA has a long tradition of employees serving the community. Newco commits to take affirmative steps to encourage and facilitate community service by its employees in the City through event programming, publicized events, and incentives at a level consistent with JEA’s historic level of 5,600 volunteer community hours per year.

Section 14.06 Charitable Contributions. Newco commits to be an active supporter of charitable causes in the City and surrounding Franchise Area, including cash contributions to charitable organizations located in the City and surrounding territory at a level commensurate with its contributions in other service territories, if applicable. Newco will implement a charitable matching program, whereby all monies donated to a 501(c)(3) by employees of the Business, up to \$[•] per annum, will be matched 100% by Newco.

Section 14.07 Downtown Headquarters. Newco will maintain the headquarters of the Business at the building currently under development at 325 West Adams Street, Jacksonville, Florida.

Section 14.08 Disaster Preparedness. JEA and the City have historically coordinated closely on preparation and response to natural disasters and other community emergencies. Newco will continue to coordinate closely with the City on disaster preparedness and response measures, including training and community education initiatives.

Section 14.09 Big Jim Steam Whistle. Located at JEA’s Main Street Water Plant, this more than century-old copper whistle blows four times each weekday at 7:00 a.m., noon, 1:00 p.m. and 5:00 p.m. Newco will continue to operate the whistle for the term of this Agreement.

**ARTICLE XV
BREACH BY NEWCO**

Upon a material breach by Newco of any of the covenants, terms, and conditions of this Agreement, the City may in its sole discretion declare a termination of this Agreement; *provided, however*, that before such action by the City will become operative and effective, the City shall serve Newco with a written notice setting forth all matters pertinent to such violation or default, and Newco will have a period of one-hundred eighty (180) days after service of such notice or, in the event such cure reasonably requires a period of more than one-hundred eighty (180) days, to present a plan, satisfactory to the City, acting reasonably, to effect such cure. Provided, any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of Newco shall not constitute grounds for termination. Upon termination of this Agreement, for a period of ninety (90) days thereafter the City shall have the right, but not the obligation, to acquire all or any portion of the Utility Systems from Newco (the “Purchase Option”) for the fair market value (as determined by a third party appraiser retained by the City) of all or such portion of the Utility Systems, *less* any Losses suffered by the City as a result of the breach by Newco (the “Purchase Option Price”). If the City desires to exercise its Purchase Option for all or a portion of the Utility Systems, the City will deliver written notice to Newco describing in reasonable detail (i) whether all or a portion of the Utility Systems will be purchased, and (ii) the calculation of the Purchase Option Price. If the City exercises the Purchase Option, Newco and the City shall promptly enter into a contract of sale, whereby Newco shall take any and all actions necessary to sell, assign and transfer all or such portion of the Utility Systems to the City (or its designee) upon the City’s (or its designee’s) payment to Newco of the Purchase Option Price.

**ARTICLE XVI
PROHIBITION ON TRANSFERS**

Newco shall not, without the prior written consent of the City, which consent may be withheld in the City’s sole discretion, (a) directly or indirectly, sell, assign, sublease, license, concession or otherwise transfer (including by means of a management agreement, concession arrangement, or otherwise), in whole or in part, any material portion of the Business or the Purchased Assets (as defined in the Purchase Agreement); or (b) recapitalize, restructure, merge, consolidate or otherwise combine with another entity, if such action results in a change of control of Newco.

**ARTICLE XVII
RIGHT OF FIRST REFUSAL**

Section 17.01 If at any time during the term of this Agreement, Newco receives an offer with respect to the sale of one or more of the Utility Systems or all or substantially all of the components of any one of the Utility Systems (either, the “ROFR Assets”) which Newco desires to accept or if Newco otherwise desires to enter into a contract for the sale of one or more of the Utility Systems or all or substantially all of the components of any one of the Utility Systems, Newco will deliver written notice to the City describing in reasonable detail the material terms of the proposed sale, together with copies of such accepted offer, letter of intent or contract of sale which has or will be entered into by Newco with respect to such proposed sale (collectively, the “Notice”). Without limitation, the Notice will set forth such material terms as the identity and nature of the proposed purchaser (the “Proposed Purchaser”), the amount and terms of the purchase price, the allocation of closing costs, any review or inspection rights, any termination rights or conditions to closing, and the closing date.

Section 17.02 Upon receipt of the Notice, the City, at the City’s sole option, may exercise its right of first refusal as hereinafter provided. City will have the right, but not the obligation, to enter into a contract for the purchase of the ROFR Assets on the same terms set forth in the Notice; such right will be

exercised by notifying Newco in writing within thirty (30) days of the date of delivery of the Notice. The City's notice will include payment of any deposit money required under the proposed sale; such payment will be under escrow conditions until the new contract is executed, and it will then be subject to its terms. If the City does not notify Newco within such time period, such failure to notify will be deemed to constitute the City's election not to enter into a contract of sale to purchase the ROFR Assets, in which event the City's right of first refusal will be waived and suspended (but will be subject to reactivation as hereinafter expressly provided).

Section 17.03 If the City notifies Newco of the City's desire to enter into a contract of sale to purchase the ROFR Assets, the City and Newco will promptly enter into a contract of sale (the "ROFR Contract") under which the Newco will be bound to sell, and the City will be bound to purchase, the ROFR Assets in accordance with the terms of the Notice, and the closing of the purchase will take place on a date of closing calculated in accordance with the relevant terms of the Notice. The other terms of the ROFR Contract will be in accordance with the relevant terms of the Notice.

Section 17.04 If the City elects not to exercise its right of first refusal as herein granted, Newco may proceed with the sale of the ROFR Assets as set forth in the Notice, but no sale will be made on terms substantially less favorable to Newco or more favorable to the purchaser than were offered to the City without first sending to the City a new notice setting forth such substantially different terms, in which event the City will have a further period of thirty (30) days following giving of this new Notice in which to elect to purchase on the new price and/or terms. If, as appropriate, the sale of the ROFR Assets to the Proposed Purchaser is not consummated within the greater period of time of the period to close described in the Notice or one hundred eighty (180) days after the giving of the relevant Notice to the City, any proposed sale of the ROFR Assets to close thereafter, whether to the same or any other purchaser, will be subject to all of the above provisions relating to the giving to the City of Notice regarding such proposed sale of the ROFR Assets and the possible exercise of the City's right of first refusal as provided herein.

ARTICLE XVIII ANNEXATION

Upon the City's annexation of any property and appropriate written notice to Newco, the portion of Utility Systems located within such annexed territory, and in, under, over, and upon the Rights-of-Way of such annexed territory, will be subject to all the terms of this Agreement within ninety (90) days of Newco's receiving written notice of such annexation from the City, which notice will include the legal description(s) of the property annexed and the addresses of the individual properties within the annexed property to the extent that information is available to the City.

ARTICLE XIX RECORDS; AUDIT RIGHTS

Section 19.01 Newco will maintain accurate records of Base Revenues received, records of its compliance with the community commitments set forth in Article XIV, and such other records, books, accounts and memoranda as may be prescribed by the FPSC. Newco will perform self-audits or third-party audits of its data security practices and procedures (for example, SOC 1/2 audits and Type 2 audits) on no less than an annual basis.

Section 19.02 Newco will make such records available to the City upon request, together with copies of any rules, regulations, terms and conditions as Newco may adopt from time to time that relate to Newco's use of the Rights-of-Way. Newco will submit a monthly statement to the City of its estimated Base Revenues for the period on which such payment is based. The acceptance of any such statement or

Section 20.02 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” and “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. 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.

Section 20.03 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 20.04 Entire Agreement. This Agreement constitutes 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 in connection with the negotiation and execution of this Agreement

Section 20.05 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 20.06 No Third-Party Beneficiaries. 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 20.07 Amendment and Modification; Waiver. This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each of the Parties. 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 20.08 Dispute Resolution. The Parties agree that it is in their respective best interests to avoid costly litigation if possible. Accordingly, the Parties agree that in the event of a dispute, prior to pursuing their available legal remedies, the Mayor and the CEO of Newco, or their respective designees, will meet in an attempt to resolve any differences. If such informal effort is unsuccessful, then the Parties may exercise any of their available legal remedies.

Section 20.09 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 20.01 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 20.10 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 20.11 Conflict. In the event any provision of this Agreement conflicts or is inconsistent with any provision of the Code of the City or any other Ordinance or resolution of the City, the provisions of this Agreement will apply and supersede on the subject matter of this Agreement. Notwithstanding the foregoing, to the extent any provision hereof conflicts with Chapter 711 of the City's Ordinance Code, this Agreement will control.

Section 20.12 No Codification. This Agreement, being of limited scope and applicability, will not be codified in the Code of the City of Jacksonville.

Section 20.13 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.

THE CITY OF JACKSONVILLE

By _____
Name: [•]
Title: [•]

[NEWCO]

By _____
Name: [•]
Title: [•]

ANNEX A

DEFINED TERMS

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

“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, civil, criminal, administrative, regulatory, or otherwise, whether at law or in equity, in each case, by or before a Governmental Authority.

“Agreement” has the meaning set forth in the Preamble.

“Base Revenues” means all of Newco’s billed revenues from the sale of Utility Services, less actual write-offs, to residential, commercial, and industrial customers within the incorporated areas of the City, including pole rental fees, sales of energy for public and highway street lighting, late payment charges, field collection charges, and other collection charges, but excluding sales for resale, sales to other public authorities, and franchise fees payable hereunder.

“Billing and Collections Services Agreement” has the meaning set forth in the Purchase Agreement.

“Business” has the meaning set forth in the Purchase Agreement.

“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.

“City” has the meaning set forth in the Preamble.

“Customers” means the customers of the Business.

“Distribution Agreement” has the meaning set forth in the Purchase Agreement.

“Effective Date” means the Closing Date as that term is defined in the Purchase Agreement.

“Electric Energy Provider” means every legal entity or association of any kind (including their lessees, trustees or receivers), including any unit of state, federal or local government, which owns, maintains, or operates an electric generation, transmission, or distribution system or facilities, or which otherwise provides, arranges for, or supplies electricity or electric energy to the public, or which supplies electricity to itself. Without limitation of the foregoing, “Electric Energy Provider” will also include every Electric Utility, electric power marketer, or electric power aggregator.

“Electric Utility” has the meaning set out in Section 366.02(2), Florida Statutes (2019), and will also include every electric “Public Utility” as defined in Section 366.02(1), Florida Statutes (2019), and every investor-owned, municipally or governmentally owned, or cooperatively owned electric utility (including their lessees, trustees or receivers) which owns, maintains, or operates an electric generation, transmission, or distribution system in any state or country.

“Electric Utility System” means the electric utility system installed and operated in the Franchise Area, including those elements described in Section 3.06.

“Franchise” has the meaning set forth in Section 1.01.

“Franchise Area” means that area for which Newco provides Utility Services within the present limits of the City, on the Effective Date, or in such territory as may hereafter be added to, consolidated with or annexed to the City within which Newco provides Utility Services on the date of annexation or consolidation.

“FPSC” means the Florida Public Service Commission.

“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.

“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.

“Newco” has the meaning set forth in the Preamble.

“Notice” has the meaning set forth in Section 17.01.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association, or other entity.

“Proposed Purchaser” has the meaning set forth in Section 17.01.

“Prudent Utility Practices” has the meaning set forth in the Purchase Agreement.

“Purchase Agreement” has the meaning set forth in Recital A.

“Purchase Option” has the meaning set forth in Article XV.

“Purchase Option Price” has the meaning set forth in Article XV.

“Retail Wheeling” means a customer/supplier arrangement whereby a Customer within the Franchise Area purchases electricity from an Electric Energy Provider.

“Rights-of-Way” means all of the public streets, alleys, highways, bridges, public easements, sidewalks, other public places and any other public rights of way owned by the City and lying within the Franchise Area, as they now exist or may hereafter be constructed, opened, laid out or extended within the Franchise Area.

“ROFR Assets” has the meaning set forth in Section 17.01.

“ROFR Contract” has the meaning set forth in Section 17.03.

“Systems Coordination Agreement” has the meaning set forth in the Purchase Agreement.

“Transmission Agreement” has the meaning set forth in the Purchase Agreement.

“Utility Services” has the meaning set forth in Recital C.

“Utility Systems” means the Electric Utility System and the Water and Wastewater Utility System, collectively.

“Vogtle PPA” means that certain Amended and Restated Power Purchase Agreement by and between JEA and the Municipal Electric Authority of Georgia dated as of December 31, 2014.

“Water and Wastewater Utility System” means the water and wastewater system installed and operated in the Franchise Area, including those elements described in Section 1.01(b) and (c)

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