

**NON-FIRM POWER PURCHASE, SALE AND MARKETING AGREEMENT**  
**BETWEEN**  
**LEE COUNTY, FLORIDA**  
**AND**  
**RAINBOW ENERGY MARKETING CORPORATION**

This Power Purchase, Sale, and Marketing Agreement (“Agreement”) is entered into effective the \_\_\_ day of \_\_\_\_\_ 2021, (“Effective Date”) by and between LEE COUNTY, FLORIDA (“LEE COUNTY”) and RAINBOW ENERGY MARKETING CORPORATION (“REMC”). LEE COUNTY and REMC may hereinafter be referred to individually as a Party, or together as the Parties.

**WHEREAS**, LEE COUNTY owns a renewable energy facility, located at 10500 Buckingham Road in Fort Myers, FL, in which municipal solid waste materials are combusted to generate steam that is converted to electricity (“**Facility**”); and,

**WHEREAS**, LEE COUNTY may from time-to-time desire to sell and REMC agrees to purchase upon request of LEE COUNTY specified Available Energy from the Facility; and,

**WHEREAS**, REMC is in the business of locating attractive wholesale markets for electric energy, contracting for the sale of such energy to such markets and for the transmission of such energy to such markets, and the scheduling and dispatching of such energy on a timely basis in order to serve such markets; and,

**WHEREAS**, REMC will purchase such Available Energy from LEE COUNTY for resale to one or more other wholesale customers in more attractive wholesale markets; and,

**WHEREAS**, LEE COUNTY is willing to compensate REMC for providing, when requested by LEE COUNTY in its sole discretion, one or more of the following services either separately from or in conjunction with a potential sale of Available Energy as further described herein: short-term marketing services; long-term marketing services; and scheduling services.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and for other good and valuable consideration, REMC and LEE COUNTY each intending to be legally bound hereby, enter into and accept the terms and conditions of this Agreement.

1. **DEFINITIONS:**

Terms used in this Agreement with initial capital letters, and not otherwise textually defined, shall have the definitions ascribed to below:

**“As-Available Energy Price”** means the price established pursuant to applicable Florida Public Service Commission rules at which Florida Power & Light Company and other public utilities are required to purchase non-firm electricity from Qualifying Facilities such as the Facility.

**“Authorized Agents”** means LEE COUNTY’s Waste to Energy Consulting Engineer who is authorized to act on LEE COUNTY’s behalf in energy marketing matters as specifically designated in this Agreement.

**“Available Energy”** means non-firm electrical energy that LEE COUNTY may offer for sale to REMC from time-to-time, but for which LEE COUNTY is under no obligation or commitment as to the quantity, time, availability or reliability of delivery of such Available Energy.

**“Available Energy Sales Report”** means the monthly report provided by REMC to LEE COUNTY that summarizes the prior month’s sales activities.

**“Benchmark Price”** means the As-Available Energy Price of FPL or other public utility, as defined in Section 3(A) and as specified by LEE COUNTY in its sole discretion, for any Transaction.

**“Carbon Credit”** means any tradable certificate or permit representing the right to emit one ton of carbon dioxide or the mass of another greenhouse gas with a carbon dioxide equivalent to one ton of carbon dioxide.

**“Confirmation”** means LEE COUNTY’s affirmative response to a REMC Proposal demonstrated in writing by execution and delivery of the TPC associated with such Proposal.

**“Corporate Guaranty(ies)”** means financial security provided and underwritten by a Guarantor(s) that is in substantially the same form as set forth in Appendix B hereto or as modified upon mutual agreement of the Parties.

**“Customer”** means the entity or entities to which REMC sells at wholesale the Available Energy purchased from LEE COUNTY.

**“Deal Entry System”** means the then current computer system program REMC has in place for recording the details of all transactions associated with Available Energy sales off of the Facility.

**“Delivery Point”** means the Point of Interconnection, unless modified in writing by the Parties in a TPC or other instrument.

**“Energy Volume” or “EV”** means, with respect to Section 3(A) actual Available Energy (MWh) delivered by LEE COUNTY at the Delivery Point during the entire period of the Transaction

**“Facility”** means the electric generating facility defined in the first recital, above.

**“FPL”** means Florida Power & Light Company.

**“Guarantor”** means the entity(ies) acceptable to LEE COUNTY that underwrite the Guaranty Amount(s) by Corporate Guaranty, letter of credit, or other acceptable instrument(s).

**“Guaranty Amount(s)”** means the amount(s), instrument(s), Guarantor(s) and terms and conditions pursuant to the provisions of Section 6 and Appendix B hereto.

**“Maximum Quantity”** means the maximum amount of Available Energy made available for sale by LEE COUNTY to REMC in accordance with a Proposal and Confirmation.

**“Net Resale Price”** means the price per MWh received by REMC net of customary and commercially reasonably incurred costs.

**“Net Revenue”** means the amount calculated in accordance with the formulae of Section 3(A) herein.

**“Net Incremental Value”** means the amount calculated in accordance with the formulae of Section 3(A) herein.

**“Point of Interconnection”** means the Buckingham substation where the Facility is interconnected with the transmission system of FPL.

**“Prior Month”** means the month preceding the current month and for which payment is due and owing to LEE COUNTY from REMC for Available Energy pursuant to a Transaction(s) during a preceding month.

**“Proposal”** means a TPC prepared by REMC and submitted to LEE COUNTY for its consideration.

**“Qualifying Facilities”** are generating facilities which meet the requirements for such status under the Public Utility Regulatory Policies Act of 1978 (PURPA).

**“Resale Costs”** means commercially reasonable costs incurred by REMC in the resale of Available Energy purchased from LEE COUNTY hereunder.

**“Resale Transaction”** means the arrangement(s) between REMC and a Customer(s) involving the resale of Available Energy purchased by REMC from LEE COUNTY.

**“Revenue”** means total monthly dollar amounts that LEE COUNTY earns from a Long-Term Transaction(s), net of reasonable transmission costs and losses, if any.

**“REMC Purchase Price” or “RPP”** means, with respect to Section 3(A), means the hourly Net Resale Price.

**“Scheduling Transaction”** means the arrangement between LEE COUNTY and REMC for scheduling services as described in Section 2(C) as may be requested by LEE COUNTY in its discretion.

**“Settlement Statement”** means that document prepared by REMC and provided to LEE COUNTY indicating the amount of money due to LEE COUNTY from REMC for Available Energy sold and purchased in the Prior Month and the variable fee (if any) for the Prior Month. This statement will be provided to LEE COUNTY within two business days of receipt by REMC of the applicable As Available prices for the Prior Month.

**“Term”** means the period of time from the Effective Date through the Termination Date.

**“Termination Date”** means the date, pursuant to Section 8 herein.

**“Transaction”** means a sale by LEE COUNTY to and purchase by REMC of Available Energy pursuant to a REMC Proposal and LEE COUNTY Confirmation.

“**Transaction Proposal & Confirmation**” or “**TPC**” means a document in substantially the same form as Appendix A hereto by which REMC will notify LEE COUNTY of a potential Transaction.

**2. ENERGY MARKETING SERVICES AND OPPORTUNITIES**

**(A) Short-Term Marketing Services**

(i) From time-to-time LEE COUNTY shall advise REMC orally or in writing of the quantities of Available Energy to be generated that LEE COUNTY anticipates will be available for sales, the date, initial time and duration of any such availability, and the Maximum Quantity of Available Energy that LEE COUNTY is willing to sell to REMC in any single transaction

(ii) REMC shall exercise commercially reasonable efforts to market the Available Energy to creditworthy Customers at the highest prices (net of any transmission or other commercially reasonable and standard costs, including line losses) reasonably attainable under the applicable circumstances, as more particularly provided herein.

(iii) REMC shall communicate the essential terms of any such Transaction in writing (email or fax) by (a) 4:00 p.m. Eastern Prevailing Time on the day before the date of initial delivery in any day ahead transaction; or (b) thirty (30) minutes prior to the scheduled initial delivery of Available Energy in any intraday transaction. Notwithstanding the forgoing, REMC and LEE COUNTY may at any time mutually agree to forego direct communication for each Transaction and utilize electronic access to REMC’s deal capture system for exchange of such information. For the term of the Agreement, LEE COUNTY and its Authorized Agents shall have continuous access to information regarding resale of Available Energy through REMC’s on-line Deal Entry System, so that LEE COUNTY will have real-time information regarding the market for Available Energy. In addition, REMC will provide LEE COUNTY with a written summary of the prior days’ activity on a daily basis.

(v) Whenever REMC successfully enters into a Resale Transaction, REMC shall then purchase such Available Energy from LEE COUNTY (not to exceed the Maximum Quantity specified by LEE COUNTY) at the Delivery Point at the REMC Purchase Price; provided, however, in the event of an outage of LEE COUNTY during a Transaction, the Purchase Price shall be calculated for each hour or parts of an hour during a Resale Transaction that LEE COUNTY is on-line (based on the pro rata Resale Costs applicable to the period when LEE

COUNTY is on-line), such that the calculation of the Purchase Price shall disregard any Resale Costs during those hours or parts of an hour during a Resale Transaction in which LEE COUNTY is experiencing an outage.

**(B) Long-Term Marketing Services:**

(i) REMC will regularly survey the market for longer-term sale opportunities from the Facility. These will include weekly, monthly, seasonal and annual capacity and energy sales. When a sale opportunity is identified, REMC will prepare a preliminary transaction summary containing basic parameters for the transaction (“Transaction Summary”). The Transaction Summary shall include the following:

- Type of sale (e.g., Unit Contingent or Non-Firm),
- Sale Quantity (MW and/or MWh),
- Term (start date and duration)
- Pricing terms (e.g., fixed price, indexed price, etc.)
- Other key terms

(ii) REMC will prepare an analysis of the opportunity, projecting revenues from the sale and providing a comparison of these revenues to the expected spot market or to As-Available energy sale revenues. REMC will review the Transaction Summary with LEE COUNTY personnel and, as requested, participate in further evaluation of the opportunity and, if directed, finalize the transaction. If approved by LEE COUNTY, REMC will execute a definitive agreement with the counter-party or will support LEE COUNTY with the execution of a definitive agreement directly between LEE COUNTY and the counter-party. If requested by LEE COUNTY, REMC will manage the transaction throughout its duration and will checkout and settle with the counter-party. REMC will review and confirm schedules and prices with the counter-party throughout the month and at the end of the month, as necessary, prior to invoice preparation. REMC will reconcile any differences discovered. REMC will prepare and deliver an invoice at the end of each month. REMC will collect payment for capacity and/or energy sold.

(iii) When requested by LEE COUNTY, REMC will assist LEE COUNTY in the preparation of responses to Requests for Proposals (RFPs) issued by utilities in Florida and the Southeast. REMC will also assist, when requested, in the analysis of and the preparation of

proposals for longer-term sale opportunities from the Facility that become known to the County and not previously being considered by REMC on LEE COUNTY's behalf.

**(C) Scheduling Services:**

When requested by LEE COUNTY in its sole discretion, REMC will provide "Scheduling Services" to LEE COUNTY for As-Available Energy sales into other Florida utility control areas as determined by LEE COUNTY, and longer-term power sale transactions that are not sold at the Point of Interconnection. As required by the Scheduling Transaction, REMC will prepare and electronically submit Transmission Service Requests (TSRs) and "Tags" or "e-Tags" via appropriate transmission provider Internet sites. The required information will be as specified by each transmission provider and will include (i) start dates and times and end dates and times for each schedule, (ii) energy volumes received and delivered during each hour of the transaction schedule, (iii) the method for handling losses, and (iv) a reservation number for each transmission path provided by each transmission provider via its Open Access Same-time Information System (OASIS) Internet site (i.e., the "OASIS Number"). REMC will subsequently monitor all LEE COUNTY transactions in order to identify any transaction curtailments and, as necessary, notify LEE COUNTY of such curtailments.

**3. FEES FOR MARKETING SERVICES**

**(A) Marketing Services:**

(i) For marketing services rendered, LEE COUNTY shall have the choice between two fee options payable to REMC:

**Option 1:** REMC shall be entitled to the greater of: \$10,000 per month, or

- 3.0 percent (3%) of Net Revenues that results from the sale of Available Energy during each calendar month.

**Option 2:** REMC shall be entitled to the greater of:

- \$10,000 per month, or
- 10.0 percent (10%) of Net Incremental Value that results from the sale of Available Energy during each calendar month.

Whereas:

Net Revenues, as used herein, will be determined as follows:

$$\text{Net Revenues} = \text{EV} \times \text{RPP}$$

and

Net Incremental Value, as used herein, will be determined as follows:

$$\text{Net Incremental Value} = \text{EV} \times [\text{RPP} - \text{Benchmark Price}]$$

Where:

EV = Energy Volume, which is the actual Available Energy (MWh) delivered by LEE COUNTY at the Delivery Point during the entire period of the Transaction.

RPP = REMC Purchase Price, which equals the hourly Net Resale Price.

Benchmark Price = The preliminary hourly As-Available Energy Price reported by FPL or Duke utilities. LEE COUNTY will advise REMC via email which systems' As-Available Energy Price to use (FPL or Duke) for future transactions by providing a minimum of 30 days' notice prior to the start of each calendar billing month. If no notice is given, the prior month's As-Available Benchmark Price will be the default As-Available Energy Price until LEE COUNTY notifies REMC otherwise.

(ii) REMC agrees that the sales of the Available Energy are not transmission contingent, and that it shall be required to arrange, or cause its Customer(s) to arrange, and to pay for, transmission of the Available Energy sold and purchased hereunder. Notwithstanding the foregoing, the Parties agree that the cost of such transmission will be a deduction in the calculation of the Net Resale Price. In no event shall LEE COUNTY have any obligation for transmission of the Available Energy, and LEE COUNTY shall also have no obligation for the costs of transmission, except to exercise reasonable efforts to attempt to mitigate damages in the case of certain unscheduled outages of LEE COUNTY, as more particularly provided below. Notwithstanding that the sales of the Available Energy are not transmission contingent, to the extent that there are events of force majeure affecting the transmission provider or other transmission constraints that are not within the reasonable control of REMC, REMC shall give prompt notice to LEE COUNTY, and LEE COUNTY shall take all actions reasonably available to mitigate the costs to LEE COUNTY of REMC not taking the Available Energy. Similarly, to the extent that there are events of force majeure affecting LEE COUNTY, such as LEE

COUNTY's fuel supplier declaring force majeure or other force majeure events that are not within the reasonable control of LEE COUNTY, LEE COUNTY shall give prompt notice to REMC, and REMC shall take all actions reasonably available to mitigate the costs to REMC of LEE COUNTY not supplying the Available Energy.

(iii) In the event of any unscheduled outages of LEE COUNTY during a Transaction, LEE COUNTY or its Authorized Agents shall undertake its commercially reasonable efforts to notify REMC by telephone within thirty (30) minutes after LEE COUNTY becomes aware of the unscheduled outage, and REMC shall undertake its commercially reasonable efforts to notify the transmission provider(s) by telephone within ten (10) minutes after REMC becomes aware of the unscheduled outage, and shall cause energy to be re-tagged for the balance of the Resale Transaction or until REMC is notified by LEE COUNTY (either orally or in writing) of the date and time that LEE COUNTY has resumed (or will resume) commercial operations. LEE COUNTY shall provide oral or written notice to REMC at the beginning and at the end of each unscheduled outage event during a Transaction, as hereinabove provided, and within thirty (30) minutes of LEE COUNTY's awareness of any material event related to such outage that LEE COUNTY believes will have a significant impact on REMC.

(iv) LEE COUNTY or its Authorized Agents shall be required to inform REMC which fee option described above that they elect to utilize prior to the Effective Date of this Agreement. LEE COUNTY shall then have the option to change the fee option, based on the two options described above, up to two times per 12-month period beginning on the Effective Date of this Agreement, by providing no less than 90 days' notice to REMC of their intentions to change the fee structure option. This notice from LEE COUNTY shall be issued either in writing or e-mail to the REMC primary contact representative and REMC shall confirm receipt of this notice within three (3) business days.

**(B) Fees for Sale of Environmental or Non-Energy Attributes**

For LEE COUNTY Approved sale or transfer to third parties of any environmental or non-energy attributes by REMC, whether such sales is the result of marketing efforts by REMC or LEE COUNTY, REMC shall be entitled to a commission of 5.0 percent of the proceeds.

#### **4. RELATIONSHIP OF THE PARTIES**

In exercising its commercially reasonable efforts to market the Available Energy as provided herein, REMC will act as LEE COUNTY's agent and fiduciary; and agrees not to give any preference or higher priority to the marketing of any other energy, regardless of the cost, price or profitability of any such other energy to REMC, any affiliate of REMC or any third-party. In so doing, REMC shall accord "most-favored-customer" status to LEE COUNTY, thereby assuring LEE COUNTY that REMC's efforts to market the Available Energy will be at least as diligent as REMC's efforts to market other energy for other counter-parties. REMC warrants and represents to LEE COUNTY that the immediately preceding agreement does not violate the terms of any contract or obligation of REMC.

#### **5. REPORTS, BILLING AND PAYMENTS**

(A) Within thirty (30) days after the end of any month in which LEE COUNTY sells Available Energy to REMC pursuant to the Agreement, LEE COUNTY shall advise REMC in writing for each of the hours in which any Transactions occurred in such month of the Benchmark Price; provided, however, that if this information is not received by LEE COUNTY by such date from FPL, Duke or other Florida utility as applicable, then LEE COUNTY shall provide such information to REMC as soon as reasonably practicable after LEE COUNTY receives such information.

(B) On the first Business Day of each month and on the first Business Day after the fifteenth (15<sup>th</sup>) day of each month during the term of the Agreement, REMC shall send LEE COUNTY an Available Energy Sales Report that shows, for the time period since the previous Available Energy Sales Report, the quantities of Available Energy sold and purchased hereunder, the applicable prices and the quantities to which each such price applies, any transmission costs (including, but not limited to, any transmission line losses) incurred by REMC and/or LEE COUNTY, and the quantities to which such costs apply, and any other information relevant to the calculation of the variable component of the Marketing Service Fee, other reasonably relevant information including that reasonably requested by LEE COUNTY relevant to this Agreement.

(C) No later than the 10<sup>th</sup> day of each month, REMC shall prepare and send a proposed monthly Settlement Statement to LEE COUNTY related to Prior Month activities, indicating the amount of money due to LEE COUNTY from REMC for Available Energy sold

and purchased in the Prior Month and the variable fee (if any) for such Prior Month. REMC shall transfer to LEE COUNTY the monies due and owing for such Prior Month's activities no later than ten (10) days following the Settlement Statement.

(D) The amount due and owing LEE COUNTY for the Prior Month shall be calculated by multiplying the REMC Purchase Price (in \$/MWh) by the Energy Volume sold and purchased hereunder during such Prior Month, and deducting from the product REMC's variable service fee, as applicable and as detailed in Section 3 of this Agreement. Within a reasonable time after its receipt of each such Available Energy Sales Report and, on a monthly basis, after receipt of the corresponding Settlement Statement LEE COUNTY shall notify REMC (orally or in writing) that it either approves or disapproves such Available Energy Sales Report and/or the any corresponding Settlement Statement. If LEE COUNTY disapproves any such Available Energy Sales Report and/or the corresponding Settlement Statement, in whole or in part, it shall specify with reasonable particularity the reason or reasons for such disapproval, and, any portion of such Settlement Statement(s) not in dispute shall become due and payable.

(E) Past due amounts owing to a Party shall accrue interest at the prime rate as quoted in *The Wall Street Journal* (or any equivalent publication) on the due date of the payment in question (or, if *The Wall Street Journal* or equivalent publication is not published on such due date, then on the next preceding date on which *The Wall Street Journal* or equivalent publication was published) ("Interest"), such Interest to accrue on the unpaid balance of the payment in question from the due date thereof until paid and to be calculated on the basis of a 365/366-day year (as the case may be) and the actual number of days elapsed.

(F) With the prior approval of LEE COUNTY, REMC may provide a net Settlement Statement and payment that consolidates amounts owing to LEE COUNTY with those due from LEE COUNTY.

(G) Except as otherwise provided herein, all communication between REMC and LEE COUNTY shall take place in accordance with the operating procedures pursuant to Section 24 of this Agreement.

(H) In any complete month when there is insufficient REMC revenue to cover its incurred reimbursable costs, REMC may submit an Invoice to LEE COUNTY. Alternatively,

REMC may elect to carry such incurred costs forward for one month and include on the next Settlement Statement.

(I) REMC shall provide LEE COUNTY an option, during each 12-month period beginning on the Effective Date of this Agreement, for training on the REMC billing and settlements process to LEE COUNTY staff upon their request at a date mutually agreed upon by both Parties. LEE COUNTY shall have the option to receive this training either virtually, or on-site at the LEE COUNTY facility, and shall be required to provide this notice to REMC with no less than 15 days' minimum notice.

## **6. SECURITY FOR PAYMENT OBLIGATIONS**

(A) Sales and purchases of Available Energy under this Agreement, including any reimbursements of the Marketing Service Fee due LEE COUNTY under item Section 2, shall initially be secured by REMC in the initial amount of five million dollars (\$5,000,000) by a Corporate Guaranty provided by a Guarantor(s) in substantially the same form as contained in Appendix B attached hereto, as may be modified upon mutual agreement of the Parties.

(i) If LEE COUNTY reasonably determines that a Guarantor's credit worthiness is significantly impaired, LEE COUNTY may request, and REMC shall immediately substitute a replacement Guarantor acceptable to LEE COUNTY.

(ii) If the Parties enter into a Long-Term Transaction, REMC will cause the Guaranty Amount(s) to be increased accordingly subject to LEE COUNTY's prior approval.

(B) In the event LEE COUNTY's credit exposure to REMC at any time exceeds 75% of the Guaranty Amount, REMC will immediately take appropriate steps to lower this exposure to fifty percent (50%) or less, through an immediate cash wire transfer to LEE COUNTY.

## **7. CONDITIONS PRECEDENT**

The effectiveness of the Agreement shall be conditioned upon: (i) REMC providing the security as required by and defined in Section 6; (ii) LEE COUNTY receiving all required approvals to proceed; and (iii) REMC maintaining its wholesale Power Tariff as filed with the FERC under Docket Number ER 94-1061-00 dated June 10, 1994.

## **8. TERM**

(i) The initial Term of this Agreement shall begin on the Effective Date and continue for a period of five years. Following this initial five-year term, and if agreed upon by both parties in writing, this Agreement may be extended for additional one-year terms. However, notwithstanding the forgoing, under no event will the Term of this Agreement exceed eight (8) years.

(ii) At any time during the initial Term of this Agreement, or during any subsequent terms as described above, this Agreement may be terminated by either Party on the Termination Date designated by such Party in writing delivered to the other Party not less than upon 180 days prior to the Termination Date.

(iii) In the event of any termination pursuant to this Section 8, each Party shall be responsible for performing under all Transactions occurring prior to 12:00 p.m. on the Termination Date or date of the termination for convenience as set forth herein. REMC's obligation to pay for all Available Energy delivered prior to 12:00 p.m. on the Termination Date or on the date of a termination for convenience as set forth herein shall survive any termination of this Agreement. Notwithstanding the foregoing, LEE COUNTY may elect in its sole discretion to terminate this Agreement for convenience at any time for any reason in its sole discretion on thirty (30) days written notice to REMC but shall remain obligated for the payment of all outstanding invoices for services received from REMC prior to such termination.

## **9. TRANSACTION PROPOSAL & CONFIRMATION**

(A) Any sales opportunity identified by REMC which it submits as a Proposal to LEE COUNTY, shall be described in detail in a Transaction Identification & Confirmation Form or TPC, in substantially the form as set forth in Appendix A hereto. LEE COUNTY, in its sole and absolute discretion may accept the Proposal as evidenced solely by providing and returning a signed copy of the TPC to REMC or it may refuse the Proposal or request additional information.

(B) Any sales opportunity that is submitted via the daily spreadsheet email TPC for proposed transaction for the following day is approved by default by LEE COUNTY unless otherwise noted via telephone, FAX, or e-mail.

(C) The information to be provided by REMC to LEE COUNTY in either (A) or (B) above shall include but not be limited to the following:

- Clear statement that the sale is Non-Firm
- The beginning date and time of the sale
- The ending date and time of the sale
- The maximum number of megawatts to be delivered per hour
- The minimum number of megawatt to be delivered per hour
- The Benchmark Price as specified by LEE COUNTY
- The sale price or Avoided Cost for each hour of the day
- Other information reasonably requested by LEE COUNTY

**10. TITLE TO CAPACITY & ENERGY**

Available Energy sold by LEE COUNTY to REMC under this Agreement shall be delivered by LEE COUNTY, free and clear of all liens, claims and encumbrances, from the Facility to the Point of Interconnection, at which time all right, title and interest to such energy shall pass to REMC. LEE COUNTY shall hold title to and be responsible only for those costs or obligations incurred prior to delivery to the Point of Interconnection. REMC shall take title to, and be wholly responsible for, any and all obligations arising out of the ownership of such Available Energy beyond the Point of Interconnection.

**11. WAIVER**

Any waiver at any time by either Party of its rights with respect to this Agreement, or with respect to any other matter arising in connection with this Agreement, shall be deemed a waiver of that specific instance only and shall not be deemed a waiver with respect to any other matter arising.

**12. NO THIRD-PARTY RIGHTS**

Nothing herein shall be construed to constitute, create, be interpreted as creating, or be deemed to have created, any standard of care, duty, responsibility or liability, on the part of either the REMC or the LEE COUNTY, to any third person.

**13. CHOICE OF LAW**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Florida, exclusive of any conflict of laws provision thereof that would apply the laws of another jurisdiction. The Parties hereby submit to the jurisdiction of, and agree that venue for actions hereunder shall be, the U.S. District Court for the Middle District of Florida, if the U.S. District Court has jurisdiction, or, if the U.S. District Court does not have jurisdiction, the Circuit Court of the State of Florida sitting in Lee County, Florida. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO A JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

**14. ARBITRATION**

(A) If a dispute between the Parties should arise under this Agreement, (i) in the first instance, the Parties shall attempt to resolve the dispute by negotiation between the members of senior management (or equivalent) of each Party, who shall meet on at least three (3) separate occasions; and (ii) if the dispute has not been resolved within forty-five (45) days of the initiation of dispute procedures under (i) above, and is not the subject of an outstanding lawsuit between the Parties, then either Party may call for submission of the dispute to arbitration, which call, if agreed to by the other Party shall be binding upon the Parties. The Parties are not required to resolve disputes via arbitration, but once both Parties agree to arbitrate a dispute, if the arbitration results in an award, the arbitrator's decision shall be binding upon the Parties and is the exclusive means of resolving those issues that are the subject of the arbitration (provided any such issue was not the subject of a pre-existing lawsuit initiated by either Party, in which case any such pre-existing lawsuit will dictate the outcome of such issue).

(B) The arbitration shall be governed by the rules and practices of the American Arbitration Association (or the rules and practice of a similar organization if the American Arbitration Association should not then exist), with the proviso that the arbitration panel shall, in all events, consist of three (3) arbitrators, one chosen by each of the Parties and the third chosen by those two arbitrators. If such rules or practices conflict with the then existing provisions of Florida law applicable to arbitration proceedings, Florida law shall govern. Any decision by the arbitrators shall be final and binding on the Parties and will not be subject to appeal, review or re-examination by a court or the arbitrators, except for fraud, perjury, manifest clerical error, or the

evident partiality or misconduct by an arbitrator that prejudices the rights of a Parties to the arbitration. The award of the arbitrators may include an award of any damages other than treble, special, punitive, exemplary, or consequential damages and, pursuant to the pleading of any Party to the dispute, any court having jurisdiction may enter a judgment of any award rendered in the arbitration. The fees and expenses of the arbitrators shall be shared equally by the Parties, and each Party shall bear its own costs.

(C) Whether or not a dispute is submitted to binding arbitration by mutual agreement of the Parties, each Party shall retain all of its rights to seek and obtain injunctive relief and other equitable remedies to enforce their respective rights. Without limiting the generality of the foregoing, any Party may (a) petition a court of competent jurisdiction to enter a temporary restraining order or preliminary injunction to preserve the status quo pending resolution of any arbitration proceeding, and (b) commence a proceeding in any court of competent jurisdiction to enforce any arbitration award or a settlement resulting from negotiation of the Parties.

## **15. AUDIT**

(A) REMC shall maintain accurate records and books of account in accordance with generally accepted accounting principles and consistent with this Agreement. Said books and records shall include, and present fairly, all metering data utilized, either directly or indirectly, in computing any charges or payments to the other Party under this Agreement, and any other relevant information required to perform the audit, including a record of preliminary As-Available prices provided by each Utility that LEE COUNTY has the option to sell As-Available energy to.

(B) Upon thirty (30) days' written notice, REMC shall afford LEE COUNTY or its independent auditors' reasonable access to the relevant records and books of account during the Term of this Agreement and for a period of one (1) year thereafter.

(C) LEE COUNTY shall have the right, after reasonable notice, at its sole expense and at a time during normal business hours as mutually agreed upon by the Parties, to examine the records of the REMC to the extent reasonably necessary to verify the accuracy of any invoice, bill, statement, charges or computation made pursuant to this Agreement. If requested, REMC shall provide to LEE COUNTY statements evidencing the quantity of Available Energy delivered at a Point of Interconnection. If any such examination reveals any inaccuracy in any invoice, bill or statement, the necessary adjustments in such invoice, bill or statement and the payments thereof

will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any invoice, bill statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

**16. INSURANCE**

REMC shall obtain and maintain at its expense during the Term of this Agreement Commercial General Liability insurance of not less than \$2,000,000 per occurrence for bodily injury and property damage including products and completed operation, contractual liability from insurers who are licensed in the state of Florida and who have an AM Best rating of B+ or better. The policy shall include LEE COUNTY and its Client (Dade County) as additional insured for liability arising out of the contract services and with a waiver of subrogation by its insurer.

**17. HEADINGS AND REFERENCES**

All titles, subject headings, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the contents or scope of this Agreement.

**18. NO PARTNERSHIP**

Nothing in this Agreement shall be treated as creating a partnership or joint venture between either of the Parties under the laws of any applicable jurisdiction and, except as specifically provided in this Agreement, no Party may act or have any authority to act as agent of or in any way bind or commit the other Party to any obligation.

**19. COSTS AND EXPENSES**

Each Party shall bear and is responsible for its own costs (including, without limitation, attorney's fees) in connection with the negotiation, preparation, execution, completion and carrying into effect of this Agreement.

**20. AMENDMENT**

This Agreement may not be amended, changed, modified or altered except as set forth in writing and signed by the Business Representatives of both Parties hereto.

**21. CONFIDENTIALITY**

Notwithstanding anything herein, REMC acknowledges County's obligations as a governmental entity regarding retention and disclosure of public records, including but not limited to the requirements of Florida Statutes Ch. 119, and that these obligations shall supersede this Agreement in the case of conflict.

**22. ENVIRONMENTAL AND NON-ENERGY ATTRIBUTES**

(A) Available Energy sold hereunder by LEE COUNTY to REMC shall not include any environmental attribute, Carbon Credit, or non-energy attribute of any kind whatsoever, including but not limited to any existing or any future credit, benefit, emissions reduction, fuel or air quality credit, or emissions reduction credit, offset, or allowance, or other tradable and transferable indicia, howsoever entitled, named, registered, created, measured, allocated, validated, hereafter recognized or deemed of value (or both) by any person, entity, including any business, governmental or other entity, representing any measurable and verifiable aspect, claim, characteristic or benefit identified, attributed to, or associated with the direct or indirect avoidance of the use or emission of any gas, chemical, particulate matter, soot, or other substance, soil, water, air quality, environmental characteristic, or otherwise

(B) Available Energy sold hereunder by LEE COUNTY to REMC shall not include any Carbon Credit, renewable energy credit or attribute whatsoever, including but not limited to any existing or any future credit, benefit, renewable energy certificate, green-tag, or other tradable and transferable indicia, howsoever entitled, named, registered, created, measured, allocated, validated, hereafter recognized or deemed of value (or both) by any person or entity, including any person, business, governmental or other entity, representing any measurable and verifiable aspect, claim, characteristic or benefit identified, attributed to, or associated with the generation, purchase, sale, delivery or use of a quantity of electric energy by the Facility during the Term

(C) For avoidance of dispute, LEE COUNTY shall own and retain all right, title and interest to one hundred percent (100%) of such carbon, environmental or and renewable energy attributes or credits that may be associated with the Facility. No right, title or interest in such attributes and credits are intended to be, or shall be deemed to be, transferred to REMC as a result of this Agreement.

## **23. REPRESENTATIONS AND WARRANTIES**

(A) As a material inducement to enter into this Agreement, each Party represents and warrants to the other that as of the Effective Date of the Agreement, and subject to the conditions precedent provided for in Section 9:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to enter into this Agreement and consummate the transactions contemplated herein;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party which requires such authorization becomes due;

(iii) the execution, delivery, and performance of this Agreement will not conflict with or violate any rule, statute or regulation of any court, agency, or regulatory body, or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;

(iv) subject to subsection (ii) above, this Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and each Party has all rights such that it can and will perform its obligations to the other Party in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;

(v) it has negotiated and entered into this Agreement in the ordinary course of its respective business, in good faith, for fair consideration on an arm's-length basis;

(vi) it is not bankrupt and there are no proceedings pending or being contemplated by it, or, to its knowledge, threatened against it which would result in it being or becoming bankrupt; and

(vii) there are no pending, or to its knowledge, threatened legal proceedings against it that could materially adversely affect its ability to perform its obligations under this Agreement.

(B) EXCEPT AS MAY BE PROVIDED IN THIS AGREEMENT, THE PARTIES MAKE NO OTHER REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THEIR PERFORMANCE OR OBLIGATIONS UNDER THIS AGREEMENT, AND EACH PARTY DISCLAIMS ANY

IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**24. OPERATING REPRESENTATIVES & BUSINESS REPRESENTATIVES**

(A) **Operating Representatives**

The Parties hereby establish, named below, their Operating Representatives to secure effective coordination and to deal on a prompt and orderly basis with the various administrative or operational issues which may arise in conjunction transactions under this Agreement. Each Party, may change its Operating Representative by written notice delivered to the other Party.

**LEE COUNTY Operating Representatives:**

Jason Fournier  
Operations Manager, Solid Waste Department  
10500 Buckingham Road, Fort Myers, FL 33905  
Tel: 239-533-8920  
Fax:  
Cell:  
Email: [JFournier@leegov.com](mailto:JFournier@leegov.com)

**And:**

Erich Tscherteu  
Public Utilities Superintendent, Solid Waste Department  
10500 Buckingham Road, Fort Myers, FL 33905  
Tel: 239-533-8931  
Fax:  
Cell:  
Email: [ETscherteau@leegov.com](mailto:ETscherteau@leegov.com)

**And:**

Director, Solid Waste Department  
10500 Buckingham Road, Fort Myers, FL 33905  
Tel: 239-533-8917  
Fax:  
Cell:  
Email:

**REMC Operating Representative:**

**Ted Schuler**, Director, Southeast Trading & Asset Management

101 East Town Place, Suite 200  
St Augustine, FL 32092  
Tel: 913-428-1661  
Cell: 785-608-3505  
FAX: 904-212-2696  
Email: [t.schuler@rainbowenergy.com](mailto:t.schuler@rainbowenergy.com)

(i) The establishment of any administrative or operating procedure or practice or any other action or determination by the Operating Representative shall be in writing and be effective when signed by the Operating Representative of each of the Parties. The Operating Representatives of the Parties shall have no authority to modify any provision of this Agreement.

(ii) Communication between the Operating Representatives hereunder, shall be in accordance with the operating procedures or practices established pursuant to this subsection.

**(B) Business Representatives**

The Parties hereby establish, named below, their Business Representatives who alone are authorized to act on behalf of the Party in matters relating to the business relations between the Parties, including but not limited to Proposals, Confirmations, Transactions, terminations, official notices and similar such matters

(i) Each Party's Business Representative shall be the person to who any notices or other communications required pursuant to this Agreement should be delivered. (ii)

Notices shall be delivered via U.S. Postal Service certified mail with return-receipt-requested as evidence of delivery to the addressee; via FedEx, UPS, or other express delivery service with evidence of delivery to the addressee; or, by hand delivery with written acknowledgement of receipt by addressee.

**LEE COUNTY Business Representatives:**

Jason Fournier  
Operations Manager, Solid Waste Department  
10500 Buckingham Road, Fort Myers, FL 33905  
Tel: 239-533-8920  
Fax:  
Cell:  
Email: [JFournier@leegov.com](mailto:JFournier@leegov.com)

**And:**

Mary Kay Ditch  
Operations Manager, Public Utilities / Solid Waste Department  
10500 Buckingham Road, Fort Myers, FL 33905  
Tel: 239-533-8932  
Fax:  
Cell:  
Email: MDitch2@leegov.com

**And:**

Director, Solid Waste Department  
10500 Buckingham Road, Fort Myers, FL 33905  
Tel: 239-533-8917  
Fax:  
Cell:  
Email:

**REMC Business Representative:**

**Joe Wolfe**, Executive Vice President  
919 S. 7th St. Ste. 405  
Bismarck, ND 58504  
Tel: 701-222-2290  
FAX: 701-255-7952  
Email: [j.wolfe@rainbowenergy.com](mailto:j.wolfe@rainbowenergy.com)

**25. LIABILITY & INDEMNIFICATION**

(A) Neither REMC nor LEE COUNTY shall be responsible to the other in tort (including negligence and strict liability), contract or otherwise for any loss, costs or damage of any kind which may result from or be caused by interruptions in delivery of electricity or deficiencies such deliveries under this Agreement except as specifically provided as a result of an Event of Default. REMC and LEE COUNTY, expressly agree, to the extent permitted by applicable law including the dollar limitations in section 768.28, Florida Statutes, as may be amended from time to time and not to be construed as a waiver of any sovereign immunity rights, to indemnify, hold harmless and defend the other Party against all claims, liability, costs or expense for loss, damage or injury to persons or property in any manner directly or indirectly connected with or growing out of the generation, transmission, distribution, marketing or scheduling of

electric energy on the indemnifying Party's side of a Point of Interconnection hereunder except to the extent due to the indemnified Party's own negligence or willful misconduct. Except in the case of indemnification resulting from third-party claims, neither Party shall be liable to the other Party for punitive, incidental or consequential damages including, but not limited to, lost profits. This Section shall survive termination or expiration of this Agreement.

(B) NEITHER BUYER OR SELLER SHALL BE LIABLE TO THE OTHER FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT, BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, UNDER ANY INDEMNITY PROVISION OR ANY OTHER THEORY OF RECOVERY. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY, AND SUCH DIRECT DAMAGES SHALL BE THE SOLE AND EXCLUSIVE MEASURE OF DAMAGES AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED; PROVIDED, HOWEVER, THAT THIS SENTENCE SHALL NOT APPLY TO LIMIT THE LIABILITY OF A PARTY WHOSE ACTIONS GIVING RISE TO SUCH LIABILITY CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT, BUT SUCH SURVIVAL SHALL APPLY ONLY TO THOSE CAUSES OF ACTION, IF ANY, ARISING PRIOR TO TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WAIVER OF A PARTY'S RIGHT TO SEEK INJUNCTIVE RELIEF.

**26. DEFAULT**

(A) Default. Each of the following will be an “Event of Default” of the Agreement:

(i) The failure of either Party to make any payment to the other Party as required by this Agreement within ten (10) days of the date when such payment became due and payable.

(ii) The failure by either Party to perform any material obligation to the other Party under this Agreement.

(iii) The insolvency or bankruptcy of a Party or its inability or admission in writing of its inability to pay its debts as they mature, or the making of a general assignment for the benefit of, or entry into any contract or arrangement with, its creditors other than Seller's or Buyer's mortgagee, as the case may be.

(iv) The application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for any part or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment against it without such authorization, consent or application, which proceedings continue un-dismissed or un-stayed for a period of at least sixty (60) days.(v) The authorization or filing by any Party of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against a Party without such authorization, application or consent, which proceedings remain un-dismissed or un-stayed for at least sixty (60) days or which result in adjudication of bankruptcy or insolvency within such time.

(vi) Any representation or warranty made by a Party in the Agreement shall prove to have been false in any material respect when made.

(vii) The Guaranty(ies) required to be provided by REMC pursuant to Section 6 hereof, fails to be renewed or replaced at least 30 days prior to its/their expiration.

(B) Cure Period for Certain Events of Default. When an Event of Default occurs under 28(A)(i) or 28(A)(ii), the non-defaulting Party will give the defaulting Party written notice of the Event of Default and an opportunity to remedy the Event of Default. If the Event of Default shall

not have been fully cured within thirty (30) days from the date of the notice or other mutually agreed upon time, the non-defaulting Party shall have all the rights it may have at law or in equity, including the right to terminate this Agreement. Anything to the contrary herein notwithstanding, the cure period of this Sub-Section 26(B) shall not apply to any of the Events of Default described in 28(A) iii, iv, v, vi and vii.

(C) Rights and Remedies. The non-defaulting Party shall have the right to immediately terminate this Agreement upon the occurrence of an Event of Default specified in 28 (A) iii, iv, v, and vi of this Agreement. In addition, the non-defaulting Party may also exercise any rights or remedies available at law or equity. No delay or failure on the part of a non-defaulting Party to exercise any right or remedy to which it may become entitled on account of an Event of Default shall constitute an abandonment of any such right, and the non-defaulting Party shall be entitled to exercise such right or remedy at any time during the continuance of an Event of Default notwithstanding any delay in enforcing such right. No waiver of any Event of Default shall constitute a waiver of any later Event of Default; all such waivers shall be in writing and shall in no circumstance be deemed effective unless such waiver is made in writing. All of the remedies and other provisions of this sub-section 26(C) shall be without prejudice and in addition to any right of setoff, recoupment, combination of accounts, lien, or other right to which any Party is at any time otherwise entitled, whether by operation of law or in equity, under contract, or otherwise.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the Effective Date.

**LEE COUNTY**

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

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

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

**RAINBOW ENERGY MARKETING CORPORATION**

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

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

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

**APPENDIX A**

**TRANSACTION PROPOSAL & CONFIRMATION**

This document shall confirm the Transaction agreed to on each operating day between LEE COUNTY and REMC regarding the sale/purchase of LEE COUNTY Available Energy:

| Date | SCHEDULE 1 |              | SCHEDULE 2 |              | SCHEDULE 3 |              | SCHEDULE 4 |              | SCHEDULE 5 |              |
|------|------------|--------------|------------|--------------|------------|--------------|------------|--------------|------------|--------------|
|      | MW         | PRICE SOLD @ | MW         | PRICE SOLD @ | MW         | PRICE SOLD @ | MW         | PRICE SOLD @ | MW         | PRICE SOLD @ |
| 1    |            |              | 1          |              | 1          |              | 1          |              | 1          |              |
| 2    |            |              | 2          |              | 2          |              | 2          |              | 2          |              |
| 3    |            |              | 3          |              | 3          |              | 3          |              | 3          |              |
| 4    |            |              | 4          |              | 4          |              | 4          |              | 4          |              |
| 5    |            |              | 5          |              | 5          |              | 5          |              | 5          |              |
| 6    |            |              | 6          |              | 6          |              | 6          |              | 6          |              |
| 7    |            |              | 7          |              | 7          |              | 7          |              | 7          |              |
| 8    |            |              | 8          |              | 8          |              | 8          |              | 8          |              |
| 9    |            |              | 9          |              | 9          |              | 9          |              | 9          |              |
| 10   |            |              | 10         |              | 10         |              | 10         |              | 10         |              |
| 11   |            |              | 11         |              | 11         |              | 11         |              | 11         |              |
| 12   |            |              | 12         |              | 12         |              | 12         |              | 12         |              |
| 13   |            |              | 13         |              | 13         |              | 13         |              | 13         |              |
| 14   |            |              | 14         |              | 14         |              | 14         |              | 14         |              |
| 15   |            |              | 15         |              | 15         |              | 15         |              | 15         |              |
| 16   |            |              | 16         |              | 16         |              | 16         |              | 16         |              |
| 17   |            |              | 17         |              | 17         |              | 17         |              | 17         |              |
| 18   |            |              | 18         |              | 18         |              | 18         |              | 18         |              |
| 19   |            |              | 19         |              | 19         |              | 19         |              | 19         |              |
| 20   |            |              | 20         |              | 20         |              | 20         |              | 20         |              |
| 21   |            |              | 21         |              | 21         |              | 21         |              | 21         |              |
| 22   |            |              | 22         |              | 22         |              | 22         |              | 22         |              |
| 23   |            |              | 23         |              | 23         |              | 23         |              | 23         |              |
| 24   |            |              | 24         |              | 24         |              | 24         |              | 24         |              |
|      | 0          | BUYER        | 0          | BUYER        | 0          | BUYER        | 0          | BUYER        | 0          | BUYER        |



## **APPENDIX B**

### **GUARANTY**

THIS GUARANTY is made and entered into, effective this 1st day of July, 2021, by United Energy Corporation (the "Guarantor"), in favor of LEE COUNTY, Florida (the "Guaranteed Party").

WHEREAS, Rainbow Energy Marketing Corporation ("Rainbow Energy"), is an affiliate of Guarantor; and Rainbow Energy and the Guaranteed Party have or will become parties to commodity related physical and financial transactions and agreements (collectively, whether one or more, the "Agreement"); and

WHEREAS, as consideration for the benefits that Guarantor will receive as a result of Rainbow Energy executing the Agreement with the Guaranteed Party, Guarantor is willing to guarantee the payment of Rainbow Energy's obligations to Guaranteed Party in accordance with the terms of the Agreement as provided herein;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein set forth, Guarantor hereby agrees as follows:

#### 1. **GUARANTY OF PAYMENT**

(a) Subject to the terms and conditions set forth in this Guaranty, Guarantor hereby guarantees the prompt payment when due of all present and future amounts owed by Rainbow Energy to Guaranteed Party in accordance with the terms and provisions of the Agreement (hereinafter the "Obligations"), such that, if Rainbow Energy shall fail to pay when due any of the Obligations, Guarantor will itself pay such Obligations, or cause the same to be paid, in each case as if Guarantor were itself the obligor with respect to the Obligations. Guarantor's liability hereunder shall at all times be equal to, and neither less than nor greater than, that of Rainbow Energy under the Agreement, provided that the aggregate amount that Guarantor shall be required to pay under this Guaranty shall not exceed five million dollars\_(U.S. \$5,000,000.00) for all obligations under the Agreement in addition to all reasonable expenses incurred by the Guaranteed Party in enforcing such payment against Guarantor. Guarantor's liability under this Guaranty shall be limited to direct, actual, monetary damages and other payments required under the Agreement and Guarantor shall not be subject to consequential, exemplary, equitable, loss of profits, tort or any other damages.

(b) The obligations of the Guarantor hereunder are in no way conditioned or contingent upon any requirement on the part of the Guaranteed Party to first attempt to enforce, require the payment of, or collect any of the Obligations from or against Rainbow Energy or any other person or to attempt to collect any of the Obligations by any other means.

#### 2. **DEMAND FOR PAYMENT**

(a) In order to make any demand hereunder for payment by Guarantor of any Obligations that Rainbow Energy has failed to pay when due, Guaranteed Party shall give written notice to Guarantor of the failure by Rainbow Energy to pay such Obligations and demanding that

Guarantor pay such Obligations (such notice shall set forth the exact amount of such Obligations to the extent quantifiable at the time of the demand). Subject to the foregoing provisions and to the limitation on Guarantor's maximum aggregate liability hereunder as set forth in Section 1(a), above, repeated and successive demands may be made, and recoveries may be had, by Guaranteed Party hereunder as and when, from time to time, Rainbow Energy shall fail to pay when due any Obligations to be paid by it.

(b) The failure by Guarantor to pay the amount of any Obligations that Guarantor is obligated to pay to Guaranteed Party hereunder within ten (10) days after Guarantor's receipt of a written demand therefore from Guaranteed Party in accordance with the provisions of Subsection a. above shall entitle Guaranteed Party to pursue all rights and remedies available to it by law or in equity or otherwise.

(c) Any Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or by certified mail, postage prepaid and return receipt requested or by overnight courier service, or by facsimile, as follows:

To Guaranteed Party:            Lee County, Florida  
   10500 Buckingham Road  
   Fort Myers, FL 33905

To Guarantor:                    United Energy Corporation  
   919 S 7<sup>th</sup> St. Suite 405  
   Bismarck, ND 58504  
   Attn: Loren R. Kopseng  
   Fax No: (701) 255-7952

Notice given by personal delivery, mail or overnight courier service shall be effective upon actual receipt. Notice given by facsimile shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All notice by facsimile shall be confirmed promptly after transmission. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such changes or address.

### 3.     TERMINATION/REINSTATEMENT

This Guaranty shall terminate 90 days after the date the Agreement terminates (the "Termination Date"); provided, however, that this Guaranty shall continue to be effective or shall be reinstated if, and only to the extent that:

a) at any time any payment made with respect to any Obligation is rescinded or must otherwise be returned by the Guaranteed Party upon the insolvency, bankruptcy, reorganization or

other similar condition of Rainbow Energy, all as though such payment had not been made; or

(b) any demand for payment made by Guaranteed Party in accordance with Section 2(a) hereof has not been paid, resolved, settled or discharged in full. Amendments to the Agreement in any form shall not terminate this Guaranty; or

(c) any Obligation remains in effect prior to the time the termination is effective.

#### 4. UNENFORCEABILITY OF OBLIGATIONS AGAINST RAINBOW ENERGY

Nothing herein is intended to deny to Guarantor, and it is expressly agreed that Guarantor shall have and may assert, any and all of the defenses, set-offs, counterclaims and other rights with regard to any Obligations that Rainbow Energy may possess, including without limitation, any defense based upon the payment or satisfaction by Rainbow Energy of such Obligations (or the performance or observance of any terms or provisions of the Agreement out of which such Obligations are alleged to arise), except any defense that Rainbow Energy may possess relating to:

(i) lack of validity or enforceability of the Agreement against Rainbow Energy arising from the defective incorporation of Rainbow Energy,

(ii) Rainbow Energy's lack of qualification to do business in any applicable jurisdiction,

(iii) Rainbow Energy's defective corporate authority to enter into, deliver or perform the Agreement, or

(iv) the insolvency, bankruptcy or reorganization of Rainbow Energy.

#### 5. REPRESENTATIONS AND WARRANTIES OF GUARANTOR

Guarantor hereby represents and warrants that the execution, delivery, and performance of this Guaranty are within the Guarantor's power and authority and have been duly authorized by all necessary proceedings, it is duly organized and validly existing under the laws of the jurisdiction of its formation, no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty and this Guaranty constitutes a valid and legally binding agreement of Guarantor enforceable against it in accordance with its terms.

#### 6. GOVERNING LAW

This Guaranty shall be governed by and construed in accordance with the laws of the State of Florida, without recourse to provisions governing choice of law or conflicts of law, and is intended to be performed in accordance with, and to the extent permitted by, such laws.

#### 7. SUBROGATION

Guarantor hereby agrees not to assert or enforce any right or contribution, reimbursement, indemnity, subrogation or any other right to payment from Rainbow Energy as a result of the

Guarantor's performance of its obligations pursuant to this Guaranty until all Obligations are paid in full.

8. WAIVERS

Guarantor hereby unconditionally waives (a) notice of acceptance of this Guaranty; and (b) presentment and demand concerning the liabilities of Guarantor, except as provided in Section 2 herein.

Except as to applicable statutes of limitation, no delay of Guaranteed Party in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder, nor shall any single or partial exercise by Guaranteed Party of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to Guaranteed Party or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Guaranteed Party from time to time.

Subject to the provisions hereof, Guarantor consents to the renewal, compromise, extension, or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Agreement, and Guarantor further agrees that Guaranteed Party, at any time and from time to time without notice to or consent of Guarantor and without impairing or releasing the obligations of Guarantor hereunder, may take or fail to take any action of any kind in respect of any security for any Obligation or liability of Rainbow Energy to Guaranteed Party.

9. MISCELLANEOUS

If any one or more provisions of this Guaranty shall for any reason or to any extent be determined invalid or unenforceable, all other provisions shall, nevertheless, remain in force and effect.

No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Guaranteed Party.

Neither the Guarantor nor the Guaranteed Party shall assign its rights, interest or obligations hereunder to any other person without the prior written consent of the other party and any purported assignment absent such consent is void.

Nothing in this Guaranty or any other document referred to herein is intended to waive any rights not specifically waived in said documents nor is intended to enlarge or modify the obligations or duties of Guaranteed Party.

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty on this \_\_\_\_\_  
day of \_\_\_\_\_, 2021.

**UNITED ENERGY CORPORATION**

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

Name: Loren R. Kopseng

Title: President