

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

**CITY OF PENSACOLA
D/B/A/ PENSACOLA ENERGY**

AND

OKALOOSA GAS DISTRICT

DATED AS OF

_____, 2020

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of _____, 2020 (the “Closing Date”), is entered into by and between the **CITY OF PENSACOLA**, doing business as **PENSACOLA ENERGY** (“Buyer”), and **OKALOOSA GAS DISTRICT**, an independent special district of the State of Florida (“Seller”). Buyer and Seller are sometimes each referred to in this Agreement individually as a “Party,” and together as the “Parties”.

RECITALS:

A. Seller is an independent special district of the State of Florida that provides natural gas service to customers in Escambia, Santa Rosa, Okaloosa, and Walton counties (the “Business”).

B. Buyer desires to purchase certain of the assets of the Seller that are used in the operation of the Business in Escambia County, Florida (the “Escambia County Business”), and Seller desires to sell certain of the assets of the Escambia County Business to Buyer, upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the representations, warranties, covenants, agreements, terms and conditions set forth in this Agreement, the receipt and adequacy of which consideration is hereby conclusively acknowledged, the Parties intending to be legally bound, hereby agree as follows:

ARTICLE 1 DEFINITIONS

The following capitalized terms have the meanings specified or referred to in this ARTICLE 1:

“Accounts Receivable” means all trade receivables, accounts receivable, accrued receivables and notes receivable of Seller and other monies receivable or collected from collection efforts of Seller.

“Acquired Assets” has the meaning set forth in Section 2.01 of this Agreement.

“Action” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the preamble to this Agreement.

“Assumed Liabilities” has the meaning set forth in Section 2.03 of this Agreement.

“Attorney’s Fees and Expenses” means any and all reasonable attorney’s and paralegal’s fees and expenses, including investigative fees, administrative costs, court costs and all expenses, even if not taxable as court costs (including all such expenses, fees, Taxes and costs incident or related to arbitration, appellate, bankruptcy and post-judgment proceedings), and all other reasonable charges billed by the attorney to the party in question (including any fees and costs associated with collecting such amounts).

“Bill of Sale and Assignment and Assumption Agreement” has the meaning set forth in Section 3.02(a)(i) of this Agreement.

“Books and Records” has the meaning set forth in Section 2.01(g) of this Agreement.

“Escambia County Business” has the meaning set forth in the recitals to this Agreement.

“Business Day” means any day except Saturday, Sunday or any other day on which commercial banks located in Pensacola, Florida, are authorized or required by Law to be closed for business.

“Buyer” has the meaning set forth in the preamble to this Agreement.

“Buyer Indemnified Parties” has the meaning set forth in Section 7.03 of this Agreement.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

“Closing” has the meaning set forth in Section 3.01 of this Agreement.

“Closing Date” has the meaning set forth in the preamble to this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended.

“Contracts” means all contracts, leases, subleases, deeds, bonds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures, sales and purchase orders and all other agreements, commitments and legally binding arrangements, whether written or oral.

“Customer Information” means any and all sales and marketing information relating in any way to any present, former or prospective customer of Seller or any Affiliate of Seller (including such Persons as have subscribed for or been sent or given any marketing or sales literature by or on behalf of Seller or any Affiliate of Seller), including respective mailing addresses, telephone numbers and email addresses, credit histories and order histories.

“Discharge” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate, as any of such terms may further be defined in any Environmental Laws, into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Dollars” or “\$” means the lawful currency of the United States.

“Electronic Delivery” has the meaning set forth in Section 8.13 of this Agreement.

“Encumbrance” means any charge, claim, community property interest, pledge, judgment, mortgage, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“Environmental Claim” means any Action, Governmental Order, lien, fine, penalty or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Discharge of or exposure to any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Law” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety or the environment (including ambient air, soil, surface water or groundwater or subsurface strata); or (b) concerning the presence of, exposure to or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, Discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

“Environmental Notice” means any written directive or notice of violation or infraction respecting any Environmental Claim relating to actual or alleged violation of any Environmental Law or any term or condition of any Environmental Permit.

“Environmental Permit” means any Permit, letter, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

“Excluded Assets” has the meaning set forth in Section 2.02 of this Agreement and includes any of Seller’s transmission and high-pressure pipeline facilities, Right of Way or easements, real property or permits associated with the excluded facilities.

“Excluded Liabilities” has the meaning set forth in Section 2.04 of this Agreement.

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Hazardous Materials” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral, or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

“Knowledge of Seller” or the “Seller’s Knowledge” or any other similar knowledge qualification, means the actual or constructive knowledge of any director or officer of Seller or of any Affiliate of Seller, after due inquiry.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, judgment, decree, other requirement or rule of law of any Governmental Authority, and common law.

“Liabilities” means liabilities, obligations, or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, liquidated or unliquidated, due or to become due, determined or determinable, or otherwise.

“Losses” means any and all losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including Attorney’s Fees and Expenses, the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers; provided, that “Losses” shall not include any punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

“Material Adverse Effect” means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the value of the Acquired Assets, or (b) the ability of Seller to consummate the Transactions on a timely basis; provided, however, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition, or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Escambia County Business operates; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities or terrorism or the escalation or worsening thereof; (v) any action required or permitted by this Agreement, except pursuant to Section 4.03 of this Agreement; (vi) any changes in applicable Laws or accounting rules; or (vii) the public announcement, pendency, or completion of the Transactions; provided further, however, that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv)

immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Escambia County Business compared to other participants in the industries in which the Escambia County Business operates. It shall not be a pre-requisite to the determination of any Material Adverse Effect that any event, occurrence, fact, condition, or change adversely affect a Party's long-term earnings power or potential in a durationally significant manner, it being understood and agreed that a short-term adverse effect may constitute a Material Adverse Effect.

"Ordinary Course of Business" means an action taken by a Person if that action: (a) is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person; (b) does not require authorization by the board of directors or shareholders of such Person (or by any Person or group of Persons exercising similar authority) and does not require any other separate or special authorization of any nature; and (c) is not contrary to generally accepted industry practices.

"Party" and "Parties" have the respective meanings set forth in the preamble to this Agreement.

"Permits" means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

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

"Purchase Price" has the meaning set forth in Section 2.06 of this Agreement.

"Representative" means, with respect to any Person, any and all directors, officers, managers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

"Required Consents" has the meaning set forth in Section 3.02(a)(v) of this Agreement.

"Restricted Business" means the business of providing natural gas distribution and related services to residential and commercial customers.

"Restricted Period" has the meaning set forth in Section 6.01(a) of this Agreement.

"Seller" has the meaning set forth in the preamble to this Agreement.

"Seller Indemnified Parties" has the meaning set forth in Section 7.04 of this Agreement.

"Tangible Personal Property" has the meaning set forth in Section 2.01(b) of this Agreement.

"Taxes" means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or

other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“Tax Return” means any return, declaration, report, claim for refund, information return or statement or other document required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Territory” means Escambia County, Florida.

“Transaction Documents” means, collectively, this Agreement, the Bill of Sale and Assignment and Assumption Agreement, and all other agreements, certificates, instruments, and other documents to be executed or delivered in connection with the Transactions.

“Transactions” means the transactions contemplated by this Agreement and the Transaction Documents.

Definitions for the other defined terms used in this Agreement are set forth in this Agreement.

ARTICLE 2

PURCHASE AND SALE

2.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth in this Agreement and in reliance upon the representations, warranties, and covenants of Seller set forth in this Agreement, at the Closing, Buyer shall purchase from Seller, and Seller shall sell, assign, transfer, convey, and deliver, or cause to be sold, assigned, transferred, conveyed, and delivered, free and clear of all Encumbrances, to Buyer at Closing all of Seller’s and Seller’s Affiliates’ right, title, and interest in, to, and under the following (the “Acquired Assets”):

(a) All customer accounts of Seller located in Escambia County, Florida, which are set forth in Section 2.01(a) of the Disclosure Schedules (“Customer Accounts”);

(b) All equipment, supplies, fixtures, replacement or repair and maintenance parts, and other tangible personal property used in the Escambia County Business (collectively, the “Tangible Personal Property”), which Tangible Personal Property is forth in Schedule 2.01(b) of the Disclosure Schedules;

(c) All transferable Permits, including Environmental Permits, if any, which are held by Seller and are required for the ownership and use of the Acquired Assets, including, without limitation, those listed in Section 4.10(b) of the Disclosure Schedules;

(d) All rights to any Actions of any nature available to or being pursued by Seller to the extent related to the Acquired Assets, whether arising by way of counterclaim or otherwise, including unliquidated rights under manufacturers’ and vendors’ warranties;

(e) All of Seller’s rights under warranties, indemnities, and all similar rights against third parties to the extent related to any Acquired Assets;

(f) All insurance benefits, if any, including rights and proceeds, relating to the Acquired Assets;

(g) All data, books, records, files, and papers, whether in hard copy or computer format, used by Seller or held by Seller for use in connection with the Acquired Assets, including all correspondence with any Governmental Authority, accounting and contract records, manuals and data, sales and purchase correspondence, studies and reports, service and warranty records, , lists of present and former customers, Customer Information, and all information relating to Taxes imposed on or with respect to the Acquired Assets ("Books and Records"); and

(h) All goodwill associated with the Acquired Assets, together with the right to represent to third parties that Buyer is the successor to the Escambia County Business.

2.02 Excluded Assets. Buyer expressly understands and agrees that the assets of Seller that are not owned, held, or used in the conduct of the Escambia County Business and not described in Section 2.01 (collectively, the "Excluded Assets") shall be excluded from the Acquired Assets. Without limiting the generality of the preceding sentence, Buyer specifically understands and agrees that the Accounts Receivable of Seller that are outstanding with respect to the Customer Accounts as of the Closing Date are Excluded Assets.

2.03 Assumed Liabilities. Subject to the terms and conditions set forth in this Agreement, Buyer shall assume and agree to pay, perform, and discharge only the Liabilities of Seller that are set forth in Section 2.03 of the Disclosure Schedules (the "Assumed Liabilities"), and no other Liabilities:

2.04 Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement or any other writing, Buyer is not assuming any Liability of Seller or any Affiliate of Seller (or any predecessor owner of all or part of either of its businesses or assets) or the Escambia County Business of whatever nature, whether presently in existence or arising or asserted hereafter, including any debt owed to any party, and all such Liabilities shall be retained by and remain Liabilities of Seller, as applicable, or its Affiliates (all Liabilities of Seller, including all Liabilities of any Affiliate of Seller, not set forth in Section 2.03 of this Agreement are referred to as the "Excluded Liabilities").

2.05 Assignment of Contracts and Rights.

(a) Contracts. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Contract of Seller or any Action or right or any benefit arising thereunder or resulting therefrom.

(b) Permits. In the event that any Permit (including any Permit required pursuant to any Environmental Law) is not transferred or transferable from Seller to Buyer effective immediately as of the Closing, then Seller shall, at Buyer's reasonable cost and expense, maintain such Permit for Buyer's benefit until the first to occur of the following: (i) such Permit is transferred to Buyer or (ii) Buyer obtains an equivalent Permit in the name of Buyer. Seller's obligation, pursuant this Section 2.05(b) to maintain each such Permit following Closing and Buyer's obligation, pursuant to this Section 2.05(b), to cover the reasonable cost and expense of maintaining each such Permit following Closing, shall terminate, with

respect to each such Permit, immediately upon the first to occur of the following: (x) such Permit being so transferred to Buyer or (y) Buyer so acquiring an equivalent Permit in the name of Buyer.

(c) Seller Payment of Monies. Seller will promptly pay to Buyer, when received, all monies received by Seller under or related to any Acquired Asset or any Action or right or any benefit arising thereunder.

2.06 Purchase Price. The aggregate purchase price for the Acquired Assets shall be **Four Hundred Twenty-Seven Thousand Seven Hundred Forty-Eight Dollars (\$427,748.00)** (the “Purchase Price”), plus the assumption of the Assumed Liabilities. The Purchase Price shall be paid as provided in Section 3.02 of this Agreement.

ARTICLE 3 CLOSING

3.01 Closing. Subject to the terms and conditions of this Agreement, the consummation of the Transactions shall take place at a closing (the “Closing”) at the offices of Buyer in Pensacola, Florida, or at such other place as the Parties may mutually agree, on or as of the Closing Date. Notwithstanding anything to the contrary in the immediately foregoing sentence, the Parties acknowledge and agree that (a) the Closing shall occur by means of Electronic Delivery, (b) no in-person Closing will be conducted as among the Parties, and (c) except to the extent required by Law, no Party will be required to provide, to any other Person, any original signed document.

3.02 Closing Deliverables.

(a) Seller’s Deliverables. At the Closing, Seller shall deliver to Buyer:

(i) a Bill of Sale and Assignment and Assumption Agreement, in the form and substance attached as Exhibit A to this Agreement (the “Bill of Sale and Assignment and Assumption Agreement”), executed by Seller;

(ii) a certificate issued by the Secretary of State of Florida as to Seller’s legal existence and good standing, if such certificates are provided by the Secretary of State;

(iii) a certificate issued by the Secretary of State of Florida certifying Seller’s state charter, if such certificates are provided by the Secretary of State;

(iv) a certificate of the Secretary or Assistant Secretary (or equivalent officer) of Seller certifying (A) that attached thereto are true and correct copies of all resolutions adopted by the board of directors of Seller authorizing the execution, delivery, and performance of this Agreement and the Transaction Documents and the consummation of the Transactions, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the Transactions; (B) the names and signatures of the officers of Seller authorized to sign this Agreement, the Transaction Documents, and the other documents to be delivered hereunder and thereunder; and (C) that attached thereto are the state charter, bylaws and other governing documents of Seller, as in full force and effect on and as of the Closing Date;

(v) the consents set forth in Section 3.02 (a)(v) of the Disclosure Schedules (the “Required Consents”);

(vi) fully executed UCC-3 termination statements and other terminations, satisfactions of mortgages, pay-offs and/or releases, or, at Buyer’s option, assignments, necessary to terminate, release, or assign, as the case may be, all Encumbrances on any Acquired Asset, as listed in Section 3.02(a)(vi) of the Disclosure Schedules, and releases in connection with any cross-collateralization agreements with creditors of Seller;

(vii) evidence, in form and substance satisfactory to Buyer (in Buyer’s sole discretion), that the operation of the Escambia County Business (A) is not in any way restricted by or subject to any (i) Law (including any building, zoning, subdivision or other land use Law) or (ii) Governmental Order, (B) does not require any action by or in respect of, or filing with, any Governmental Authority, (C) does not require any Permit (other than any Permit that is an Acquired Asset and is freely transferable from Seller to Buyer), and (D) is not subject to any Action or threatened Action; and

(viii) all other agreements, certificates, instruments, and documents reasonably requested by Buyer in order to fully consummate the Transactions and carry out the purposes and intent of this Agreement.

(b) Buyer’s Deliverables. At the Closing, Buyer shall deliver to Seller:

(i) the Purchase Price by wire transfer of immediately available funds in accordance with the wire instructions set forth in Section 3.02(b)(i) of the Disclosure Schedules;

(ii) the Bill of Sale and Assignment and Assumption Agreement, executed by Buyer;

(iii) a certificate of the Secretary or Assistant Secretary (or equivalent officer) of Buyer certifying (A) that attached thereto are true and correct copies of all resolutions adopted by the governing board of Buyer (Pensacola City Council) authorizing the execution, delivery and performance of this Agreement and the Transaction Documents and the consummation of the Transactions, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the Transactions; (B) the names and signatures of the officers of Buyer authorized to sign this Agreement, the Transaction Documents, and the other documents to be delivered hereunder and thereunder; and (C) that attached thereto are the governing documents of Buyer, as in full force and effect on and as of the Closing Date; and

(iv) all other agreements, certificates, instruments, and documents reasonably requested by Seller in order to fully consummate the Transactions and carry out the purposes and intent of this Agreement.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this ARTICLE 4 are true and correct as of the Closing Date. All Section headings in the Disclosure Schedules correspond to the Sections of this Agreement; provided, however, that disclosure under any Section in the Disclosure Schedules will constitute disclosure under all other reasonably relevant Sections of the Disclosure Schedules if appropriate cross-references are provided, but only to the extent that such relevance is reasonably apparent on the face of such disclosure. Seller makes the following representations and warranties to Buyer.

4.01 Organization and Authority of Seller. Seller is an independent special district of the State of Florida, duly organized, validly existing, and in good standing under the Laws of the State of Florida and has full corporate power and authority to own, operate, or lease the properties and assets now owned, operated, or leased by it and to carry on the Escambia County Business as currently conducted. Seller has all requisite power and authority and full legal capacity to execute and deliver this Agreement and to perform Seller's obligations under this Agreement.

4.02 Execution and Delivery; Valid and Binding Agreement. The execution, delivery, and performance by Seller of this Agreement and each other Transaction Document to be entered into by Seller have been duly and validly authorized by all requisite action on the part of Seller, and no other actions on Seller's part are necessary to authorize the execution, delivery, or performance of this Agreement. This Agreement and each other Transaction Document to be entered into by Seller has been duly executed and delivered by Seller, and (assuming due authorization, execution, and delivery by Buyer) each of this Agreement and each such other Transaction Document constitutes a valid and binding obligation of Seller, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, or moratorium Laws, other similar Laws affecting creditors' rights, and general principles of equity affecting the availability of specific performance and other equitable remedies (regardless of whether enforcement is sought in a proceeding at law or in equity).

4.03 No Conflicts; Consents. The execution, delivery, and performance by Seller of this Agreement and each other Transaction Document to be entered into by Seller, and the consummation of the Transactions, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the state charter, bylaws, or other governing documents of Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, the Escambia County Business, or the Acquired Assets; (c) except as set forth in Section 4.03 of the Disclosure Schedules, require the consent of, notice to, or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of, or create in any party the right to accelerate, terminate, modify, or cancel any Contract or Permit to which Seller is a party or by which Seller or the Escambia County Business is bound or to which any of the Acquired Assets are subject; or (d) result in the creation or imposition of any Encumbrance on the Acquired Assets. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the Transaction Documents and the consummation of the Transactions.

4.04 Liabilities. Seller has no Liabilities with respect to the Escambia County Business or the Acquired Assets except those which have set forth in Section 4.03 of the Disclosure Schedules.

4.05 Contracts. None of the Acquired Assets is bound or affected by any Contract, and Seller is not a party to, or bound by, any Contract in connection with the Escambia County Business or the Acquired Assets.

4.06 Assets.

(a) Title. Seller has good and valid title to all of the Acquired Assets. All such Acquired Assets are free and clear of Encumbrances. Upon consummation of the Transactions, Buyer will have acquired good and marketable title in and to each of the Acquired Assets, free and clear of all Encumbrances and without incurring any penalty or other adverse consequence as a result of, or arising from, the consummation of the Transactions.

(b) Condition and Sufficiency. The items of Tangible Personal Property included in the Acquired Assets are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put; and none of such Tangible Personal Property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The Acquired Assets are sufficient for the continued conduct of the Escambia County Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property, and assets necessary to conduct the Escambia County Business as currently conducted. None of the Excluded Assets is material to the Escambia County Business.

(c) Right to Assign Assets. Seller has the complete and unrestricted power and unqualified right to sell, assign, transfer, convey, and deliver the Acquired Assets to Buyer without penalty or other adverse consequences.

4.07 Customers. Section 4.07 of the Disclosure Schedules sets forth with respect to the Escambia County Business (a) each customer of Seller for goods or services rendered during the 12 months preceding the Closing Date, (b) the description and amount of goods and services provided by Seller to each such customer during such period; and (c) the amounts charged to and paid by each such customer during such period. Except as set forth in Section 4.07 of the Disclosure Schedules, Seller has not received any notice, and has no reason to believe, that any of such customers has ceased, or intends to cease after the Closing, to use the goods or services of the Escambia County Business or to otherwise terminate or materially reduce its relationship with the Escambia County Business.

4.08 Real Property. No parcel of real property, no building, fixture, structure, or improvement situated thereon, and no easement, right-of-way, or other right or privilege appurtenant thereto, whether owned or leased by Seller or otherwise used by Seller, is necessary or beneficial for the conduct of the Escambia County Business as currently conducted.

4.09 Legal Proceedings; Governmental Orders. There are no Actions pending or, to Seller's Knowledge, threatened against or by Seller (a) relating to or affecting the Acquired Assets or the Assumed Liabilities; or (b) that challenge or seek to prevent, enjoin, or otherwise delay the Transactions. No event

has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action. There are no outstanding Governmental Orders and no unsatisfied judgments, penalties, or awards against, relating to, or affecting the Acquired Assets.

4.10 Compliance With Laws; Permits.

(a) No Violations. Seller has complied, and is now complying, with all Laws applicable to the ownership and use of the Acquired Assets. Seller is not in violation of, and Seller has not violated, in any material respect, any applicable provisions of any Law or Governmental Order, and to Seller's Knowledge, Seller is neither under investigation with respect to, nor has been threatened to be charged with or been given notice of any violation of, any Law or Governmental Order applicable to the Acquired Assets or the conduct of the Escambia County Business, or that could affect the legality, validity or enforceability of this Agreement, any Transaction Document, or the consummation of any of the Transactions.

(b) Permits. All Permits required for Seller for the ownership and use of the Acquired Assets have been obtained by Seller and are valid and in full force and effect; and, assuming the related Required Consents have been obtained prior to the Closing Date, are transferable by Seller, and will not be terminated or impaired or become terminable as a result of the Transactions. Upon consummation of such Transactions, Buyer will, assuming the related Required Consents have been obtained prior to the Closing Date, have all of the right, title, and interest in all the Permits. All fees and charges with respect to such Permits as of the Closing Date have been paid in full. Section 4.10(b) of the Disclosure Schedules lists all current Permits issued to Seller which are related to the ownership and use of the Acquired Assets, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse, or limitation of any Permit set forth in Section 4.10(b) of the Disclosure Schedules.

(c) No Defaults. Seller is not in default under, and, to Seller's Knowledge, no condition exists that without notice or with lapse of time or both would constitute a default under, any Governmental Order applicable to the Escambia County Business.

4.11 Environmental Matters.

(a) The operations of Seller with respect to the Escambia County Business and the Acquired Assets are currently, and have been, in compliance with all Environmental Laws. Seller has not received from any Person, with respect to the Escambia County Business or the Acquired Assets, any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) Seller has obtained and is in material compliance with all Environmental Permits (each of which is disclosed in Section 4.11(b) of the Disclosure Schedules) necessary for the conduct of the Escambia County Business as currently conducted or the ownership, lease, operation, or use of the Acquired Assets; all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by Seller through the Closing Date in accordance with Environmental Law; and Seller is not aware

of any condition, event, or circumstance that might prevent or impede, after the Closing Date, the conduct of the Escambia County Business as currently conducted or the ownership, lease, operation, or use of the Acquired Assets. With respect to any such Environmental Permits, Seller has undertaken, or will undertake prior to the Closing Date, all measures necessary to facilitate transferability of the same, and Seller is not aware of any condition, event, or circumstance that might prevent or impede the transferability of the same, and has not received any Environmental Notice or written communication regarding any material adverse change in the status or terms and conditions of the same.

(c) None of the Escambia County Business or the Acquired Assets or any real property currently or formerly owned, leased, or operated by Seller in connection with the Escambia County Business is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) Seller has not at any time Discharged, nor has it at any time allowed or arranged for any third party to Discharge, Hazardous Materials to, at, or upon: (i) any location other than a site lawfully permitted to receive such Hazardous Materials; (ii) any parcel of real property owned, used, or leased at any time by Seller in the operation of the Escambia County Business, except in compliance with applicable Environmental Laws; or (iii) any site which, pursuant to CERCLA or any similar state Law, has been placed on the National Priorities List or its state equivalent, or as to which the Environmental Protection Agency or any relevant state agency has notified Seller that it has proposed or is proposing to place on the National Priorities List or its state equivalent. To Seller's Knowledge, there has not occurred, nor is there presently occurring, a Discharge, or threatened Discharge, of any Hazardous Material caused by, contributed to, exacerbated by, or otherwise affected by the acts or omissions of Seller on, into, or directly beneath the surface of any real property owned, used, or leased at any time by Seller in the operation of the Escambia County Business or onto any property located adjacent thereto, or otherwise in close physical proximity thereto (i) in an amount requiring, or reasonably requiring, a notice, notification, or report to be made to a governmental agency or authority pursuant to Environmental Laws, or (ii) in violation or noncompliance, or alleged violation or noncompliance, of Environmental Laws.

(e) Section 4.19(e) of the Disclosure Schedules contains a complete and accurate list of all off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by Seller and any predecessors in connection with the Escambia County Business or the Acquired Assets as to which Seller may retain liability, and none of these facilities or locations has been placed or proposed for placement on the National Priorities List (or CERCLIS) under CERCLA, or any similar state list, and Seller has not received any Environmental Notice regarding potential liabilities with respect to such off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by Seller.

(f) Seller has provided or otherwise made available to Buyer and listed in Section 4.19(f) of the Disclosure Schedules any and all environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, economic models, and other similar documents with respect to the Escambia County Business or the Acquired Assets or any real property currently or formerly owned, leased, or operated by Seller in connection with the Escambia County Business which are in the possession or control of Seller related to compliance with Environmental Laws, Environmental Claims or an Environmental Notice, or the Discharge of Hazardous Materials.

(g) Seller is not aware of and does not reasonably anticipate, as of the Closing Date, any condition, event, or circumstance concerning the Discharge or regulation of Hazardous Materials that might, after the Closing Date, prevent, impede, or materially increase the costs associated with the ownership, lease, operation, performance, or use of the Escambia County Business or the Acquired Assets as currently carried out.

4.12 Taxes. Any and all Tax Returns with respect to the Escambia County Business or the Acquired Assets that are required to be filed by Seller have been, or will be, timely filed. Such Tax Returns, if any, are, or will be, true, complete, and correct in all respects. All Taxes due and owing by Seller (whether or not shown on any Tax Return) have been, or will be, timely paid. No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of Seller or for which Buyer may be liable or that could result in an Encumbrance on the Acquired Assets. All deficiencies asserted, or assessments made, against Seller as a result of any examinations by any taxing authority have been fully paid. Seller is not a party to any Action by any taxing authority. There are no pending or threatened Actions by any taxing authority. There are no Encumbrances for Taxes upon any of the Acquired Assets nor, to Seller's Knowledge, is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the Acquired Assets (other than for current Taxes not yet due and payable). No portion of the Purchase Price is subject to withholding in respect of any U.S. federal income taxes. No state of facts exists or has existed that would constitute grounds for the assessment against Buyer, whether by reason of transferee liability or otherwise, of any liability for any Tax of Seller.

4.13 Brokers. No broker, finder, or investment banker is entitled to any brokerage, finder's, or other fee or commission in connection with the Transactions based upon arrangements made by or on behalf of Seller.

4.14 Full Disclosure. None of this Agreement or the Transaction Documents, or the Disclosure Schedules, schedules, exhibits, and other documents delivered in connection with this Agreement, when read together as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein not misleading. The information relating to the Acquired Assets delivered to Buyer has been prepared in good faith based on assumptions that are reasonable, and no facts or information exist that would lead Seller to believe that such information is incorrect or misleading in any material respect. Except as set forth in this Agreement or the Disclosure Schedules, there are no facts or circumstances of which Seller is aware that have had or could be expected to have, individually or in the aggregate, a Material Adverse Effect on Seller or the Escambia County Business.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this ARTICLE 5 are true and correct as of the Closing Date.

5.01 Organization and Authority of Buyer.

(a) Buyer is an operating unit of the City of Pensacola, Florida, an incorporated municipality validly existing under the Laws of the State of Florida. Buyer has all necessary corporate power and authority to enter into this Agreement, to carry out its obligations under this Agreement and to consummate the Transactions.

(b) The execution and delivery by Buyer of this Agreement and each other Transaction Document to be entered into by Buyer, the performance by Buyer of its obligations under this Agreement and each other Transaction Document, and the consummation by Buyer of the Transactions have been duly authorized by all requisite action on the part of Buyer. This Agreement and such other Transaction Documents have been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) each of this Agreement and such other Transaction Documents constitutes a legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, or moratorium Laws, other similar Laws affecting creditors' rights, and general principles of equity affecting the availability of specific performance and other equitable remedies (regardless of whether enforcement is sought in a proceeding at law or in equity).

5.02 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and each other Transaction Documents to be entered into by Buyer, and the consummation of the Transactions, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the charter, ordinances, or other governing documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice, or other action by any Person under any Contract to which Buyer is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority (other than Buyer) is required by or with respect to Buyer in connection with the execution and delivery of this Agreement or any other Transaction Document to be entered into Buyer, except for such consents, approvals, Permits, Governmental Orders, declarations, filings, or notices which, in the aggregate, would not have a Material Adverse Effect.

5.03 Brokers. No broker, finder, or investment banker is entitled to any brokerage, finder's, or other fee or commission in connection with the Transactions based upon arrangements made by or on behalf of Buyer.

5.04 Sufficiency of Funds. Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the Transactions.

5.05 Legal Proceedings. There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin, or otherwise delay the Transactions.

ARTICLE 6 COVENANTS

6.01 Non-Competition.

(a) Commencing on the Closing Date (the “Restricted Period”), Seller shall not, and shall not permit any of its Affiliates to, directly or indirectly, (i) engage in or assist others in engaging in the Restricted Business in the Territory; (ii) have an interest in any Person that engages directly or indirectly in the Restricted Business in the Territory in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee, or consultant; or (iii) cause, induce or encourage any material actual or prospective client, customer, supplier, or licensor of the Escambia County Business (including any existing or former client or customer of Seller and any Person that becomes a client or customer of the Escambia County Business after the Closing), or any other Person who has a material business relationship with the Escambia County Business, to terminate or modify any such actual or prospective relationship.

(b) Seller acknowledges that a breach or threatened breach of this Section 6.01 would give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Seller of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(c) Seller acknowledges that the restrictions contained in this Section 6.01 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the Transactions. In the event that any covenant contained in this Section 6.01 should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service or other limitations permitted by applicable Law. The covenants contained in this Section 6.01 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

6.02 Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by Seller with respect to any period prior to the Closing, or for any other reasonable purpose, for a period of five years after the Closing, Buyer shall:

(i) retain the Books and Records relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of Seller; and

(ii) upon reasonable notice, afford the Seller’s Representatives reasonable access (including the right to make, at Seller’s expense, photocopies), during normal business hours, to such Books and Records.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer or the Escambia County Business after the Closing, or for any other reasonable purpose, for a period of five years following the Closing, Seller shall:

(i) retain the books and records of Seller which relate to the Escambia County Business and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford the Buyer's Representatives reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records.

(c) Neither Buyer nor Seller shall be obligated to provide the other party with access to any books or records pursuant to this Section 6.02 where such access would violate any Law.

6.03 Public Announcements. Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), including but not limited to Chapter 119 or Chapter 286, Florida Statutes, no Party shall make any public announcements in respect of this Agreement or the Transactions or otherwise communicate with any news media regarding the Transactions (including with respect to the Purchase Price or any other financial terms of the Transactions) without the prior written consent of Buyer, on the one hand, or Seller, on the other hand, as applicable (which consent shall not be unreasonably withheld, delayed, or conditioned); and Buyer, on the one hand, and Seller, on the other hand, shall cooperate as to the timing and contents of any such announcement.

6.04 Bulk Sales Laws. The Parties hereby waive compliance with the provisions of any bulk sales, bulk transfer, or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Acquired Assets to Buyer; it being understood that any Liabilities arising out of the failure of Seller to comply with the requirements and provisions of any bulk sales, bulk transfer, or similar Laws of any jurisdiction shall be treated as Excluded Liabilities.

6.05 Receivables. From and after the Closing, if Seller or any of its Affiliates receives or collects any funds relating to any Acquired Asset (except for Accounts Receivable of Seller for goods or services provided to customers prior to the Closing Date), Seller or its Affiliate shall remit such funds to Buyer within five Business Days after its receipt thereof. From and after the Closing, if Buyer or any of its Affiliates receives or collects any funds relating to any Excluded Asset (or in payment of Accounts Receivable of Seller for goods or services provided to customers prior to the Closing Date), Buyer or its Affiliate shall remit any such funds to Seller within five Business Days after its receipt thereof.

6.06 Certain Filings. The Parties shall cooperate with each other (a) in determining whether any action by or in respect of, or filing with, any Governmental Authority is required in connection with the consummation of the Transactions and (b) in taking such actions or making any such filings, furnishing information required in connection therewith, and seeking timely to obtain any such actions, consents, approvals or waivers.

6.07 Further Assurances. Following the Closing, each of the Parties shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances, and

assurances, and take such further actions as may reasonably be required, to carry out the provisions of this Agreement and give effect to the Transactions.

ARTICLE 7

SURVIVAL; INDEMNIFICATION

7.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained in this Agreement shall survive the Closing and shall remain in full force and effect until the date that is 24 months from the Closing Date; provided, that the representations and warranties set forth in (a) Sections 4.01, 4.02, 4.06, 4.13, 5.01, and 5.03 of this Agreement shall survive indefinitely; and (b) Sections 4.09, 4.10, 4.11, and 4.12 of this Agreement shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation, tolling, or extension thereof) plus 60 days. All covenants and agreements contained in this Agreement shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

7.02 Investigations; Due Diligence. Notwithstanding anything to the contrary in this Agreement, the right to indemnification, payment of Losses, or other remedy based on any such representations, warranties, covenants, and obligations will not be affected by any investigation or due diligence conducted by or on behalf of Buyer, or any Knowledge acquired, or capable of being acquired, at any time by or on behalf of Buyer in connection with such investigation or due diligence, who may have the right to indemnification, payment of Losses, or other remedy pursuant to this Agreement. Seller further acknowledges and agrees that Buyer assisted Seller in the preparation of certain closing items solely at Seller's request and any such items prepared by or with the assistance of Buyer shall in no way affect Buyer's right to indemnification, payment of Losses, or other remedy under this Agreement.

7.03 Indemnification by Seller. Subject to the other terms and conditions of this ARTICLE 7, Seller shall indemnify Buyer, Buyer's Affiliates, their Representatives (collectively, the "Buyer Indemnified Parties") against, and shall defend and hold the Buyer Indemnified Parties harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, any Buyer Indemnified Party based upon, arising out of, with respect to, or by reason of:

(a) any inaccuracy in or breach of the representations or warranties of Seller contained in this Agreement, in the Transaction Documents, or in any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date); provided, that for the sole purpose of determining Losses (and not for determining whether or not any breaches of representations or warranties have occurred), the representations and warranties of Seller contained in this Agreement shall not be deemed to be qualified by "material", "in all material respects", "Material Adverse Effect", or any similar term or limitation;

(b) any breach or non-fulfillment of any covenant, agreement, or obligation to be performed by Seller pursuant to this Agreement, the Transaction Documents, or any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement;

(c) any Excluded Asset or any Excluded Liability; or

(d) any Third-Party Claim based upon, resulting from or arising out of the business, operations, properties, assets, or obligations of Seller or any of its Affiliates (other than the Acquired Assets or Assumed Liabilities) conducted, existing, or arising on or prior to the Closing Date.

7.04 Indemnification by Buyer. Subject to the other terms and conditions of this ARTICLE 7, Buyer shall indemnify Seller, Seller's Affiliates, and their Representatives (collectively, the "Seller Indemnified Parties") against, and shall defend and hold Seller Indemnified Parties harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, any Seller Indemnified Party based upon, arising out of, with respect to, or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date); provided, that for the sole purpose of determining Losses (and not for determining whether or not any breaches of representations or warranties have occurred), the representations and warranties of Buyer contained in this Agreement shall not be deemed to be qualified by "material", "in all material respects", "Material Adverse Effect", or any similar term or limitation;

(b) any breach or non-fulfillment of any covenant, agreement, or obligation to be performed by Buyer pursuant to this Agreement; or

(c) any Assumed Liability.

7.05 Certain Limitations. The Person or Persons making a claim under this ARTICLE 7 is referred to as the "Indemnified Party", and the Person or Persons against which such claims are asserted under this ARTICLE 7 is referred to as the "Indemnifying Party". Notwithstanding anything to the contrary in this Agreement, the indemnification provided for in Sections 7.03 and 7.04 of this Agreement shall be subject to the following limitations:

(a) The Buyer Indemnified Parties shall not be indemnified pursuant to Section 7.03(a) of this Agreement with respect to Losses incurred, sustained by, or imposed upon the Buyer Indemnified Parties to the extent that the aggregate amount of all Losses for which the Buyer Indemnified Parties have received indemnification pursuant to Section 7.03(a) of this Agreement has exceeded the Purchase Price. The Seller Indemnified Parties shall not be indemnified pursuant to Section 7.03(a) of this Agreement with respect to Losses incurred, sustained by, or imposed upon the Buyer Indemnified Parties to the extent that the aggregate amount of all Losses for which the Buyer Indemnified Parties have received indemnification pursuant to Section 7.03(a) of this Agreement has exceeded the Purchase Price.

(b) Notwithstanding anything to the contrary in Section 7.05(a) of this Agreement, the limitations set forth in Section 7.05(a) of this Agreement shall not apply with respect to Losses recoverable from Seller to the extent that such Losses are caused by Seller's fraud.

(c) For purposes of this ARTICLE 7, any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality, Material Adverse Effect, or other similar qualification contained in or otherwise applicable to such representation or warranty.

7.06 Indemnification Procedures.

(a) Third-Party Claims.

(i) If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a Party or an Affiliate of a Party or a Representative of the foregoing (a "Third-Party Claim") against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Each such notice by the Indemnified Party shall describe the Third-Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the good faith estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party.

(ii) The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third-Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall reasonably cooperate in good faith in such defense; provided, that if the Indemnifying Party is Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third-Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Escambia County Business, or (y) seeks an injunction or other equitable relief against the Indemnified Party. If the Indemnifying Party assumes the defense of any such claim or legal proceeding as contemplated in this Section 7.06(a), the Indemnifying Party shall select counsel reasonably acceptable to the Indemnified Party (such consent not to be unreasonably withheld, delayed or conditioned) to conduct the defense of such claim or legal proceeding and shall have the right to take any action it deems necessary to avoid, dispute, defend, appeal or make counterclaims with respect to any Third-Party Claim in the name and on behalf of the Indemnified Party.

(iii) In the event that the Indemnifying Party assumes the defense of any Third-Party Claim, the Indemnified Party shall have the right, at its own cost and expense, to participate in the defense of any Third-Party Claim with counsel selected by it, subject to the Indemnifying Party's right to control the defense thereof.

(iv) If the Indemnifying Party elects not to compromise or defend such Third-Party Claim or fails to notify the Indemnified Party in writing of its election to defend as provided in this Agreement by the 30th day following the Indemnified Party delivering to the Indemnifying Party the prompt

written notice of such Third-Party Claim that is contemplated by the first sentence of Section 7.06(a)(i) of this Agreement, then the Indemnified Party may, subject to Section 7.06(b) of this Agreement, pay, compromise, defend such Third-Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third-Party Claim. Notwithstanding anything to the contrary in this Agreement (including in the immediately foregoing sentence), but subject to Section 7.06(a)(iii) of this Agreement, in no event shall any Indemnifying Party be liable to any Indemnified Party for the fees or disbursements of more than one separate counsel for all Indemnified Parties in any jurisdiction in any single action or proceeding.

(v) Buyer and Seller shall cooperate with each other in all reasonable respects in connection with the defense of any Third-Party Claim, including making available records relating to such Third-Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending Party, management employees of the non-defending Party as may be reasonably necessary for the preparation of the defense of such Third-Party Claim.

(b) Settlement of Third-Party Claims.

(i) Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third-Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, delayed or conditioned), except as provided in this Section 7.06(b). If a firm offer is made to settle a Third-Party Claim solely for monetary payment that will be paid by the Indemnifying Party without leading to liability or the creation of a financial or other obligation (or any injunctive or other form of relief) on the part of the Indemnified Party and its Affiliates and provides, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third-Party Claim, and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party.

(ii) If the Indemnified Party fails to consent to such firm offer within 10 days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third-Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third-Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third-Party Claim, the Indemnifying Party may settle the Third-Party Claim upon the terms set forth in such firm offer to settle such Third-Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 7.06(a) of this Agreement, it shall not agree to any settlement or other determination without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, delayed or conditioned).

(c) Direct Claims.

(i) Any claim by an Indemnified Party on account of a Loss which does not result from a Third-Party Claim (a “Direct Claim”) shall be asserted by the Indemnified Party giving the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material

written evidence thereof and shall indicate the good faith estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party.

(ii) The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. During such 30-day period, the Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim, and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the premises and personnel of the Escambia County Business and the right to examine and copy any accounts, documents, or records) as the Indemnifying Party or any of its professional advisors may reasonably request.

(iii) If the Indemnifying Party does not so respond within such 30-day period (or if in its response it disputes such Direct Claim), the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to this Agreement.

7.07 Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the Parties as adjustment to the Purchase Price, unless otherwise required by Law.

7.08 Exclusive Remedy. The Parties acknowledge and agree that their sole and exclusive remedy with respect to (a) any and all claims for any breach (or alleged breach) of any representation, warranty, covenant, agreement, or obligation set forth in this Agreement, (b) otherwise with respect to the performance or breach of this Agreement, (c) the Transactions, or (d) otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this ARTICLE 7. In furtherance of the foregoing in this Section 7.08, each Party hereby waives, to the fullest extent permitted under Law, any and all rights, claims, and causes of action for any breach of any representation, warranty, covenant, agreement, or obligation set forth in this Agreement or otherwise relating to the subject matter of this Agreement (except for claims based upon fraud) that it may have against the other Party, its Affiliates, and each of their respective Representatives arising under or based upon any Law, whether at law or in equity, except pursuant to the indemnification provisions set forth in this ARTICLE 7. Each of the Parties acknowledges and agrees that it may not avoid such limitation on remedies by (x) seeking other damages for breach of contract, tort, or other theory of liability (except for claims based upon fraud), or any equitable relief (except with respect to Section 6.01), all of which are hereby waived or (y) asserting or threatening any claim against any Person that is not a Party (or an heir, legal representative, successor or permitted assign with respect to any Party) for, or relating to or arising from, any breach of any representation, warranty, covenant, agreement, or obligation set forth in this Agreement.

ARTICLE 8

MISCELLANEOUS

8.01 Expenses. Except as otherwise expressly provided in this Agreement, all costs and expenses, including fees and disbursements of counsel, financial advisors, and accountants, incurred in

connection with this Agreement and the Transactions shall be paid by the Party incurring such costs and expenses, whether or not the Closing shall have occurred.

8.02 Recitals; Interpretation. The recitals to this Agreement are hereby incorporated by reference into the Agreement for all purposes. For purposes of this Agreement: (a) the words “include”, “includes”, and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) if a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb); (d) terms defined in the singular have the corresponding meanings in the plural, and vice versa; (e) unless the context of this Agreement clearly requires otherwise, words importing the masculine gender shall include the feminine and neutral genders, and vice versa; (f) except as otherwise specifically set forth in this Agreement, all references to currency in this Agreement shall be to, and all payments required under this Agreement shall be paid in, Dollars and (g) the words “herein”, “hereof”, “hereby”, “hereto”, and “hereunder” refer to this Agreement as a whole and not to any particular section or article in which such words appear. Unless the context otherwise requires, references in this Agreement: (x) to Articles, Sections, Schedules, Disclosure Schedules, and Exhibits mean the Articles and Sections of, and Schedules, Disclosure Schedules, and Exhibits to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a particular statute or regulation include all rules and regulations thereunder and any predecessor or successor statute, rule, or regulation, in each case, as amended or otherwise modified from time to time. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Whenever any action must be taken under this Agreement on or by a day that is not a Business Day, then such action may be validly taken on or by the next day, following such day, that is a Business Day. The Disclosure Schedules and Exhibits referred to in this Agreement shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim in this Agreement.

8.03 Notices. All notices, requests, demands, claims or other communications that are required or may be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly given and received: (a) on the date of delivery, if personally delivered by hand; (b) on the fifth day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested; or (c) on the date scheduled for delivery after such notice is sent by a nationally recognized overnight express courier, charges prepaid. Subject to the immediately foregoing sentence, each such notice shall be sent to the following addresses (as applicable):

if to Buyer, to:

Pensacola Energy
222 W. Main Street
Pensacola, FL 32502
Attention: Don Suarez
Phone: (850) 474-5316
Email: dsuarez@cityofpensacola.com

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

Gunster, Yoakley & Stewart, P.A.
200 S. Orange Ave., Suite 1400
Orlando, FL 32801
Attention: Jeffery Q. Jonasen
Phone: (407) 406-5250
Email: jjonasen@gunster.com

if to Seller, to:

Okaloosa Gas District
364 Valparaiso Parkway
Valparaiso, FL 32580
Attention: Gordon King
Phone: (850) 729-4700
Email: GordonKing@okaloosagas.com

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

Anchors Smith Grimsley
Professional Limited Company
909 Mar Walt Drive, Suite 1014
Fort Walton Beach, FL 32547
Attention: C. LeDon Anchors, Esq.
Phone: (850) 863-4064
Email: danchors@asglegal.com

8.04 Headings and Captions. The headings and captions in this Agreement are included for convenience of reference only and shall be ignored in the construction or interpretation of this Agreement.

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

8.06 Entire Agreement. This Agreement, the Exhibits, Disclosure Schedules, and other schedules to this Agreement, and the other Transaction Documents, constitute the sole and entire agreement of the Parties with respect to the subject matter contained in this Agreement and in such Exhibits, Disclosure Schedules, other schedules to this Agreement, and other Transaction Documents, and supersede all prior and contemporaneous representations, warranties, negotiations, discussions, proposals, undertakings, understandings, covenants, and agreements (including draft agreements (including non-final versions of this Agreement, any other Transaction Document, or any such other agreement, certificate, instrument, or other document)), both written and oral, with respect to such subject matter. Without limiting the generality of the foregoing in this Section 8.06, no non-final version of this Agreement or any such other agreement, certificate, instrument, or other document shall be taken into account, in any way or to any extent, in interpreting either (a) this Agreement or any such other agreement, certificate, instrument, or other document or (b) the Parties' intent hereunder or thereunder. In the event of any inconsistency between the statements in the body of this Agreement and the Exhibits, Disclosure Schedules, or other schedules to this Agreement (other than an exception expressly set forth as such in the Disclosure Schedules or any such other schedule to this Agreement), or any other Transaction Document, the statements in the body of this Agreement shall control.

8.07 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, legal representatives, successors, and permitted assigns. No Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party (for the avoidance of doubt, the consent of Seller's Representatives shall constitute the consent of Seller), which consent shall not be unreasonably withheld, delayed or conditioned; provided, that Buyer may collaterally assign its rights and obligations under this Agreement to any lender providing financing to Buyer. No assignment shall relieve the assigning Party or Parties of any of its (or their) obligations pursuant to this Agreement. Any attempted assignment in violation of this Section 8.07 shall be void and without effect, *ab initio*.

8.08 No Third-Party Beneficiaries. Except as provided in Section **Error! Reference source not found.** and ARTICLE 7 of this Agreement, this Agreement is for the sole benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

8.09 Amendment and Modification; Waiver. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

8.10 Enforcement Costs. Except as otherwise specifically provided in this Agreement, if any civil action, arbitration, or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provision of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable Attorney's Fees and Expenses, court costs, sales and use taxes, and all expenses even if not taxable as court costs (including all such fees, taxes, costs, and expenses incident to arbitration, appellate, bankruptcy, and post judgment proceedings), incurred in that proceeding, in addition to any other relief which such Party or Parties may be entitled. Attorney's Fees and Expenses shall include paralegal fees, investigative fees, administrative costs, sales and use taxes, and all other reasonable charges billed by the attorney to the prevailing Party or Parties (including any fees and costs associated with collecting such amounts).

8.11 Governing Law; Jurisdiction; Dispute Resolution Process.

(a) This Agreement, the negotiation, execution, terms, and performance of this Agreement, the rights of the Parties under this Agreement, and all Actions arising, in whole or in part, under or in connection with or related to this Agreement or the Transactions, shall be governed by and construed in accordance with the internal laws of the State of Florida without giving effect to any choice or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Florida.

(b) The Parties acknowledge that a substantial portion of the negotiations and anticipated performance of this Agreement occurred or will occur exclusively in Escambia County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement or the Transactions will be brought exclusively in the courts of record of the State of Florida in Escambia County or the United States District Court, Northern District of Florida in Escambia County. Each Party consents to the jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court. Service of any court paper may be effected on such Party by mail, as provided in this Agreement, or in such other manner as may be provided under Laws.

(c) Notwithstanding anything to the contrary in this Agreement, each of the Parties agrees that, prior to commencing litigation seeking monetary damages with respect to the Transactions, the Parties agree to use commercially reasonable efforts to try to resolve the dispute, including by meeting promptly, in person, on at least one occasion. If the Parties are unable to reach agreement on a resolution of such dispute within 20 days of an initial meeting, the Parties agree to submit, for a period of 60 days, to voluntary non-binding mediation before a jointly selected neutral third-party mediator, to be conducted in the State of Florida, Escambia County (however, such mediation or obligation to mediate shall not suspend or otherwise delay any termination or other action of the Parties or affect the Parties' other rights).

8.12 No Construction Against Draftsmen. The Parties acknowledge that each Party and its attorneys have reviewed this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party, or any similar rule operating against the drafter of an agreement, shall not be applicable to the construction or interpretation of this Agreement. Any controversy over construction of this Agreement shall be decided without regard to events of authorship or negotiation.

8.13 Counterparts; Effectiveness. This Agreement may be executed in one or more counterparts, each of which shall be an original. Any such counterpart, to the extent delivered by means of a facsimile machine or by .pdf, .tif, .gif, .jpeg or similar attachment to an electronic mail message (any such delivery, an "Electronic Delivery"), shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No Party shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such Party forever waives any such defense.

8.14 Certain Disclaimers.

(a) No Additional Representations by Seller. BUYER ACKNOWLEDGES, AGREES, AND ACCEPTS THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 4 OF THIS AGREEMENT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY (INCLUDING WITH RESPECT TO SELLER OR WITH RESPECT TO THE ESCAMBIA COUNTY BUSINESS OR ANY OF THE ASSETS, LIABILITIES, OR OPERATIONS OF THE ESCAMBIA COUNTY BUSINESS), AND BUYER EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES BY SELLER THAT ARE NOT SPECIFICALLY SET FORTH IN ARTICLE 4 OF THIS AGREEMENT.

(b) No Additional Representations by Buyer. SELLER ACKNOWLEDGES, AGREES, AND ACCEPTS THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 5 OF THIS AGREEMENT, BUYER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY (INCLUDING WITH RESPECT TO BUYER), AND SELLER EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES BY BUYER THAT ARE NOT SPECIFICALLY SET FORTH IN ARTICLE 5 OF THIS AGREEMENT.

8.15 JURY WAIVER. IN ANY CIVIL ACTION, COUNTERCLAIM OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS, THE PERFORMANCE OF THIS AGREEMENT, OR THE RELATIONSHIP CREATED BY THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THIS AGREEMENT OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS SECTION 8.15. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS SECTION 8.15. EACH PARTY ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY ITS OWN COUNSEL WITH RESPECT TO THIS AGREEMENT AND SPECIFICALLY WITH RESPECT TO THIS SECTION 8.15.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Closing Date by their respective duly authorized representatives.

SELLER:

OKALOOSA GAS DISTRICT

By: _____
Gordon King, Chief Executive Officer

BUYER:

**CITY OF PENSACOLA d/b/a
PENSACOLA ENERGY**

By: _____
Grover C. Robinson, IV, Mayor

Attest:

By: _____
Ericka L. Burnett, City Clerk

Approved as to substance:

By: _____
Don Suarez, Department Director

Legal in form and valid as drawn:

By: _____
City Attorney

(CORPORATE SEAL)

Signature Page to Asset Purchase Agreement

EXHIBIT A

FORM OF BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT

See attached.

[TO BE ATTACHED]