

**MEMORANDUM**

**TO:** MAYOR AND CITY COMMISSION

**FROM:** CITY ATTORNEY'S OFFICE

**DATE:** September 20, 2021

**RE:** **Natural Gas Sales Agreement with City of Clearwater, Florida**

Attached hereto for your consideration is a proposed Agreement with the City of Clearwater, Florida to purchase approximately 10,000 MMBtus of qualifying use natural gas per day set forth in two (2) separate transactions, with the first purchase consisting of 4,200 MMBtus and the second purchase consisting of 5,800 MMBtus as defined by U.S. Treasury Regulations. Municipal entities can only use this type of qualified natural gas because tax-exempt bonds are required to fund the natural gas supply.

Black Belt Energy (BBE) Gas District will acquire a long-term natural gas supply under a prepaid gas transaction to purchase its supply from J. Aron & Company, LLC for a period of thirty (30) years. Florida Gas Utility (FGU) will subsequently buy the BBE supply and sell it to the City of Clearwater, which will then sell the natural gas to the City of Lakeland for use by Lakeland Electric to generate electricity for its customers. The purchase of 10,000 MMBtu's of natural gas per day from the City of Clearwater, utilizing the previous five (5) year average, only represents a small portion of Lakeland Electric's daily natural gas supply which was previously around 23%, but will now likely only be around 19% of Lakeland Electric's daily MMBtu's required to generate power.

The term of the Agreement for the purchase of 4,200 MMBtus of natural gas will be effective for an initial term commencing April 1, 2022 and continuing through March 31, 2027, subject to City Commission approval. The second purchase of 5,800 MMBtus of natural gas will be effective either on April 1, 2022 or a few months later in 2022, whichever occurs first, and will also be effective for a five (5) year term. In accordance with both transactions, Lakeland Electric will receive 80% of the minimum discount rate that the natural gas is being sold to the City of Clearwater for, which equates to 24 cents per MMBtu. A one (1) year termination notice prior to expiration of the initial contract term will be required to discontinue the purchase of natural gas from the City of Clearwater for either transaction.

The Agreement applicable to both purchases contains a period of re-pricing when BBE will have to return to the market to reissue bonds. During this remarketing period, there is a minimum discount floor, which again Lakeland Electric would receive 80% of the minimum discount rate which is equal to 13.6 cents per MMBtu. Once BBE goes out to market within the upcoming month, the actual discount rate and date of the remarketing period will be finalized in the Agreement. While the Agreement is structured so the

discount rate cannot be lower than 30 cents per MMBtu on the initial offering, it can also be greater than that amount, which could result in an even larger discount on the natural gas purchase for the City. During the remarketing period, the discount for either purchase cannot be lower than 17 cents or the Agreement may be terminated with no further obligation for the City. Until BBE goes to market, pricing will not be available so the Agreement does not currently contain the discounted rate.

The Agreement for both purchases also requires a one (1) year notice of termination prior to each renewal date during the contract term to relieve the City of Lakeland from its obligation to continue purchasing natural gas from the City of Clearwater. In the event the City of Lakeland terminates the Agreement, there is a two (2) year waiting period restriction that would prohibit the purchase of the specific replacement volumes of MMBtus of prepaid natural gas. If the Agreement terminates because BBE cannot meet the minimum discount during the remarketing period, there is no waiting period restriction.

The estimated minimum savings to the City pursuant to this Agreement for prepaid natural gas of 4,200 MMBtus is approximately \$1,839,600 over a five (5) year period. The estimated minimum savings to the City for pre-paid natural gas of 5,800 MMBtus is approximately \$2,540,400. The total cost of natural gas is included in Lakeland Electric's FY22 fuel budget.

This Agreement is contingent on the City of Clearwater obtaining final approval by its City Council of a Gas Services agreement with FGU so it can resell the natural gas to the City of Lakeland. In the event that the City of Clearwater does not approve either of the transactions, the City of Leesburg, Florida may enter into a similar transaction with FGU. In such event, City of Lakeland staff is seeking authority to enter into an Agreement, with substantially similar terms and conditions with the City of Leesburg.

It is recommended that the City of Lakeland City Commission approve the Natural Gas Sales Agreement for the purchase of up to 10,000 MMBtus of natural gas in two (2) separate transactions with the City of Clearwater and authorize the appropriate City of Lakeland officials to execute all corresponding documents to the Agreement, including authority for Lakeland Electric staff to enter into an Agreement with the City of Leesburg if the City of Clearwater City Council does not approve its agreement with FGU. Any final Agreement pursuant to any of the above-specified purchases are subject to final review by the City Attorney's Office.

Attachment

**GAS SALES CONTRACT**

**BY AND BETWEEN**

**THE CITY OF CLEARWATER, FLORIDA**

**AND**

**THE CITY OF LAKELAND, FLORIDA**

**DATED AS OF SEPTEMBER 20, 2021**



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## **GAS SALES CONTRACT**

### **PREAMBLE**

This Gas Sales Contract (the “Agreement”), dated as of September 20, 2021 (the “Effective Date”), is made and entered into by and between the City of Clearwater, Florida, a municipal corporation and political subdivision of the State of Florida (the “Seller”), and the City of Lakeland, Florida, a municipal corporation of the State of Florida on behalf of its municipal utility, Lakeland Electric (the “Purchaser”). Gas Purchaser and the Seller are sometimes hereinafter referred to in this Agreement collectively as the “Parties” or individually as a “Party”.

### **RECITALS**

WHEREAS, The Black Belt Energy Gas District, a public corporation of the State of Alabama (“BBE”), has developed a project to acquire long-term supplies of natural gas under a prepaid gas supply transaction between BBE and a new single purpose entity to be created by J. Aron & Company LLC, as a Delaware limited liability company (“Prepay LLC”); and

WHEREAS, Prepay LLC will purchase supply and management services from J. Aron & Company LLC (“J. Aron”), a New York limited liability company and a wholly-owned subsidiary of The Goldman Sachs Group, Inc.; and

WHEREAS, BBE will purchase prepaid gas supplies from Prepay LLC pursuant to a Prepaid Natural Gas Sales Agreement, dated as of September \_\_, 2021 (the “Prepaid Gas Agreement”), to meet a portion of the Gas supply requirements of certain participating Municipal Utilities (the “Project Participants”) participating in the gas prepayment project (the "Prepaid Project"); and

WHEREAS, BBE will finance the prepayment under, and the other costs of, the Prepaid Project by issuing Bonds; and

WHEREAS, Florida Gas Utility (“FGU”) is a Project Participant in the Prepaid Project and will purchase Gas supply from the Prepaid Project pursuant to a Gas Supply Agreement with BBE (the “Project Participant Agreement”);

WHEREAS, FGU has agreed to resell the gas supplies acquired from BBE under the Project Participant Agreement to Seller under its existing All Requirements Gas Services Agreement with Seller; and

WHEREAS, Seller is willing to resell the gas supplies acquired from FGU to Purchaser under the terms and conditions specified in this Agreement; and

WHEREAS, Purchaser owns and operates a municipal electric system and desires to enter into an agreement with Seller for the purchase of Gas supplies that Seller acquires from FGU for use in Purchaser’s gas-fired electric generating facilities to generate Electricity for resale to Purchaser’s retail customers; and

WHEREAS, as a condition precedent to the effectiveness of the Parties’ obligations under this Agreement, (i) FGU shall have entered into the Gas Supply Agreement with BBE; (ii) BBE shall have entered into the Prepaid Gas Agreement and shall have issued the Bonds; (iii) Seller shall have received all necessary authorizations to enter into and perform under this contract by no later than October 7, 2021; and (iv) Purchaser shall have received all necessary authorizations to enter into and perform under this contract by no later than September 20, 2021.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows.

## ARTICLE I

### DEFINITIONS AND CONSTRUCTION

1.1 Construction of the Agreement. The Preamble and the Recitals set forth above are incorporated into this Agreement for all purposes. References to Articles, Sections, and Exhibits throughout this Agreement are references to the corresponding Articles, Sections, and Exhibits of this Agreement unless otherwise specified. All Exhibits are incorporated into this Agreement for all purposes. References to the singular are intended to include the plural and vice versa. The word “including” and related forms thereof are intended to be interpreted inclusively, whether or not the phrase “but not limited to” follows such word or words. The words “will” and “shall” indicate mandatory requirements of the Parties except in the Recitals.

1.2 Definitions. Unless another definition is expressly stated in this Agreement, the following terms and abbreviations, when used in this Agreement, are intended to and shall mean as follows:

- (a) “Agreement” is defined in the Preamble.
- (b) “Alternate Delivery Point” has the meaning specified in Section 3.1.
- (c) “Annual Refund” means eighty percent (80%) the annual refund, if any, provided to FGU or a Delivery Year in accordance with the terms of the Project Participant Agreement and following the release of funds to BBE for such purposes under the terms of the Bond Indenture.
- (d) "Available Discount" means, for each Month of a Reset Period, eighty percent (80%) of the discount amount expressed in cents per MMBtu (rounded down to the nearest one-half cent) determined in accordance with the procedures specified in the FGU

Project Participant Agreement and available to FGU following the payment of all fees under the Project Participant Agreement including, without limitation, the Project Administration Fee paid by FGU to BBE. The Available Discount shall equal the sum of the Monthly Discount and any anticipated Annual Refunds for the applicable Reset Period, and shall be the discount available to Purchaser before payment of the Project Administration Fee. During the Initial Discount Period, the Available Discount shall be no less than 24 cents per MMBtu.

(e) “Bond Indenture” means the Trust Indenture dated as of September 1, 2021, between BBE and Regions Bank, as Trustee, providing for the issuance of and security for the Bonds, together with any other trust indenture providing for the issuance of and security for any refunding Bonds, in each case as the same may be amended from time to time.

(f) “Bonds” means BBE’s Gas Supply Revenue Bonds, Series 2021B issued to finance BBE’s purchase of Gas from Prepay LLC under the Prepaid Agreement and other costs associated therewith, and any refunding Bonds issued by BBE under the Bond Indenture.

(g) “Btu” means one British thermal unit, the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit at 60 degrees Fahrenheit, and is the International Btu. The reporting basis for Btu is 14.73 pounds per square inch absolute and 60 degrees Fahrenheit; provided, however, that the definition of Btu as determined by the operator of the relevant Delivery Point shall be deemed conclusive in accordance with Article VI of the Prepaid Agreement; and provided further that in the event of an inconsistency in the definition of “Btu” between this definition and the definition of “Btu” in the Prepaid Agreement, the definition in the Prepaid Agreement shall apply.

(h) “Business Day” means (i) with respect to payments and general notices required to be given under this Agreement, any day other than (a) a Saturday or Sunday, (b) a

Federal Reserve Bank holiday, (c) any day on which commercial banks located in either New York, New York, or the State of Alabama are required or authorized by law or other governmental action to close, or (d) any other day excluded pursuant to the Bond Indenture, and (ii) with respect to Commodity deliveries and notices with respect thereto, any day.

(i) “Calculation Agent” has the meaning specified in the Re-Pricing Agreement.

(j) “Cf” means cubic foot of Gas, defined as the amount of Gas required to fill a cubic foot of space when the Gas is at an absolute pressure of 14.73 pounds per square inch absolute and at a temperature of 60 degrees Fahrenheit.

(k) “Code” means the Internal Revenue Code of 1986, as amended, 26 U.S.C. §1 *et seq.* References herein to the Code or to a section of the Code include the U.S. Treasury Regulations thereunder.

(l) “Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any decision, purchase, sale or other action required to be made, attempted or taken by a Party under this Agreement, such decision or efforts as a reasonably prudent Person would make or undertake, as the case may be, for the protection of its own interest under the conditions affecting such decision, purchase, sale or other action. For the avoidance of doubt, the reasonableness of any action taken by a Party under this Agreement shall be determined at the time of such action, taking into full account the facts, circumstances and competitive environment surrounding such action.

(m) “Commodity” means Gas or Electricity.

(n) “Commodity Swap” means (i) the ISDA Master Agreement, together with the Schedule thereto and a related Confirmation, each between Seller and Axpo U.S. LLC and BP Energy Company, (ii) the ISDA Master Agreement, together with the Schedule thereto and a related Confirmation, each between Seller and Axpo U.S. LLC and BP Energy Company, and (iii) each replacement commodity swap entered into pursuant to the Prepaid Gas Agreement.

(o) “Commodity Swap Counterparty” means BBE’s counterparties under the Commodity Swaps, which initially shall be Axpo U.S. LLC and BP Energy Company.

(p) “Contract Price” means the price per MMBtu described in Section 4.1.

(q) “Daily Contract Quantity” or “DCQ” means, for each Month, the quantity of Gas in MMBtu that shall be delivered by Seller to Purchaser and received by Purchaser from Seller each Gas Day during such Month, as set forth in and may be adjusted pursuant to Exhibit B.

(r) “Delivery Period” is defined in Section 2.1.

(s) “Delivery Point” is defined in Section 3.1.

(t) “Delivery Point Premium” means the applicable delivery point premium specified in Exhibit B.

(u) “Delivery Year” means a period of 12 consecutive Months beginning at the beginning of the first day of April each year and ending immediately prior to the beginning of the first day of April in the next calendar year.

(v) “Electricity” means three-phase, 60-cycle alternating current electric energy, expressed in MWh.

(w) “Event of Insolvency” means with respect to any Person the occurrence and continuance of one or more of the following events: (a) the issuance, under the laws of the

state or other jurisdiction having primary regulatory authority over such Person or any successor provision thereto (or any other law under which such Person is at the time organized), of an order for relief, rehabilitation, reorganization, conservation, liquidation or dissolution of such Person that is not dismissed within 30 days; (b) the commencement by such Person of a voluntary case or other proceeding seeking an order for relief, liquidation, rehabilitation, conservation, reorganization or dissolution with respect to itself or its debts under the laws of the state or other jurisdiction of incorporation or formation of such Person or any bankruptcy, insolvency or other similar law now or hereafter in effect including, without limitation, the appointment of a trustee, receiver, liquidator, custodian or other similar official for itself or any substantial part of its property; (c) the consent of such Person to any relief referred to in the preceding clause (b) in an involuntary case or other proceeding commenced against it; (d) the appointment of a trustee, receiver, liquidator, custodian or other similar official for such Person or any substantial part of its property by a Government Agency or authority having the jurisdiction to do so; (e) the making by such Person of an assignment for the benefit of creditors; (f) the failure of such Person generally to pay its debts or claims as they become due; (g) the Person shall admit in writing its inability to pay its debts when due; (h) the declaration of a moratorium with respect to the payment of the debts of such Person; or (i) the initiation by such Person of any action to authorize any of the foregoing.

(x) “Failed Remarketing” has the meaning specified in the Bond Indenture.

(y) “FERC” means the Federal Energy Regulatory Commission and any successor thereto.

(z) “FERC Gas Tariff” means the interstate pipeline tariff filed by a Transporter pursuant to FERC regulations and approved by FERC, as amended from time to time.

(aa) “Firm” means that performance by a Person may be interrupted without liability only to the extent that such performance is prevented by reasons of Force Majeure with respect to such Person asserting Force Majeure.

(bb) “Force Majeure” is defined in Section 13.2.

(cc) “Gas” means natural gas or any other mixture of hydrocarbon gases, or of hydrocarbons and liquids or liquefiables, or of hydrocarbons and non-combustible gases, consisting predominantly of methane.

(dd) “Gas Day” means a period of 24 consecutive hours beginning at 9:00 a.m. Central Prevailing Time (“CPT”) on a calendar day and ending at 9:00 a.m. CPT on the next calendar day. The date of the Gas Day shall be the date at its beginning. If, through standardization of business practices in the industry or for any other reason, a Transporter, or the FERC with general applicability, changes the definition of Gas Day, such change shall apply to the definition of Gas Day in this Agreement with respect to such Transporter or generally, as applicable.

(ee) “Government Agency” means the United States of America, any state or commonwealth thereof, any local jurisdiction, any political subdivision of any of the foregoing, and any other division of government of any of the foregoing, including but not limited to courts, administrative bodies, departments, commissions, boards, bureaus, agencies, municipalities, or instrumentalities.



(ff) “Imbalance Charges” means any fees, penalties, costs or other charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter’s balancing, scheduling and/or nomination requirements based on such Transporter’s FERC Gas Tariff.

(gg) “Index Price” means the Monthly market index price described in Section 4.2, and any substitute index price determined under Section 4.2.

(hh) “Initial Discount Period” means the period from and including April 1, 2022 to and including \_\_\_\_\_, 20[ ].

(ii) “J. Aron” is defined in the Recitals.

(jj) “Maturity Date of the Bonds” means the Final Maturity Date of the Bonds, as defined in the Bond Indenture.

(kk) “Mcf” means 1,000 cubic feet of Gas.

(ll) “Minimum Discount” means 24 cents per MMBtu for the Initial Discount Period, and thereafter an amount that would ensure the Available Discount realized from the Initial Discount Period through the end of such Reset Period, excluding any Reset Period for which FGU delivered a Remarketing Election Notice under the Project Participant Agreement, to be an average of no less than 15.2 cents per MMBtu, but in any event no less than 13.6 cents per MMBtu, and in every case includes the Monthly Discount plus the projected Annual Refund.

(mm) “MMBtu” means 1,000,000 Btu, which is equivalent to one dekatherm.

(nn) “Month” means the period beginning at the beginning of the first Gas Day of a calendar month and ending at the beginning of the first Gas Day of the next calendar month. The term “Monthly” shall be construed accordingly.

(oo) “Monthly Discount” means (i) for each Month of the Initial Discount Period, \_\_\_cents (\$0.\_\_\_)<sup>1</sup> per MMBtu, and (ii) for each Month of a Reset Period thereafter, eighty percent (80%) of the net Monthly Discount (following payment of all administrative fees to BBE including, without limitation, the Project Administration Fee) as determined in accordance with the Re-Pricing Agreement and available to FGU under its Project Participant Agreement, which shall set forth in an updated Exhibit C provided by Seller after such determination.

(pp) “Municipal Utility” means any Person that (i) is a governmental person as defined in the implementing regulations under Section 141 of the Code and any successor provision, (ii) owns either or both a Gas distribution utility or an electric distribution utility (or provides Gas or Electricity at wholesale to, or that is sold to entities that provide Gas or Electricity at wholesale to, governmental Persons that own such utilities), and (iii) agrees in writing to use the Gas purchased by it (or cause such Gas to be used) for a qualifying use as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii).

(qq) “Net Remarketing Proceeds” means (i) the actual amounts, if any, received by FGU under the Project Participant Agreement from the sale of Gas that BBE is able to remarket or cause to be remarketed following a loss of load under Section 4.3 or as a result of Purchaser’s failure to receive Gas pursuant to Section 6.2, less (ii) all directly incurred costs or expenses, including but not limited to remarketing and administrative fees paid to BBE under the Project Participant Agreement, provided that in no event shall the Net Remarketing Proceeds for any Gas exceed the quantity of such Gas multiplied by the Contract Price for such Gas.

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<sup>1</sup> This will be 80% of the final Monthly Discount available to FGU.

(rr) “Non-Priority Gas” means Gas, other than (i) Priority Gas and (ii) Gas to be delivered under this Agreement, that Purchaser is obligated or has the right to take under an agreement.

(ss) “Notice of Termination” has the meaning specified in Section 5.2.

(tt) “Person” means any individual, public or private corporation, partnership, limited liability company, state, county, district, authority, municipality, political subdivision, instrumentality, partnership, association, firm, trust, estate, or any other entity or organization whatsoever.

(uu) “Prepaid Agreement” is defined in the Recitals.

(vv) “Prepaid Project” is defined in the Recitals.

(ww) “Prepay LLC” is defined in the Recitals.

(xx) “Primary Delivery Point” is defined in Section 3.1.

(yy) “Prime Rate” means, for any day of determination, the fluctuating rate per annum equal to the "Prime Rate" listed daily in the "Money Rates" section of The Wall Street Journal on such day (or if such day is not a Business Day, the preceding Business Day), or if The Wall Street Journal is not published on a particular Business Day, then, the "prime rate" published in any other national financial journal or newspaper selected by Prepay LLC in its reasonable judgment, and if more than one such rate is listed in the applicable publication, the highest rate shall be used; any change in the Prime Rate shall take effect on the date specified in the announcement of such change.

(zz) “Priority Commodities” means Priority Gas and Priority Electricity.

(aaa) “Priority Electricity” means Electricity that Purchaser is obligated to take under a long-term agreement that provides for the purchase and sale of Electricity under a transaction using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from income for federal income tax purposes.

(bbb) “Priority Gas” means Gas that Purchaser, prior to the date hereof, is obligated to take under a long-term agreement, which Gas either has been purchased (or has been produced from Gas reserves in the ground which reserves were purchased) by Purchaser or a joint powers authority using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from income for federal income tax purposes pursuant to a long-term prepaid gas purchase agreement.

(ccc) “Project Administration Fee” means the administrative fee payable by FGU to BBE under the Project Participant Agreement.

(ddd) “Project Participants” is defined in the Recitals.

(eee) “Purchaser” is defined in the Preamble.

(fff) “Purchaser’s Transporter” means the Transporter receiving Gas on Purchaser’s behalf at the Delivery Point.

(ggg) “Qualifying Use Requirements” means, with respect to any Commodity delivered under this Agreement, such Commodity is used (i) for a “qualifying use” as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii), (ii) in a manner that will not result in any “private business use” within the meaning of Section 141 of the Code, and (iii) in a manner that is consistent with the Federal Tax Certificate attached as Exhibit D.

(hhh) “Remarketing Election” is defined in Section 5.3(a).

(iii) “Remarketing Election Notice” is defined in Section 5.3(b).

(jjj) "Remarketing Event" is defined in Section 5.3(a).

(kkk) "Re-Pricing Agreement" means the Re-Pricing Agreement, dated as of \_\_\_\_\_ 1, 2021, by and between Prepay LLC and BBE, as amended or supplemented from time to time in accordance with its terms.

(lll) "Reset Period" means each five-year period (or such longer or shorter period as may be agreed to by BBE and Prepay LLC pursuant to the Re-Pricing Agreement) commencing on the last day of the Initial Discount Period or prior Reset Period, as the case may be, and ending on the fifth anniversary (or such later or earlier anniversary, as the case may be) of such last day; *provided* that the final Reset Period shall be the period from the last day of the prior Reset Period to the Maturity Date of the Bonds.

(mmm) "Transporter" means all Gas gathering or pipeline companies transporting Gas for Seller or Purchaser upstream or downstream, respectively, of the Delivery Point.

(nnn) "Trustee" means the Trustee under the Bond Indenture, which initially shall be Regions Bank, and its successors as trustee under the Bond Indenture.

## ARTICLE II

### SERVICE OBLIGATIONS

#### 2.1 Gas Supply Service.

(a) This Agreement shall not become effective until (i) FGU shall have entered into the Gas Supply Agreement with BBE; (ii) BBE shall have entered into the Prepaid Gas Agreement and shall have issued the Bonds; (iii) Seller shall have received all necessary authorizations to enter into and perform under this contract by no later than October 7, 2021; and

(iv) Purchaser shall have received all necessary authorizations to enter into and perform under this contract by no later than September 20, 2021.

(b) Provided that the conditions precedent in Section 2.1(a) are satisfied, Gas supply service under this Agreement shall commence on April 1, 2022 and shall continue, subject to the early termination provisions of Article V, until either: (i) the date upon which Purchaser's Notice of Termination of this Agreement becomes effective; or (ii) the Maturity Date of the Bonds (the "Delivery Period"). Subject to Article V, and provided that FGU delivers the applicable Daily Contract Quantity, Seller for each Gas Day on a Firm basis shall tender for delivery to Purchaser at the Delivery Point, and Purchaser for each Gas Day on a Firm basis shall purchase and receive from Seller at the Delivery Point, the applicable Daily Contract Quantity of Gas set forth for each Month in Exhibit B.

(c) The Parties recognize and agree that, in order to achieve a successful remarketing of the Bonds following the Initial Discount Period, it may be necessary to reduce the Daily Contract Quantity in a Reset Period following the Initial Discount Period pursuant to the re-pricing methodology described in the Re-Pricing Agreement, in which case it shall be so reduced. The Parties agree further that if, pursuant to the Re-Pricing Agreement, BBE and the Calculation Agent determine in connection with the establishment of any new Reset Period that: (i) such Reset Period will be the final Reset Period because no remaining gas value (as described in the Re-Pricing Agreement) will remain following such Reset Period; and (ii) such Reset Period will end prior to the end of the Delivery Period, then (A) the Delivery Period will be deemed to be modified so that it ends at the end of such Reset Period, and (B) the Daily Contract Quantity for the last Month in such Reset Period may be reduced as provided in the Re-Pricing Agreement.

### ARTICLE III

#### **RECEIPT AND DELIVERY POINTS**

3.1 Delivery Point. All Gas delivered under this Agreement shall be delivered and received at the point of delivery specified in Exhibit A (the “Primary Delivery Point”); or to any other point of delivery (an “Alternate Delivery Point”) that has been mutually agreed to in writing by Seller and Purchaser (each Primary Delivery Point or Alternate Delivery Point, if specified, being a “Delivery Point”).

3.2 Transfer of Title. Purchaser shall take title to all Gas delivered to it by Seller at the Delivery Point and shall own such Gas and shall assume all risk of loss following its transfer at the Delivery Point.

### ARTICLE IV

#### **PRICING OF GAS SUPPLY SERVICES**

4.1 Charge Per MMBtu Delivered. For each MMBtu of Gas delivered by Seller to Purchaser, Purchaser shall pay Seller the Contract Price for such Gas, which shall be the applicable Index Price, as defined in Section 4.2, less the Monthly Discount, plus any Delivery Point Premium as specified on Exhibit B. Purchaser shall not be charged for any Gas that is not tendered for delivery by Seller. Notwithstanding the foregoing, the Parties recognize and agree that the pricing specified in Section 5.3 shall apply to any Gas deliveries made by Seller following a Failed Remarketing under the Prepaid Agreement.

4.2 Index Price. The Index Price for any Month shall mean the price per MMBtu, stated in U.S. dollars, as published in the first issue for the Month (including corrections thereto in later issues) in which the event occurred that required calculation of the Index Price, of

*Inside FERC's Gas Market Report*, a publication of S&P Global Platts, a division of S&P Global, in the section "Monthly Bidweek Spot Gas Prices – Platts Locations (\$/MMBtu)", under the heading "Louisiana/Southeast" (or any successor heading) and "Southern Natural, La." under the column "Index", as applicable and identified on Exhibit B. If *Inside FERC's Gas Market Report* should cease to publish such first-of-the-month index prices or should cease to be published entirely, the Index Price shall be the price per MMBtu, stated in U.S. dollars, for Gas to be delivered at the Delivery Point during the applicable Month as set forth in an alternative index as determined under Section 18.11 of the Prepaid Agreement.

#### 4.3 Remarketing Upon Load Loss.

(a) Temporary Load Loss. In the event Purchaser does not require all or any portion of the Daily Contract Quantity that it is obligated to purchase under this Agreement as a result of a temporary reduction in requirements for Gas due to a change in Purchaser's generation requirements (including as a result of increased purchases of renewable generation or economic dispatch of non-Gas-fired generation), then, in either case, Purchaser may provide notice to Seller, FGU and BBE and BBE shall, upon reasonable notice from Purchaser, use Commercially Reasonable Efforts, to the extent permitted in the Prepaid Agreement, to arrange for the sale of such quantities by Prepay LLC to another purchaser or purchasers. Seller shall credit the Net Remarketing Proceeds against the amounts owed by Purchaser under this Agreement. Purchaser shall not be required to reduce its takes of Priority Gas in order to request remarketing under this Section 4.3 (a), but Purchaser shall be required to fully reduce its takes of all Non-Priority Gas prior to requesting remarketing under this Section 4.3(a).

(b) Permanent Load Loss. In the event Purchaser does not require all or any portion of the Daily Contract Quantity that it is obligated to purchase under this Contract as a



result of the permanent loss of gas-fired electric generation facilities (evidenced by the Purchaser's governing body taking such action which has the effect of approving, consenting to, or acquiescing in the cessation of operation of natural gas-fired generation for the Remaining Term); (ii) a permanent reduction in requirements for Gas due to a change in the Purchaser's generation requirements (including as a result of increased purchases of renewable generation or economic dispatch of other non-Gas-fired generation); or (iii) legislative or regulatory imposition of requirements upon Purchaser related to climate change, reduction in greenhouse gas emissions, or other environmental concerns that has the effect of requiring Purchaser to change its generation portfolio mix to include less fossil fuel-dependent generation resources or pay an additional charge, tax, or penalty for continuing to operate or rely upon fossil fuel-dependent generation resources (respectively, which shall be deemed by the Parties to have occurred if the Purchaser must reduce fossil fuel-dependent generation resources such that its needs for Gas under this Agreement are either reduced or eliminated and the Purchaser's reasonably projected Gas needs from such units are less than the total quantity of Priority Gas/Commodities allocable to the Purchaser); then, Purchaser may give notice to Seller, FGU, and BBE of the permanent reduction of such quantities from its Daily Contract Quantity for the Remaining Term. If BBE is reasonably satisfied that such loss of need for Gas is permanent, which determination shall not be unreasonably withheld, conditioned, or delayed, then Seller will, six months following the receipt of notice from Purchaser, reduce Purchaser's DCQ as of the date of such permanent reduction for the remainder of the Delivery Period and BBE shall arrange for the sale of such quantities by Prepay LLC to another purchaser or purchasers. Purchaser shall not be required to reduce its takes of Priority Gas in order to request remarketing under this Section 4.4(b), but

Purchaser shall be required to fully reduce its takes of all Non-Priority Gas prior to requesting remarketing under this Section 4.4(b). As used in this Section 4.4(b), “permanent” means a period of time, commencing as of the delivery of Purchaser’s notice under this section, that lasts for at least as long as the Remaining Term.

4.4 Annual Refunds. In addition to the Monthly Discount applicable to deliveries of the Daily Contract Quantity to Purchaser under this Agreement, Seller (or FGU or BBE on behalf of Seller) shall, provide the Annual Refund to Purchaser following the release of such funds under the Bond Indenture. On the date of this Agreement, the projected Annual Refund for the Initial Discount Period is \_\_ cents (\$0.\_\_) per MMBtu.<sup>2</sup>

## ARTICLE V

### TERM

5.1 Primary Term. This Agreement shall be effective as of the Effective Date and shall be implemented as appropriate to effectuate purchases and sales of Gas under this Agreement for deliveries commencing on the first day of the Delivery Period and shall continue for an initial term ending on March 31, 2027 (the “Initial Term”).<sup>3</sup> Unless earlier terminated in accordance with Section 5.3, this Agreement thereafter shall remain in full force and effect though either: (i) the date on which Purchaser’s Notice of Termination becomes effective consistent with the requirements of Section 5.2 of this Agreement; (ii) the Maturity Date of the Bonds; or (iii) the effective date of any Remarketing Election Notice issued by FGU under its

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<sup>2</sup> This will be 80% of the projected Annual Discount to FGU under its Participant Agreement.

<sup>3</sup> NTD: In the event the Initial Discount Period ends prior to March 31, 2027, the Initial Term specified here will be shortened to be coterminous with the end of such Initial Discount Period.

Project Participant Agreement with BBE, and, in all cases, subject to all winding up arrangements as described in Section 5.5.

5.2 Notice of Termination. Purchaser shall have the right to terminate this Agreement by providing written notice consistent with the requirements of this Section 5.2 and, thereafter, this Agreement shall terminate as of the date specified in such notice subject to all winding up arrangements as described in Section 5.5 (a “Notice of Termination”). Any Notice of Termination must specify a termination date that is not less than twelve (12) months from the date on which written notice is delivered, provided, however, that no termination shall be effective prior to the end of the Initial Term. Furthermore, upon the commencement of a Reset Period for which the Minimum Discount has been achieved or for which FGU has not submitted a Remarketing Election Notice under its Project Participant Agreement, the term of this Agreement shall be extended for a five (5) year period unless such Reset Period is less than five (5) years in which case this Agreement shall be extended for the duration of such Reset Period (“Extended Term”). During any Extended Term, no termination shall be effective prior to the end of the Extended Term. However, Purchaser reserves the right to issue a Notice of Termination not less than twelve (12) months from the date of which written notice is delivered to Seller, which specifies an effective date that coincides with the end of any Extended Term. By way of example, upon the commencement of a Reset Period with a duration of seven (7) years, Purchaser shall extend this Agreement for a period of five (5) years during which it may not terminate this Agreement. Purchaser may, however, provide Seller with a Notice of Termination specifying a termination date at the end of the Extended Term, subject to the

conditions specified in this Section 5.2 Any Notice of Termination shall be in the form attached as Exhibit G and delivered to each of Seller, FGU, Prepay LLC and BBE.

5.3 Early Termination Before End of Primary Term. Notwithstanding Section 5.1, Purchaser acknowledges and agrees that (i) in the event FGU's Project Participant Agreement terminates prior to the end of the term of this Agreement, this Agreement shall terminate on the date of early termination of the Project Participant Agreement (subject to all winding up arrangements) and (ii) Seller's obligation to deliver Gas under this Agreement shall terminate upon the termination of deliveries of Gas to FGU under its Project Participant Agreement. In addition, Purchaser acknowledges and agrees that this Agreement may terminate early as a result of a default by Purchaser under Article XIV. Seller shall provide notice to Purchaser of any early termination date. Moreover, the Parties recognize and agree that, in the event that the Prepaid Agreement terminates because of a Failed Remarketing of the Bonds that occurs in the first Month of a Reset Period, Seller shall deliver Gas under this Agreement for the remainder of such first Month, and, notwithstanding anything in this Agreement to the contrary, the Contract Price for all Gas deliveries made by Seller during such first Month shall be the applicable Index Price identified for deliveries in Section 4.2, with no Monthly Discount and no Annual Refunds associated with such deliveries.

5.4 Remarketing Election; Suspension and Resumption of Deliveries.

The Parties acknowledge and agree that, in the event the estimated Available Discount for a Reset Period is not at least equal to the Minimum Discount for that Reset Period (a "Remarketing Event") FGU will have the right, consistent with the terms of its Project Participant Agreement, to suspend deliveries of Gas for the duration of such Reset Period and the Daily Contract Quantity for such Reset Period shall be zero MMBtu per day. In the event that

FGU exercises such right (a “Remarketing Election”), the Parties’ obligations to deliver and receive Gas under this Agreement shall also be suspended for the duration of such Reset Period and the Daily Contract Quantity for such Reset Period shall be zero MMBtu per day. In the event that Gas deliveries are suspended following a Remarketing Election made by FGU, the Parties acknowledge and agree that deliveries will resume if under this Agreement if, in any future Reset Period, Purchaser has not issued a valid Notice of Termination with an effective date prior to the commencement of such Reset Period; and, (i) the Available Discount calculated for such Reset Period is equal to or exceeds the Minimum Discount applicable to such Reset Period; or (ii) FGU agrees to resume deliveries under its Project Participant Agreement for such future Reset Period with a discount less than the applicable Minimum Discount.

5.5 Winding Up Arrangements. The termination of this Agreement shall not relieve either Party of any obligation to pay amounts due under this Agreement for periods prior to the termination date, including all interest, costs and indemnity obligations, or to effectuate all winding up arrangements, or to take any other actions as may be necessary to effectuate all of the terms of this Agreement. For the avoidance of doubt, Purchaser shall not be responsible for the payment of more than the Contract Price for Gas deliveries as a result of any winding up arrangements.

## **ARTICLE VI**

### **FAILURE TO PERFORM**

6.1 Cost of Replacement Gas. Except in cases of Force Majeure, for each MMBtu that Seller is obligated to deliver to Purchaser under this Agreement but fails to deliver, Seller shall pay to Purchaser an amount equal to the difference between the price per MMBtu which would have been applicable to the undelivered Gas under Article IV and any higher cost per

MMBtu which Purchaser actually incurred to obtain an equivalent quantity of replacement Gas, including but not limited to any incremental charges associated with the transportation and storage of such replacement Gas, exercising Commercially Reasonable Efforts to obtain such replacement Gas and alternate transportation at a Commercially Reasonable price. For purposes of this Section 6.1, replacement Gas includes without limitation Gas withdrawn from storage, liquefied natural gas, and peak shaving, and costs associated with obtaining such Gas include without limitation storage withdrawal and injection costs, storage fuel, and liquefaction and vaporization costs for stored liquefied natural gas; provided, however, that for purposes of the foregoing the price of any such replacement Gas withdrawn from storage shall be the market price applicable to such Gas at the time of the withdrawal.

6.2 Obligation to Take the Daily Quantity. Subject to the operation of Section 4.4 governing load loss, which shall apply to an inability to take by Purchaser as a result of a loss of load as set forth in that Section, if on any Gas Day Seller tenders the Daily Contract Quantity for delivery to Purchaser and Purchaser fails to take the Daily Contract Quantity, Purchaser shall remain obligated to pay Seller the Contract Price for the Daily Contract Quantity. Seller shall credit to Purchaser's account any Net Remarketing Proceeds that FGU may receive from BBE under the Project Participant Agreement in connection with the remarketing of such Gas.

6.3 No Consequential or Special Damages. Neither Party shall be liable for consequential, incidental, special, or punitive damages or losses which may be suffered by the other as a result of the failure to deliver or take or pay for the required quantities of Gas under this Agreement.

6.4 Imbalances. The Parties shall use Commercially Reasonable Efforts to avoid the imposition of any Imbalance Charges. If Seller or Purchaser receives an invoice from a

Transporter that includes Imbalance Charges related to the obligations of either Party under this Agreement, the Parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Purchaser's takes of quantities of Gas greater than or less than the Daily Contract Quantity at any Delivery Point, then Purchaser shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's deliveries of quantities of Gas greater than or less than the Daily Contract Quantities at any Delivery Point, then Seller shall pay for such Imbalance Charges or reimburse Purchaser for such Imbalance Charges paid by Purchaser. Notwithstanding the provisions of Sections 6.1 and 6.2, the Parties may mutually agree to make up any differences between the Daily Contract Quantity and the quantity delivered or taken on any Gas Day in kind.

## **ARTICLE VII**

### **RESPONSIBILITY FOR TRANSPORTATION**

7.1 General Responsibility. Seller shall make all arrangements for transportation services required to effect the delivery of the Daily Contract Quantity to the Delivery Point. Purchaser shall take all actions and be responsible for making all arrangements required to effect the transportation of the Daily Contract Quantity from the Delivery Point, including but not limited to all nominations, scheduling, balancing, and associated management and administrative functions. Seller shall bear all costs and expenses of transportation prior to the delivery of the Daily Contract Quantity at the Delivery Point. Purchaser shall bear all costs of transportation at and after the delivery of Gas to the Delivery Point.

## **ARTICLE VIII**

### **DELIVERY REQUIREMENTS**

8.1 Specifications. All Gas delivered under this Agreement shall be merchantable and shall, upon delivery, conform to the quality specifications and heating value specified in Purchaser's Transporter's FERC Gas Tariff.

8.2 Pressure. All Gas sold by Seller to Purchaser under this Agreement shall be delivered to Purchaser at the pressure maintained from time to time in Purchaser's Transporter's facilities at the Delivery Point.

8.3 Measurement. Gas sold under this Agreement shall be measured through Purchaser's Transporter's existing measurement facilities at the Delivery Point in accordance with the provisions of such Transporter's FERC Gas Tariff. The unit of volume for measurement of Gas delivered under this Agreement shall be one Mcf or otherwise as consistent with Transporter's measurement at the Delivery Point. The sales unit of the Gas shall be one MMBtu, established by converting Mcfs measured at the Delivery Point to MMBtus according to the Btu content determined by Transporter on a dry basis at the Delivery Point under Transporter's FERC Gas Tariff. With respect to any measurement of Gas delivered or received under this Agreement at any Delivery Point, the measurement of such Gas (including the definition of Btu used in making such measurement) by the operator of such Delivery Point shall be conclusive.

## **ARTICLE IX**

### **TITLE AND RISK OF LOSS**

Seller warrants the title to all Gas sold to Purchaser under this Agreement. Transfer of custody and title to Gas sold under this Agreement shall pass to and vest in Purchaser at the



Delivery Point. As between the Parties, Seller shall be deemed to be in exclusive control and possession of Gas delivered under this Agreement prior to the time of delivery to Purchaser at the Delivery Point, and Purchaser shall be deemed to be in exclusive control and possession of Gas delivered under this Agreement at and after delivery at the Delivery Point.

## **ARTICLE X**

### **ROYALTIES AND TAXES**

10.1 Royalties and Other Charges. Seller shall pay or cause to be paid any royalties or other sums due on the gathering, handling, and transportation of Gas sold under this Agreement prior to its delivery to Purchaser at the Delivery Point.

10.2 Taxes. The price for Gas sold to Purchaser under this Agreement is inclusive of all production, severance, ad valorem, or similar taxes levied on the production or transportation of the Gas prior to its delivery to Purchaser at the Delivery Point, and all such taxes shall be borne and paid exclusively by Seller; provided, however, that if Purchaser is required to remit such taxes to the collecting authority, Purchaser shall do so and Seller shall credit an amount equal to the taxes so paid against payments otherwise due to Seller under this Agreement. The price for Gas sold to Purchaser under this Agreement does not include any federal, tribal, state, or local sales, use, consumption, utility, storage, greenhouse gas, carbon, license, ad valorem, franchise, or similar taxes imposed by any taxing authority on the sale to, or use by, Purchaser of Gas sold under this Agreement, including without limitation ad valorem taxes on Gas held in storage by Purchaser. Purchaser shall be responsible for the payment of any such applicable taxes, unless otherwise exempt, and for completing and filing all required forms.

## ARTICLE XI

### BILLING AND PAYMENT

11.1 Timing. Not later than ten days following the end of the Month of delivery, Seller (or FGU or BBE on behalf of Seller) shall provide a Monthly billing statement to Purchaser of the amount due for Gas tendered for delivery under this Agreement. Such billing statement shall be provided to Purchaser by hand delivery, first-class mail, express courier, electronic transmission, or facsimile transmission to the address or facsimile number set forth for Purchaser in Article XVIII. The due date for payment by Purchaser to Seller shall be the 19th day of the Month following the Month of delivery. Such due date shall be applicable without regard to the date or source of a billing statement to Purchaser. If the 19th day is not a Business Day, payment is due on the immediately preceding Business Day. Purchaser shall make payment by wire transfer to the account set forth in Article XVIII.

11.2 Late Payment. In the event Purchaser fails to pay an amount when due hereunder, interest thereon shall accrue at a rate of one percent (1.0%) per month on any unpaid balance in accordance with Florida Statute §218.70 et. seq., the Local Government Prompt Payment Act. If Purchaser disputes the appropriateness of any charge or calculation in any billing statement, Purchaser, within the time provided for payment, shall notify Seller of the existence of and basis for such dispute and shall pay all amounts billed by Seller, including any amounts in dispute. If it is ultimately determined that Purchaser did not owe the disputed amount, by agreement or by a final order of a court of competent jurisdiction which is not subject to appeal or concerning which any right to appeal has been waived or which the Parties have irrevocably agreed not to appeal, Seller shall pay Purchaser that amount plus interest as calculated in accordance with this Section 11.2.

11.3 Audit Rights. Each Party shall have the right at its own expense, to examine and audit at any reasonable time the books, records, measurement data, charts, and telemetry data of the other Party to the extent, but only to the extent, necessary to verify the accuracy of any statements or charges made under or pursuant to this Agreement. Any inaccuracy shall be corrected promptly when discovered; provided, however, that neither Party shall be required to maintain books, records, measurement data, charts, or telemetry data for a period of more than two calendar years following the end of the calendar year to which they are applicable. Neither Party shall have a right to question or contest any charge or credit if the matter is not called to the attention of the other Party in writing within 24 Months of the date of the charge or credit in question.

11.4 Operating Expense of Purchaser. Purchaser's obligation to make the payments it is required to make under this Agreement is a several obligation and not a joint obligation with the obligations of any other purchaser of Gas under the Prepaid Project. Purchaser further covenants and agrees: (i) that it shall use all of the Gas it acquires under this Agreement to generate electricity for resale to its retail electric distribution customers; (ii) that it shall charge and collect amounts for retail electric distribution service so as to provide revenues sufficient, together with other available moneys, to enable Purchaser to pay to Seller all amounts payable under this Agreement and to pay all other amounts payable from its operating revenues and to maintain any required reserves; (iii) that it will not create or agree to any lien or prior charge on the amounts that it collects from its retail electric distribution customers that will be used to make its payments under this Agreement; and (iv) that it shall not take an action to institute an Event of Insolvency with respect to Purchaser.

11.5 Financial Responsibility. When reasonable grounds for insecurity of payments due under this Agreement arise, Seller may demand, and Purchaser shall provide within five Business Days if demanded, adequate assurance of performance. Reasonable grounds include but are not limited to the occurrence of an Event of Insolvency with respect to Purchaser or the downgrading of Purchaser's credit rating, if any, by Moody's Investors Service to a level below investment grade, and/or such facts and circumstances which would constitute reasonable grounds for insecurity under Title XXXIX, Chapter 672, Section 609 of the Florida Code. Adequate assurance shall mean sufficient security in the form and for a term reasonably specified by Seller, including but not limited to a standby irrevocable letter of credit, a prepayment, a deposit to an escrow account, or a performance bond or guaranty by a creditworthy entity. The Parties agree that in the event Purchaser fails to provide such adequate assurance as demanded, Seller shall have the right to suspend further deliveries of Gas to Purchaser under this Agreement on three days written notice and shall not be obligated to restore such deliveries until the first day of the Month after such demand has been satisfied; provided, however, that Seller shall not be obligated to restore such deliveries notwithstanding the satisfaction of such demand until the completion of the term of deliveries to any replacement sales customer to which Prepay LLC has remarketed the Gas on behalf of Seller.

11.6 No Set-Off. Payment for all amounts set forth in a billing statement provided to Purchaser pursuant to Section 11.1 shall be made without set-off or counterclaim of any kind.

## **ARTICLE XII**

### **LAWS AND REGULATIONS**

This Agreement is subject to all valid laws, orders, rules, regulations, or other governmental actions of any duly constituted federal, state, or local governmental authority, to

the extent such laws, orders, rules, and regulations are applicable and effective from time to time; provided, however, that no such action by Purchaser's or Seller's governing body may affect that Party's obligations and rights under this Agreement.

### **ARTICLE XIII**

#### **FORCE MAJEURE**

13.1 Suspension of Obligations. Except with regard to a Party's obligation to make payments under this Agreement, neither Party shall be liable to the other for failure to perform an obligation to the extent such failure was caused by Force Majeure, as defined in Section 13.2.

13.2 Force Majeure Defined. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the Party claiming suspension, as further defined in this Section 13.2. The term "Force Majeure" shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes or tornadoes, which result in evacuation of the affected area, floods, washouts, explosives, or breakage of or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of transportation and/or storage by Transporters (provided that if the affected Party is using interruptible or secondary Firm transportation, only if primary, in-path, Firm transportation is also curtailed by the same event, or, if the relevant Transporter does not curtail based on path, if primary Firm transportation is also curtailed); (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage,

insurrections, wars or acts of terror; (v) governmental actions, such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a Government Agency having jurisdiction; and (vi) any invocation of Force Majeure by Prepay LLC under the Prepaid Agreement. Seller and Purchaser shall make Commercially Reasonable Efforts to avoid the adverse impacts of a Force Majeure event or occurrence and to resolve the event or occurrence once it has occurred in order to resume performance.

13.3 Force Majeure Exclusions. Neither Party shall be entitled to the benefits of a claim of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the Party claiming excuse failed to remedy the condition and to resume the performance of its obligations with reasonable dispatch; (ii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price, Purchaser's ability to purchase Gas at a lower or more advantageous price, or a Government Agency disallowing, in whole or in part, the pass-through of costs resulting from this Agreement; or (iii) the loss of Purchaser's markets or Purchaser's inability to resell Gas purchased under this Agreement, except, in either case, as provided in Section 13.2. Purchaser shall not be entitled to the benefit of the provisions of Force Majeure to the extent performance is adversely affected by any action taken by Purchaser in its governmental capacity. The Party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

13.4 Settlement of Labor Disputes. Notwithstanding anything to the contrary in this Agreement, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance.

13.5 Force Majeure Procedure. The Party whose performance is prevented by Force Majeure must provide notice to the other Party as soon as practicable. Initial notice may be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notice of Force Majeure to the other Party, the affected Party will be relieved of its obligation, from the onset of Force Majeure, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither Party shall be deemed to have failed in such obligations to the other during such occurrence or event.

## **ARTICLE XIV**

### **DEFAULT**

14.1 Failure by Purchaser to Make Payments Due. Failure by Purchaser to make to Seller when due any of the payments for which provision is made in this Agreement shall constitute a default on the part of Purchaser.

14.2 Enforcement and Right to Discontinue Service. In the event of any default under Section 14.1, Seller shall have the right to recover from Purchaser any amount in default. In enforcement of any such right of recovery, Seller may bring any suit, action, or proceeding at law or in equity, including without limitation mandamus, injunction and action for specific performance, as may be available to Seller to enforce any covenant, agreement, or obligation to make any payment for which provision is made in this Agreement, and Seller in its sole discretion may, upon three days written notice to Purchaser, cease and discontinue providing delivery of all or any portion of the Gas otherwise to be delivered to Purchaser at the Delivery Point under this Agreement. In the event Seller takes all or any of the actions authorized by this

Section 14.2, Purchaser shall remain fully liable for payment of all amounts in default and shall not be relieved of any of its payment obligations under this Agreement.

14.3 Reinstatement of Service. If Seller exercises its right to discontinue providing Gas deliveries to Purchaser under Section 14.2, such Gas deliveries may only be reinstated upon (i) payment in full by Purchaser of all amounts then due and payable under this Agreement and (ii) payment in advance by Purchaser at the beginning of each Month of amounts estimated by Seller to be due to Seller for the future delivery of Gas under this Agreement for such Month.

14.4 Other Default by Purchaser. In the event of a failure by Purchaser to establish, maintain, or collect rates or charges adequate to provide revenues sufficient to enable Purchaser to pay all amounts due to Seller under this Agreement, or in the event of a failure by Purchaser to take from Seller its Gas supplies in accordance with the provisions of this Agreement, or in the event of any default by Purchaser under any other covenant, agreement, or obligation in this Agreement, Seller (without limiting the provisions of Section 14.6) may bring any suit, action, or proceeding at law or in equity, including without limitation mandamus, injunction, and action for specific performance, as may be available to Seller to enforce any covenant, agreement, or obligation of Purchaser in this Agreement.

14.5 Default by Seller. In the event of a default by Seller under any covenant, agreement, or obligation in this Agreement, Purchaser (without limiting the provisions of Section 14.6) may bring any suit, action, or proceeding at law or in equity, including without limitation mandamus, injunction, and action for specific performance, as may be available to Purchaser to enforce any covenant, agreement, or obligation in this Agreement against Seller.



14.6 Mediation. Notwithstanding any other provision of this Agreement to the contrary, the Parties by mutual written agreement may agree to mediate any dispute that arises under this Agreement.

14.7 Third Party Beneficiaries. It is agreed that there are no third-party beneficiaries of this Agreement and that this Agreement shall not impart any rights enforceable by any Person not a party to this Agreement.

#### **ARTICLE XV**

**[RESERVED]**

#### **ARTICLE XVI**

##### **WAIVERS**

No waiver by either Seller or Purchaser of any default of the other under this Agreement shall operate as a waiver of any future default, whether of like or different character or nature.

#### **ARTICLE XVII**

##### **SUCCESSION AND ASSIGNMENT**

The terms and provisions of this Agreement shall extend to and be binding upon the Parties and their respective successors, assigns, and legal representatives; provided, however, that neither Party may assign this Agreement or its rights and interests, in whole or in part, under this Agreement as set forth in this Article XVII without the prior written consent of the other Party. Prior to assigning this Agreement, Purchaser shall deliver to Seller (i) written confirmation from Moody's Investors Service, provided that such agency has rated and continues to rate the Bonds, that the assignment will not result in a reduction, qualification, or withdrawal of the then-current ratings assigned by Moody's Investors Service, to the Bonds; or (ii) written

confirmation from Moody's Investors Service, provided that it has rated the Bonds, that the assignee has an outstanding long-term senior, unsecured, unenhanced debt rating equivalent to or higher than the ratings assigned by Moody's Investors Service to the Bonds. Whenever an assignment or a transfer of a Party's interest in this Agreement is requested to be made with the written consent of the other Party, the assigning or transferring Party's assignee or transferee shall expressly agree to assume, in writing, the duties and obligations under this Agreement of the assigning or transferring Party. Upon the agreement of a Party to any such assignment or transfer, the assigning or transferring Party shall furnish or cause to be furnished to the other Party a true and correct copy of such assignment or transfer and assumption of duties and obligations.

## **ARTICLE XVIII**

### **NOTICES**

Except as is otherwise specifically provided in this Agreement, any notice, request, demand, or statement provided for in this Agreement must be given in writing and delivered in person, by United States mail, or by express courier to the respective Parties at the addresses shown below or at such other addresses as may hereafter be furnished to the other Party in writing, and all payments due from Purchaser under this Agreement shall be made by wire transfer to the account for payments set forth below:

**Seller:**

Clearwater Gas System  
777 Maple Street  
Clearwater, FL 33755  
Attn: Brian Langille, Gas System Assistant Director  
Phone (727) 562-4911  
Fax (727) 462-6211  
Email – [brian.langille@clearwatergas.com](mailto:brian.langille@clearwatergas.com)

Payments  
Division Controller  
Phone (727) 562-4900 Ext. 7414  
Fax (727) 462-6211  
Email – [gasap@myclearwater.onmicrosoft.com](mailto:gasap@myclearwater.onmicrosoft.com)

Payments:

Institution Wells Fargo Bank  
ABA#: 121000248  
DDA#: 2020050839788  
Account Name: SEI PRIVATE TRUST COMPANY ACF REGIONS BANK  
Originator to Beneficiary Information: CID 1001023691 BBE REV FD 2021  
BIC WFBIUS6S

Purchaser:

Correspondence and notices:

City of Lakeland, Florida  
501 E Lemon Street, Lakeland FL 33801  
Attention: Tory Bombard, Fuels Manager  
Telephone: (863) 834-6207  
Fax: (863) 834-8393  
Email: [Tory.Bombard@lakelandelectric.com](mailto:Tory.Bombard@lakelandelectric.com)

Billing:

Attention: Fuel Department, 501 E Lemon Street, Lakeland FL 33801  
Telephone: (863)834-6207  
Fax: (863)834-8393  
Email: [Fuelinvoices@lakelandelectric.com](mailto:Fuelinvoices@lakelandelectric.com)

Florida Gas Utility:

Correspondence and notices:

Florida Gas Utility  
4619 NW 53rd Avenue  
Gainesville, FL 32653  
Attn: Operations Director

Telephone: 352-334-0770  
Facsimile: 352-334-0789  
Email: [notices@flgas.com](mailto:notices@flgas.com)

BBE:

Correspondence and notices:

The Black Belt Energy Gas District  
P.O. Box 220  
2003 College Avenue  
Jackson, Alabama 36545  
Attention: Kelly Henry, Chief Financial Officer  
Telephone: (251) 751-8635  
Fax: (251) 246-2479  
Email: [khenry@blackbeltenergy.com](mailto:khenry@blackbeltenergy.com)

Any notice initially delivered orally as may be permitted under this Agreement shall be confirmed in writing, and any notice initially delivered by facsimile transmission, email or other electronic means shall be followed by a hard copy sent by first-class mail or express courier within two days after transmission of the facsimile transmission, email or other electronic means.

**ARTICLE XIX**

**CHOICE OF LAW, JURISDICTION AND VENUE**

This Agreement shall be interpreted and construed in accordance with the applicable laws of the State of Florida, excluding conflicts of law principles which would refer to the laws of another jurisdiction. The parties consent to the jurisdiction and venue of the state courts in Polk County, Florida or the United States District Court, in and for the Middle District of Florida, Tampa Division.

**ARTICLE XX**

**MODIFICATIONS**

No modifications of the terms and provisions of this Agreement shall be or become effective except pursuant to and upon the due and mutual execution of a supplemental written amendment by the Parties.

**ARTICLE XXI**

**COMPUTATIONS**

Except as provided herein, all computations related to prices and indices performed under this Agreement shall be rounded to four decimal places (\$0.0000).

**ARTICLE XXII**

**REPRESENTATIONS AND WARRANTIES**

22.1 Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to Purchaser:

(a) Seller is a municipal corporation, duly organized and validly existing under the laws of the State of Florida, and has the power and authority to own its properties, to carry on its business as now being conducted, and to enter into and to perform its obligations under this Agreement.

(b) The execution, delivery, and performance by Seller of this Agreement have been duly authorized by all necessary corporate action of Seller and do not and will not require, subsequent to the execution of this Agreement by Seller, any consent or approval of the governing body or any officers of Seller.

(c) This Agreement is the legal, valid, and binding obligation of Seller, enforceable in accordance with its terms, except as such enforceability may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity and (ii) bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore or hereafter enacted, to the extent constitutionally applicable.

(d) As of the date of this Agreement, there is no pending or, to Seller's knowledge, threatened action or proceeding affecting Seller which purports to affect the legality, validity, or enforceability of this Agreement.

(e) Seller shall deliver to Purchaser as a condition precedent to Purchaser's execution of this Agreement an opinion letter of counsel to Seller, in substantially the form set forth in Exhibit E.

22.2 Representations and Warranties of Purchaser. Purchaser hereby makes the following representations and warranties to Seller

(a) Purchaser is a municipal corporation, duly organized and validly existing under the laws of the State of Florida, and has the power and authority to own its properties, to carry on its business as now being conducted, and to execute, deliver, and perform this Agreement.

(b) The execution, delivery, and performance by Purchaser of this Agreement have been duly authorized by the governing body of Purchaser and do not and will not require, subsequent to the execution of this Agreement by Purchaser, any consent or approval of the governing body or any officers of Purchaser.

(c) This Agreement is the legal, valid, and binding obligation of Purchaser, enforceable in accordance with its terms, except as such enforceability may be subject to (i) the

exercise of judicial discretion in accordance with general principles of equity and (ii) bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore or hereafter enacted, to the extent constitutionally applicable.

(d) As of the date of this Agreement, there is no pending or, to Purchaser's knowledge, threatened action or proceeding affecting Purchaser which purports to affect the legality, validity, or enforceability of this Agreement.

(e) Purchaser shall deliver to Seller as a condition precedent to the effectiveness of this Agreement an officer's certificate to Purchaser in substantially the form set forth in Exhibit F.

(f) Purchaser shall deliver to Seller as a condition precedent to the effectiveness of this Agreement a Federal Tax Certificate in substantially the form set forth in Exhibit D and a Closing Certificate in substantially the form set forth in Exhibit H.

## **ARTICLE XXIII**

### **CERTAIN OBLIGATIONS WITH RESPECT TO BLACK BELT'S BONDS**

23.1 Tax-Exempt Status of Bonds. The Bonds will be issued with the intention that the interest thereon will be exempt from federal taxes under Section 103 of the Code. Accordingly, Purchaser agrees that it will (a) provide such information with respect to its retail electric system as may be requested by Seller (on behalf of BBE) in order to establish the tax-exempt status of the Bonds, and (b) act in accordance with such written instructions as Seller (on behalf of BBE) may provide from time to time in order to maintain the tax-exempt status of the Bonds. Without limiting the foregoing, Purchaser further agrees that it will use all of the Gas and/or Electricity purchased under this Agreement (i) for a "qualifying use" as defined in U.S. Treas.

Reg. § 1.148-1(e)(2)(iii), (ii) in a manner that will not result in any “private business use” within the meaning of Section 141 of the Code, and (iii) consistent with the Federal Tax Certificate attached as Exhibit D. Purchaser agrees that it will provide such additional information, records and certificates as Seller (on behalf of BBE) may reasonably request to confirm Purchaser’s compliance with this Section 23.1.

23.2 Continuing Disclosure. Purchaser agrees to provide to Seller: (a) such financial and operating information as may be requested by BBE including its most recent audited financial statements for use in BBE’s offering documents for the Bonds; and (b) annual updates to such information and statements to enable Seller to comply with its continuing disclosure undertakings under Rule 15(c)2-12 of the United States Securities and Exchange Commission (the “Rule”). Failure by Purchaser to comply with its agreement to provide such annual updates shall not be a default under this Agreement, but any such failure shall entitle Seller or BBE or an owner of the Bonds to take such actions and to initiate such proceedings as may be necessary and appropriate to cause Purchaser to comply with such agreement, including without limitation the remedies of mandamus and specific performance.

23.3 Remediation. The Parties acknowledge that Purchaser may at times need to remarket, or may at times inadvertently remarket, Gas received under this Agreement or, with respect to Electricity generated using Gas received under this Agreement, may sell or utilize the Electricity in a manner that does not comply with the Qualifying Use Requirements needs. To the extent Purchaser does so, Purchaser shall, to the extent possible, use the proceeds of such remarketing to purchase Commodities (other than Priority Commodities) that Purchaser uses in compliance with the Qualifying Use Requirements by not later than the end of the calendar quarter (each calendar quarter, a “Quarter”) in which such proceeds were received. To track



compliance with these requirements, Purchaser shall provide a quarterly report to Seller, FGU, BBE and Prepay LLC (delivered not later than the 15th day of each April, July, October and January until the end of the Delivery Period) (each, a “Quarterly Report”) showing the following:

- (a) The total quantity of Priority Commodities received by Purchaser during such Quarter;
- (b) The total quantity of Priority Commodities sold or used not in compliance with the Qualifying Use Requirements (such quantity as units, “Disqualified Sale Units” and such quantity as value received, “Disqualified Sale Proceeds”).

(c) If, for any Quarter, Purchaser had any Disqualified Sale Proceeds, then such Quarterly Report must also demonstrate whether such Disqualified Sale Proceeds were remediated through the purchase of Commodities (other than Priority Commodities) used in compliance with the Qualifying Use Requirements. In connection therewith, Purchaser shall report the following for any Quarter in which it had Disqualified Sale Proceeds:

- (i) Purchaser’s aggregate system demand for the preceding Quarter;
- (ii) the total quantity (in units and dollars) of Electricity (other than Priority Commodities) purchased by Purchaser during such Quarter from generation not owned or controlled by Purchaser;
- (iii) the total quantity (in units) of Electricity (other than Priority Commodities) generated using capacity owned or controlled by Purchaser during such Quarter;

(iv) the total quantity (in units) of Gas (other than Priority Commodities) used by Purchaser in generating the Electricity described in clause (c); and

(v) the amount of any Disqualified Sale Proceeds received from a “governmental person” as defined in Treasury Regulations Section 1.141-1(b) that agreed in writing to not use any part of such Gas for a “private business use” as defined in Section 141 of the Code.

23.4 Remarketing Reserve Payment. To the extent any Quarterly Report delivered under Section 23.3 does not demonstrate that all Disqualified Sale Proceeds were remediated as described above, then:(a) Such unremediated Disqualified Sale Proceeds and the associated Disqualified Sale Units shall be added to the appropriate remarketing ledgers maintained by Prepay LLC under the Prepaid Agreement, with the ledger entries dated as of the end of the first Month of the relevant Quarter, and

(b) Purchaser shall pay to Seller, for deposit into the Gas Remarketing Reserve Fund (as defined in the Bond Indenture) an amount equal to the applicable Monthly Discount multiplied by the quantity of unremediated Disqualified Sale Units (the number of MMBtus) for such Quarter. That amount shall be due in the Month following delivery of the Quarterly Report on which such Disqualified Sale Units were reported.

23.5 Special Tax Covenant. Purchaser covenants and agrees that, in the event that it issues a Notice of Termination under this Agreement, it shall not purchase any Gas acquired using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from income for federal income tax purposes pursuant to a long-term prepaid gas purchase agreement for the purpose of displacing the Gas purchased pursuant to this Agreement with Gas purchased at a lower price for a period of twenty-four (24) months following the effective date of such

Notice of Termination. Notwithstanding any other provision of this Agreement, the Special Tax Covenant in this paragraph 23.5 shall survive the termination of this Agreement for a period not to exceed twenty-four (24) months.

## **ARTICLE XXIV**

### **EXCHANGES**

24.1 General Rule. Purchaser may effectuate an exchange of Delivery Points for Gas purchased under this Agreement on a daily or Monthly basis under Section 24.2 or Section 24.3; provided, however, that any failure by a third party to perform its obligations under any such exchange arrangement shall not relieve Purchaser of its obligations under this Agreement.

24.2 Description of Exchange Agreement. Purchaser may enter into an exchange agreement with a third party under which Purchaser implements redelivery of the Gas delivered at the Delivery Point (“Point A”) to a delivery point on another pipeline connected with Purchaser’s system (“Point B”). Under such an exchange agreement, Purchaser would deliver Gas at Point A to the exchange counterparty and receive delivery of an equivalent value of Gas at Point B from the exchange counterparty. The equivalent value of Gas at Point B may be taken by Purchaser on the same Gas Day that Gas is delivered at Point A or at any time after such Gas Day within the same or the next succeeding Month. The transaction described in this Section 24.2 is not in itself a “disqualifying use” under federal tax law in effect on the date of this Agreement.

24.3 Exchange Transactions Through a Third Party. In addition to an exchange agreement under Section 24.2, Purchaser may effectuate an exchange of deliveries of Gas at

Point A (as described in Section 24.2) for deliveries at Point B (as described in Section 24.2) by entering into an agreement to provide the exchange through a third party. Under such an agreement, Purchaser would arrange for the delivery of Gas to one party (“Party 1”) at Point A, and the receipt of Gas from another party (“Party 2”) at Point B, either directly or through a commodity exchange such as the Intercontinental Exchange (“ICE”), and bring the arrangements with Party 1 and Party 2 to a third party for the third party to enter into. Purchaser would then enter into an exchange agreement with the third party, as described in Section 24.2 above. The transaction described in this Section 24.3 is not in itself a “disqualifying use” under federal tax law in effect on the date of this Agreement.

## **ARTICLE XXV**

### **INTERPRETATION**

25.1 Entirety of Agreement. This Agreement constitutes the entire agreement between Seller and Purchaser with respect to the sale, delivery, purchase and receipt of the Daily Contract Quantity under the Prepaid Project, and supersedes any and all prior negotiations, understandings, or agreements, whether oral or in writing.

25.2 Headings. The headings used throughout this Agreement are inserted for reference purposes only and shall not be construed or considered in interpreting the terms and provisions of any Section or Article or the Agreement as a whole.

25.3 Severability. If any Article, Section, term, or provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without said Article, Section, term, or provision; provided, however, that if such severability materially changes the economic benefits of this Agreement to either Party, the Parties agree to negotiate promptly an equitable

adjustment to the provisions of the Agreement in good faith so as to place the Parties in as close to the same position as is possible under the circumstances as they were prior to such declaration by the court or other action or event.

25.4 Limited Liability. Seller and Purchaser acknowledge and agree that Purchaser's obligations under this Agreement are limited as expressly described in this Agreement and that Seller has no recourse to any other source of payment from Purchaser except as set forth in Section 11.4 of this Agreement. Seller and Purchaser acknowledge and agree that Purchaser has no recourse to any source of payment from Seller, FGU, or BBE under this Agreement except funds from the Trust Estate as defined in the Bond Indenture, and only to the extent such funds are available to be applied for such purpose in accordance with the Bond Indenture.

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**ARTICLE XXVI**

**COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and each of which shall be deemed to be an original instrument as against a Party that has signed it.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date hereinabove first written.

**CITY OF LAKELAND, FLORIDA**

By: \_\_\_\_\_

Attested By: \_\_\_\_\_

Printed Name: H. William Mutz

Printed Name: Kelly S. Koos

Title: Mayor

Title: City Clerk

Approved as to form and correctness:

By: \_\_\_\_\_

Palmer C. Davis, City Attorney

**CITY OF CLEARWATER, FLORIDA**

By: \_\_\_\_\_

Attested By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Signature Page to the Gas Sales Contract

**EXHIBIT A**  
**DELIVERY POINTS**

For Deliveries on SONAT pipeline:

SONAT Z0 Pool (Primary Meter 611001)



**EXHIBIT B**

**DAILY CONTRACT QUANTITIES/INDEX PRICE**

For Deliveries on SONAT Pipeline:

<b>Delivery Point</b>	<b>MMBtu/Day</b>	<b>Index Price</b>	<b>Delivery Point Premium (\$/MMBtu)</b>
SONAT Z0 Pool	4,200	<i>Inside FERC's Gas Market Report, a publication of S&amp;P Global Platts, a division of S&amp;P Global Inc., in the table entitled "Monthly Bidweek Spot Gas Prices – Platts Locations (\$/MMBtu)", under the heading "Louisiana/Southeast", for Southern Natural, La. under the column "Index"</i>	Not Applicable

**EXHIBIT C**  
**MONTHLY DISCOUNT**

[\_\_\_] per MMBtu for the period from and including April 1, 2022 to and including \_\_\_\_\_, 202\_.

## **EXHIBIT D**

### **FEDERAL TAX CERTIFICATE**

This Federal Tax Certificate is executed in connection with the Gas Sales Contract dated as of September 20, 2021 (the “Supply Agreement”), by and between the City of Clearwater, Florida (“Seller”) and the City of Lakeland, Florida, on behalf of its municipal utility Lakeland Electric (“Purchaser”). Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Supply Agreement, in the Tax Certificate and Agreement, or in the Bond Indenture.

WHEREAS Purchaser acknowledges that The Black Belt Energy Gas District, is issuing the Bonds to fund the prepayment price under the Prepaid Agreement; and

WHEREAS the Bonds are intended to qualify for tax exemption under Section 103 of the Internal Revenue Code of 1986, as amended; and

WHEREAS Purchaser’s use of Gas acquired pursuant to the Supply Agreement and certain funds and accounts of Purchaser will affect the Bonds’ qualification for such tax exemption.

NOW, THEREFORE, GAS PURCHASER HEREBY CERTIFIES AS FOLLOWS:

1. Purchaser is a municipal corporation and body politic created and existing under the laws of the State of Florida.
2. Purchaser will use all of the Gas acquired pursuant to the Supply Agreement to generate electricity for resale to its retail electric distribution customers within its retail electric service area, with retail sales in all cases being made pursuant to regularly established and generally applicable tariffs or under authorized requirements contracts. For purposes of the foregoing sentence, the term “service area” means (x) the area throughout which Purchaser provided electric distribution service at all times during the 5-year period ending on December 31, 2020, and from then until the date of issuance of the Bonds (the “Closing Date”), and (y) any area recognized as the service area of Purchaser under state or federal law.
3. The annual average amount during the testing period of Gas purchased to generate electricity for resale to its retail customers who are located within the service area is 15,613,374 MMBtu. The maximum annual amount of Gas in any year being acquired pursuant to the Supply Agreement is 1,533,000 MMBtu. The annual average amount of Gas which Gas Purchaser holds in storage as of the Closing Date is [0] MMBtu. The annual average amount of Gas which Purchaser otherwise has a right to acquire as of the Closing Date is [0] MMBtu. The sum of (a) the maximum amount of Gas in any year being acquired pursuant to the Supply Agreement, (b) the annual average amount of Gas which Purchaser holds in storage, and (c) the amount of Gas which Purchaser otherwise

has a right to acquire in the year described in the foregoing clause (a) is 1,533,000 MMBtu. Accordingly, the amount of Gas to be acquired under the Supply Agreement by Gas Purchaser, supplemented by the amount of Gas otherwise available to Purchaser as of the Closing Date, during any year does not exceed the sum of (i) 10% of the annual average amount during the testing period of Gas purchased (other than for resale) by customers of Purchaser who are located within the service area of Purchaser and (ii) the amount of Gas to be used to transport the prepaid Gas to Purchaser during such year. For purposes of this paragraph 3, the term "testing period" means the 5 calendar years ending [December 31, 2020], and the term "service area" means (x) the area throughout which Purchaser provided electric transmission or distribution service at all times during the testing period, (y) any area within a county contiguous to the area described in the foregoing clause (x) in which retail customers of Purchaser are located if such area is not also served by another utility providing electric services, and (z) any area recognized as the service area of Purchaser under state or federal law.

4. Purchaser expects to pay for Gas acquired pursuant to the Supply Agreement solely from funds derived from its electric distribution utility operations. Purchaser expects to use current net revenues of its electric utility system to pay for current Gas acquisitions. There are no funds or accounts of Purchaser or any person who is a Related Person to Purchaser in which monies are invested and which are reasonably expected to be used to pay for Gas acquired more than one year after it is acquired. No portion of the proceeds of the Bonds will be used directly or indirectly to replace funds of Purchaser or any persons who are related persons to Purchaser that are or were intended to be used for the purpose for which the Bonds were issued.

IN WITNESS WHEREOF the undersigned has executed this Tax Certificate on and as of the date first written above.

\_\_\_\_\_, 2021

By: \_\_\_\_\_  
[Name]  
[Title]

**EXHIBIT E**

**FORM OF OPINION OF COUNSEL TO SELLER**

\_\_\_\_\_, 2021

City of Lakeland Florida

Re: Gas Supply Agreement dated \_\_\_\_\_ 1, 2021, by and between the City of Clearwater, Florida and City of Lakeland Florida

Ladies and Gentlemen:

We have acted as counsel to the City of Clearwater, Florida (“Seller”) and in that capacity we have acted as counsel to Seller in conjunction with the above-captioned Gas Supply Agreement (the “Agreement”) between Seller and the City of Lakeland Florida (“Purchaser”).

This opinion is being delivered pursuant to Section 22.1 of the Agreement. Unless otherwise specified herein, all terms used but not defined in this opinion shall have the same meanings as are ascribed to them in the Agreement.

In rendering this opinion, we have examined a copy of the Agreement and such records and other documents as we have deemed necessary and relevant for the purposes of this opinion. In our examination, we have assumed that Purchaser has the right, power, authority and capacity to enter into the Agreement and that the Agreement has been duly authorized, executed and delivered by Purchaser, and we have assumed the genuineness of all signatures (other than those of officers or representatives of Seller), the authenticity of all documents submitted to us as originals, and the conformity of all original documents submitted to us as certified or photostatic copies.

As to factual matters, we have relied solely upon the documents described above, the representations and warranties of Seller contained in the Agreement, the certificate of incorporation of Seller, and various certificates and other documents furnished to us by Seller’s officers and its Board of Directors and the correctness of any facts stated in any such documents, without undertaking to verify the same by independent investigation. Except as otherwise stated in this opinion, we have undertaken no investigation or verification of such matters.

Based on such examinations and assumptions, and subject to the qualifications that follow, we are of the opinion, on the date hereof, that:

1. Seller is a municipal corporation of the State of Florida, duly organized and validly existing under the laws of the State of Florida, and has the power and authority to own its properties, to carry on its business as now being conducted, and to enter into and to perform its obligations under the Agreement.

2. The execution, delivery, and performance by Seller of the Agreement have been duly authorized by all necessary corporate action of Seller and do not and will not require, subsequent to the execution of the Agreement by Seller, any consent or approval of the governing body or any officers of Seller.

3. The Agreement is the legal, valid, and binding obligation of Seller, enforceable in accordance with its terms, except as such enforceability may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity and (ii) bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore or hereafter enacted, to the extent constitutionally applicable.

4. As of the date of this opinion, there is no pending or, to our knowledge, threatened action or proceeding at law or in equity or by any court, government agency, public board or body affecting or questioning the existence of Seller or the titles of its officers to their respective offices or affecting or questioning the legality, validity, or enforceability of the Agreement, nor to our knowledge is there any basis therefor.

5. To our knowledge, after due inquiry of representatives of Seller and longstanding counsel of Seller, the execution and delivery of the Agreement and compliance by Seller with the provisions thereof will not conflict with or constitute on the part of Seller a material breach of or default under any agreement or instrument to which Seller is a party, or violate any existing law, administrative regulation, court order or consent decree to which Seller is subject.

Notwithstanding anything to the contrary contained above, the foregoing opinions are expressly made subject to the following exceptions, qualifications, and assumptions:

- (a) We express no opinion with respect to the validity or enforceability of any provisions of the Agreement or any other documents that may be read to require Seller to indemnify any party.
- (b) We express no opinion as to the enforceability of provisions of the Agreement waiving, directly or indirectly, expressly or impliedly, defenses to obligations or rights granted by law, where such waivers are prohibited by law or are against public policy or any provision which is qualified by the phrase "to the extent permitted by law" or words of similar impact.
- (c) We except from this opinion any provision contained in the Agreement that purports to prevent any party from raising an affirmative defense thereto, such as estoppels, illegality, etc., if such affirmative defense arises or is asserted to have arisen out of any action by any party which has not been brought to our attention, or which purports to prevent any party from raising a claim of fraud.
- (d) We except from this opinion any provision contained in the Agreement that could be construed as waiving service of process or any applicable statute of limitations defense or which establishes any right to specific performance.

- (e) Our opinion as to enforceability is limited by standards of good faith, fair dealing, materiality, and reasonableness that may be applied by a court to the exercise of certain rights and remedies; limitations based on statutes or on public policy limiting a contracting's right to waive the benefit of statutory provisions or of a common law right; and limitations releasing a party from or indemnifying a party against liability for its own wrongful or negligent act when such release or indemnification is contrary to public policy.
- (f) Our opinion is limited to the matters stated herein and no opinion may be inferred or implied beyond the matters expressly stated herein. The opinions expressed in this letter are given solely for your use and benefit in connection with the transactions referred to herein and no other person may use or rely upon this opinion letter, nor may it be used or relied upon in any other transaction which is not related to the transactions referred to herein without our prior express written consent. This opinion is provided to you as a legal opinion only and not as a warranty or guarantee on the matter described herein or in the documents referred to herein.
- (g) We are licensed to practice only in the State of Florida and we do not hold ourselves out as being experts in, nor do we express any opinion as to, the laws of any jurisdiction other than the State of Florida. Accordingly, for purposes of the foregoing opinions we have assumed that any agreement, contract or other instrument that is governed under any laws other than the laws of the State are enforceable in accordance with the terms of that document under the laws of such foreign jurisdiction.
- (h) The scope of this opinion is limited to those issues and parties specifically considered herein and no further or more expansive opinion is implied or should be inferred from any opinion expressed herein. On such basis, any variation or difference in the facts upon which this opinion is based might affect our conclusions in an adverse manner and make them inaccurate.
- (i) In this opinion letter issued in our capacity as counsel to Seller, we are opining only upon those matters set forth herein, and we are not passing upon the accuracy, adequacy or completeness of any statements made in connection with the execution and delivery of the Agreement or any federal or state tax consequences arising from the receipt or accrual of payments under the Agreement.
- (j) No attorney-client relationship has existed or exists between us and anyone other than Seller in connection with the Agreement by virtue of this opinion.
- (k) In basing the opinions and other matters set forth herein on "our knowledge," the words "our knowledge" signify that, in the course of our representation of Seller in matters with respect to which we have been engaged by them, no information

has come to our attention that would give us actual knowledge or actual notice that any such opinion or other matters are not accurate or that any of the foregoing documents, certificates, reports and information on which we have relied are not accurate and complete. The words “our knowledge” and similar language used herein are intended to be limited to the knowledge of the lawyers within our firm who have devoted substantive attention to the transaction contemplated by the Agreement and not to knowledge of the firm generally.

The foregoing opinion is rendered solely for the use and benefit of Purchaser in connection with the Agreement and may not be relied upon other than in connection with the transactions contemplated by the Agreement, or by any other person or entity for any purpose whatsoever, nor may it be quoted in whole or in part or otherwise referred to in any document or delivered to any other person or entity without the prior written consent of the undersigned. The information set forth herein is as of the date hereof, this opinion is given as of the date hereof and no opinion is expressed as to the effect of future applicable laws and court decisions. We assume no obligation, and expressly disclaim any obligation, to update or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or as to any change in laws that may hereafter occur.

Sincerely,



**EXHIBIT F**

**FORM OF PURCHASER OFFICER'S CERTIFICATE**

**CITY OF LAKELAND, FLORIDA**

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I, **Kelly S. Koos**, City Clerk of the City of Lakeland, Florida, a municipality organized and existing in accordance with the laws of the State of Florida (the "City of Lakeland") do hereby certify, in my capacity as City Clerk of the City of Lakeland and not individually, that:

- a) A Base Contract for Sale and Purchase of Natural Gas between the City of Clearwater, Florida and the City of Lakeland, Florida dated as of September 20, 2021 (the "Agreement") has been duly authorized, executed and delivered by the City of Lakeland; and
- b) The Agreement constitutes a valid and legally binding obligation of the City of Lakeland enforceable against the City of Lakeland in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal this [Insert Date of Closing] day of September, 2021.

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Kelly S. Koos, City Clerk

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**EXHIBIT G**

**FORM OF NOTICE OF TERMINATION**

The Black Belt Energy Gas District  
P.O. Box 220  
2003 College Avenue  
Jackson, Alabama 36545  
Attention: Kelly Henry, Chief Financial Officer

Clearwater Gas System  
777 Maple Street  
Clearwater, FL 33755  
Attn: Brian Langille, Gas System Assistant Director

Aron Energy Prepay 6 LLC  
c/o J. Aron & Company LLC  
200 West Street  
New York, NY 10282

Florida Gas Utility  
4619 NW 53rd Avenue  
Gainesville, FL 32653  
Attn: Operations Director

To the Addressees:

The undersigned, duly authorized representative of the City of Lakeland, Florida ("Purchaser"), is providing this Notice of Termination pursuant to the Gas Sales Contract Agreement, dated as of September 20, 2021 (the "Supply Agreement"), between the City of Clearwater, Florida and the Purchaser.

Pursuant to Section 5.2 of the Supply Agreement, Purchaser has elected to terminate this Agreement effective as of [insert effective date consistent with requirements of Section 5.2].

Given this [\_\_\_\_] day of [\_\_\_\_\_], 20[\_\_\_\_].

CITY OF LAKELAND

By: \_\_\_\_\_  
Name:

Title:

**EXHIBIT H**

**FORM OF CLOSING CERTIFICATE**

**CLOSING CERTIFICATE OF PURCHASER**

September 20, 2021

Re: The Black Belt Energy Gas District  
Gas Supply Revenue Bonds,  
Series 2021B

The undersigned \_\_\_\_\_ of the City of Lakeland Florida, on behalf of its municipal utility, Lakeland Electric (the "*Purchaser*"), hereby certifies as follows in connection with the Gas Sales Contract dated as of September 20, 2021 (the "*Agreement*") between the Purchaser and the City of Clearwater, Florida ("*Seller*") and the issuance and sale by The Black Belt Energy Gas District of the above-referenced bonds (the "*Bonds*") (capitalized terms used and not defined herein shall have the meanings given to them in the Agreement):

1. The Purchaser is a municipal corporation duly created and validly existing and in good standing under the laws of the State of Florida (the "*State*"), and has the corporate power and authority to enter into and perform its obligations under the Agreement.

2. By all necessary official action on its part, the Purchaser has duly authorized and approved the execution and delivery of, and the performance by the Purchaser of the obligations on its part contained in the Agreement, and such authorization and approval has not been amended, supplemented, rescinded or modified in any respect since the date thereof.

3. The Agreement constitutes the legal, valid and binding obligation of the Purchaser.

4. The authorization, execution and delivery of the Agreement and compliance with the provisions on the Purchaser's part contained therein (a) will not conflict with or constitute a breach of or default in any material respect under (i) any instrument relating to the organization, existence or operation of the Purchaser, (ii) any ruling, regulation, ordinance, judgment, order or decree to which the Purchaser (or any of its officers in their respective capacities as such) is subject or (iii) any provision of the laws of the State relating to the Purchaser and its affairs, and (b) will not result in, or require the creation or imposition of, any lien on any of the properties or revenues of the Purchaser pursuant to any of the foregoing.

5. The Purchaser is not in breach of or default in any material respect under any applicable constitutional provision, law or administrative regulation of the State or the United

States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Purchaser is a party or to which the Purchaser or any of its property or assets are subject, and no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default in any material respect by the Purchaser under any of the foregoing.

6. Payments to be made by the Purchaser under the Agreement shall constitute a special obligation of Gas Purchaser payable solely from the amounts it charges and collects under the Gas Services Agreements with respect to the Gas purchased from the Gas Project. The application of the revenues and other available funds of the Purchaser's utility system to make such payments is not subject to any prior lien, encumbrance or other restriction.

7. No litigation, proceeding or tax challenge is pending or, to its knowledge, threatened, against the Purchaser in any court or administrative body which would (a) contest the right of the officials of the Purchaser to hold and exercise their respective positions, (b) contest the due organization and valid existence of the Purchaser, (c) contest the validity, due authorization and execution of the Agreement or (d) attempt to limit, enjoin or otherwise restrict or prevent the Purchaser from executing, delivering and performing the Agreement, nor to the knowledge of the Purchaser is there any basis therefor.

8. All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the Purchaser of its obligations under the Agreement have been duly obtained.

9. The representations and warranties of the Purchaser contained in the Agreement were true, complete and correct on and as of the date thereof and are true, complete and correct on and as of the date hereof.

10. The statements and information with respect to the Purchaser contained in the Official Statement dated \_\_\_\_\_, 2021 with respect to the Bonds, including Appendix B thereto (the "*Official Statement*"), fairly and accurately describe and summarize the financial and operating position of the Purchaser for the periods shown therein, and such statements and information did not as of the date of the Official Statement and do not as of the date hereof contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make such statements and information, in the light of the circumstances under which they were made, not misleading.

11. No event affecting the Purchaser has occurred since the date of the Official Statement which should be disclosed therein in order to make the statements and information with respect to the Purchaser contained therein, in light of the circumstances under which they were made, not misleading in any material respect.

IN WITNESS WHEREOF the undersigned has executed this Certificate on and as of the date first written above.

City of Lakeland

By \_\_\_\_\_

Name:

Title: