

**POWER PURCHASE AGREEMENT FOR THE SUPPLY OF
DEPENDABLE CAPACITY, ENERGY AND ENVIRONMENTAL
ATTRIBUTES
FROM A BIOMASS-FIRED POWER PRODUCTION FACILITY**

by and between

GAINESVILLE RENEWABLE ENERGY CENTER, LLC

and

THE CITY OF GAINESVILLE, FLORIDA

d/b/a

GAINESVILLE REGIONAL UTILITIES

dated as of April 29, 2009

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This **POWER PURCHASE AGREEMENT FOR THE SUPPLY OF DEPENDABLE CAPACITY, ENERGY AND ENVIRONMENTAL ATTRIBUTES FROM A BIOMASS-FIRED POWER PRODUCTION FACILITY** (this "Agreement") is made and entered into as of April 29, 2009 (the "Effective Date"), by and among:

- (1) GAINESVILLE RENEWABLE ENERGY CENTER, LLC, a Delaware Limited Liability Company ("Seller"); and
- (2) THE CITY OF GAINESVILLE, FLORIDA d/b/a GAINESVILLE REGIONAL UTILITIES ("Purchaser").

RECITALS:

WHEREAS, Seller intends to build, operate and maintain a 100 MW (net) biomass-fired power production facility, located in Alachua County, Florida, which will utilize biomass fuels and sell power to Purchaser; and

WHEREAS, Purchaser intends to purchase all of the energy production from the facility, as well as of the associated Environmental Attributes and Capacity Attributes, upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. GENERATION AND SALE OF PRODUCTS

- 1.1 Generation and Sale of Test Power Products. From time to time until the Commercial Operation Date, Seller shall generate, sell and deliver the Test Power Products to the Delivery Point and Purchaser shall purchase and take delivery at the Delivery Point of all of the Test Power Products produced by the Facility pursuant to the terms of this Agreement.
- 1.2 Generation and Sale of Products. Seller shall generate, sell and deliver the Products to the Delivery Point and Purchaser shall purchase and take delivery at the Delivery Point of all of the Products produced by the Facility pursuant to the terms of this Agreement during the Delivery Term.

2. DELIVERY TERM

- 2.1 Effective Date. This Agreement shall be effective as of the date specified in the introductory paragraph hereof, provided it has been approved by the City Commission of the City of Gainesville prior to June 5, 2009.
- 2.2 Delivery Term. This Agreement shall remain in full force and effect until the thirtieth (30th) anniversary of the Commercial Operation Date (the "Delivery Term").

- 2.3 Renewal Option. This Agreement may be renewed and extended for one additional five-year period by mutual agreement and written confirmation of the Parties on the same terms and conditions as are applicable during the Delivery Term. Such written confirmation by both Parties must be received and agreed to no later than one hundred twenty (120) days before the end of the Delivery Term.
- 2.4 Survival. Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billings and adjustments related to the period prior to termination, provided that each Party shall make commercially reasonable efforts to complete such billings and adjustments within one (1) year of termination. Section 29.15, *Confidentiality*, shall survive termination of this Agreement for a period of three (3) years.

3. CONTRACT PRICES

3.1 Contract Prices.

- 3.1.1 Prior to the Commercial Operation Date, Purchaser shall pay to Seller for all Test Power Products, the Variable O&M and Fuel Charges with respect to Delivered Energy pursuant to Appendix III.
- 3.1.2 After the Commercial Operation Date, Purchaser shall pay to Seller the prices (the "Contract Prices") listed in Appendix III for all the Products produced by the Facility and delivered by Seller during the Delivery Term.
- 3.2 Change in Law. The Parties recognize and agree that the Contract Prices are based on the current regulatory requirements for generating and selling the Products. A "Change in Law" shall be a change in any applicable law, regulation, permit, ordinance, market rule, or order of any governmental or regulating authority, market regulator, court or arbitration tribunal enacted after the Effective Date where such change in law specifically increases or decreases the actual cost of generating and selling the Products, but it shall not include any such change in law that is not specifically directed toward generating facilities or which just has general economic effects that indirectly increase or decrease Seller's costs, nor shall it include any change in law with respect to Production Tax Credits, Renewable Energy Grant or Investment Tax Credits. If there is a Change in Law, then the Contract Prices shall be equitably adjusted to cover the additional costs, or pass on the additional savings, associated with generating and selling the Products. No claim for extra compensation based on a change in law that results in an increase in Seller's costs shall be presented by Seller or considered by Purchaser unless Seller shall first have provided written notice of such claim to Purchaser. No claim for a reduction in payments shall be presented by Purchaser or considered by Seller unless Purchaser shall first have provided written notice of such claim to Seller. Receipt of such notice shall in no event constitute acceptance by either Party of the validity of such claim for extra compensation. In the event of a dispute over a claim for extra compensation, Seller represents and agrees that it shall promptly and without interruption proceed with the generation of Products

while any claim for a change in Contract Prices is being resolved. Seller shall comply with any Change in Law in the most effective commercially reasonable manner.

- 3.3 Production Tax Credit. If the Seller receives the Investment Tax Credit or the Renewable Energy Grant for the Facility, the PTC Adder shall be multiplied by zero (0) megawatt hours. If the Seller does not receive the Investment Tax Credit or the Renewable Energy Grant for the Facility and Production Tax Credits are available for the Energy produced from the Facility, then during the first ten (10) years of the Delivery Term the PTC Adder shall be multiplied by the positive difference of the Available Energy in the Billing Period less the Delivered Energy in the Billing Period. If the Seller does not receive the Investment Tax Credit or the Renewable Energy Grant for the Facility and Production Tax Credits are not available for the Energy produced from the Facility for any part of the first ten (10) years of the Delivery Term, then during the period from when Production Tax Credits were available up until the first ten (10) years of the Delivery Term the PTC Adder shall be multiplied by the Available Energy in the Billing Period.

3.4 Ad Valorem Taxes.

3.4.1 Seller shall be responsible for paying ad valorem taxes or similar taxes imposed on the value of personal or real property, including existing and future such taxes, imposed on Seller for the Facility and real or personal property related to the Facility. All such payments shall be made by Seller not less than five (5) days prior to the last date on which the same may be paid at a discounted amount for early payment of the full amount owed for such tax.

3.4.2 Purchaser shall reimburse Seller for such ad valorem taxes; provided that such ad valorem tax amount shall not exceed the discounted amount for early payment of the full amount owed for such taxes. If the Facility has had no Available Energy for over 120 days during a calendar year, then for such calendar year, Purchaser shall only be liable for reimbursement to Seller of the pro rata share of ad valorem taxes based on the ratio of days with Available Energy over the number of days in the calendar year. Seller shall bill Purchaser promptly for such ad valorem taxes, that are actually paid for by Seller during the Delivery Term, and Purchaser shall reimburse Seller for such ad valorem taxes, in accordance with Section 8.

4. FUEL PROCUREMENT

- 4.1 Fuel Procurement Responsibility. Seller shall manage fuel procurement activities for the Facility. Purchaser shall have the option, exercisable from time to time upon not less than thirty (30) days' written notice to Seller, to procure fuel for the Facility up to any uncommitted and uncontracted portion of the fuel supply. If Purchaser exercises the option, it shall procure fuel that meets the requirements of Sections 4.3 and 4.4. Purchaser shall not take over management of the fuel

procurement activities of the Facility by exercise of its option. If Purchaser exercises the option to procure a portion of the fuel for the Facility, it must give 60-days notice to Seller in the event that it chooses to later cease its procurement activities. Seller shall keep Purchaser informed of contracted portions of the fuel supply and estimates of future fuel costs to the extent reasonably available. Purchaser shall similarly keep Seller informed of its potential and planned fuel procurement commitments so that the Facility's fuel procurement activities are fully coordinated.

If Purchaser shall procure fuel for the Facility, Purchaser shall pay for such fuel directly. Purchaser shall indemnify Seller from any injury, financial or otherwise, caused by the reckless or negligent action of Purchaser or its agents in connection with the procurement and delivery of fuel to the Facility under this Section. Purchaser shall not be liable for any damage to the Facility as a result of the composition of the fuel provided under this Section, provided that Seller had the reasonable opportunity to inspect such fuel upon delivery.

- 4.2 Impact on Facility Operation. Fuel procurement shall be managed in a manner such that it shall not stop or otherwise impede the operations of the Facility. Beginning six months after the Commercial Operation Date, Seller shall maintain adequate inventory of fuel onsite to ensure continuous operations of the Facility for at least fifteen (15) days. Purchaser shall have the right to conduct from time-to-time, at Purchaser's expense, an audit of the fuel inventory onsite following reasonable notice to Seller.
- 4.3 Minimum Sustainability Standards for Forest-Produced Biomass. Seller and/or Purchaser, as applicable, shall use commercially reasonable efforts to ensure the Suppliers comply with the Minimum Sustainability Standards for Forest-Produced Biomass set forth in Appendix VIII, and Seller and/or Purchaser, as applicable, shall terminate contracts with Suppliers who do not comply with such standards.
- 4.4 Fuel Specification.
 - 4.4.1 Seller covenants that the fuel utilized by the Facility to generate the Energy delivered to Purchaser shall consist of forest residue, waste pallets, municipal wood waste, agricultural residue, wood storm debris, whole tree chips, clean construction and demolition debris, and other clean sources of wood as well as small amounts of saw dust and fines (max 10% of the total fuel supply) from mill residues. The as-received fuel shall be a three (3) inch nominal product and not exceed a maximum particle dimension of seven (7) x two (2) x one (1) inches. The biomass mixture must be delivered reasonably free of stones, soil, metal, glass, clay, or other incombustibles.
 - (a) The amount of unfluidized (diameter greater than 1,400 microns) particles in the fuel (including fuel ash, inerts, rocks, gravel, make-up sand

and other incombustible particles) shall be less than one quarter of one percent (0.25%) of delivered fuel.

(b) The total amount of aluminum (Al), tin (Sn), zinc (Zn) and lead (Pb) in metallic form shall each be less than 0.01 weight-% of dry mass hourly fuel flow and the total amount of Zn + Pb + Sn shall be less than 0.05 weight-% of dry solids.

(c) The fuel particle size for the fine end shall be less than thirty percent (30%) passing through a 0.124 inch sieve hole diameter.

4.4.2 Seller shall not use any fuel inconsistent with the foregoing without the prior written approval of Purchaser; *provided, however*, propane and/or natural gas may be used as start-up fuels to the extent such use would not jeopardize the Energy produced by the Facility from qualifying for RECs.

4.5 Fuel Procurement and Fuel Charge. Costs incurred under Section 4.5 shall not be included in the calculation of the Actual Fuel Price.

4.5.1 Seller shall hire an independent forestry consultant to conduct annual audits of Seller's compliance with the Minimum Sustainability Standards for Forest-Produced Biomass. The independent forestry consultant shall conduct inspections and visits to a randomly selected sample of harvesting sites no less than twice per calendar year.

4.5.2 Seller shall institute a documentation policy to ensure that Suppliers comply with biomass fuel supply contract terms.

4.5.3 Supply contracts for Forest-Produced Biomass fuel shall incorporate the Minimum Sustainability Standards for Forest-Produced Biomass and Suppliers shall agree to compliance with these standards.

4.5.4 Each supply contract for Forest-Produced Biomass must be signed by a professional forester representing the Supplier certifying that the professional forester has been engaged by the Supplier to ensure compliance with the Minimum Sustainability Standards for Forest-Produced Biomass and confirming the professional forester's understanding of and commitment to fulfill this responsibility.

4.5.5 Each delivered load of biomass fuel must be labeled by a unique identification number ("ID") corresponding to the supplier ID, contract ID, tract ID, crew, transport, date and time and be accompanied by a manifest signed by the harvesting foreman and driver listing such information. If possible, Seller shall seek to use electronic media to increase the accuracy of the information.

4.5.6 Seller shall record the delivery identification information.

- 4.5.7 Seller shall inspect at least ten percent (10%) of all delivered loads to assure compliance with Parts 1.3, 1.6 and 1.7 within Appendix VIII, the Minimum Sustainability Standards for Forest-Produced Biomass.
- 4.5.8 Suppliers shall keep on file harvesting contracts, cutting agreements, and other related documents for each harvested area and these files shall be available for inspection by Seller for a period of three (3) years following harvest.
- 4.5.9 Seller shall conduct semi-annual inspections of all Suppliers to verify compliance with the Facility's record-keeping procedures and harvesting practices.
- 4.5.10 Seller shall reject non-complying deliveries of biomass fuel.
- 4.5.11 Seller shall suspend deliveries from a biomass fuel supplier for a period of no less than one (1) year if the supplier is found to be in non-compliance in three (3) separate instances within any one-year period.
- 4.6 Forest Stewardship Incentive Payments. Purchaser shall reimburse Seller for payments made to its fuel suppliers with respect to the Forest Stewardship Incentive Program described in Part 2 of Appendix VIII; provided that the fuel supplier shall have presented documentation that they are qualified for such program. It is the responsibility of the Purchaser to advise the Seller if a fuel supplier's eligibility is no longer valid. Seller shall not be denied reimbursement of a Forest Stewardship Incentive Payment unless the Purchaser has notified Seller of a fuel supplier's ineligibility.
- 4.7 Fuel Price Reporting.
 - 4.7.1 The Seller shall report to the Purchaser on a monthly basis the Seller's actual delivered fuel cost paid by the Seller, the quantity of fuel purchased and the weighted average delivered cost of fuel for all fuel purchased during a given month within ten (10) Business Days after the close of that month. The Seller's report shall include its calculation of the Fuel Price Adjuster for the current month based on the foregoing information.
 - 4.7.2 The Purchaser shall have the right, upon reasonable notice, to audit the Seller's fuel procurement records and contracts for a period of one (1) year after such report is provided to the Purchaser. If the audit reveals a material error in the calculation of the Fuel Price Adjuster that resulted in an overpayment or underpayment by the Purchaser, the Seller shall refund to the Purchaser the amount of any such overpayment plus interest thereon from the date of overpayment at an annual rate equal to the Late Payment Rate in effect on the date any such overpayment was made, or Purchaser shall pay to the Seller the amount of any such underpayment.

5. TAXES AND FEES

- 5.1 Seller to Pay. Seller shall pay or cause to be paid all taxes, fees or governmental charges imposed by any government authority ("Taxes") on or with respect to the Products arising from the production or ownership thereof prior to the Delivery Point.
- 5.2 Purchaser to Pay. Purchaser shall pay or cause to be paid all Taxes on or with respect to the Products arising from the purchase, use or ownership thereof at and from the Delivery Point (other than franchise or income taxes that are related to the sale of the Products to Purchaser and are, therefore, the responsibility of the Seller).
- 5.3 Cooperation. Seller and Purchaser shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the parties to minimize taxes, so long as neither Party is materially adversely affected by such efforts.
- 5.4 Remedies. In the event Seller is required to remit or pay Taxes that are Purchaser's responsibility hereunder, Purchaser shall promptly reimburse Seller for such Taxes. If Purchaser is required to remit or pay Taxes that are Seller's responsibility hereunder, Purchaser may deduct the amount of any such Taxes from any sums due to Seller. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under the law.

6. DELIVERY, TITLE, AND RISK OF LOSS

- 6.1 Delivery. Seller shall deliver Products to the Delivery Point.
- 6.2 Seller Responsibility for Delivery. Seller shall bear all costs of delivery, including insurance, and all risk of loss with respect to Products until they have been delivered to the Delivery Point.
- 6.3 Transfer of Title and Risk of Loss. Purchaser shall take title to the Products and to the same extent, Seller shall be deemed to have conveyed one hundred percent (100%) of its right, title and interest therein to Purchaser, when the Products are delivered at the Delivery Point. Purchaser shall bear all risk of loss to the Products from and after delivery of the Products at the Delivery Point. Purchaser shall be responsible for all transmission arrangements and all costs associated therewith necessary to transmit the Energy purchased hereunder from and after the Delivery Point.
- 6.4 Seller's Covenant of Title and Freedom from Liens. Seller covenants to Purchaser that title to all Products shall pass to Purchaser free and clear of all liens, claims, security interests or encumbrances.

- 6.5 Defense of Title or Other Interests Warranted. At its own expense, Seller shall defend all claims by third parties against Seller's title or other proprietary interests of Seller in the Products up to the point at which title passes to the Purchaser.
- 6.6 Purchaser's Covenant of Title and Freedom from Liens. Purchaser covenants that title to all payment shall pass to Seller free and clear of all liens, claims, security interests or encumbrances.

7. METERING

- 7.1 General. The Purchaser shall design, approve, furnish, install, own, inspect, test, maintain and replace when necessary, all Metering Equipment. The Metering Equipment shall be capable, at a minimum, of providing all data necessary to determine the megawatt hours of Energy delivered during each 15-minute period and the total megawatt hours of Energy delivered during each Billing Period. The metering devices shall account only for MWh delivered to the Delivery Point and the Seller shall not be compensated for any MWh losses realized due to energy transformation or transmission from the Seller's Facility to the Delivery Point. The Seller shall have regular access, by mutually agreeable means, to the metered data necessary for the Seller to prepare Billing Statements, as defined below in Section 8, and for other reasonable purposes associated with the Facility's operation and maintenance.
- 7.2 Metering Point. Metering shall be performed at the Delivery Point.
- 7.3 Telemetry Equipment and Data Transmission Equipment. The Purchaser shall design, approve, furnish, install, own, inspect, test, maintain and replace when necessary, such telemetry equipment and data transmission equipment as Purchaser may reasonably require to transmit such data to its Systems Control Center.
- 7.4 Testing and Inspection of Metering Equipment.
- 7.4.1 The Purchaser shall maintain the accuracy of all Metering Equipment installed pursuant to the Interconnection Agreement by regular testing and calibration in accordance with recognized standards (e.g., ANSI C12.1 – 2008). The Purchaser shall test the Metering Equipment for accuracy at least annually and may test the equipment on a more frequent basis if so desired. The Seller may request a test of the Metering Equipment for accuracy at any time. The Seller shall bear the cost of any test it requests of the Metering Equipment should the accuracy be found to be within the accuracy parameters stated below. Any meter tested in accordance with recognized standards and found to register within one percent (1%) accuracy, whether above or below the accurate value per the tests, shall be considered correct and accurate. If any of the inspections or tests disclose an error exceeding one percent (1%), either fast or slow, the Purchaser shall promptly repair, recalibrate or replace the Metering Equipment.

- 7.4.2 A discovered metering inaccuracy rate shall be documented and used to adjust previous readings. The affected Billing Period invoice and associated payment shall be adjusted as necessary by the corrected MWh reading for the actual period during which the Metering Equipment rendered inaccurate measurements if such period can be ascertained. If the actual period cannot be ascertained, an adjustment shall be made to the measurements taken during the time the Metering Equipment was in service since last tested, but not exceeding three (3) Billing Periods. The results of all Metering Equipment testing and calibration shall be maintained for a period of three (3) years and shall be open to examination by Seller at reasonable times upon written notice to Purchaser.

8. BILLING AND PAYMENT

- 8.1 Billing. Seller shall prepare and submit a statement (a "Billing Statement") for each Billing Period within ten (10) Business Days following the end of the Billing Period; *provided, however*, that the Purchaser shall nevertheless be obligated to pay any amount properly billed without regard to whether the Billing Statement was provided within such time period.
- 8.2 Contents of Billing Statement. The Billing Statement shall contain the following information for the Billing Period:
- 8.2.1 Available Energy (MWh)
 - 8.2.2 Delivered Energy (MWh)
 - 8.2.3 Non-Fuel Energy Charge
 - 8.2.4 Fixed O&M Charge
 - 8.2.5 Variable O&M Charge
 - 8.2.6 Fuel Purchased (Tons)
 - 8.2.7 Actual Fuel Price (\$/Ton)
 - 8.2.8 Target Fuel Price (\$/Ton)
 - 8.2.9 Fuel Charge
 - 8.2.10 Shutdown Charge
 - 8.2.11 PTC Adder (only applicable for the first ten (10) years of the Delivery Term)
 - 8.2.12 Ad Valorem Taxes (including any adjustment due under Section 3.4.2) and similar impositions on the Facility

- 8.3 Estimated Information. In the event that Seller has not received all actual metered values for the Billing Period when required to produce a Billing Statement for such Billing Period, Seller may estimate the unavailable data in the Billing Statement. Any estimated data shall be identified in such Billing Statement and be subject to adjustment in a subsequent Billing Period within the following one (1) year to reflect actual data received.
- 8.4 Payment. Purchaser shall pay Seller by wire transfer or electronic funds transfer the sum due (a "Payment") within fifteen (15) Business Days of receipt of a Billing Statement from Seller.
- 8.5 Billing Disputes. If either Seller or Purchaser contests a Billing Statement or Payment, any uncontested portions of invoiced amount shall be paid on or before the due date under Section 8.4 or shall be subject to Late Payment Rate interest charges. The remaining disputed amount shall be subject to the dispute resolution procedure in Section 24, *Dispute Resolution*. Neither Seller nor Purchaser shall have the right to challenge any Billing Statement or any Payment, to invoke arbitration of the same, or to bring a legal or administrative action of any kind regarding such Billing Statement or Payment after a period of one (1) year from the date of receipt of such Billing Statement or Payment. In the event that such Billing Statement depends in whole or in part upon estimated data according to Section 8.3, such one (1) year limitation period shall be deemed to begin on the date of receipt of such Billing Statement in which such estimated data are adjusted to actual.
- 8.6 Late Payment. Any amounts not paid to Seller when due shall bear interest at the Late Payment Rate from the due date to the date of payment.
9. STANDBY, SUPPLEMENTAL AND STARTUP POWER
- 9.1 Standby, Supplemental and Startup Power Agreement. Prior to the Commercial Operation Date, Purchaser and Buyer shall enter into a Standby, Supplemental and Startup Power Agreement in substantially the form set forth in Appendix VII.
- 9.2 Supply of Standby, Supplemental and Startup Power. Purchaser shall supply electricity to Seller for the Facility's standby, supplemental and startup load according to the Standby, Supplemental and Startup Power Agreement for so long as that Standby, Supplemental and Startup Power Agreement shall remain in effect.
10. DISPATCH AND SCHEDULING
- 10.1 Scheduling by Purchaser. After the Commercial Operation Date, Purchaser shall be responsible for scheduling the Facility's daily production in accordance with the written operating procedures to be developed in accordance with Part 1.3 of Appendix V.
- 10.2 Designation of Operating Representatives.

- 10.2.1 Purchaser shall notify Seller of its designated Schedulers. Seller shall notify Purchaser of its designated Operators. The Schedulers and Operators so designated shall be authorized to administer the terms of this Section 10. Each Party shall notify the other of any changes to their respective operating representatives.
- 10.2.2 Each Party shall maintain a twenty-four-hour telephone number that can be used to contact operating representatives designated under this Section 10, and shall notify the other of any changes to the telephone number.
- 10.3 Schedules and Forecasts. Seller shall provide such schedules and forecasts as Purchaser may reasonably request from time to time, including:
- 10.3.1 At least thirty (30) days prior to the production of Test Power Products.
- 10.3.2 At least sixty (60) days prior to (i) the Commercial Operation Date and (ii) the beginning of each calendar year, Seller shall provide to Purchaser Seller's generation forecast for the upcoming calendar year, which forecast shall be consistent with the schedule of Planned Maintenance for such calendar year established pursuant to Section 10.4.
- 10.3.3 Each month on or before the twentieth (20th) day of such month, Seller shall provide or cause to be provided to the Scheduler Seller's generation forecast for the following month, any planned events or activities which could have a material effect on Seller's generation forecast, and the start and finish dates and times of such planned events or activities. Seller shall give, or shall cause to be given, prompt notice to the Scheduler of any planned deviation in such forecast.
- 10.3.4 Each day on or before 8:00 a.m. EPT, Seller shall provide or cause to be provided to the Scheduler Seller's generation schedule for the next day in hourly scheduling intervals, any planned events or activities which could reasonably have a material effect on Seller's generation schedule, the start and finish dates and times of such planned events or activities, and the actual quantity of Energy delivered during the previous forecast period in hourly scheduling intervals. Seller shall promptly notify the Scheduler of any planned deviation in such schedule.
- 10.3.5 The details of the forecasts and schedules specified above shall be coordinated by the Parties cooperating in good faith. Seller shall utilize Good Utility Practice in developing and preparing the forecasts and schedules.
- 10.4 Outages.
- 10.4.1 Planned Maintenance.

(a) Seller shall submit a written annual maintenance plan containing its forecast of Planned Maintenance for the coming year no later than sixty (60) days prior to the Commercial Operation Date and the start of each calendar year. Any and all changes to such plan shall be mutually agreeable to Seller, Purchaser, and to FRCC and promptly communicated to Purchaser in writing as soon as practicable.

(b) Not less than seven (7) days prior to any Planned Maintenance, Seller shall notify the Scheduler of the timing, expected duration and the impact upon the quantity of Energy to be delivered to Purchaser. Prior to reducing the quantity of Energy to be delivered to Purchaser because of Planned Maintenance, Seller shall notify the Scheduler of the latest information regarding the timing, the rate at which the Facility will be removed, or ramped down, from service, expected duration and the expected impact upon the quantity of Energy to be delivered. During the Planned Maintenance, Seller shall notify the Scheduler of any changes to the expected duration of the Planned Maintenance outage as soon as practicable.

(c) Seller shall notify the Scheduler prior to beginning the startup process for the Facility following a Planned Maintenance outage. Such notification shall include the timing of the start-up and the rate at which the Facility will be returned, or ramped up, to service.

(d) Seller shall work with Purchaser to schedule Planned Maintenance in a manner that minimizes the economic cost to Purchaser of such outages. Seller and Purchaser shall comply with FRCC operating procedures regarding any such Planned Maintenance.

10.4.2 Maintenance Outage.

(a) Upon the occurrence of an event necessitating a Maintenance Outage, Seller shall notify the Scheduler of the reason, timing, expected duration, the impact upon the quantity of Energy to be delivered to Purchaser, and the scheduling flexibility of each Maintenance Outage. The Scheduler and Seller shall agree upon a schedule for the Maintenance Outage, which schedule shall minimize the impact upon Facility operations. If the Scheduler and Seller cannot agree, Seller shall schedule the Maintenance Outage and give the Scheduler prior notice of such schedule. Unless otherwise agreed to by Seller and Scheduler, Seller shall use reasonable efforts to confine all Maintenance Outages to weekends, holidays, and, to the extent necessary, non-holiday weekdays other than between the hours of 7 a.m. to 10 a.m. and 4 p.m. to 7 p.m. EPT.

(b) During the Maintenance Outage, Seller shall notify the Scheduler of any changes to the expected duration of the outage as they become known.

(c) Seller shall not begin the startup process to return the Facility to service following a full or partial shutdown without prior notice to Scheduler.

Such notification shall include the timing of the start-up and the ramp up rate of that portion of the Facility returning to service.

(d) Seller shall work with Purchaser, when practical, to minimize the economic cost to Purchaser of any Maintenance Outages.

10.4.3 Forced Outage.

(a) As soon as practicable after the occurrence of a Forced Outage, Seller shall notify the Scheduler, to the extent information is available, of the reason for, the timing of, and the impact upon the quantity of Energy delivered to Purchaser of such outage. Seller shall provide a good faith estimate of the duration of the Forced Outage.

(b) During an extended Forced Outage, Seller shall notify the Scheduler of any changes to the expected duration of the outage as they become known.

(c) Seller shall notify the Scheduler prior to returning the Facility to service following a Forced Outage. Such notification shall include the timing of the start-up and the ramp up rate of that portion of the Facility returning to service. If Seller is able to initiate an immediate restart following a Forced Outage, Seller shall notify Scheduler of the foregoing information as soon as practicable. If Purchaser has entered into a contract to purchase capacity or energy to offset the lost capacity and/or production of the Facility during the Forced Outage, then Seller shall not return the Facility to service prior to the end of the estimated duration of the Forced Outage provided under clause (a) directly above.

(d) Seller shall work with Purchaser, when practical and in compliance with Good Utility Practice, to minimize the economic cost to Purchaser of any Forced Outages.

10.4.4 Outage Reports.

Purchaser may from time-to-time request, and Seller shall provide, a report of the cause of any Facility outage and the actions taken by Seller to correct the situation.

10.5 Good Utility Practice. Purchaser may dispatch and schedule the Facility subject to the standards set forth in this Section 10 and shall use reasonable efforts to dispatch and schedule the Facility in a manner that is consistent with Good Utility Practice.

10.6 Minimum Dispatch. Purchaser shall not dispatch the Facility to produce less than seventy (70) MW under normal (*i.e.*, non-emergency) operating conditions and may only dispatch the Facility to produce between fifty (50) MW and seventy (70) MW under a System Emergency for a period not to exceed one (1) hour at

any time. Purchaser may not dispatch the Facility to produce less than fifty (50) MW under any conditions unless it requests a complete shutdown.

- 10.7 Maximum Shutdowns. Purchaser shall not dispatch and schedule more than sixteen (16) Purchaser Shutdowns in any Winter Period. Purchaser shall not dispatch and schedule any Purchaser Shutdowns during any Summer Period. If Purchaser requests a Purchaser Shutdown, then Purchaser shall pay Seller the Shutdown Charge. If the Facility shuts down for any reason other than Purchaser Shutdown, the shutdown shall not count toward these sixteen (16) Purchaser Shutdowns and Purchaser shall not pay the Shutdown Charge.

11. PRE-OPERATION PERIOD; COMMISSIONING AND TESTING

- 11.1 Pre-Operation Period. Prior to the Commercial Operation Date, Seller shall comply with the pre-operation period requirements set forth in Appendix V.
- 11.2 Commissioning and Testing. Seller shall commission and test the Facility in accordance with the requirements set forth in Appendix IX.

12. OPERATIONS, MAINTENANCE AND PERFORMANCE STANDARDS

- 12.1 Reasonable Efforts to Maximize Performance. Subject to the terms of this Agreement, Seller shall use commercially reasonable efforts consistent with Good Utility Practice to operate the Facility in a manner that maximizes the Products generated by the Facility over the Delivery Term.
- 12.2 Facility Upgrades. Seller in its sole discretion may sell or otherwise dispose of any machinery, equipment, or other personal property constituting part of the Facility that Seller determines has become inadequate, obsolete, worn out, unsuitable, or unnecessary, provided that substitute property having equal or greater utility but not necessarily the same function in the operation of the Facility in producing and delivering the Products is installed in the Facility and such removal and substitution would not materially impair the efficiency of operation of the Facility, adversely affect the structural integrity or electrical output of the Facility, or change the nature of the Facility to the extent that it would no longer constitute the type of electricity generating facility operated prior to such replacement.
- 12.3 Operating Performance Standards.
- 12.3.1 Summer Period. For any Summer Period, the Unavailability Factor shall be less than five percent (5%).
- 12.3.2 Winter Period. For any Winter Period, the Unavailability Factor shall be less than twelve and one-half percent (12.5%).
- 12.3.3 Unavailability Factor and Liquidated Damages. If, at the end of any seasonal period, the Facility's Unavailability Factor is greater than the

requirement set forth in Section 12.3.1 or 12.3.2, the Seller shall pay Purchaser liquidated damages in an amount equal to One Hundred and Fifty Thousand Dollars (\$150,000), in 2009 dollars as escalated by the Gross Domestic Product Implicit Price Deflator applicable to the first quarter as available on April 30, 2010, and on each succeeding April 30, for each one percent (1%) difference between the Unavailability Factor requirement set forth in Section 12.3.1 or 12.3.2 and the actual Unavailability Factor determined pursuant to this Section 12 and Appendix IX. Payments shall be due at the end of the first Billing Period after each seasonal period and may be netted against the Contract Prices. Such damages shall not exceed One-and-a-Half Million Dollars (\$1,500,000) in the aggregate for any two consecutive seasonal periods.

12.4 Operational Capacity Performance and Penalties.

12.4.1 Payment Decreases. For each instance where Seller fails, after written notification from Purchaser, to meet the operating level specified by Purchaser, pursuant to Section 10, *Dispatch and Scheduling*, by more than five percent (5%) for a Billing Period, the Dependable Capacity for that Billing Period shall be decreased by ten percent (10%). The integrated hourly net output will be used to determine if the Facility was within five percent (5%) of the specified operating level for a Billing Period.

12.4.2 Liquidated Damages. If, as a result of the testing done pursuant to Appendix IX, the Facility's Dependable Capacity is determined to be less than ninety percent (90%) of the Facility's initial Dependable Capacity determined pursuant to Appendix IX for the appropriate seasonal period (*i.e.*, either Summer or Winter), Seller shall, in addition to any other liabilities due hereunder, pay to Purchaser an amount equal to Fifty Dollars (\$50) per KW, in 2009 dollars as escalated by the Gross Domestic Product Implicit Price Deflator applicable to the first quarter as available on April 30, 2010, and on each succeeding April 30, for the difference between ninety percent (90%) of such initial Dependable Capacity and the Dependable Capacity determined pursuant to such testing. This payment shall be a liquidated damage for the detrimental impact of such lower Dependable Capacity on Purchaser's generation planning.

12.5 Subcontractors. Seller shall operate the Facility in accordance with this Section 12. Seller may use its own employees or subcontractors may be used to perform the operation and maintenance services on the Facility. If Seller uses subcontractors, then Seller must give Purchaser an opportunity to bid for such services on commercially reasonable terms.

13. PERFORMANCE SECURITY

13.1 Completion Performance Security. Seller shall pay or provide to Purchaser a security deposit equal to Five Million Dollars (\$5,000,000) as security for Seller's

completion of the construction of the Facility by the Guaranteed Commercial Operation Date (the "Completion Performance Security"). Such Completion Performance Security will be required within ten (10) days of the Construction Commencement Date. Such security shall be in the form of cash deposited in an interest bearing escrow account mutually acceptable to Purchaser and Seller; an unconditional and irrevocable direct pay letter of credit in form and substance reasonably satisfactory to Purchaser; or a performance bond in form and substance reasonably satisfactory to Purchaser. The form of security required will be in the sole discretion of Seller.

- 13.2 PPA Performance Security. Seller shall pay or provide to Purchaser a security deposit equal to Five Million Dollars (\$5,000,000) as security for Seller's performance of its obligations under the Agreement (the "PPA Performance Security"). Such PPA Performance Security will be required within ten (10) days of the Commercial Operation Date. Such security shall be in the form of cash deposited in an interest bearing escrow account mutually acceptable to Purchaser and Seller; an unconditional and irrevocable direct pay letter of credit in form and substance reasonably satisfactory to Purchaser; or a performance bond in form and substance reasonably satisfactory to Purchaser. The form of security required will be in the sole discretion of Seller.
- 13.3 Return of Performance Securities. Purchaser shall refund the balance of any performance security within twenty days following the completion of the obligation to which the security attached.
- 13.4 Purchaser's Performance Security. Within ten (10) days after the Commercial Operation Date, Purchaser shall pay or provide to Seller a security deposit equal to Forty Million Dollars (\$40,000,000) as security for Purchaser's performance of its obligations under the Agreement (the "Purchaser's Performance Security"). Such Purchaser's Performance Security will not be required after the Commercial Operation Date if the Purchaser's senior unsecured debt rating at any time is rated at or above a Standard & Poor's rating of "A-" or a Moody's rating of A3 (such rating levels to be equitably adjusted if either rating agency were in the future to change its rating standards). If required, such security shall be in the form of cash deposited in an interest bearing escrow account mutually acceptable to Purchaser and Seller; an unconditional and irrevocable direct pay letter of credit in form and substance reasonably satisfactory to Seller; or a performance bond in form and substance reasonably satisfactory to Seller. The form of security required will be in the sole discretion of Purchaser.

14. SCHEDULE GUARANTEES AND LIQUIDATED DAMAGES

- 14.1 Construction Schedule Guarantee. Purchaser may retain or draw down an amount equal to five percent (5%) of the Completion Performance Security amount for each of the first six months (or portion thereof) and ten percent (10%) per month (or portion thereof) thereafter that the Commercial Operation Date is delayed beyond the Guaranteed Commercial Operation Date ("Completion Liquidated

Damages"). Such Completion Liquidated Damages shall be Purchaser's sole and exclusive remedy in the event that the Commercial Operation Date is delayed or in the event that the Facility is not completed for any reason.

15. EXCUSE FOR PERFORMANCE

- 15.1 Force Majeure. Seller shall not have any liability or be considered to be in breach or default of its obligations under this Agreement to the extent that performance of such obligation is delayed or prevented, directly or indirectly due to Force Majeure, and may suspend its construction or operation of the Facility upon the occurrence and during the continuance of any event constituting a Force Majeure, and may have the Guaranteed Construction Commencement Date and Guaranteed Commercial Operation Date extended by a period equal to the time lost by reason of such Force Majeure, plus such additional time as may be reasonably necessary to overcome the effect of such Force Majeure (including without limitation the time required for any resultant demobilization and remobilization), provided that (i) within a reasonable time after Seller has knowledge of the commencement of such event of Force Majeure and again within a reasonable time after resumption of the Work after such suspension occurs, Seller submits a notice to Purchaser describing in detail the event of Force Majeure, the effect thereof on the Facility, the length of delay and the measures taken or to be taken to minimize such delay, (ii) Seller uses commercially reasonable efforts to remedy its inability to construct or operate the Facility and to minimize delay caused by such event of Force Majeure, (iii) Seller promptly resumes its performance at the cessation of the event, and (iv) such event of Force Majeure causes a suspension of construction greater than 48 continuous hours. Seller shall continue to perform its obligations under this Agreement so far as commercially practical and shall seek all reasonable alternative means for performance not prevented by Force Majeure. Seller shall advise Purchaser in writing of all actions Seller proposes to take, including any alternative means for performance not prevented by the event of Force Majeure.
- 15.2 Purchaser Obligations. Purchaser shall not be obligated to purchase Products that cannot be delivered due to disruptions, breakdowns, electrical system failures and/or mechanical failures, maintenance or repair, including, for reasons of Force Majeure, to the Facility, prior to the Delivery Point or outside of Purchaser's System. However, Purchaser shall be obligated to purchase Products delivered to the Delivery Point, or that cannot be delivered due to disruptions, breakdowns, electrical system failures and/or mechanical failures, maintenance or repair of Purchaser's System.
- 15.3 Purchaser Delay. Seller shall not have any liability or be considered to be in breach or default of its obligations under this Agreement to the extent that performance of such obligation is delayed or prevented, directly or indirectly, by acts or omissions of Purchaser (a "Purchaser Delay"). Seller may suspend its construction or operation of the Facility upon the occurrence and during the continuance of any event constituting a Purchaser Delay, and may have the

Guaranteed Construction Commencement Date and the Guaranteed Commercial Operation Date extended by a period equal to the time lost by reason of such Purchaser Delay, plus such additional time as may be reasonably necessary to overcome the effect of such Purchaser Delay (including without limitation the time required for any resultant demobilization and remobilization), provided that (i) within a reasonable time after Seller has knowledge of the commencement of such event of Purchaser Delay and again within a reasonable time after resumption of the Work after such suspension occurs, Seller submits a notice to Purchaser describing in detail the event of Purchaser Delay, the effect thereof on the Facility, the length of delay and the measures taken or to be taken to minimize such delay, (ii) Seller uses commercially reasonable efforts to remedy its inability to construct or operate the Facility and to minimize delay caused by such event of Purchaser Delay, and (iii) Seller promptly resumes its performance at the cessation of the event. Seller shall continue to perform its obligations under this Agreement so far as reasonably practical and shall seek commercially reasonable alternative means for performance not prevented by Purchaser Delay. Seller shall advise Purchaser in writing of all actions Seller proposes to take, including any alternative means for performance not prevented by the event of Purchaser Delay.

16. COMPLIANCE WITH LEGAL REQUIREMENTS

- 16.1 Governmental Jurisdiction and Regulatory Compliance. Each Party shall at all times comply with all applicable laws, ordinances, rules, and regulations applicable to it, including, but not limited to, the anti-discrimination provisions of the City of Gainesville, Code of Ordinances. As applicable, each Party shall give all required notices, shall procure and maintain all necessary governmental permits, licenses, and inspections necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith.
- 16.2 Approvals, Licenses, and Permits for the Facility. Except for the Determination of Need by the Florida Public Service Commission, which Purchaser shall obtain, Seller shall obtain at its own expense all approvals, licenses and permits required by all federal, state and local governmental agencies for construction, testing and operation of the Facility.
- 16.3 Renewable Energy Credits; Environmental Attributes. Seller shall be responsible for applying for all regulatory or other approvals necessary for the output of the Facility to qualify in the State of Florida for Renewable Energy Credits as defined under applicable federal and state rules; *provided, however*, that Purchaser shall provide such assistance at its own expense as Seller shall reasonably request. Purchaser shall be responsible for applying for all regulatory or other approvals necessary for the output of the Facility to qualify for any Environmental Attribute; *provided, however*, that Seller shall provide such assistance at its own expense as Purchaser shall reasonably request.
- 16.4 Provision of Support. Seller shall make available, upon Purchaser's reasonable request, any personnel of Seller and any records relating to the Facility to the

extent that Purchaser requires the same in order to fulfill any regulatory reporting requirements, or to assist Purchaser in litigation, including, but not limited to, proceedings before utility regulatory commissions. Purchaser shall make available, upon Seller's reasonable request, any personnel of Purchaser and any records relating to the Facility to the extent that Seller requires the same in order to fulfill any regulatory reporting requirements, or to assist Seller in litigation, including, but not limited to, proceedings before utility regulatory commissions.

- 16.5 No Contractual Zoning; No Contracting of Police Powers. The Parties recognize that Purchaser is also the government entity that is vested with the authority to grant or deny certain development approvals, including but not limited to, land use and zoning changes, subdivision plats, development plan approval, and building permits. The Parties agree that nothing contained in this Agreement shall be interpreted or construed as an approval, waiver or agreement to approve or waive any development plan, development permit, rezoning, comprehensive plan amendment or any other governmental requirement for Seller's intended use and occupancy of the Premises. Nothing contained in this Agreement shall be interpreted or construed as contracting away the exercise of the police powers of the Purchaser.

17. INDEMNIFICATION

- 17.1 Seller's Indemnities. Seller agrees to indemnify Purchaser and its affiliates and principals, and the managers, officers, agents and employees of each of them from and against any and all damages, costs, claims, expenses and liabilities (including, without limitation, reasonable attorneys fees) resulting from, or arising out of or in any way connected with, the facilities on Seller's side of the Delivery Point, or Seller's operation and/or maintenance of the Facility, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, excepting only such loss, claim, action or suit as may be caused solely by the willful misconduct or negligence of Purchaser, officers, employees, agents or representatives.
- 17.2 Purchaser's Indemnity. Purchaser hereby agrees to indemnify Seller and its affiliates and principals, and the managers, members, stockholders, directors, officers, agents and employees of each of them (the "Seller Indemnified Parties") for claims brought against the Seller Indemnified Parties only to the extent that they are found to result from the sole negligence of Purchaser, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts, or omissions of third parties, independent contractors or third party agents of the Purchaser. This indemnification shall not be construed as a waiver of Purchaser's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which Purchaser could be liable under the common law interpreting the limited waiver of sovereign immunity. An action may not be instituted on a claim against Purchaser unless the claimant presents the claim in writing to Purchaser's risk manager within three (3) years after such claim accrues or Purchaser's risk manager denies the claim in writing. For

purposes of this paragraph, the requirements of notice to Purchaser's risk manager and denial of the claim are conditions precedent to maintaining an action but shall not be deemed to be elements of the cause of action and shall not affect the date on which the cause of action accrues. Notwithstanding any other provisions of this paragraph, the value of this indemnification is limited to the maximum sum of Two Hundred Thousand Dollars (\$200,000) as the result of all claims and judgments arising out of the same incident or occurrence, not to exceed the sum of One Hundred Thousand Dollars (\$100,000) for any claim or judgment or portions thereof. In addition, this indemnification shall be construed to limit recovery by the indemnified party against Purchaser to only those damages caused by Purchaser's sole negligence, and shall specifically exclude any attorney's fees or costs associated therewith.

- 17.3 Defense. When required to indemnify a Person pursuant to this Section 17, Purchaser or Seller, as applicable, shall assume and conduct with due diligence and in good faith the defense of any such suit against such party, whether it shall be joined therein; *provided, however*, that without relieving the Purchaser or Seller of its obligations hereunder, such indemnified Person may elect to participate, at its own expense, in the defense of any such suit.

18. INSURANCE

- 18.1 Insurance by the Seller. The Seller shall maintain in full force and effect at all times within ten (10) days after the Construction Commencement Date and continuing until the Termination Date, insurance policies with insurance companies authorized to do business in the State of Florida with a Best Insurance Reports rating of "A-" or better and a financial size category of "IX" or higher (or other companies acceptable to the Purchaser), with limits and coverage provisions in no event less than the limits and coverage provisions set forth below:

18.1.1 Builder's All Risk Property: Builder's All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood and boiler and machinery and providing delayed start up coverage in an amount at least equal to one year delay. The Builder's All Risk Property insurance may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Builder's All Risk Property insurance shall be maintained in accordance with the terms available in the insurance market for similar facilities. The Builder's All Risk Property insurance shall terminate at the Commercial Operation Date.

18.1.2 All Risk Property: From the Commercial Operation Date through the Termination Date, All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood and boiler and machinery. The All Risk Property

insurance may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The All Risk Property insurance shall be maintained in accordance with the terms available in the insurance market for similar facilities.

18.1.3 Workers' Compensation Insurance: Workers' compensation insurance as required by state laws.

18.1.4 Employer's Liability Insurance: Employer's liability insurance for all employees of the Seller in the amount of One Million Dollars (\$1,000,000) per occurrence.

18.1.5 General Liability Insurance: Liability insurance against claims for personal injury (including bodily injury and death) and property damage. Such insurance shall provide coverage for products completed operations, blanket contractual, explosion, collapse and underground coverage, broad form property damage and personal injury insurance with a Ten Million Dollars (\$10,000,000) limit per occurrence.

18.1.6 Automobile Liability Insurance: Automobile liability insurance against claims of personal injury (including bodily injury and death) and property damage covering all owned (if any), leased, non-owned and hired vehicles used in the performance of the Seller's obligations under this Agreement with One Million Dollars (\$1,000,000) minimum limit per occurrence for combined bodily injury and property damage and containing appropriate no-fault insurance provisions wherever applicable.

18.1.7 The amounts of insurance required in the foregoing subsections 18.1.4 and 18.1.5 may be satisfied by the Seller purchasing coverage in the amounts specified or by any combination thereof, so long as the total amount of insurance meets the requirements specified above.

18.1.8 Casualty. In the event that any building constructed on the Premises is damaged or destroyed by fire or other casualty and, as a result of such event, such building's remaining useful life is determined to be equal to or greater than fifty percent (50%) of its remaining useful life prior to such event, Seller shall restore or reconstruct such building so damaged or destroyed. However, if such building's remaining useful life is determined to be less than fifty percent (50%) of its remaining useful life prior to such event, Seller shall have no obligation to restore or reconstruct such building so damaged or destroyed; provided however this does not relieve Seller from its other obligations under this Agreement.

18.2 Purchaser's Approval of Insurance. On or before the Construction Commencement Date, Seller shall obtain the approval of Purchaser (which approval shall not be unreasonably withheld) of the insurers with which the insurance referred to in this Section 18 shall be maintained. Thereafter, Seller

shall provide that no cancellation or material change thereof shall be effective until at least thirty (30) days after being mailed to Purchaser and shall notify Purchaser in writing at least thirty (30) days before obtaining coverage from any additional insurer or new insurer, and Purchaser shall have the right to approve (which approval shall not be unreasonably withheld) any such additional or new insurer.

18.3 Seller's Certificates of Insurance. Certificates of insurance in a form reasonably satisfactory to Purchaser shall be furnished by Seller to Purchaser on or before the Construction Commencement Date.

18.4 Insurance by the Purchaser. Purchaser shall maintain in full force and effect at all times within ten (10) days after the Construction Commencement Date and continuing until the Termination Date, insurance policies with insurance companies authorized to do business in the State of Florida with a Best Insurance Reports rating of "A-" or better and a financial size category of "IX" or higher (or other companies acceptable to the Seller), with limits and coverage provisions in no event less than the limits and coverage provisions set forth below:

18.4.1 Workers' Compensation Insurance: Workers' compensation insurance as required by state laws.

18.4.2 Employer's Liability Insurance: Employer's liability insurance for all employees of Purchaser in the amount of One Million Dollars (\$1,000,000) per occurrence.

18.4.3 General Liability Insurance: Liability insurance against claims for personal injury (including bodily injury and death) and property damage. Such insurance shall provide coverage for products completed operations, blanket contractual, explosion, collapse and underground coverage, broad form property damage and personal injury insurance with a Ten Million Dollars (\$10,000,000) limit per occurrence.

18.4.4 The amounts of insurance required in the foregoing subsections 18.4.2 and 18.4.3 may be satisfied by the Purchaser purchasing coverage in the amounts specified or by any combination thereof, so long as the total amount of insurance meets the requirements specified above.

18.5 Seller and Purchaser's Insurance. On or before the Construction Commencement Date, Purchaser shall notify Seller in writing of the insurers with which the insurance referred to in this Section 18 shall be maintained. Thereafter, Purchaser shall notify Seller in writing at least thirty (30) days before obtaining coverage from any additional insurer or new insurer, or a cancellation or material change occurs with respect to Purchaser's insurance during the Delivery Term.

18.6 Purchaser's Certificates of Insurance. Certificates of insurance in a form reasonably satisfactory to Seller shall be furnished by Purchaser to Seller on or before the Construction Commencement Date.

19. REPRESENTATIONS AND WARRANTIES

19.1 Seller's Representations and Warranties.

- 19.1.1 Organization. Seller represents and warrants to Purchaser that Seller is duly organized and validly existing under the laws of the State of Delaware and that Seller is qualified to do business in the State of Florida.
- 19.1.2 Power and Authority. Seller represents and warrants to Purchaser that Seller has the requisite limited liability company power and authority to enter into this Agreement and to perform according to the terms of this Agreement.
- 19.1.3 Duly Authorized. Seller represents and warrants to Purchaser that the execution, delivery and performance of this Agreement by Seller has been duly authorized by all requisite corporate action.
- 19.1.4 Duly Executed. Seller represents and warrants to Purchaser that this Agreement has been duly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller, enforceable against it in accordance with the terms hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditor's rights generally and to general principles of equity.
- 19.1.5 No Breach of Existing Indebtedness. Seller represents and warrants to Purchaser that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.
- 19.1.6 No Breach of Law. Seller represents and warrants to Purchaser that none of the execution, delivery and performance by Seller of this Agreement, the compliance with the terms and provisions hereof, and the carrying out of the transactions contemplated hereby, conflicts or will conflict with or result in a breach or violation of its operating agreement or any of the terms, conditions, or provisions of any law, governmental rule or regulation or any applicable order, writ, injunction, judgment or decree of any Governmental Authority against Seller.
- 19.1.7 No Governmental Authorization Needed. Seller represents and warrants to Purchaser that no authorization, consent, approval, order of, notice to or registration, qualification, declaration or filing with, any Governmental Authority, is required for the execution, delivery and performance by Seller of this Agreement or the carrying out by Seller of the transactions contemplated hereby, other than regulatory and similar approvals and permits needed with respect to the construction and operation of the

Facility or for certification or other recognition of the RECs or other Environmental Attributes.

19.1.8 Judgments, Lawsuits, Actions or Proceedings. Seller represents and warrants to Purchaser that there are, to the best of Seller's knowledge, no judgments, lawsuits, actions or proceedings, pending or threatened, whether involving a governmental authority or private party, against Seller (or any member entities), that, if decided adversely against Seller (or any member entity), would prevent it from fulfilling its obligations hereunder or under this Agreement.

19.1.9 Financial Condition. Seller represents and warrants to Purchaser that no financial event has occurred and no financial condition exists that has had a Material Adverse Change.

19.2 Purchaser's Representations and Warranties.

19.2.1 Organization. Purchaser represents and warrants to Seller that Purchaser is duly organized and validly existing under the laws of the State of Florida.

19.2.2 Power and Authority. Purchaser represents and warrants to Seller that Purchaser has the requisite power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

19.2.3 Duly Authorized. Purchaser represents and warrants to Seller that the execution, delivery and performance of this Agreement by Purchaser have been duly authorized by all requisite governmental action.

19.2.4 Duly Executed. Purchaser represents and warrants to Seller that this Agreement has been duly executed and delivered by Purchaser and constitutes the legal, valid and binding obligation of Purchaser, enforceable against it in accordance with the terms hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditor's rights generally and to general principles of equity.

19.2.5 No Breach of Existing Indebtedness. Purchaser represents and warrants to Seller that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Purchaser or any valid order of any court, or any regulatory agency or other body having authority to which Purchaser is subject.

19.2.6 No Breach of Law. Purchaser represents and warrants to Seller that none of the execution, delivery and performance by Purchaser of this Agreement, the compliance with the terms and provisions hereof, and the carrying out of the transactions contemplated hereby, conflicts or will

conflict with or result in a breach or violation of Purchaser's charter or any of the terms, conditions, or provisions of any law, governmental rule or regulation or any applicable order, writ, injunction, judgment or decree of any Governmental Authority against Purchaser.

19.2.7 No Governmental Authorization Needed. Purchaser represents and warrants to Seller that no authorization, consent, approval, order of, notice to or registration, qualification, declaration or filing with, any Governmental Authority, is required for the execution, delivery and performance by Purchaser of this Agreement or the carrying out by Purchaser of the transactions contemplated hereby, other than approval by the City Commission of the City of Gainesville, Florida, and regulatory approvals and permits under applicable federal, state and local laws and regulations needed with respect to the operation of the Facility, including, but not limited to the certificate of need determination by the Florida Public Service Commission and environmental permits issued by the Florida Department of Environmental Protection. Purchaser further represents and warrants that (i) it has complied or will comply in a timely fashion with all competitive bidding, public notice, election, referendum, prior appropriation or other procedures required to be followed or taken by it under any applicable law and all relevant constitutional, organic or other governing documents, (ii) entry into and performance of this Agreement by it are for a proper public purpose within the meaning of any applicable law and all relevant constitutional, organic or other governing documents, and (iii) the term of this Agreement does not extend beyond any applicable limitation imposed by any law or other relevant constitutional, organic or other governing document.

19.2.8 Judgments, Lawsuits, Actions or Proceedings. Purchaser represents and warrants to Seller that there are, to the best of Purchaser's knowledge, no judgments, lawsuits, actions or proceedings, pending or threatened, whether involving a governmental authority or private party, against Purchaser (or any member entities), that, if decided adversely against Purchaser (or any member entity), would prevent it from fulfilling its obligations hereunder or under this Agreement.

20. COVENANTS RELATING TO CONSTRUCTION FINANCING

20.1 Cooperation. Purchaser recognizes that Seller may seek to obtain debt financing for the Facility and Purchaser hereby agrees to cooperate reasonably with Seller's efforts to secure such financing, and to provide Seller and its lenders on a timely basis with such consents and related documents, as are reasonably requested by the lenders and reasonably acceptable to Purchaser.

20.2 Documents. Purchaser shall provide, execute and deliver to Seller, or at Seller's request, to Lender, such documents, certificates, instruments, consents and information as shall be within the control of Purchaser to provide and as Seller or

Lender may reasonably request as a condition to any takedown of any portion of the Facility Financing. Purchaser further agrees to act in good faith to modify this Agreement to accommodate Lender's reasonable and customary requirements; *provided, however*, that no such modification shall change the economic terms of the Agreement or impose any obligation on Purchaser that would materially increase Purchaser's costs or the risks allocated between the Parties.

- 20.3 Notices. Seller shall deliver to Purchaser, as soon as practicable and in any event, unless otherwise specified, within ten (10) business days after Seller obtains actual knowledge thereof, written notice of (i) the occurrence of any Material Adverse Change, and (ii) any litigation or similar proceeding affecting Seller in which the amount involved is in excess of Five Million Dollars (\$5,000,000).

21. ASSIGNMENT

- 21.1 Assignment by Seller. This Agreement shall not be assigned by Seller to any Person without the prior written consent of Purchaser, which shall not be unreasonably withheld or delayed; *provided* that Seller may collaterally assign its interest hereunder to a Lender. In the event of the assignment of this Agreement by Seller to a Lender, Seller shall remain fully responsible according to this Agreement for all of its obligations and liabilities hereunder. No such assignment shall alter or impair the rights of any surety. Purchaser agrees to provide such legal opinions and consents as may be reasonably requested by Seller and Lender in connection with such financing.
- 21.2 Assignment by Purchaser. This Agreement shall not be assigned by Purchaser without the prior written consent of Seller, which shall not be unreasonably withheld or delayed.
- 21.3 Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties to this Agreement and any successor or assignee acquiring an interest hereunder consistent with Sections 21.1 and 21.2 hereof.

22. CONTRACT ADMINISTRATION, MONITORING AND INSPECTION

- 22.1 Contract Administration; Reports and Records; Meetings. Seller shall submit to Purchaser an annual written report, which report shall include, at a minimum, a description of the operation of the Facility and planned maintenance, unplanned maintenance and upgrades to the Facility, and an evaluation of problems and deficiencies and a description of any planned corrective action with respect thereto. Seller shall keep such full and detailed accounts following generally accepted accounting principles as may be necessary for proper financial management under this Agreement. Seller and Purchaser shall conduct quarterly (or such other frequency as shall be mutually agreeable) teleconferences or, if the parties agree, quarterly meetings at mutually agreeable locations between representatives of Seller and Purchaser to review the status of the Facility, including the status of construction prior to the Commercial Operation Date.

- 22.2 Operation Audit. Purchaser shall have the right to conduct a semi-annual operation audit of the Facility following reasonable notice to Seller. An operation audit shall consist of on-site inspections of the Facility and access to interview operation managers of Seller.
- 22.3 Access Rights. Purchaser, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Facility Site and the Facility at any time upon prior notice and for any purposes reasonably connected with this Agreement, including verification of the Facility's availability or unavailability, compliance with the performance standards set forth in Sections 10, 11 and 12 and Appendices VIII, IX and X, and to monitor construction of the Facility. While at the Facility and on the Facility Site, such persons shall comply with all applicable law and observe such safety precautions as may be reasonably required and communicated to such representatives by Seller or Seller's representatives and shall not interfere with the operation of the Facility, except in the exercise of Purchaser's remedies hereunder.

23. NOTICE

- 23.1 Notices. All notices, consents and other communications required or permitted by this Agreement shall be in writing and shall be delivered by hand or overnight courier service, sent by certified or registered mail or sent by telecopy (or, if explicitly permitted, by email) as follows:

23.1.1 If to the Seller:

Gainesville Renewable Energy Center, LLC
75 Arlington St., 5th Floor
Boston, MA 02116
Attention: James Gordon
Telephone: (617) 482-6150
Telecopy: (617) 482-6159

23.1.2 If to Purchaser:

For administrative/operational issues:
Gainesville Regional Utilities
301 S.E. 4th Avenue
Gainesville, FL 32614-7117
Attention: Assistant General Manager,
Energy Supply - John Stanton
Telephone: (352) 393-1789
Telecopy: (352) 334-2786

For legal/compliance issues:
Gainesville Regional Utilities
301 S.E. 4th Avenue

Gainesville, FL 32614-7117
Attention: General Manager
Telephone: (352) 393-1007
Telecopy: (352) 334-2277

- 23.2 Receipt of Notice. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by telecopy or email, or on the date seven (7) days after dispatch if sent by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party.
- 23.3 Address Changes. Changes in the respective addressees or addresses to which such notices shall be directed may be made from time to time by any such person by notice to Seller and Purchaser.
- 23.4 Operational Notices. All operational notices (including notices of all Facility outages) must be in writing (including by telecopy or email), except that routine operational notices and communications and notices during an emergency or other unforeseen event may be made in person or by telephone to an operational contact. Purchaser and Seller shall provide each other contact information for an operational contact at least sixty (60) days prior to the Commercial Operation Date.

Prior notification of an event or situation to be made pursuant to this Section 23.4 shall be given a reasonable amount of time in advance of such event or situation.

24. DISPUTE RESOLUTION

- 24.1 Dispute Resolution Process. If either Seller or Purchaser believes it has a claim under this Agreement, the designated representative of the claimant shall initiate a claim by submitting such claim in writing, including a detailed description, to the designated representative of the other party, who shall review the claim and shall respond in writing of his findings and recommendations concerning the claim within a reasonable time period not to exceed thirty (30) days. If the claim is not resolved within such thirty (30) day period, the claimant may further pursue the claim by submitting the claim to arbitration pursuant to the Arbitration Procedure.
- 24.2 Arbitration Procedure. Any controversy, dispute or claim between Seller and Purchaser arising out of or relating to this Agreement, or the breach thereof, shall be settled finally and conclusively by arbitration according to the Rules of the American Arbitration Association then in effect, unless the parties mutually otherwise agree. If the parties fail to agree on an arbitrator within thirty (30) days following the date of a written notice by one party to the other calling for arbitration, the parties shall promptly designate an arbitrator from a list of persons from the National Roster of Arbitrators and Mediators following said Rules and

that arbitrator shall select an arbitrator from the National Roster of Arbitrators and Mediators who will adjudicate the issue. The costs and expenses of arbitration shall be paid as awarded by the arbitrators; otherwise costs and expenses shall be shared equally. Seller and Purchaser shall each abide by and perform any required actions according to any resulting arbitration award. The arbitration award, when issued, shall be final and shall be enforceable in any court of competent jurisdiction. The location for the arbitration shall be Alachua County, Florida.

24.3 Performance During Dispute. While any controversy, dispute or claim arising out of or relating to this Agreement is pending, Seller and Purchaser shall continue to perform their obligations hereunder to the extent possible notwithstanding such controversy, dispute or claim.

24.4 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.

25. DEFAULT; TERMINATION

25.1 Seller Events of Default. Each of the following shall be considered a default by Seller (each such event being called a "Seller Event of Default"):

25.1.1 Seller defaults in any respect in the observance or performance of any material obligation hereunder, including, but not limited to, failure to make a payment when due, failure by Seller to provide adequate security, or breach by Seller of a representation or warranty, and Seller has not cured such default within thirty (30) days after written notice from Purchaser specifying the default and demanding that the same be remedied; provided that if Seller has commenced reasonable efforts to cure the default within such thirty (30) days (and the default is such that it could reasonably be expected to be possible to cure) and continues to diligently pursue those efforts, then Seller shall have an additional thirty (30) days in which to cure the default;

25.1.2 Seller's failure to cure any material default under any material Facility financing agreement or other material debt instrument entered into by

Seller if Seller has failed to cure the default within the time allowed for a cure under such agreement or instrument unless the event out of which the asserted default arose is in formal arbitration pursuant to an arbitration clause in an agreement of which Seller is a party, or litigation;

- 25.1.3 Seller's failure to achieve the Construction Commencement Date by the Guaranteed Construction Commencement Date;
 - 25.1.4 Seller's failure to cause the Facility to achieve the Commercial Operation Date within fourteen (14) months after the Guaranteed Commercial Operation Date;
 - 25.1.5 A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by Purchaser within thirty (30) days from the date of such request;
 - 25.1.6 Seller files a petition commencing a voluntary case under the Bankruptcy Code, or for liquidation, reorganization, or an arrangement pursuant to any other federal or state bankruptcy law, or is adjudicated a debtor or be declared bankrupt or insolvent under the Bankruptcy Code, or any other federal or state law as now or hereafter in effect relating to bankruptcy, insolvency, winding-up, or adjustment of debts, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, or if a petition commencing an involuntary case under the Bankruptcy Code or an answer proposing the adjudication of Seller as a debtor or a bankrupt or proposing its liquidation or reorganization pursuant to the Bankruptcy Code, any other federal or state bankruptcy law is filed in any court and Seller consents to or acquiesces in the filing thereof or such petition or answer is not discharged or denied within thirty (30) days after the filing thereof; or
 - 25.1.7 A custodian, receiver, trustee or liquidator of Seller, or of all or substantially all of the assets of Seller, is appointed in any proceeding brought by Seller, or any such custodian, receiver, trustee, or liquidator is appointed in any proceeding brought against Seller and is not discharged within thirty (30) days after such appointment, or if Seller consents to or acquiesces in such appointment.
- 25.2 Default by Seller. (a) If, during the continuance of this Agreement, one or more Seller Events of Default occurs, then in any such case, Purchaser, at its option, may terminate this Agreement by delivering written notice to the Seller and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement.
- (b) With respect to Seller Event of Default set forth in Section 25.1.3, if Purchaser decides to exercise its option to terminate this Agreement pursuant to Section 25.2(a) and Seller decides to sell the Facility in its as-built condition as a

result thereof, Seller may not sell the Facility unless Seller shall have complied with the requirements set forth in Section 27.3, *Right of First Offer*.

25.3 Purchaser Events of Default. Each of the following shall be considered a default by Purchaser (each such event being called a "Purchaser Event of Default"):

25.3.1 Purchaser defaults in the payment of any sum undisputedly due the Seller payable hereunder and Purchaser has not cured such default within twenty (20) days after receipt of written notice from Seller that such payment is due;

25.3.2 Purchaser defaults in any respect in the observance or performance of any material obligation contained herein (other than a payment default covered under Section 25.3.1) and Purchaser has not cured such default within thirty (30) days after written notice from Seller specifying the default and demanding that the same be remedied; provided that if Purchaser has commenced reasonable efforts to cure the default within such thirty (30) days (and the default is such that it could reasonably be expected to be possible to cure) and continues to diligently pursue those efforts, then Purchaser shall have an additional thirty (30) days in which to cure the default;

25.3.3 A Material Adverse Change has occurred with respect to Purchaser and Purchaser fails to provide such performance assurances as are reasonably requested by Seller within thirty (30) days from the date of such request;

25.3.4 Purchaser files a petition commencing a voluntary case under the Bankruptcy Code, or for liquidation, reorganization, or for an arrangement pursuant to any other federal or state bankruptcy law, or is adjudicated a debtor or be declared bankrupt or insolvent under the Bankruptcy Code, or any other federal or state law as now or hereafter in effect relating to bankruptcy, insolvency, winding-up or adjustment of debts, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, or if a petition commencing an involuntary case under the Bankruptcy Code or an answer proposing the adjudication of Purchaser as a debtor or a bankrupt or proposing its liquidation or reorganization pursuant to the Bankruptcy Code any other federal or state bankruptcy law is filed in any court and Purchaser consents to or acquiesces in the filing thereof or such petition or answer is not discharged or denied within ninety (90) days after the filing thereof; or

25.3.5 A custodian, receiver, trustee or liquidator of Purchaser or of all or substantially all of the assets of Purchaser, is appointed in any proceeding brought by Purchaser, or any such custodian, receiver, trustee, or liquidator is appointed in any proceeding brought against Purchaser and is not discharged within ninety (90) days after such appointment, or if Purchaser consents to or acquiesces in such appointment.

- 25.4 Default by Purchaser. If, during the continuance of this Agreement, one or more Purchaser Events of Default shall occur, then in any such case, Seller, at its option, may terminate this Agreement by delivering written notice to Purchaser and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement.
- 25.5 Duty/Right to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

26. LIMITATION OF LIABILITY

- 26.1 Limitation on Liability. Unless expressly herein provided, neither Party (including its subcontractors, vendors of any tier, or their respective officers, directors, employees, agents or affiliates) shall be liable for any incidental, consequential, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or contract, under any indemnity provision or otherwise, provided that the foregoing exclusion shall not preclude recovery by a Party of delay damages, or any liquidated damages expressly herein provided, nor shall it be construed to limit recovery by an indemnitee under any indemnity provision in respect of a third party claim. Unless expressly herein provided, and subject to the provisions of Section 17 (Indemnities), it is the intent of the parties that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes related thereto, including the negligence of any party, whether such negligence be sole, joint or concurrent, or active or passive. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy therefore, the obligor's liability shall be limited as set forth in such provision and all other remedies or damages at law or equity with respect to such breach are waived except to the extent expressly set forth herein. If no remedy or measure of damages is expressly provided herein, the obligor's liability shall be limited to direct actual damages only, such direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. To the extent any damages required to be paid under this Agreement are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine or otherwise obtaining an adequate remedy would be inconvenient, and the damages provided for by this Agreement constitute a reasonable approximation of the full harm or loss. The Parties further confirm that the express remedies and measures of damages provided by this Agreement satisfy the essential purposes of the Agreement.
- 26.2 No Implied Warranties. ANY REMEDIES SPECIFIED HEREIN FOR DEFECTS OR BREACH OF WARRANTY SHALL BE EXCLUSIVE. ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, AT LAW OR IN EQUITY, WHETHER ORAL OR WRITTEN, AND WHETHER ARISING FROM CUSTOM OR TRADE OTHERWISE INCLUDING BUT

NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL NOT APPLY.

- 26.3 No Recourse; Limited Liability. No recourse under or upon any obligation contained in this Agreement shall be had against BayCorp Holdings, Ltd., Energy Management, Inc., BayCorp Nacogdoches, LLC, EMI Nacogdoches, LLC, Tyr Energy, Inc., Tyr Biomass, LLC or any partner, member, manager, stockholder, director, officer or employee of Seller. Purchaser expressly waives and releases all right to assert liability under this Agreement against, or to satisfy any claim arising hereunder or thereunder against, any such person.

27. PURCHASER'S OPTION TO PURCHASE FACILITY

- 27.1 Option at Year Twenty-Nine. After the twenty-ninth anniversary of the Commercial Operation Date, Purchaser shall have the option to purchase the Facility by Payment of the Purchase Option Price. Purchaser shall provide a written notice (a "Purchaser's Notice of Intent") to Seller of Purchaser's intent to exercise the option to purchase the Facility (the "Purchase Option") no later than ninety (90) days following the twenty-ninth anniversary of the Commercial Operation Date. Upon receipt of a Purchaser's Notice of Intent the Purchase Option Price shall be determined in accordance with the process and formula set forth in Section 27.2.
- 27.2 Purchase Option Price. The "Purchase Option Price" shall be the Fair Market Value of the Facility as defined in Section 27.2.5 and as determined by a panel of Qualified Appraisers using the following process:
- 27.2.1 No later than thirty (30) days following Purchaser's Notice of Intent, Purchaser and Seller shall each appoint a Qualified Appraiser.
- 27.2.2 The Qualified Appraisers appointed by Purchaser and Seller shall appoint a third Qualified Appraiser no later than thirty (30) days following such appointment.
- 27.2.3 No later than ninety (90) days following the appointment of the third Qualified Appraiser, each Qualified Appraiser shall produce a report estimating the Fair Market Value of the Facility as defined in Section 27.2.5.
- 27.2.4 Purchaser shall pay the costs of the Qualified Appraiser appointed by Purchaser. Seller shall pay the costs of the Qualified Appraiser appointed by Seller. Purchaser and Seller shall evenly split the costs of the third Qualified Appraiser.
- 27.2.5 The "Fair Market Value of the Facility" is the summation of the following components:

(i) the sum of the principal of outstanding unsecured debt of Seller necessary for the construction and operation of the Facility and refinancing thereof, plus the sum of any associated termination fees, prepayment fees and other transaction costs related to the termination or payment of such debt;

plus

(ii) the total amount of termination fees necessary to terminate any contracts related to the Facility in force at the time that Purchaser issues Purchaser's Notice of Intent that would become effective upon the closing of Purchaser's purchase of the Facility;

plus

(iii) the present value of the remaining payments under this Agreement if this Agreement went to full Delivery Term minus (A) the projected debt service in each year on any debt that was included in the calculation of clause (i) above, (B) Variable O&M Charges and (C) Fuel Charges, discounted to the date two hundred ten (210) days following Purchaser's Notice of Intent at an annual rate of ten percent (10%);

plus

(iv) the present value of the expected net income of Seller, as calculated by each Qualified Appraiser using any data that such Qualified Appraiser determines to be appropriate for estimating revenues and expenses, for a period of thirteen (13) years following the end of the Delivery Term discounted to the date two hundred ten (210) days following Purchaser's Notice of Intent at an annual rate of ten percent (10%);

plus

(v) an appropriate salvage value for the Facility after the expiration of the Ground Lease.

27.2.6 The "Purchase Price" of the Facility shall be the average of the estimates of the Fair Market Value of the Facility produced by the three Qualified Appraisers.

(i) If the highest estimated Fair Market Value of the Facility is more than thirty percent (30%) greater than the next highest estimated Fair Market Value of the Facility, or the lowest estimated Fair Market Value of the Facility is less than seventy percent (70%) of the next lowest estimated Fair Market Value of the Facility, the outlier estimate shall be discarded and the Purchase Price of the Facility shall be the average of the remaining two estimates of the Fair Market Value of the Facility.

(ii) If both the highest estimated Fair Market Value of the Facility is more than thirty percent (30%) greater than the next highest estimated Fair Market Value of the Facility, and the lowest estimated Fair Market Value of the Facility is less than seventy percent (70%) of the next lowest estimated Fair Market Value, the Purchase Price of the Facility shall be the average of the estimates of the Fair Market Value of the Facility produced by all three Qualified Appraisers.

27.2.7 Purchaser shall close the purchase and sale of the Facility through the payment of immediately available funds no later than ninety (90) days following the receipt of the appraisal reports on a "where is" and "as is" basis, with no representations or warranties made by Seller as to the condition of the Facility or site. Seller covenants that, within the period of one (1) year before the deadline for Purchaser to exercise either of the Purchase Options, Seller shall provide Purchaser reasonable opportunities and access to the Facility and the site to inspect the site and Facility and to conduct necessary tests, environmental assessments, and other evaluations reasonably necessary for the Purchaser to determine whether it wishes to exercise the Purchase Option.

27.3 Right of First Offer. Seller may not sell the Facility, either directly or indirectly through a change of control of Seller, during the term of this Agreement unless Seller shall have complied with the following: prior to selling the Facility, Seller shall give notice to Purchaser of Seller's intent to sell the Facility and Purchaser shall have sixty (60) days from such notice to prepare an offer (the "First Offer") to purchase the Facility. Seller shall negotiate in good faith exclusively with Purchaser for a minimum of thirty (30) days from receipt of the First Offer to attempt to reach agreement on the terms of a purchase. If the Parties cannot reach an agreement on sale terms within the thirty (30) days of receipt of the First Offer then Seller shall have three hundred sixty (360) days from the date of Purchaser delivering the First Offer to close on a sale of the Facility to an unaffiliated third party for a price and for terms that are no less than the price and no more onerous than the terms in the First Offer. If Seller cannot close on the sale within such three hundred sixty (360)-day period, it must make another offer and again comply with the terms of this Section before selling the Facility. In any case, Seller may not sell the Facility (directly or indirectly) unless the purchaser of the Facility assumes in writing Seller's obligations hereunder. Notwithstanding anything herein to the contrary, a construction financing or tax equity financing with respect to the Facility shall not be deemed to be a change of control for purposes of this Section 27.3.

28. CHOICE OF LAW; CHOICE OF FORUM

28.1 Applicable Law. Seller and Purchaser agree that the laws of the State of Florida shall govern the validity, interpretation, construction and performance of this Agreement without regard to their internal principles of conflict of laws.

- 28.2 Choice of Forum. Seller and Purchaser agree, with respect to matters not subject to the provisions regarding Arbitration in Section 24, to submit to the jurisdiction of the federal courts located in Alachua County, Florida, in any litigation between the parties, or, if the federal courts lack jurisdiction, the state courts located in Alachua County, Florida.

29. CONTRACT DOCUMENTS; INTERPRETATION

- 29.1 Schedules and Appendices. The following Schedules and Appendices are made a part of this Agreement:

Schedule I	Definitions
Appendix I	Facility
Appendix II	Products
Appendix III	Contract Prices
Appendix IV	Interconnection One Line Diagram
Appendix V	Pre-Operation Period Standards
Appendix VI	Template of Operating Procedures
Appendix VII	Standby, Supplemental and Startup Power Agreement
Appendix VIII	Sustainability Standards
Appendix IX	Initial Testing Standards and Operational Capacity Testing

- 29.2 Entire and Complete Agreement. This Agreement, including any referenced attachments, and any other documents incorporated by reference therein, shall constitute the complete agreement between Seller and Purchaser relating to the Facility, superseding all prior agreements or undertakings. Any exceptions or additional terms are hereby rejected unless specifically agreed to in writing by Seller and Purchaser. No course of prior dealing or performance between Seller and Purchaser or usage of trade shall be relevant to supplement, explain, interpret or modify any term, condition or instruction used in this Agreement.

- 29.3 Independent Contractor. Nothing in this Agreement shall be deemed to constitute either Party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the Parties. Seller is, and shall remain, an independent contractor in the construction and operation of the Facility, maintaining complete control of its personnel, workers, subcontractors and operations required for construction and operation of the Facility.

- 29.4 Third Party Beneficiaries. This Agreement shall be for the sole benefit of the Seller and Purchaser and for such other parties only as expressly provided in this Agreement and then subject to the terms of this Agreement.
- 29.5 English Language. Seller and Purchaser agree that the official language of this Agreement shall be English. Purchaser hereby represents that it has sufficient knowledge of the English language to fully understand this Agreement. This Agreement shall be in the English language and all documentation related thereto shall also be in the English language.
- 29.6 English Units. Seller and Purchaser agree that the official system of units of this Agreement shall be the United States Standard measure (English) unit system. All drawings and other written material shall show English units.
- 29.7 Gender and Plural. Unless the context of this Agreement otherwise requires, words of any gender include each other gender and words using the singular or plural number also include the plural or singular number, respectively.
- 29.8 Calendar Days. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified.
- 29.9 Headings. Captions and heading in this Agreement are for reference only and do not constitute a part of the substance of this Agreement.
- 29.10 Complementary Reading. All documents comprising this Agreement, including any modifications or additions thereto, shall be read in a complementary manner.
- 29.11 Amendments. This Agreement may be amended or modified only by a written agreement between the parties hereto.
- 29.12 Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision hereof. Any invalid or unenforceable provision shall be deemed severed from this Agreement and the balance of this Agreement shall be reformed in such a manner as to effect to the maximum extent possible the original intent of Seller and Purchaser.
- 29.13 Waiver. Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the party granting such waiver. If any representation, warranty or covenant contained in this Agreement is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and not be deemed to waive any other breach under this Agreement.

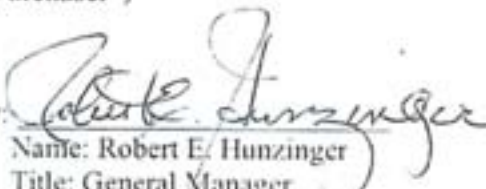
- 29.14 Consideration. Seller and Purchaser agree that the mutuality of the agreements, promises and covenants set forth in this Agreement are sufficient consideration for such agreements, promises and covenants, and Seller and Purchaser hereby acknowledge the sufficiency and adequacy of the same.
- 29.15 Confidentiality. Purchaser and Seller recognize that the terms of this Agreement and materials or information regarding the Facility may constitute trade secrets governed by Sections 815.045, Florida Statutes, 812.081, Florida Statutes and 815.043(3), Florida Statutes, which restrict the use and disclosure of trade secrets as that term is defined in the applicable sections. To the extent permitted by Florida law, each of the Parties agrees that it shall keep strictly confidential the terms of this Agreement and any materials or information regarding the Facility (including, without limitation, any data delivered by Seller to Purchaser and vice versa) delivered or received in connection herewith and any other agreements entered into pursuant hereto all of which is marked as proprietary or confidential; provided that the terms hereof may be disclosed to the attorneys, accountants and other consultants of the parties involved in assisting the parties with this Agreement, as long as such parties agree to be bound by the foregoing confidentiality requirement and further provided that each party shall be fully liable for any breach of this Section by any attorney, accountant or other consultant to whom it has disclosed such information. The provisions of this Section shall not apply to information, notwithstanding any confidential designation thereof, that is previously known to the receiving party without any restriction as to disclosure or use at the time it is furnished, which is or becomes generally available to the public without breach of any confidentiality obligation by the receiving party, or which is received from a third party without limitation or restriction on said third party or the receiving party at the time of disclosure. Further, the Parties acknowledge that the designation of this Agreement or any other materials, as "confidential", or "trade secret" and the City of Gainesville's refusal to disclose such material, may be challenged in a court of competent jurisdiction by any person. Seller by so designating any material agrees to hold harmless and indemnify the Purchaser from any award to a plaintiff for damages, costs or attorney fees and from any costs and attorney fees incurred by the Purchaser by reason of any action to require disclosure of this Agreement or Seller's materials, and the Purchaser's refusal to disclose the same. Provided, however, that Purchaser shall give prompt written notice to Seller of the receipt of any demand for disclosure and commencement of any action to compel disclosure.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed in their respective names by persons duly authorized to do so on their behalf.

GAINESVILLE RENEWABLE ENERGY CENTER, LLC ("Seller")

By: 
Name: James S. Gordon
Title: President

THE CITY OF GAINESVILLE, FLORIDA d/b/a GAINESVILLE REGIONAL UTILITIES
("Purchaser")

By: 
Name: Robert E. Hunzinger
Title: General Manager

APPROVED AS TO FORM AND LEGALITY:

By: 
Name: Raymond O. Manasco, Jr.
Title: Utilities Attorney

Schedule I
Definitions

The following Definitions are made a part of this Agreement:

"Actual Fuel Price" means, for each Billing Period, the weighted average delivered fuel price per ton during the Billing Period, to be calculated as the sum of all dollars spent on fuel purchases net of tipping fees during the Billing Period / the total tons of fuel purchased during the Billing Period.

"Affiliate" means, with respect to any person, any other person (other than an individual) 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" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" means this Agreement, the Appendices and any other documents incorporated or referenced therein.

"Available Energy" is, for the applicable period, the sum of the following items:

- (i) each MWh of Energy generated by the Facility and delivered to the Delivery Point;

plus

- (ii) for each hour in which Purchaser dispatches the Facility at less than 100% of the seasonal Dependable Capacity, each MWh of Energy that could have been generated by the Facility and delivered to the Delivery Point had the Facility been dispatched at 100% of the seasonal Dependable Capacity, but that was not generated by the Facility due to dispatch instructions from Purchaser, to be calculated for each such hour by subtracting the actual capacity level in MW for such hour from the seasonal Dependable Capacity, or if Seller has notified Purchaser of a curtailment or derating for such hour, each MWh of Energy that could have been generated by the Facility and delivered to the Delivery Point had the Facility been dispatched at the maximum capacity available, to be calculated for each such hour by subtracting the actual capacity level in MW for such hour from the seasonal Dependable Capacity;

plus

- (iii) for each hour during which Seller would have been capable of producing and delivering Energy, but was prevented from doing so due to a constraint or fault in Purchaser's facilities but only if that was not caused by a constraint or fault of facilities owned by third parties, each MWh of Energy that could have been generated by the Facility and delivered to the Delivery Point had the Facility been dispatched at 100% of the seasonal Dependable Capacity, but that was not generated by the Facility due to the constraint or fault, to be calculated for each such hour by subtracting the actual capacity level in MW for such hour from the seasonal Dependable Capacity, or if Seller has

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notified Purchaser of a curtailment or derating for such hour, each MWh of Energy that could have been generated by the Facility and delivered to the Delivery Point had the Facility been dispatched at the maximum capacity available, to be calculated for each such hour by subtracting the actual capacity level in MW for such hour from the maximum capacity available for such hour.

"Bankruptcy Code" means Title 11, United States Code, and any other state or federal insolvency, reorganization, moratorium or similar law for the relief of debtors.

"Base Fuel Charge" means, for each calendar year, the Target Fuel Price x 1.35 (tons/MWh).

"Billing Period" means a calendar month.

"Business Day" means any day except Saturdays, Sundays and other days on which the bank institutions of New York City, New York, do not provide services pursuant to applicable law or the policies of the bank institutions.

"Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute (excluding, however, (i) Environmental Attributes; (ii) Production Tax Credits; (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits), whether general in nature or specific as to the location or any other attribute of the Facility, intended to value any aspect of the capacity of the Facility to produce energy or ancillary services.

"Change in Law" has the meaning specified in Section 3.2 hereof.

"Commercial Operation Date" means the first day following the date Seller successfully completes the Initial Capacity Test (as defined in Appendix IX of this Agreement) that determines Dependable Capacity (as defined in Appendix IX of this Agreement).

"Completion Liquidated Damages" has the meaning specified in Section 14.1 hereof.

"Completion Performance Security" has the meaning specified in Section 13.1 hereof.

"Construction Commencement Date" means the day on which Seller has closed construction financing for the Facility, issued a notice to proceed to begin construction of the Facility, and has obtained all prerequisite governmental approvals.

"Construction Cost Adjuster" means the sum of

(a) ninety-three percent (93%) multiplied by the quotient of (i) the ENR BCI ATL most recently published as of the Construction Commencement Date, divided by (ii) the ENR BCI ATL for April 2009, plus

(b) seven percent (7%) multiplied by the quotient of (i) the Dollar/Euro Exchange Rate for the Construction Commencement Date, divided by (ii) the Dollar/Euro Exchange Rate for the Effective Date.

The Construction Cost Adjuster is used in computing the Non-Fuel Energy Charge. Refer to the example in Appendix III of the Agreement.

"Contract Prices" has the meaning specified in Section 3.1 hereof.

"CPI" means the Consumer Price Index Series SUUR0000SA0, U.S. City Average, All Items, published by the Bureau of Labor Statistics, US Department of Labor.

"Delivered Energy" means, for the applicable period, the sum of each MWh of Energy generated by the Facility and delivered to the Delivery Point.

"Delivery Point" means the point of interconnection between the Facility and the Gainesville Regional Utilities high voltage transmission system as described in the Interconnection One Line Diagram contained in Appendix IV. The point of interconnection is located in Alachua County, Florida, in the Purchaser's existing Deerhaven Switching Station. Specifically, the point of interconnection shall be defined as the points where Purchaser's 138 kV conductors connect to Seller's 4-hole pad connections on Seller's 138 kV dead-end structure.

"Delivery Term" has the meaning specified in Section 2.2 hereof.

"Dependable Capacity" means the amount of capacity of the Facility determined under Appendix IX hereto.

"Dollar/Euro Exchange Rate" means the preceding 90-day average New York Closing U.S. Dollar to Euro Currency Exchange Rate as quoted in the Wall Street Journal on Monday through Friday (weekdays) over that interval.

"Eastern Prevailing Time" or "EPT" means the prevailing eastern time in Alachua County, Florida.

"ENR BCI Atlanta" or "ENR BCI ATL" means the McGraw Hill Engineering News Report (ENR) Building Cost Index (BCI) for Atlanta.

"Effective Corporate Tax Rate" equals thirty-five percent (35%).

"Effective Date" has the meaning specified in the introductory paragraph of this Agreement.

"Energy" means any and all three phase, sixty hertz electric energy generated by the Facility and available for sale during the Delivery Term, but not including energy obtained from other sources, used for station loads or dissipated by transformer and transmission losses, if any.

"Environmental Attributes" means any and all emissions credits or other environmental credits or attributes associated with the Energy generated by the Facility during the Delivery Term, but shall not include Production Tax Credits associated with the ownership, construction or

operation of the Facility or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation; fuel-related subsidies or tipping fees that may be paid to Seller to accept certain fuels; or emission reduction credits encumbered and used by the Facility for compliance with local, state, or federal operating and air quality permits; *provided, however*, that any fuel-related subsidies or tipping fees shall be applied to reduce the cost of fuel in accordance with the Fuel Price Adjuster mechanism set forth in Appendix III. By way of example, Environmental Attributes may include renewable portfolio standard, carbon emission, or sulfur or oxide nitrogen allowances, credits or offsets.

"Equivalent Forced Outage Hours" has the meaning assigned to such term by the National Electric Reliability Council, or any successor thereto.

"Estimated Dependable Capacity" means the amount of estimated capacity of the Facility determined under Appendix IX hereto.

"Facility" means the Facility more particularly described in Appendix I hereto.

"Facility Financing" means financing for the acquisition, development, construction, and ownership of the Facility and related purposes including any required reserve accounts, any capital additions, any operational needs relating to the Facility and any refinancing or replacement financing of any of the foregoing.

"Facility Site" has the meaning set forth in Appendix I hereto.

"Fair Market Value of the Facility" has the meaning specified in Section 27.2.5 hereof.

"Fixed O&M Charge" has the meaning set forth in Appendix III attached hereto.

"Force Majeure" means any cause beyond the reasonable control of the Seller or of Purchaser that, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to Acts of God, acts or omissions of government, acts of a public enemy, wars (declared or undeclared), hostilities, blockades, insurrections, rebellions, revolutions, riots, terrorism, civil disturbances, sabotage, embargoes, epidemics, quarantines, landslides, earthquakes, fires, explosions, lightning, floods, storms, hurricanes, tornados, nuclear accident, strikes and other labor disturbances, inability, despite due diligence, to obtain required licenses, permits, or approvals for the construction and operation of the Facility under the terms of this Agreement, restraint by court order or other delay or failure in performance as a result of any action or inaction by or on behalf of a public authority, in each case to the extent that the event of Force Majeure (i) in fact affects the Facility or the Products, (ii) is not the fault of the Party relying on the event, and (iii) could not have been prevented by the Party's exercise of reasonable diligence. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved.

"Forced (Full or Partial) Outage" or "Forced Outage" means the occurrence of an immediate reduction (Forced Partial Outage) or suspension (Forced Full Outage) of the electrical output from the Facility in response to an abnormal operating condition. A Forced Outage is

distinguished from a Maintenance Outage in that the abnormal condition causing an Forced Outage requires prompt shutdown or curtailment of the Facility.

"Forest-Produced Biomass" means biomass derived from forestry operations meeting the appropriate specifications for use by Seller to produce electricity in the Facility, as opposed to biomass derived from mill residue, urban forestry and urban land clearing.

"Forest Stewardship Incentive Payments" means the forest stewardship incentive payments set forth in Appendix VIII attached hereto.

"FRCC" means the Florida Reliability Coordination Council, Inc. or successor thereto.

"FRCC Requirements" means the operating, planning and readiness standards adopted by FRCC to assure the safe and reliable operation of Florida's electrical system.

"Fuel Charge" has the meaning set forth in Appendix III attached hereto.

"Fuel Price Adjuster" means: $(\text{Actual Fuel Price} - \text{Target Fuel Price}) \times 1.15$ (tons/MWh) (for the avoidance of doubt, the Fuel Price Adjuster can be a negative number).

"Good Utility Practice" means any practices, methods, and acts (including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry) that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region. With respect to the Facility, Good Utility Practice includes but is not limited to taking reasonable steps to ensure the following:

- (i) That adequate equipment, materials, resources and supplies (excluding fuel) are available to meet the Facility's needs;
- (ii) That sufficient operating personnel are available and are adequately experienced, trained, and licensed as necessary to operate the Facility properly and efficiently, and who are capable of responding to reasonably foreseeable emergency conditions whether caused by events on or off the site of the Facility;
- (iii) That preventative, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools;
- (iv) That appropriate monitoring and testing are performed to ensure that equipment is functioning as designed;
- (v) That equipment is not operated recklessly, or in a manner that is unsafe to workers, the general public, or the environment, or without regard to defined limitations, such as steam pressure, temperature, and moisture content, chemical content of make-up

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water, flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, or control system limits;

(vi) That equipment will function properly under both normal and reasonably expected emergency conditions; and

(vii) That the Facility is operated in conformance with the applicable FRCC operating procedures.

"Ground Lease" means the ground lease with respect to the Facility between Purchaser and Seller.

"Guaranteed Construction Commencement Date" shall be May 15, 2012.

"Guaranteed Commercial Operation Date" shall be the date forty (40) months following the Construction Commencement Date.

"Initial Capacity Test" has the meaning specified in Appendix IX hereof.

"Interconnection Agreement" means the interconnection agreement between Seller and Purchaser, as it may be amended from time to time.

"Investment Tax Credit" or "ITC" means the energy credit (26 U.S.C. § 48) applicable to owners of generating facilities that use biomass energy to produce electric energy or any other similar tax credit that replaces or is in addition to 26 U.S.C. § 48 that is applicable to owners of generating facilities and for which the Facility qualifies.

"Late Payment Rate" means, in relation to any period for which a late payment charge may be incurred under this Agreement, the prime rate as announced from time to time by the Bank of America or its successor plus two percent (2%) per annum.

"Legal Requirements" means and includes all applicable laws, statutes, ordinances, orders, rules, regulations or requirements of any federal, state or municipal government, agency, department, commission, board or officer having jurisdiction over the Facility.

"Lender" means the financial institution named in a notice from the Seller as providing part of the Facility Financing, its successors and assigns.

"Maintenance Outage" means the occurrence of reduced or suspended operation of the Facility caused by abnormal operating conditions that require corrective action. A Maintenance Outage is distinguished from a Forced Outage in that the required repair or maintenance for a Maintenance Outage can be delayed or scheduled for a minimum of seven (7) days from the occurrence. An outage starting less than seven (7) days from the occurrence that caused the need for repair or maintenance shall constitute a Forced Outage.

"Maintenance Outage Hours" means the aggregate Maintenance Outage hours for a given period.

"Material Adverse Change" means a material adverse change on (i) the business, assets, operation, or financial condition of the Facility and Seller taken as a whole, or (ii) the ability of Seller to pay or perform its material obligations under this Agreement in accordance with the terms hereof or to own and operate the Facility.

"Metering Equipment" means the metering and telemetry equipment provided pursuant to the terms of the Interconnection Agreement, which shall be owned by the Purchaser and shall be in accordance with FRCC Requirements. Any changes to the meters, telemetry equipment, voltage transformers, current transformers, and associated panels, hardware, conduit and cable, which will affect the data being received by Seller shall not be agreed to by Purchaser without first consulting with Seller.

"Metering Point(s)" means the Delivery Point.

"Minimum Sustainability Standards for Forest-Produced Biomass" has the meaning set forth in Appendix VIII attached hereto.

"Non-Fuel Energy Charge" has the meaning set forth in Appendix III attached hereto.

"Operator(s)" means the persons responsible for forecasting, scheduling and controlling the output of the Facility on behalf of Seller.

"Party" and/or "Parties" means the Seller, the Purchaser, or the Seller and the Purchaser.

"Payment" has the meaning specified in Section 8.4 hereof.

"Period Hours" means the aggregate number of hours for a given period.

"Person" means any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited partnership, limited liability company, limited liability partnership, trust, or governmental organization.

"Planned Maintenance" means the occurrence of reduced or suspended operation of the Facility for the purpose of performing routine or regular maintenance in accordance with Good Utility Practice. Planned Maintenance is distinguished from Forced Outages and Maintenance Outages in that the duration and timing of Planned Maintenance has been established during the prior business year.

"Planned Outage Hours" means the aggregate Planned Maintenance hours for a given period.

"PPA Performance Security" has the meaning specified in Section 13.2 hereof.

"Premises" has the meaning set forth in the Ground Lease.

"Production Tax Credit" or "PTC" means the renewable energy production tax credit (26 U.S.C. § 45) applicable to owners of generating facilities that use biomass energy to produce electric energy or any other similar tax credit that replaces or is in addition to 26 U.S.C. § 45 that is applicable to owners of generating facilities and for which the Facility qualifies.

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"Products" means the products set forth in Appendix II attached hereto.

"PSC" means the Florida Public Service Commission.

"PTC Adder" equals Ten Dollars (\$10) divided by one (1) minus the Effective Corporate Tax Rate, adjusted annually in accordance with the inflation adjustment factor set forth in 26 U.S.C. § 45(c)(2)(B) with 2008 as the base year.

"PTC Adjustment" means the product of the PTC Adder multiplied by the applicable megawatt hours as defined within Section 3.3.

"Purchase Option" has the meaning specified in Section 27.1 hereof.

"Purchase Option Price" has the meaning specified in Section 27.2 hereof.

"Purchaser" has the meaning specified in the introductory paragraph hereof.

"Purchaser Delay" has the meaning specified in Section 15.3 hereof.

"Purchaser Event of Default" has the meaning specified in Section 25.3 hereof.

"Purchaser Shutdown" means a requested complete shutdown of the Facility's generation by Purchaser other than a request that is prompted by a System Emergency which emergency is not a result of a physical condition or situation that is only on Purchaser's System.

"Purchaser's Notice of Intent" has the meaning specified in Section 27.1 hereof.

"Purchaser's Performance Security" has the meaning specified in Section 13.4 hereof.

"Purchaser's System" means the electric transmission system and generating units owned by Purchaser.

"Qualified Appraiser" means a nationally recognized third-party appraiser which shall (i) be qualified to appraise an independent electric generating business, (ii) have been engaged in the appraisal or business valuation and consulting business for at least five years, and (iii) not be associated with any Party or any Affiliate of a Party.

"Renewable Energy Credit" or "REC" means a certificate of proof, issued by the applicable regulatory authority or organization, for compliance with renewable energy standards, that one unit of electricity was generated by an eligible renewable energy resource.

"Renewable Energy Grant" means the grant for specified energy property as described in H.R. 1 (The American Recovery and Reinvestment Act of 2009) Sec. 1603 applicable to owners of generating facilities that use biomass energy to produce electric energy or any other similar grant that replaces or is in addition to Sec. 1603 of H.R. 1 that is applicable to owners of generating facilities and for which the Facility qualifies.

"Schedule Guarantees and Liquidated Damages" means the guarantees and liquidated damages set forth in Section 14 hereof.

"Scheduler(s)" means Purchaser's representative or representatives responsible for day-to-day scheduling.

"Seller" has the meaning specified in the introductory paragraph hereof.

"Seller Event of Default" has the meaning specified in Section 25.1 hereof.

"Seller Indemnified Parties" has the meaning specified in Section 17.2 hereof.

"Shutdown Charge" has the meaning set forth in Appendix III attached hereto.

"Standby, Supplemental and Startup Load" means the electric energy related to electric generation necessary to serve the parasitic generating facility station requirements when the Facility is either operating or not operating (Supplemental Load), or to serve the parasitic or other power needs of the Facility when it is not operating, or the power needs of the Facility when in the startup mode prior to synchronizing.

"Standby, Supplemental and Startup Power" means the electric energy used to serve Standby, Supplemental and Startup Load.

"Startup Fuel Cost" shall equal the sum of (i) the actual cost of the natural gas used to start the Facility during the most recent startup plus (ii) the cost of 1,250 tons of biomass fuel at the Actual Fuel Price plus (iii) the cost of Auxiliary Power during the most recent startup.

"Startup O&M Cost" means an allowance of Five Thousand Dollars (\$5,000) for chemicals and water used during startup.

"Summer Period" means a period that begins at 12:00 am on June 1st and ends at 11:59 pm September 30th. The Summer Period may be adjusted from time to time by Purchaser upon one (1) year notice provided that it must remain a continuous 122-day period.

"Supplier" means any entity with which the Seller enters into an agreement to purchase Forest-Produced Biomass.

"System Emergency" means a physical condition or situation that, in the judgment of FRCC or the Purchaser, affects or will affect the ability of Purchaser to accept the Products from the Facility at the Delivery Point.

"Target Fuel Price" means, for each calendar year, the weighted average delivered, invoiced fuel price per ton for the previous calendar year, to be calculated as the sum of all dollars spent on fuel purchases (based on the actual invoice prices) net of tipping fees during the previous calendar year divided by the total tons of fuel purchased during the previous calendar year. Notwithstanding the foregoing, the Target Fuel Price for the first twelve (12) billing periods shall be Twenty-Eight Dollars (\$28.00)/ton.

"Taxes" has the meaning specified in Section 5.1 hereof.

"Test Power Products" means Products that are delivered prior to the Commercial Operation Date.

"Unavailability Factor" shall be calculated as follows:

$$UF = \frac{POH + MOH + EFOH}{PH} \times 100$$

Where,

POH is Planned Outage Hours,

MOH is Maintenance Outage Hours,

EFOH is Equivalent Forced Outage Hours, and

PH is Period Hours.

"Variable O&M Charge" has the meaning set forth in Appendix III attached hereto.

"Winter Period" means a period that begins at the end of the last Summer Period and extends until the start of the next Summer Period.

Appendix I
Facility

1. Facility

- 1.1 The Facility will be a new one hundred (100) MW (total net) biomass-fired electric generating facility, consisting of a biomass fuel handling system, a biomass-fired boiler, a condensing steam turbine generator with evaporative cooling towers and auxiliary support equipment. The Facility will also utilize a Zero Liquid Discharge system to eliminate wastewater discharges. The Facility will be designed in accordance with standards normally used in the utility industry so that the Facility will, with standard operating and maintenance practices, be designed to provide full service over the forty-two (42)-year design life of the Facility.
- 1.2 The Facility will utilize a bubbling fluidized bed boiler to produce superheated steam. The boiler will be equipped with a baghouse to control particulate matter. An aqueous ammonia injection Selective Non-Catalytic Reduction ("SNCR") system will be provided for NOx control. Superheated steam from the boiler will be admitted to a single steam turbine with four extractions for feedwater heating. The steam turbine will generate electricity before exhausting axially into the condenser with cooling water provided from the wet evaporative cooling tower.
- 1.3 The primary fuels for the Facility will be forest residue, mill residue, forest thinnings and urban wood waste. Supplementary fuels could include herbaceous plant matter, agricultural residues, woody storm debris, whole tree chips and pulpwood chips.
- 1.4 The biomass fuel handling system will consist of three truck tippers, two sets of screens and hogs, an automatic stacker/reclaimer system and a manual stacker/reclaimer system. Biomass fuel will be transported to the Facility Site by truck. Fuel will be transported into and out of on-site storage via a series of conveyors. The Facility will have two 100% capacity conveyors leading from the storage piles to the boiler metering bins. From the metering bins, fuel will be distributed across the combustion zone of the boiler through a pneumatic feed system.
- 1.5 Electric power will be produced in the steam turbine generator at the nominal generator voltage. The Facility will increase the voltage at an on-site substation and transmit the power through aerial transmission lines to the interconnection point. When the steam turbine generator is off-line, station service power will be obtained by back feeding.

2. Facility Site

The Facility Site shall be the area of land depicted in the conceptual map below subject to a more precise description of such area in the Ground Lease to be entered into by the Parties prior to the Construction Commencement Date.



Appendix II
Products

<u>Product</u>	<u>Quantity Sold to Purchaser</u>
Dependable Capacity	One Hundred Percent (100%)
Energy	One Hundred Percent (100%)
Environmental Attributes	One Hundred Percent (100%)

Appendix III
Contract Prices

<u>Billing Charge</u>	<u>Facility Status</u>	<u>Measurement (for Billing Period)</u>	<u>Contract Prices</u>	<u>Escalation</u>
Non-Fuel Energy Charge	Facility Receives ITC or Renewable Energy Grant	Available Energy	\$50.00/MWh x Construction Cost Adjuster	None
	Facility Does Not Receive ITC or Renewable Energy Grant	Available Energy	\$58.10/MWh x Construction Cost Adjuster	None
Fixed O&M Charge	N/A	Available Energy	\$23.00/MWh	None
Variable O&M Charge	N/A	Delivered Energy	\$3.15/MWh	Annually on the anniversary of the Effective Date, the Variable O&M Charge shall be escalated by the percentage change in the CPI from the CPI value 12 months before the current anniversary date
Fuel Charge	N/A	Delivered Energy	Base Fuel Charge + Fuel Price Adjuster	None
Shutdown Charge	N/A	Purchaser Shutdown	Startup Fuel Cost + Startup O&M Cost	Annually on the anniversary of the Commercial Operation Date, the Startup O&M Cost shall be escalated by the percentage change in the CPI from the CPI value 12 months before the current anniversary date
Ad Valorem	N/A	Actual monthly (or a lump-sum) ad valorem taxes paid by Seller	Actual monthly (or a lump-sum) ad valorem taxes paid by Seller, subject to adjustment pursuant to Section 3.4.2.	None

Non-Fuel Energy Charge Adjustment Example

(the following is for illustrative purposes only and does not imply what the non-fuel energy charge will be in the future)

Assumptions

- Assume Construction Commencement Date is November 15, 2010
- Assume ENR BCI ATL for November 2010 is 3638.1
- ENR BCI ATL for April 2009 is 3725.44
- Assume Dollar/Euro Exchange Rate for Construction Commencement Date is 1.434
- Dollar/Euro Exchange Rate for 4/29/2009 is 1.3023

Calculation of Construction Cost Adjuster

$(93\% \times (\text{ENR BCI ATL for 11/2010} \div \text{ENR BCI ATL for 4/2009}))$
 $+ (7\% \times (\text{Dollar/Euro Exchange Rate for 11/15/2010} \div \text{Dollar/Euro Exchange Rate for 4/29/2009})) =$

$(93\% \times (3638.10 \div 3725.44)) + (7\% \times (1.4340 \div 1.3023)) =$

$(0.93 \times 0.9766) + (0.07 \times 1.1011) = (0.9082 + 0.0771) = 0.9851$

Construction Cost Adjuster = 0.9851

Calculation of Non-Fuel Energy Charge

- *If the Facility Receives the ITC or Renewable Energy Grant*
Non-fuel Energy Charge = \$50.00 x Construction Cost Adjuster = \$50.00 x 0.9851 = \$49.26
- *If the Facility Does Not Receive the ITC or Renewable Energy Grant*
Non-fuel Energy Charge = \$58.10 x Construction Cost Adjuster = \$58.10 x 0.9851 = \$57.23

Appendix IV
Interconnection One Line Diagram

The parties hereto agree to work together in good faith to produce a mutually agreeable interconnection one line diagram prior to the Construction Commencement Date, which shall be inserted into this appendix.

Appendix V
Pre-Operation Period Standards

1. Pre-Operation Period Standards

- 1.1** Seller shall submit to Purchaser its construction schedule thirty (30) days prior to starting Facility construction and a start-up and test schedule for the Facility thirty (30) days prior to start-up and testing of new Facilities. Seller shall submit progress reports in a form reasonably satisfactory to Purchaser on the first day of every Month until the Initial Synchronization Date and notify Purchaser of any changes to such schedules in a timely manner. Purchaser shall have the right to observe the construction, start-up and testing of the Facility and Seller shall comply with all reasonable requests of Purchaser resulting there from. Seller shall cooperate in such physical inspections of the Facility as may be reasonably required by Purchaser during and after completion of construction. Purchaser's technical review and inspection of the Facility shall not be construed as endorsing the design thereof nor as any warranty of the safety, durability or reliability of the Facility.
- 1.2** Seller shall provide Purchaser with generator manufacturer's capability curves, relay types, and proposed relay settings for review and inspection by Purchaser no later than two hundred and ten (210) days prior to the anticipated Commercial Operations Date. Within sixty (60) days of receiving such material, Purchaser shall inform Seller, in writing, if the proposed relay types and relay settings are acceptable. If these are not found to be acceptable to Purchaser in accordance with Good Utility Practices, Seller agrees to comply with any requests, by Purchaser, to provide acceptable relay types and relay settings. All information must be submitted in a manner reasonably acceptable to Purchaser, particularly the generator data; which shall be used for Purchaser's inspections and transient stability analysis. Generator data must be completely submitted at least two hundred and ten (210) days prior to the anticipated Commercial Operations Date.
- 1.3** Seller and Purchaser shall mutually develop written operating procedures no later than one hundred and twenty (120) days prior to the Anticipated Commercial Operations Date. The operating procedures will be a mutual agreement based on the design of the Facility and the design of the interconnection to Purchaser's bulk electric system. The operating procedures will be intended as a guide on how to integrate the Seller's Facility and output into Purchaser's bulk electric system. Topics covered shall include, but not necessarily be limited to, method of day-to-day communications, key personnel list for both Seller and utility operating centers, clearances and switching practices, outage scheduling, daily capacity and energy reports, unit operations log, reactive power support and Facility performance and event reporting which shall be in a format consistent with National Electric Reliability Council (NERC) and the Generation Availability Data System (GADS) reporting standards. Such operating procedures shall be consistent with the template attached as Appendix VI and the terms and conditions of this Agreement.

- 1.4 Purchaser shall prepare and submit to Seller a written voltage schedule no later than thirty (30) days prior to the Anticipated Commercial Operations Date. Purchaser may change such voltage schedule upon thirty (30) days prior written notice to Seller. Seller shall use such voltage schedule in the operation of its Facility. This voltage schedule shall be based on the normally expected operating conditions for the facility and the reactive power requirements of Purchaser's system.
- 1.5 Seller shall notify Purchaser of the Initial Synchronization Date in writing no less than two (2) weeks prior to that date. Purchaser and Seller shall agree on the Initial Synchronization Date and Purchaser shall have the right to have representatives present at such time.
- 1.6 Purchaser reserves the right to delay the Initial Synchronization Date due to problems with the Facility which could adversely affect Purchaser's electrical system. In such event, Purchaser shall give Seller written notice of such problems and Seller shall remedy any such problems with facilities or equipment which Seller installed or maintains. Purchaser agrees to use reasonable efforts to cooperate with Seller to minimize such delay.
- 1.7 During the period between the commencement date and the Commercial Operations Date, Seller shall have the right to conduct tests of the Facility, provided that such tests shall be coordinated with the Operations Center and Purchaser will not curtail such tests except during emergencies.
- 1.8 Prior to the Commercial Operations Date, Seller shall provide Purchaser a copy of the operations and maintenance agreement for the Facility. Purchaser may review and comment upon the terms of any such agreement, provided, however, that Seller shall be under no obligation to modify any such agreement in response to any such comments by Purchaser.

Appendix VI
Template of Operating Procedures

The parties hereto agree to work together in good faith to produce a mutually agreeable template of operating procedures by May 15, 2009, which shall be inserted into this appendix.

EQUITABLE ADJUSTMENT FOR CHANGE OF LAW

of the

**POWER PURCHASE AGREEMENT FOR THE SUPPLY OF DEPENDABLE
CAPACITY, ENERGY AND ENVIRONMENTAL ATTRIBUTES FROM A BIOMASS-
FIRED POWER PRODUCTION FACILITY**

by and between

GAINESVILLE RENEWABLE ENERGY CENTER, LLC

and

THE CITY OF GAINESVILLE, FLORIDA

d/b/a

GAINESVILLE REGIONAL UTILITIES

dated as of March 16, 2011

This **EQUITABLE ADJUSTMENT FOR CHANGE OF LAW** is agreed to and entered into as of March 16, 2011, by and between Gainesville Renewable Energy Center, LLC, a Delaware Limited Liability Company ("Seller") and The City of Gainesville Florida, d/b/a Gainesville Regional Utilities ("Purchaser"). Seller and Purchaser are collectively referred to herein as the "Parties".

RECITALS

WHEREAS, Seller and Purchaser are parties to that certain Power Purchase Agreement for the Supply of Dependable Capacity, Energy and Environmental Attributes from a Biomass-fired Power Production Facility dated as of April 29, 2009 (the "Agreement") and, unless otherwise indicated, terms defined therein shall have the same meaning herein; and

WHEREAS, by action of the City Commission of the City of Gainesville on May 7, 2009, the undersigned General Manager of Purchaser has been duly authorized to implement the Agreement on behalf of Purchaser and to execute and deliver any instruments in connection therewith; and

WHEREAS, the Agreement provides at Section 3.2 that the Contract Prices thereunder were based upon the then current regulatory requirements for generating and selling the Products and that, in the event of a Change of Law, as defined in the Agreement, that specifically increases the actual cost of generating and selling the Products, the Contract Prices under the Agreement shall be equitably adjusted to cover the resulting additional costs (an "Equitable Adjustment"); and

WHEREAS, the Parties recognize and agree that various regulatory agencies, including the Florida Department of Environmental Protection and the United States Environmental Protection Agency, have imposed changes upon the design and operation of the Facility that result in specific increases of the actual cost of generating and selling the Products; and

WHEREAS, Seller has presented a claim for Equitable Adjustment based upon Changes in Law, including those included in the Final Rule of the National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters issued by the United States Environmental Protection Agency on February 21, 2011 (the "EPA Final Rule"); and

WHEREAS, Seller and Purchaser have agreed upon and hereby memorialize the implementation of Section 3.2 in the manner as set forth below, in full satisfaction of any claims arising out of Changes in Law that have occurred as of the date hereof.

NOW THEREFORE, pursuant to Section 3.2 of the Agreement, which was entered into for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree and memorialize as follows:

1. **Equitable Adjustments.** Pursuant to Section 3.2 of the Agreement: (i) the Non-Fuel Energy Charge Contract Price of "\$50.00/MWh x Construction Cost Adjuster" set forth at Appendix III is hereby adjusted to hereafter be "54.40/MWh x Construction Cost Adjuster;" (ii) the Non-Fuel Energy Charge Contract Price of "58.10/MWh x Construction Cost Adjuster" set forth at Appendix III is hereby adjusted to hereafter be "\$62.50/MWh x Construction Cost Adjuster"; and (iii) Purchaser shall, to the extent not funded by grants received, fund the costs of connecting the Facility to the reclaimed water system of the City of Alachua.

2. **Replacement of Appendix III.** In accordance with the foregoing Equitable Adjustments, Appendix III of the Agreement is hereby replaced and superseded in all respects by the Appendix III attached hereto.

3. **Full Satisfaction of Change of Law Claims.** Seller acknowledges that the foregoing provisions fully address and satisfy any and all claims of Seller arising under Section 3.2 as of the date hereof, including any claims arising out of the EPA Final Rule, the Facility's PSD construction air permit, the Facility's Site Certification Order, or any other order or governmental action or condition as of the date hereof, including, without limitation any cost relating to the following items: replacing the SNCR with SCR; changes to the sorbent injection system, including storage and injection, to control hazardous air pollutant emissions; changes to the ash characteristics due to operational modifications; changes to the baghouse to control particulate matter emissions; changes to the facility water system due to the required use of reclaimed water; and, changes to the auxiliary power which affect the facility heat rate; and the usage of reclaimed water.

4. **Agreement Remains in Full Force and Effect.** Except with respect to the Equitable Adjustments set forth above, all terms and provisions of the Agreement remain in full force and effect, and each of the Parties ratifies and confirms all such provisions. Without limiting the foregoing, this Equitable Adjustment for Change of Law and the terms hereof shall bind and inure to the benefit of the Parties and any successor or assignee acquiring an interest in the Agreement pursuant to Sections 21.1 and 21.2 thereof.

Appendix III
Contract Prices

<u>Billing Charge</u>	<u>Facility Status</u>	<u>Measurement (for Billing Period)</u>	<u>Contract Prices</u>	<u>Escalation</u>
Non-Fuel Energy Charge	Facility Receives ITC or Renewable Energy Grant	Available Energy	\$54.40/MWh x Construction Cost Adjuster	None
	Facility Does Not Receive ITC or Renewable Energy Grant	Available Energy	\$62.50/MWh x Construction Cost Adjuster	None
Fixed O&M Charge	N/A	Available Energy	\$23.00/MWh	None
Variable O&M Charge	N/A	Delivered Energy	\$3.15/MWh	Annually on the anniversary of the Effective Date, the Variable O&M Charge shall be escalated by the percentage change in the CPI from the CPI value 12 months before the current anniversary date
Fuel Charge	N/A	Delivered Energy	Base Fuel Charge + Fuel Price Adjuster	None
Shutdown Charge	N/A	Purchaser Shutdown	Startup Fuel Cost + Startup O&M Cost	Annually on the anniversary of the Commercial Operation Date, the Startup O&M Cost shall be escalated by the percentage change in the CPI from the CPI value 12 months before the current anniversary date
Ad Valorem	N/A	Actual monthly (or a lump-sum) ad valorem taxes paid by Seller	Actual monthly (or a lump-sum) ad valorem taxes paid by Seller, subject to adjustment pursuant to Section 3.4.2.	None