

**AGREEMENT FOR THE LEASE, IMPROVEMENT
AND OPERATION OF THE
JASPER CLEAN ENERGY FACILITY**

between

Jasper Clean Energy LLC
("Lessee")

-and-

The City of Jasper, Indiana
acting by and through
its Utility Service Board
("Lessor")

Dated as of: December 29, 2011

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**AGREEMENT FOR THE LEASE, IMPROVEMENT AND
OPERATION OF THE JASPER CLEAN ENERGY FACILITY**

THIS AGREEMENT FOR THE LEASE, IMPROVEMENT AND OPERATION OF THE JASPER CLEAN ENERGY FACILITY (this "**Lease**") dated as of December 29, 2011, by and between **The City of Jasper, Indiana** (the "**Lessor**"), acting by and through its Utility Service Board of the City of Jasper (the "**USB**"), and **Jasper Clean Energy LLC**, an Indiana limited liability company, having its principal place of business in Jasper, Indiana (the "**Lessee**").

RECITALS

A. Lessor owns the real property located in the City of Jasper, Indiana, as more fully described in **Exhibit 1**, attached hereto and incorporated herein (the "**Site**").

B. Lessor owns and operates an existing 1968 vintage, Riley Stoker, coal-fired power plant, with a current boiler capacity of approximately 142,000 lbs/hr and a current gross generator capacity of approximately 14.5 megawatts (MW), as more fully described in **Exhibit 2**, attached hereto and incorporated herein (the "**Existing Plant**"), which boiler capacity and generator capacity will be tested and demonstrated ("**Phase I Demonstrated Capacities**") no later than thirty (30) days after the transfer of possession of the Existing Plant from Lessor to Lessee on the Commencement Date.

C. Lessor desires to maximize the economic value of the Existing Plant for the benefit of the citizens of the City of Jasper by entering into this Lease, whereby (i) during Phase I, Lessor will continue to operate the Existing Plant as a coal-fired power plant, (ii) during Phase II, Lessee will transfer possession of the Existing Plant to Lessee who will invest substantial funds to modify the boiler of the Existing Plant to operate using regionally-grown biomass, instead of coal, as its fuel ("**Modified Boiler**"), and construct the natural gas-fired Facility, (iii) during Phase III, Lessee will operate and maintain the Modified Boiler, together with the natural gas-fired Facility to produce clean, reliable electric power for sale at wholesale to a third party purchaser under a multi-year power purchase and sales agreement and (iv) during Phase IV, at the end of the Term of the Lease, Lessee will, at Lessor's option, either (1) sell the Facility and the Related Facilities to Lessor at a price equal to their fair market value and transfer the Modified Boiler to Lessor at no cost, or (2) decommission and remove the Facility and transfer possession to Lessor of the Modified Boiler and all or a portion of the Related Facilities, including the Modified Boiler together with an operating electric generator that achieves the Phase II Demonstrated Capacities and has a remaining useful life of at least five years, and Reclaim that portion of the Site where the Facility was located.

D. Lessee desires to develop, construct, own and operate a hybrid renewable energy project at the Site comprised of: (i) a natural gas-fired combustion turbine attached to an approximately 48 MW (gross) electric generator ("**CT Genset**"), (ii) a heat recovery steam generator ("**HRSG**") that will convert exhaust gas from the combustion turbine to steam, (iii) a steam turbine attached to an approximately 32 MW (gross) electric generator ("**Steam Turbine**").

Genset”), (iv) a black-start electric generator and diesel fuel delivery, handling and storage facilities (such diesel to be used as primary fuel for the black-start generator, emergency water pump, and potentially as emergency fuel for the CT Genset), (v) related Utilities, improvements, equipment, facilities, appurtenances and other improvements to be developed, constructed, owned, operated and maintained on the Site, including but not limited to all structures, machinery, equipment, meters, fixtures, interconnections, ancillary equipment, parking areas, and materials, and all additions, expansions and modifications thereto as may be located on the Site (collectively (i) through (v), the **“Facility”**), (vi) associated biomass fuel delivery, handling and storage facilities, (vii) interconnections to the required City-supplied utility services required by the hybrid renewable energy project including water supply lines, wastewater and stormwater sewer lines, electric service and natural gas lines, (viii) telecommunication and telephone lines, (collectively (vi) through (viii), the **“Related Facilities”**), (ix) electrical station-use, interconnection, switching and station transformer, (x) a new natural gas supply line from the Site to an interstate pipeline, and (xi) a new 69 kV electric line from the Site to the Jasper North Substation, (collectively (ix) through (xi), the **“Transmission Facilities”**), all as more fully described in **Exhibit 3**, attached hereto and incorporated herein.

E. Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the Site and the Existing Plant, in order for Lessee to develop, construct, own and operate the Facility and the Related Facilities, and develop and construct modifications to the Existing Plant, in order to produce electric capacity, energy and ancillary services for sale into the available wholesale power markets.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, hereby agree as follows:

ARTICLE I.

DEFINITIONS AND DOCUMENTS

Section 1.01. Definitions. For all purposes of this Lease, the following terms shall have the meanings assigned to them in this Article, and include the plural as well as the singular.

“Affiliate” shall mean, when used with reference to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of the foregoing, “control”, “controlled by” and “under common control with” with respect to any Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, partnership interests or by contract or otherwise.

“Applicable Law” means as of the Effective Date: (1) any federal, state or local law, code, or regulation, any Administrative Consent Order, or any agreement with any Regulating Entity having appropriate jurisdiction; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule or order of any

Regulating Entity having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate Regulating Entity if such interpretation is documented by such regulatory body and generally applicable; and (4) any Governmental Approval, in each case having the force of law and applicable from time to time to (a) the siting, permitting, design, acquisition, construction, equipping, financing, ownership, possession, start-up, testing, operation, maintenance, repair, replacement or management of electric generation facilities; (b) the transfer, handling, processing, or transportation of Fuel; (c) operation of the Facility under any applicable Environmental Laws; (d) the health and welfare of individuals at or visiting the Facility; or (e) any other transaction or matter contemplated hereby (including, without limitation, any of the foregoing which pertain to waste disposal, health, safety, fire, environmental protection, labor relations, building codes, the payment of prevailing or minimum wages and non-discrimination).

“Bona Fide Offer” shall have the meaning set forth in **Section 28.01**.

“Casualty” means any loss or destruction of or damages to the Facility or the Site resulting from any act of God, fire, explosion, earthquake, accident or the elements, whether or not covered by insurance and whether or not caused by the fault or negligence of either Party, or such Party’s employees, agents, contractors, or visitors.

“City Council” means the Common Council of the City of Jasper, Indiana

“Closing” shall have the meaning set forth in **Section 28.02**.

“Commencement Date” means the date upon which Lessee provides written notice to Lessor of the satisfaction or waiver of the Conditions Precedent set forth under **Section 3.03**.

“Commencement Date Deadline” shall have the meaning set forth in **Section 3.01**

“Commercial Operation Date” means the date upon which Lessee notifies Lessor that the Facility, all or in part as determined by Lessee, is commercially operational.

“Commercial Operation Date Deadline” shall have the meaning set forth in **Section 3.05**.

“Conditions Precedent” shall have the meaning set forth in **Section 3.03**.

“Construction Funding” shall have the meaning set forth in **Section 3.03.4**.

“Construction Liquidated Damages” shall have the meaning set forth in **Section 6.03.2**

“Contract Year” shall mean a period of twelve months during the Term of this Lease, with the first Contract Year commencing on the Commencement Date and continuing until the last day of the calendar month preceding the calendar month in which the first anniversary of the Commencement Date occurs, and the second Contract Year (and each Contract Year thereafter) shall commence on the first day of the calendar month which contains the anniversary of the Commencement Date and end on the last day of the calendar month which precedes the calendar month which contains the next anniversary of the Commencement Date (e.g., if the Commencement Date is September 15, 2012, then the first Contract Year shall commence on

September 15, 2012, and end on August 31, 2013, and each Contract Year thereafter shall commence on September 1 and end on the following August 31).

“Coordination Committee” shall have the meaning set forth in **Section 14.01**.

“CT Genset” has the meaning set forth in the Recitals, as more fully described in **Exhibit 3**.

“Effective Date” means the date on which this Lease is fully executed by the parties hereto as set forth on the signature page below.

“Environmental Laws” shall mean any federal, state or local law, code, statute, ordinance, rule, regulation, rule of common law, guideline or informal policy position, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material; or any substances or mixture of any Hazardous Materials regulated thereunder, now or hereafter enacted or promulgated (collectively, and including, without limitation, any such laws which require notice of the use, presence, storage, generation, disposal or release of any Hazardous Materials to be provided to any Party), including, but not limited to, the following: the Comprehensive Environmental Response, Compensation and Liability Act, as now or hereafter amended (42 U.S.C. Section 9601, et seq.); the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Section 1801, et seq.); the Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. Section 6901, et seq.); and any so-called “Superfund” or “Superlien” law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material; or any substances or mixture regulated under the Toxic Substance Control Act of 1976, as now or hereafter amended (15 U.S.C. Section 2601 et seq.); and any “toxic pollutant” under the Clean Water Act, as now or hereafter amended (33 U.S.C. Section 1251 et seq.); and any hazardous air pollutant under the Clean Air Act, as now or hereafter amended (42 U.S.C. Section 7901 et seq.).

“Environmental Liability” shall mean any action, lawsuit, claim or proceeding (including claims or proceedings at common law or under the Occupational Safety and Health Act or similar laws relating to safety of employees) arising under or related in any way to the Environmental Laws or which seeks to impose liability for (i) noise; (ii) pollution or contamination of the air, surface water, ground water or land or the clean-up of such pollution or contamination; (iii) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation; (iv) exposure to or contamination by Hazardous Materials; (v) the safety or health of employees or (vi) the manufacture, processing, distribution in commerce or use of Hazardous Materials. An “Environmental Liability” includes a common law action, whether direct or indirect, as well as a proceeding to issue, modify or terminate an Environmental Permit, or to adopt or amend a regulation to the extent that such a proceeding attempts to redress violations of an applicable permit, license, or regulation as alleged by any governmental authority.

“Environmental Permit” shall mean any permit, license, approval or other authorization under any applicable Environmental Laws.

“Existing Plant” has the meaning set forth in the Recitals, as more fully described in **Exhibit 2**.

“**Facility**” has the meaning set forth in the Recitals, as more fully described in **Exhibit 3**.

“**Facility Management Company**” has the meaning set forth in **Exhibit 19**.

“**Financing Documents**” shall have the meaning set forth in **Section 21.01**.

“**Financing Parties**” shall have the meaning set forth in **Section 21.01**

“**Force Majeure**” means all events beyond the reasonable control of the Party affected, including without limitation flood, drought, earthquake, storm, lightning, fire, explosion, war, riot, civil disturbances, strikes, sabotage, and any act or failure to act of a Regulating Entity.

“**Fuel**” means (i) natural gas, as the primary fuel for the Facility, (ii) a “closed-loop biomass” crop known as *Miscanthus x giganteus*, or any subsequently improved or beneficially modified form of *Miscanthus*, as the primary fuel for the Modified Boiler, or, subject to the consent of Lessor as set forth in **Section 25.01**, any other “closed-loop biomass” crops as an alternate fuel for the Modified Boiler, and (iii) diesel fuel as the primary fuel for the black-start generator and the emergency firewater pump, and potentially as emergency fuel for the CT Genset. For the avoidance of doubt, the term “closed-loop biomass” shall have the meaning set forth in Section 45(c)(2) of the Internal Revenue Code (26 U.S.C. 45(c)(2)); PROVIDED HOWEVER that this definition is further subject to the provisions of **Section 25.01**.

“**Good Engineering Practice**” means those practices, methods, applicable codes and acts engaged in or approved by a significant portion of the natural gas pipeline industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Good Engineering Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

“**Government Approval**” shall mean any permit, license, approval or other authorization obtained from a Regulating Entity under any Applicable Law.

“**HRSG**” has the meaning set forth in the Recitals, as more fully described in **Exhibit 3**.

“**Hazardous Materials**” shall mean any flammable, reactive, explosive, corrosive or radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials, wastes or substances, exposure to which is prohibited, limited or regulated by a federal, state, county, regional or local authority, or any Environmental Laws, or which, even if not so regulated, may or could pose a hazard to the health and safety of the occupants of the Facility, the Site or of property adjacent to the Facility or the Site, including, but not limited to, asbestos, PCBs, petroleum products and by-products, hazardous air pollutants, or any substance identified, defined or listed as a “toxic pollutant,” “hazardous wastes,” “hazardous

materials,” “hazardous substances,” “toxic substances,” “pollutant or contaminant,” “hazardous chemical,” or any hazardous air pollutant, or similarly identified in, pursuant to, or for purposes of, any Environmental Laws.

“Implicit Price Deflator” As used in this Lease, the “Implicit Price Deflator” means the Implicit Price Deflator for Gross Domestic Product (2005 = 100), as published by the Bureau of Economic Analysis of the U.S. Department of Commerce.

“Initial Term” shall have the meaning set forth in **Section 2.01**.

“Jasper Clean Energy Center”, as used in this Lease, shall refer to the operating electric generating station owned and/or leased by Jasper Clean Energy LLC, and shall include the Modified Boiler, the Facility, the Related Facilities and such other equipment and systems located on, or proposed to be located on, the Site.

“Lease” means this Agreement for the Lease, Improvement and Operation of the Jasper Clean Energy Center, including the exhibits hereto as identified in **Section 1.03**.

“Lease Option Payment” shall have the meaning set forth in **Section 2.04**.

“Legal Action” means litigation pending or threatened against the Lessor or the Lessee by any Person opposing, preventing, enjoining or attempting to oppose, prevent or enjoin the Lessor or the Lessee from performing its obligations pursuant to the terms and provisions of this Lease, including any intervention, protest or opposition that may be submitted by any Person with respect to any Environmental Permit or Government Approval.

“Lessee” means Jasper Clean Energy LLC, its successors and assigns.

“Lessee Events of Default” shall have the meaning set forth in **Section 16.01**.

“Lessee’s Parties” means Lessee, its officers, directors, partners, members, affiliates, lenders, employees, shareholders, attorneys, lessees, sublessees, licensees, invitees, contractors, subcontractors, consultants, agents and any of their respective successors and assigns.

“Lessor” means the City of Jasper, Indiana, its successors and assigns, acting by and through its Utility Service Board.

“Lessor Events of Default” shall have the meaning set forth in **Section 16.03**.

“Lessor’s Parties” means Lessor, its employees, attorneys, licensees, invitees, contractors, subcontractors, consultants, agents, elected and appointed officials and representatives, or members of public boards.

“MISO” shall mean the Midwest Independent Transmission System Operator, Inc., or its successor.

“Modified Boiler” has the meaning set forth in the Recitals, as more fully described in **Exhibit 4**.

“**NERC**” shall mean the North American Electric Reliability Corporation, or its designee, or any successor thereto.

“**Non-Essential Spare Parts**” shall mean those spare parts used to support the Existing Plant by Lessor prior to and during Phase I which Lessee and Lessor agree will not be necessary or useable to support the Facility or Modified Boiler which shall be in existence at the conclusion of Phase II.

“**Official Records**” shall mean the Official Records of Dubois County, Indiana.

“**Party**” or “**Parties**” shall mean Lessor and Lessee.

“**Person**” shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, estate, unincorporated organization or other business entity, or any governmental authority.

“**Phase I**” shall mean the period of time from the Effective Date to the Commencement Date.

“**Phase II**” shall mean the period of time from the Commencement Date to the Commercial Operation Date.

“**Phase III**” shall mean the period of time from the Commercial Operation Date to the end of the Term.

“**Phase IV**” shall mean the period of time from the end of the Term until the completion of the applicable tasks required of Lessor and Lessee during Phase IV, which depends on the option elected at that time by Lessor.

“**Phase I Demonstrated Capacity**” shall mean the electric and steam generation capacities of the existing steam turbine generator and the existing coal fueled boiler, as determined by testing (performed in accordance with the then effective MISO electric generating capacity testing procedures then in effect) when using 100% coal as fuel no later than thirty (30) days after the transfer of possession of the Existing Plant from Lessor to Lessee and prior to the commencement of any modifications of the Existing Plant by Lessee.

“**Phase II Demonstrated Capacity**” shall mean steam generation capacity of the Modified Boiler and the incremental electric generation capacity of the Steam Turbine Genset resulting from the operation of the Modified Boiler at full generating capability utilizing only biomass as Fuel for the Modified Boiler, as determined by testing (performed in accordance with the then effective MISO electric generating capacity testing procedures then in effect) no later than ninety (90) days after the commencement of commercial operation by Lessee of the Modified Boiler. It is the intention of Lessor and Lessee that this testing shall occur at the same time of the testing required to be performed by the general contractor for the construction of the Modified Boiler to demonstrate that the Modified Boiler satisfies the required performance specifications of the applicable construction contract.

“**Prudent Electrical Practice**” means those practices, methods, applicable codes and acts engaged in or approved by a significant portion of the electric power industry during the relevant

time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Electrical Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

“Reclaim” or “Reclaiming” shall mean remove all structures to two feet below grade and restore surface with soil suitable for growing ground cover (i.e. grass). Such reclaiming will not require restoring the area to the original contours or require the removal of any underground piping or electrical wiring existing two feet below grade.

“Regulating Entity” shall mean any federal, state, regional, county or local entity, court, agency or body, or subdivision thereof, having governmental or quasi-governmental authority and jurisdiction over the Facility.

“Related Facilities” has the meaning set forth in the Recitals, as more fully described in **Exhibit 3**.

“Release” shall mean any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Material.

“Remaining Equipment” shall mean (i) a functioning “closed-loop biomass” fired Modified Boiler coupled with a steam-operated electric generator that together will have (A) a steam-generation capacity and an electric generation capacity equal to no less than ninety five (95%) percent of the Phase II Demonstrated Capacities of the Modified Boiler, and (B) an expected useful remaining life of at least five (5) years, and (ii) all the Related Facilities, less any of such Related Facilities that Lessee elects to remove and retain from the Site, so long as sufficient Related Facilities remain at the Site to constitute a fully functional biomass power plant, as more fully described in **Section 6.01(ii)** and **Exhibit 5**.

“Remaining Equipment Liquidated Damages” shall have the meaning set forth in **Section 6.03.4**.

“Renewal Notice” shall have the meaning set forth in **Section 2.01**.

“Renewal Term” shall have the meaning set forth in **Section 2.01**.

“Rent” shall have the meaning set forth in **Section 4.01**.

“Rent Payment Date” shall have the meaning set forth in **Section 4.01**.

“Right of First Refusal” shall have the meaning set forth in **Section 28.01**.

“Site” means that portion of Lessor’s existing 8.73 acre parcel of real property located on the northwest side of the railroad tracks, including any right, title and interest to utilize the railroad

right-of-way traversing such parcel in the City of Jasper, County of Dubois, State of Indiana, consisting of 6.546 acres, as more fully described in **Exhibit 1** attached hereto.

“Steam Turbine Genset” has the meaning set forth in the Recitals, as more fully described in **Exhibit 3**.

“Taxes and Assessments” shall have the meaning set forth in **Section 24.02**.

“Term” means the Initial Term, as extended by any and all Renewal Terms.

“Title Policies” shall have the meaning set forth in **Section 22.01**.

“Transfer” means a transfer or conveyance of Lessor’s interest in the Site, the Existing Plant, and/or this Lease.

“USB” means the Utility Service Board of the City of Jasper, Indiana, its successors and assigns.

“Utility Services” means the services and related improvements, equipment and facilities necessary for the construction, operation and maintenance of the Facility and the Modified Boiler, including, but not limited to, natural gas, electrical power, clean water supply, and sewer, together with all improvements, equipment and facilities related thereto. For avoidance of doubt, Utility Services do not include provision of natural gas as Fuel for the Facility, but do include the provision of natural gas for any other purposes requested by Lessee. The following utility services for water supply and waste water/sewer are estimates of the requirements for the Facility and Lessor has determined that it can supply at least the following Water Supply and Waste Water services as more fully specified below:

Water Supply (Max Conditions)

- GPM = 425
- GPH = 25,500
- GPD = 600,000

Waste Water (Max Conditions)

- GPM = 30
- GPH = 1,800
- GPD = 42,000

Section 1.02. Interpretation. As used in this Lease, (i) the word "or" is not exclusive, (ii) the words "consent" and "approval" are synonymous and are deemed to be followed by the phrase "which shall not be unreasonably withheld or delayed," (iii) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," (iv) any pronoun shall include the corresponding masculine, feminine and neuter forms, (v) words in the singular number shall include words in the plural and vice versa, unless the context of the usage of such term clearly indicates otherwise, and (vi) accounting terms that are used, but not otherwise defined herein, are to be construed and interpreted in accordance with "generally accepted accounting principles" and procedures (**“GAAP”**) in effect on the Effective Date, as described in Auditing Standards Board SAS No. 69 and established by various pronouncements of the Accounting Principles Board, the Financial Accounting Standards Board and the American Institute of Certified Public Accountants.

1.02.1 Captions, headings and the Table of Contents in this Lease, exclusive of Exhibits, are for convenience of reference only and do not constitute a part of this Lease or affect its meaning, construction or effect.

1.02.2 Except as expressly stated to the contrary elsewhere herein, in computing the number of days for purposes of this Lease, all days should be counted, including Saturdays, Sundays and legal holidays for Lessor; PROVIDED, HOWEVER, that if the final day of any time period falls on a Saturday, Sunday or legal holiday for Lessor, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday for Lessor.

Section 1.03. Exhibits. The following is a listing of all of the Exhibits to this Lease:

Exhibit 1	Site Description; Map
Exhibit 2	Description of Existing Plant
Exhibit 3	Description of Facility, Related Facilities and Transmission Facilities; and Facility Map
Exhibit 4	Description of Modified Boiler
Exhibit 5	Description of Remaining Equipment
Exhibit 6	Common Council Resolution; Utility Service Board Resolution
Exhibit 7	Minimum Insurance Requirements
Exhibit 8	Form of Memorandum of Lease
Exhibit 9	Natural Gas Pipeline Agreement
Exhibit 10	69 kV Service Line Agreement
Exhibit 11	Utility Representation Letter
Exhibit 12	Form of Deposit Account Control Agreement for Sinking Fund
Exhibit 13	Construction Contractor Qualifications
Exhibit 14	Coordination Committee – Management Areas
Exhibit 15	Form of Consent and Agreement
Exhibit 16	Reporting and Plan Requirements
Exhibit 17	Emissions
Exhibit 18	Sustainability; Fire Protection and Training
Exhibit 19	Qualifications of Facility Manager
Exhibit 20	Employment Offers to Existing Employees of Lessor (Coal Plant)
Exhibit 21	Form of Letter of Credit

ARTICLE II.

LEASE; TERM; AND PHASE I

Section 2.01. Lease of Site and Existing Plant; Term. Lessor hereby leases the Site and the Existing Plant to Lessee, and Lessee hereby leases the Site and Existing Plant from Lessor, upon the terms and conditions hereof, for an initial time period of approximately twenty-two (22) years, which shall commence on the Commencement Date and end 20 years from the Commercial Operation Date (the “**Initial Term**”); PROVIDED, HOWEVER, that by providing written notice (a “**Renewal Notice**”) to Lessor not less than three hundred sixty-five (365) days prior to the expiration of the then current term of this Lease, Lessee may elect to extend the term

of this Lease for up to two (2) time periods of not more than five (5) years each, with each such renewal term (each a “**Renewal Term**”) to commence on the expiration of the then current term of this Lease and continue for the period specified in such renewal notice delivered by Lessee. Lessor has agreed to DELAY the Commencement Date subject to the Condition Precedents set forth in **ARTICLE III** and receipt of the payments set forth below in **Section 2.03**.

Section 2.02. No Mineral Rights. This Lease does not demise or lease to Lessee any oil, gas or minerals in place underneath the surface of the Site or the right to extract and remove the same, which oil, gas, and mineral rights are reserved to, and retained by, Lessor. During the Term, Lessor may not use, or permit the use of the Site from the surface to a depth of 500 feet below the surface, for the purpose of exploring for, extracting, producing or mining any such oil, gas or minerals.

Section 2.03. Phase I Obligations of Lessor and Lessee.

2.03.1 During Phase I, Lessee shall pursue development of the Facility, including using all commercially reasonable efforts to: (i) enter into various contracts for (a) the long term wholesale sale of the electrical output of the Facility, (b) the design, engineering, procurement of equipment, and construction of the Facility and the Modified Boiler, (c) the electrical interconnection of the Facility to the wholesale power grid, and (d) the interconnection of the Facility to the natural gas transmission system; (ii) arrange with third parties to deliver “closed loop biomass” as fuel for the Modified Boiler; (iii) obtain all required Government Approvals necessary to (a) construct and operate the Facility, the Related Facilities and the Modified Boiler and (b) generate and sell electric capacity, energy and ancillary services in the available wholesale power markets, but (c) excluding any Governmental Approvals typically obtained after the commencement of construction or operation of the Facility and the Related Facilities; and (iv) obtain Construction Funding sufficient to construct the Facility, the Related Facilities and the Modified Boiler.

2.03.2 During Phase I, Lessor shall continue to operate and maintain the Existing Plant, Lessor may sell the electrical output thereof in the available wholesale markets for power, and Lessor shall maintain the Site, all in accordance with Prudent Utility Practices and all at Lessor’s expense, in order to ensure that, on the Commencement Date at the end of Phase I, Lessor will be able to transfer possession to Lessee of the Existing Plant and the Site in the same condition as the Existing Plant and the Site were in on the Effective Date as provided for in **Section 5.02**. In the event of damage to the Existing Plant due to a casualty, Lessor shall agree to use any insurance proceeds therefrom to repair the Existing Plant in order to meet its obligations under this **Section 2.03.2**; PROVIDED, HOWEVER, that to the extent that any part or portion of the Existing Plant which was damaged in the casualty is not going to be utilized by Lessee as part of the Facility following the construction and modifications by Lessee as set forth in this Lease, then Lessor, subject to Lessee’s prior written consent, will not repair such part of portion of the Existing Plant, but Lessor will pay fifty percent (50%) of such insurance proceeds to Lessee. Further, in the event that there is a repair or replacement needed to be made to the Existing Plant because that part of the equipment or building is to be utilized by Lessee in connection with the operation of the Facility, Lessor shall have the option to

repair or replace the damaged part of the Existing Plant or to transfer the insurance proceeds (or the appropriate portion thereof) to Lessee in lieu of the repair or replacement of said damaged building or equipment, less any salvage value which shall be available to Lessee for the damaged or destroyed building or equipment. Lessor shall cooperate with the efforts of Lessee in connection with Lessee's activities in pursuit of the requirements under **Section 2.03.1(i)(c)** and **(d)**, and costs incurred by Lessor in connection therewith shall be reimbursed by Lessee.

2.03.3 As of the Effective Date, Lessor represents and warrants as follows: (A) this Lease and the obligations and liabilities of Lessor thereunder shall be in compliance with IC 36-1-11 of the Indiana Code, (B) Lessor is lawfully authorized thereunder to lease the Site and the Existing Plant to Lessee pursuant to Resolutions of the City Council and the USB, attached hereto as **Exhibit 6**, (C) this Lease has been duly authorized, executed and delivered by Lessor and constitutes the legally valid and binding obligation of Lessor enforceable against the Lessor in accordance with its terms, and (D) there is no litigation pending or threatened against the Lessor preventing the Lessor from performing its obligations pursuant to the terms and provisions of this Lease, or, if existing, such litigation is pending or threatened, and it has been previously documented by Lessor to Lessee.

2.03.4 On the Effective Date, Lessor shall deliver to Lessee evidence, satisfactory to Lessee, that Lessor shall be able to provide adequate Utility Services to Lessee at the Site, including water supply, handling and treatment of wastewater and sanitary sewer, electric utilities to the Site, natural gas distribution services, as and to the extent necessary for Lessee to construct, operate and maintain the Facility, the Related Facilities and the Modified Boiler in the same or similar form as the letter attached as **Exhibit 11**.

2.03.5 On the Effective Date, Lessor shall provide evidence to Lessee, as may be commercially reasonable and necessary for Lessee to obtain the title commitment from Title Company under **ARTICLE XXI**, that Lessor owns fee title to the Site and the Existing Plant and is duly authorized to complete the transactions contemplated by this Lease.

2.03.6 On the Effective Date, Lessee shall have delivered to Lessor a certified copy of the resolution of Members of Lessee approving the execution and delivery of this Lease; and

2.03.7 As of the Effective Date, Lessee represents and warrants as follows: (A) the Lessee is duly authorized and existing under the laws of the jurisdiction of its formation and is qualified to do business in the State of Indiana; (B) this Lease has been duly authorized, executed and delivered by the Lessee and constitutes the legally valid and binding obligation of the Lessee enforceable against the Lessee in accordance with its terms; and (C) there is no litigation pending or threatened against the Lessee preventing the Lessee from performing its obligations pursuant to the terms and provisions of this Lease.

Section 2.04. Phase I Lease Option Payments. Sixty (60) days after the Effective Date Lessee shall commence making quarterly payments to Lessor in the amount of Sixty Thousand Dollars (\$60,000.00) (each a "**Lease Option Payment**"). Lessee shall pro-rate the Lease Option Payment for the first quarter (e.g., July 1 through September 30, 2011). For each quarterly period after such first quarter, the Lease Option Payment shall be due on the twentieth (20th) day after the first (1st) day of each such quarter. The final Lease Option Payment shall be pro-rated in accordance with the number of days in the final three (3) month period divided by ninety (90) days.

Section 2.05. Lessee Access to Site and Existing Plant During Phase I. During Phase I, from and after the Effective Date, Lessee shall have the following rights of access to the Site and the Existing Plant:

2.05.1 During Phase I, Lessee and any of its contractors or sub-contractors designated by Lessee in writing to Lessor, shall have the right to access and enter upon the Site to conduct such studies and investigations as Lessee deems necessary to evaluate the feasibility of the Site for Lessee's intended use, including, but not limited to environmental studies, surveys, and geotechnical studies; PROVIDED, HOWEVER, Lessee shall obtain written consent from Lessor or its Authorized Representative as to any and all studies or surveys or other activities conducted at the Site, which consent may be in the form of a blanket consent or may apply to multiple periods. Lessee and its designated contractors and sub-contractors shall provide proof of proper insurance under **Section 10.01.1** and **Exhibit 7**, attached hereto, and enter into access agreements with Lessor in order to conduct activities at the Site, which access agreements shall meet the applicable requirements under this Lease, and should be in a form approved by legal counsel to the Lessor.

Section 2.06. Authorized Representatives. No later than ten (10) days after the Effective Date, and in any event prior to the commencement of work under this Lease, each Party shall designate in writing an employee or third-party contractor of the designating Party (the "**Authorized Representative**") who shall have the authority and responsibility to administer this Lease. Each Party may change its Authorized Representative by written notice as provided in this Lease. Each Authorized Representative shall be sent a copy of all notices required under this Lease. The Authorized Representative for Lessor shall have the right to designate one or more of Lessor's employees or third-party contractors to oversee all or a portion of Lessee's compliance with the terms of this Lease.

ARTICLE III.

PHASE II COMMENCEMENT AND OBLIGATIONS; CONDITIONS PRECEDENT; TERMINATION RIGHTS

Section 3.01. Commencement of Phase II. Phase II shall commence on the Commencement Date, which Commencement Date shall occur on the date when Lessee provides written notice to Lessor that Lessee has satisfied or waived all of the conditions precedent to Lessee's Phase II obligations under **Section 3.03**. Lessor and Lessee expect the Commencement Date to occur on or before fourteen (14) months after the Effective Date; PROVIDED,

HOWEVER, that the Commencement Date shall occur no later than twenty-four (24) months after the Effective Date ("**Commencement Date Deadline**"); PROVIDED, FURTHER, that if Lessee has been unable to satisfy the conditions precedent to Lessee's Phase II obligations due to the occurrence of any Force Majeure or Legal Action, then the Commencement Date Deadline shall be extended by one day for every day that such Force Majeure or Legal Action has been in effect.

Section 3.02. Phase II Obligations of Lessor and Lessee. During Phase II (and during those alteration projects covered under **Section 9.02**), Lessor and Lessee shall perform the following obligations:

3.02.1 Within five (5) days after receipt of written notice from Lessee of the occurrence of the Commencement Date, Lessor shall surrender possession of the Site and the Existing Plant to Lessee, pursuant to **ARTICLE V**, in order to allow Lessee to (i) at Lessee's option, either (a) test the capacity of the existing boiler (expressed in lbs/hour at the rated temperature) when using coal as fuel and the electric generating capacity of the existing generator (expressed in MW) to determine the Phase I Demonstrated Capacity of the Existing Plant which tests the Lessor would agree to perform at the direction of the Lessee or its consultants, and Lessee shall agree to reimburse Lessor for the cost of said tests net of any revenues received by the Lessor from the sale of the electricity generated, or (b) use the most recent MISO Capacity Demonstration Capacity Test.; (ii) commence construction of the Facility; and (iii) commence construction of the Modified Boiler by modifying the Existing Plant to convert the existing coal-fired boiler to operate using "closed-loop biomass" as its Fuel; and (iv) within thirty (30) days, Lessor must remove all Non-Essential Spare Parts, coal supplies, etc., from the site;

3.02.2 Lessee shall provide the Phase II Letter of Credit to Lessor, in accordance with the provisions of **ARTICLE XXVII**, within five (5) days after the occurrence of the Commencement Date, but in any event no later than the date that Lessor surrenders possession of the Site and the Existing Plant to Lessee; and

3.02.3 Lessor shall cause to be available the facilities necessary for Lessor or the USB to provide Utility Services to the Site as required to permit Lessee to commence the construction, operation and maintenance of the Facility and the Modified Boiler pursuant to **Exhibit 11**.

Section 3.03. Conditions Precedent to Phase II Obligations of Lessee. The Commencement Date of this Lease shall be contingent upon, and all of Lessee's obligations under this Lease to be performed during or after Phase II, *i.e.*, **after the Commencement Date**, shall not be effective unless and until, Lessee has provided Lessor with written notice on or before the Commencement Date Deadline that the following Conditions Precedent ("**Conditions Precedent**") have been satisfied or waived:

3.03.1 Environmental Permits. Lessee has obtained all necessary Environmental Permits related to the construction, operation and/or maintenance of the Facility and the Modified Boiler, including, but not limited to, the air emission permits from the Indiana

Department of Environmental Management (“**IDEM**”) containing terms and conditions acceptable to Lessee.

3.03.2 Interconnection Agreement. Lessee has obtained an interconnection agreement with MISO, permitting it to connect the Facility to the 69 kV electric transmission grid containing terms and conditions acceptable to Lessee.

3.03.3 Power Sales Agreement. Lessee has entered into one or more power sales agreement(s) for the sale of the electric capacity, energy and/or ancillary services generated by the Facility.

3.03.4 Construction Funding. Lessee has closed on the equity or debt financing required to fund construction of the Facility and the Modified Boiler (“**Construction Funding**”).

3.03.5 Natural Gas Pipeline Agreement. Lessor and Lessee have entered into the Natural Gas Pipeline Agreement, providing for the construction and operation of a natural gas pipeline, substantially as set forth in **Exhibit 9** and have obtained any regulatory approvals and environmental permits required for the construction and operation of such natural gas pipeline.

3.03.6 Government Approvals. Lessee has obtained all necessary Government Approvals related to the construction, operation and/or maintenance of the Facility and the Modified Boiler, and the generation and sale of electric capacity, energy and/or ancillary services generated by the Facility, including Government Approvals from any Regulating Entity, including any zoning variances, building permits or other similar authorizations under the laws of the State of Indiana or any local laws, but excluding any Government Approval not typically issued until after the commencement or completion of construction.

3.03.7 69 kV Service Line Agreement. Lessor and Lessee have entered into the 69 kV Service Line Agreement providing for the construction and operation of the 69 kV Service Line, substantially as set forth in **Exhibit 10**, and any regulatory approvals and environmental permits required for the construction and operation thereof

3.03.8 Tax Abatement. Lessee shall have obtained tax abatement with respect to the Facility, the Related Facilities, and the Modified Boiler, in form, substance and amount acceptable to Lessee Move to Section 24.01.

Section 3.04. Termination Right. Lessor and Lessee shall each have the right to terminate this Lease at any time prior to the occurrence of the Commencement Date as set forth in this **Section 3.04**.

3.04.1 Lessor’s Right to Terminate. Lessor shall have the right to terminate the Lease, with no further liability to Lessee under the Lease, by providing written notice to Lessee of termination of the Lease upon the occurrence of the following:

(i) Failure by Lessee to provide written notice to Lessor of satisfaction or waiver of all of the conditions precedent set forth in **Section 3.03** by the occurrence of the Commencement Date Deadline as set forth in **Section 3.01**; or

(ii) Failure by Lessee to make any Lease Option Payment when due during Phase I, provided that Lessee fails to make such payment within five (5) days after receipt of written notice from Lessor of such failure; or Failure by Lessee to transfer to Lessor the Phase II Letter of Credit in accordance with the provisions of **ARTICLE XXVII** on or before the date set forth in **Section 3.02.2**.

3.04.2 Lessee's Right to Terminate. Lessee shall have the right to terminate the Lease, with no further liability to Lessor under the Lease, by providing written notice to Lessor of termination of the Lease upon the occurrence of any of the following:

(i) If Lessee fails to satisfy or waive any one or more of the conditions precedent set forth in **Section 3.03** at any time on or before the deadline for the occurrence of the Commencement Date as set forth in **Section 3.01**; provided, that, if Lessee has used commercially reasonable efforts to satisfy such condition(s) precedent, then, at such time, Lessee may terminate the Lease; or

(ii) If Lessor fails to transfer possession of the Site and the Existing Plant to Lessee, in a condition acceptable to Lessee (refer to **Section 5.02**), within five (5) days after the occurrence of the Commencement Date.

Section 3.05. Commercial Operation Date. The Commercial Operation Date of the Facility shall occur no later than twenty-four (24) months after the Commencement Date ("**Commercial Operation Date Deadline**"); PROVIDED, HOWEVER, that the Commercial Operation Date Deadline may be extended by Lessee, in its sole discretion, by one additional year until thirty-six (36) months after the Commencement Date; FURTHER PROVIDED, HOWEVER, that if Lessee has been unable to complete construction of the Facility due to the occurrence of any Force Majeure or Legal Action, then the Commercial Operation Date Deadline in this **Section 3.05** shall be extended by one day for every day that such Force Majeure or Legal Action has been in effect. Upon the occurrence of the Commercial Operation Date, Lessee shall provide written notice thereof to Lessor, at which time Phase II shall end and Phase III shall commence and continue until the end of the Term of the Lease. Upon the occurrence of the Commercial Operation Date, Lessor shall return the Phase II Letter of Credit, in accordance with **ARTICLE XXVII**, and Lessee shall provide to Lessor the Phase III Letter of Credit in accordance with **ARTICLE XXVII**.

ARTICLE IV.

RENT

Section 4.01. Payment of Rent. During the Term, Lessee shall pay an annual rent ("**Rent**") to Lessor commencing on the Commencement Date, with the second annual rent payment due on the first day of the second Contract Year, and on the first day of each Contract

Year thereafter during the Term (each such payment date, a “**Rent Payment Date**”) in accordance with this **ARTICLE IV**.

Section 4.02. Annual Rent. The annual Rent for each Contract Year commencing on the Commencement Date and due on the first day of each Contract Year thereafter during the Initial Term and any Extension Term, shall be Four Hundred Twenty-Five Thousand Dollars (\$425,000.00), which annual Rent amount shall be adjusted annually on the first (1st) day of each Contract Year by one hundred percent (100%) of the annual change in the most recently published Implicit Price Deflator; PROVIDED, HOWEVER, the annual Rent shall never decrease below Four Hundred Twenty-Five Thousand Dollars (\$425,000.00).

Section 4.03. Royalty. Commencing with the first Contract Year, and for each Contract Year thereafter, the royalty shall be One Dollar and Fifty Cents/Mwh (\$1.50/Mwh) for each megawatt hour of electric energy produced from Fuel in the Modified Boiler during that Contract Year. The royalty rate shall be adjusted annually on the first day of each Contract Year by one hundred percent (100%) of the annual change in the most recently published Implicit Price Deflator. The royalty shall be paid quarterly in arrears on the thirtieth (30) day after the end of the preceding quarter. The royalty owed by Lessee under this **Section 4.03** shall be determined based upon the billing statements generated by Lessee to its third party customer(s) for the renewable energy produced from the Fuel in the Modified Boiler or any replacement or substitute boiler. Lessee shall pay a royalty to Lessor on all renewable energy produced and sold to third party customers using steam from the Modified Boiler or any replacement or substitute boiler at the Jasper Clean Energy Center (excluding: (i) any renewable energy produced and sold to third party customers from solar energy generation facilities, owned, leased or operated by Lessee at the Jasper Clean Energy Center; and (ii) any renewable energy consumed by the Jasper Clean Energy Center which was produced using steam from the Modified Boiler or produced from such solar energy generation facilities).

ARTICLE V.

USE OF SITE AND EXISTING PLANT AND RIGHT OF INSPECTION

Section 5.01. Use. During the Term, Lessee shall have exclusive use of the Site and the Existing Plant. Lessee shall use the Site and, the Existing Plant in accordance with Prudent Electrical Practices and all Applicable Laws, Government Approvals and Environmental Permits, and Lessee shall comply with all such laws, regulations and permits as they may pertain to the condition of the Site, the Existing Plant, the Modified Boiler, the Related Facilities or the Facility. Lessee may use the Site and the Existing Plant for purposes related to due diligence investigations and studies, and the construction, use, operation, repair, replacement, expansion, modification, upgrade or maintenance of the Modified Boiler or the Facility. Any portion of the equipment previously comprising the Existing Plant, which is replaced or substituted by Lessee will be the property of Lessee, and any funds or other value available from the sale or scrapping of such equipment (*e.g.*, existing steam turbine generator set) will be for Lessee’s account.

Section 5.02. Operation and Maintenance of the Existing Plant. At all times prior to the Commencement Date, Lessor may operate the Existing Plant using coal and natural gas as fuel and Lessor shall, at its own cost and expense, without any obligation or liability on the part of

Lessee, provide, or cause to be provided, all maintenance of the Existing Plant during Phase I until the Commencement Date; PROVIDED, HOWEVER, that if the existing boiler suffers any damage during Phase I that has not been caused by Lessee, then Lessor shall pay to repair the Existing Plant, including, but not limited to, repairing the existing boiler and the steam turbine generator and restoring each of them to produce a Phase I Demonstrated Capacity of at least 14.5 MW, or compensate Lessee for the change in value to Lessee arising from the utilization of the Existing Plant by Lessor from that which existed on the Effective Date. Lessor and Lessee acknowledge that on June 8, 2011, Lessor conducted a MISO Real Power Capability Test of the Existing Plant, which resulted in a test result of 14.83 MW for the four (4) one hour tests conducted on the Existing Plant. Upon construction of the Facility, particularly the Steam Turbine Genset and necessary interconnection facilities, Lessee may operate the Existing Plant to produce steam for use as an input to the Steam Turbine Genset of the Facility to produce electricity for sale into the available grid.

Section 5.03. Access to and Inspection of the Facility, Related Facilities and Site On and after the Commencement Date, upon notice by Lessor's Designated Representative, Lessor, its employees and agents shall have the right to enter any part of the Facility, Related Facilities and/or Site at reasonable times during normal business hours for the purposes of examination or inspection. Lessor agrees, whenever reasonably possible, to give Lessee not less than forty-eight (48) hours prior written notice of its intention to enter the Facility, Related Facilities and/or Site for any of the purposes described in the preceding sentence. In the event of an emergency, Lessor shall have the right of entry into the Facility, Related Facilities and/or Site at any time when such entry is necessary. Lessor shall incur no liability to Lessee for such entry, nor shall such entry constitute an eviction of Lessee or a termination of this Lease or entitle Lessee to any abatement of rent therefore; provided, however, that the rights of access provided in this **Section 5.03** shall be exercised in a manner that will not interfere with Lessee's use and occupancy of the Site consistent with the need for the exercise of such rights and Lessor, its employees and agents shall comply with all safety-related instructions of Lessee, its employees or agents.

ARTICLE VI.

SURRENDER OF SITE AND EXISTING PLANT

Section 6.01. Surrender of Site and Existing Plant. Upon expiration of the Term (*i.e.*, during Phase IV) and as provided in this **ARTICLE VI**, Lessee shall surrender to Lessor the Site, the Existing Plant (as the Existing Plant has been modified by Lessee during Phase II and thereafter during the Term), and other specified facilities in accordance with Lessor's election under this **Section 6.01**. Lessor shall notify Lessee no less than one hundred eighty (180) days prior to the end of the Term whether Lessor elects to:

- (i) purchase the Facility, the Modified Boiler and all Related Facilities in place and as is on the Site for a purchase price equal to their fair market value, less the residual value of the Existing Plant, if any; or
- (ii) require Lessee to decommission, dismantle and remove the Facility from the Site, together with any portion of the Related Facilities which Lessee desires to remove from the Site, so long as Lessee leaves a functioning "closed-loop biomass" fired

Modified Boiler coupled with a steam-operated electric generator that satisfies the definition of Remaining Equipment, as more fully described in **Exhibit 5**.

Within two hundred seventy (270) days after the termination or expiration of the Term, Lessee shall have implemented Lessor's election, vacated the Site, and transferred possession of the Site to Lessor. Lessor hereby grants to Lessee and Lessee's contractor(s) a license to enter upon the Site to perform the activities required to be performed by Lessee pursuant to this **Section 6.01**, which license shall be effective commencing upon the date of termination or expiration of the Term and shall terminate upon the date which is two hundred seventy (270) days thereafter.

Section 6.02. Severance. The Parties agree that all improvements at any time constructed by or for Lessee on the Site and all equipment at any time acquired by or for Lessee and brought onto the Site, including (without limitation) the Facility, the Related Facilities, and all modifications made to the existing boiler of the Existing Plant to enable the use of "closed-loop biomass" as Fuel, and all changes to the emissions control equipment of the Existing Plant, are hereby severed by agreement and intention of the Parties, and shall remain severed from the Site and the Existing Plant, shall be considered with respect to the interests of the Parties hereto as the property of Lessee and subject to a valid, permitted lien in favor of any Financing Party designated by Lessee, and, even though attached to or affixed to or installed upon the Site or installed inside any existing structure of the Existing Plant, shall not be considered to be fixtures or a part of the Site or the Existing Plant and shall not be or become subject to the lien of any mortgage or deed of trust heretofore or hereafter placed on the Site or the Existing Plant by Lessor; PROVIDED, HOWEVER, that the Existing Plant, including the physical boiler and its unmodified piping, existing heat exchangers, existing feedwater systems, existing multiclone, existing stack and existing cooling systems, shall be considered to be fixtures and a part of the Site and shall be considered with respect to the parties hereto as the property of Lessor. Lessor waives any rights it may have under the laws of the State of Indiana arising under this Lease or otherwise to any lien upon, or any right to distress or attachment upon, or any other interest in, any item constituting part of the Facility, the Related Facilities, or any other equipment or improvements constructed or acquired by or for Lessee and located on the Site, excluding the Existing Plant and, for the avoidance of doubt, those portions of the Existing Plant comprising the physical boiler and its unmodified piping, existing heat exchangers, existing feedwater systems, existing multiclone, stack and existing cooling systems; SUBJECT to the rights and obligations of Lessor and Lessee under this **ARTICLE VI**.

Section 6.03. Liquidated Damages.

6.03.1 General. Lessee acknowledges that Lessor is relying on the Facility and the Related Facilities being constructed and that, in the event that, after Lessee commences modifying the Existing Plant to consume "closed-loop biomass," either: (i) Lessee fails to complete construction of the Facility and the Related Facilities and achieve the Commercial Operation Date of the Facility; (ii) Lessee is in default of the terms and conditions of this Lease; or (iii) Lessee fails to deliver to Lessor at the end of the Term of this Lease, the Remaining Equipment that (A) is capable of such boiler capacity and generator capacity equal to no less than 95% of the Phase II Demonstrated Capacities of the Modified Boiler by Lessee utilizing "closed-loop biomass" as a Fuel, and (B) has an expected remaining useful life of at least five (5) years, which shall be

determined by an independent engineering consultant mutually agreed upon by both Lessor and Lessee; then Lessor may suffer damages which would be impossible to measure. Accordingly, the Parties have agreed that in such case, in lieu of actual damages, Lessee shall pay liquidated damages pursuant to this **Section 6.03**, and Lessor shall also be entitled to exercise such other remedies as may be specified in this **ARTICLE VI**.

6.03.2 Failure to Complete Construction. In the event that, after Lessee commences modifying the Existing Plant to consume “closed-loop biomass” as a Fuel, Lessee fails to complete construction of the Facility and the Related Facilities and achieve the Commercial Operation Date of the Facility on or before the Commercial Operation Date Deadline, then Lessee shall pay to Lessor an amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000.00) (“**Construction Liquidated Damages**”).

6.03.3 Default of Terms and Conditions of Lease. In the event of a Default under the terms and conditions of this Lease, including any Lessee Event of Default under **ARTICLE XVI**, Lessor, subject to Lessee’s right to cure, shall have the right to recover Liquidated Damages in the greatest amount available during the applicable phase of the Lease.

6.03.4 Failure to Return Remaining Equipment. In the event that Lessee commences modifying the Existing Plant to cause the Modified Boiler to consume “closed-loop biomass” as Fuel, completes construction of the Facility and the Related Facilities, and achieves the Commercial Operation Date of the Facility, and, thereafter, at the end of the Term of this Lease, Lessee fails to transfer possession to Lessor of the Remaining Equipment that: (A) is capable of producing such boiler capacity and generating capacity that is no less than 95% of the Phase II Demonstrated Capacities of the Modified Boiler, and (B) has an expected remaining useful life of at least five (5) years, which shall be determined by an independent engineering consultant mutually agreed upon by both Lessor and Lessee, then Lessee shall pay Liquidated Damages to Lessor equal to the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000.00) plus the funds in the Sinking Fund established under **Section 6.03.7** (“**Remaining Equipment Liquidated Damages**”).

6.03.5 Sole and Exclusive Remedy. Notwithstanding the foregoing, the Construction Liquidated Damages payable pursuant to **Section 6.03.2** shall be the sole and exclusive remedy for Lessee’s failure to complete construction of the Facility and achieve the Commercial Operation Date of the Facility. Notwithstanding the foregoing, the Remaining Equipment Liquidated Damages payable pursuant to **Section 6.03.4** shall be the sole and exclusive remedy for Lessee’s failure to deliver the Remaining Equipment meeting the standard set forth in **Section 6.03.4** at the end of the Term of this Lease.

6.03.6 Phase II Letter of Credit. In order to secure the payment of Construction Liquidated Damages pursuant to **Section 6.03.2**, Lessee shall provide the Phase II Letter of Credit (as defined in **Section 27.02**) in favor of Lessor, after the Commencement Date,

but no later than twenty (20) days prior to the date, that Lessee commences modification of the Existing Plant to cause the Modified Boiler to operate using “closed-loop biomass” as Fuel. Such Phase II Letter of Credit shall be provided by Lessee until the occurrence of the Commercial Operation Date as provided in **Section 27.02**. In the event that Lessee fails to pay the Construction Liquidated Damages when due and owing to Lessor, Lessor may draw on the Phase II Letter of Credit provided by Lessee pursuant to this **Section 6.03.6** and shall use such proceeds to satisfy Lessee’s obligation to pay such Construction Liquidated Damages. Otherwise, Lessor shall hold such Phase II Letter of Credit and shall return the Phase II Letter of Credit to Lessee within fifteen (15) days after the first to occur of: (i) the completion of construction of the Facility and the achievement of the Commercial Operation Date of the Facility, or (ii) any earlier termination or expiration of this Lease as a result of an event of default by Lessor.

6.03.7 Phase III Letter of Credit and Sinking Fund. In order to secure the payment of Remaining Equipment Liquidated Damages pursuant to **Section 6.03.4**, Lessee shall provide the Phase III Letter of Credit to Lessor on the Commercial Operation Date in the amount of \$3,500,000 as provided in **Section 27.03**. In addition, Lessee shall establish a sinking fund (“**Sinking Fund**”) to be funded, after the Facility achieves the Commercial Operation Date, by Lessee’s depositing initially Three Hundred Thousand Dollars (\$300,000.00) into a deposit account and then Three Hundred Thousand Dollars (\$300,000.00) per year by the end of each subsequent Contract Year into such deposit account during the Term of this Lease, which deposit account shall be an interest-bearing bank account, which shall be subject to a Deposit Account Control Agreement among Lessee (as Debtor), Lessor (as Secured Party) and a depository financial institution (as Intermediary) using the Form of Deposit Account Control Agreement attached hereto as **Exhibit 12**. When the aggregate amount of funds deposited annually into such Sinking Fund equals One Million Five Hundred Thousand Dollars (\$1,500,000.00), then Lessee may cease making any further deposits into such Sinking Fund. Upon the total amount in the Sinking Fund reaching an amount of Two Million Dollars (\$2,000,000) (comprising deposits plus accrued interest) all subsequent interest paid on the Sinking Fund shall be paid to Lessee, the timing of such payments to be determined by Lessee. Funds deposited by Lessee into such Sinking Fund shall accrue interest at the then-prevailing commercial annual rate of interest, which shall be no less than the one (1) year Federal Funds Rate of Interest (the “**SF Interest Rate**”), and which Sinking Fund shall be established with a depository financial institution located in Dubois County, Indiana. Upon any termination of this Lease for any reason other than an event of default by Lessor, if the Remaining Equipment is not capable of producing boiler capacity and generating capacity at least equal to 95% the Phase II Demonstrated Capacity, or has an expected remaining useful life of less than five (5) years, which shall be determined by an independent engineering consultant mutually agreed upon by both Lessor and Lessee, then Lessor may draw on this Phase III Letter of Credit and Lessee shall transfer to Lessor (or Lessor may withdraw) the funds in such Sinking Fund in a combined amount not to exceed the Remaining Equipment Liquidated Damages.

6.03.8 Lessor’s Right to Draw Against Sinking Fund. In addition, Lessor may draw on the amounts held in the Sinking Fund for any payment not paid when due and owing by Lessee to Lessor under this Agreement or for any fine, judgment or other

assessment against Lessee that has not been paid when due; provided, further, that if Lessor draws any such funds from the Sinking Fund, then Lessee shall be required to replenish such funds to the Sinking Fund within sixty (60) days after the date of such drawing by Lessor.

6.03.9 Withdrawal of Funds. If Lessor withdraws funds from the Sinking Fund and Lessee disputes whether Lessor is authorized under this Agreement to draw such funds, Lessee may seek resolution of such Dispute under **ARTICLE XV** or judicial review of such Dispute and, if Lessee prevails, Lessor shall return such amounts to Lessee, plus interest, accrued from the date of such withdrawal by Lessor to the day before payment to Lessee, at a rate equivalent to the SF Interest Rate earned by the Sinking Fund under **Section 6.03.7**.

6.03.10 Liquidated Damages. Notwithstanding the foregoing, and for the avoidance of doubt: (i) if the Lease is terminated prior to the date that Lessee commences modifying the Existing Plant to operate using “closed-loop biomass” as a Fuel, then Lessee is not required to pay Construction Liquidated Damages or Remaining Equipment Liquidated Damages; and (ii) if the Lease is terminated after the date that Lessee commences modifying the Existing Boiler to operate using “closed-loop biomass” as a Fuel, but prior to the date that Lessee completes construction of the Facility and achieves the Commercial Operation Date of the Facility, then Lessee is not required to pay Remaining Equipment Liquidated Damages.

ARTICLE VII.

NONTERMINATION

Except as specifically provided to the contrary in this Lease, this Lease shall not terminate, nor shall Lessee’s interest in the Site, the Existing Plant or the Facility be extinguished, lost, conveyed or otherwise impaired, or be merged into or with any other interest or estate in the Site, the Existing Plant, or any other property interest, in whole or in part, by any cause or for any reason whatsoever, including, without limitation, the following: (a) destruction of all or any part of the Existing Plant, the Facility or the Site or the taking of the Existing Plant, the Facility or the Site or any portion thereof by condemnation, requisition, eminent domain or otherwise; (b) any prohibition, limitation or restriction of Lessee’s Parties’ or any Financing Party’s use of all or any part of the Site or the Existing Plant, or of Lessee’s Parties’ or any Financing Party’s use of the Facility, or the interference of such use by any Person, or any eviction by paramount title or otherwise; (c) any inadequacy, incorrectness or failure of the description of the Site, the Existing Plant, or any other property or rights intended to be granted or conveyed by this Lease; (d) insolvency, bankruptcy, reorganization or similar proceedings by or against either Party; or (e) any other reason whatsoever, whether similar or dissimilar to any of the foregoing.

ARTICLE VIII.

POSSESSION AND QUIET ENJOYMENT

Section 8.01. Possession and Quiet Enjoyment. As long as no Lessee Event of Default under this Lease has occurred and is continuing beyond any applicable cure period, and subject to the provisions of this Lease, Lessor covenants and agrees that Lessee shall enjoy quiet possession of the Site and the Existing Plant without any disturbance from Lessor or any Person claiming through Lessor.

Section 8.02. Unpermitted Liens. In no event shall Lessee permit or suffer to exist, any lien or other encumbrance on or against the Site or the Existing Plant, excluding any modifications made by Lessee to the Modified Boiler, without Lessor's prior written consent. Upon either Party's discovery of any such lien, such Party shall: (i) promptly give written notice thereof to the other Party, and (ii) Lessee shall cause the same to be discharged of record or deliver to Lessor appropriate security for payment within thirty (30) days after the date Lessee receives notice of filing of same, either by payment, deposit or bond. If Lessee shall fail to discharge any such lien(s) within such period, in addition to any other rights or remedy hereunder, Lessor may, but shall not be obligated to, procure the discharge of the same either by paying the amount claimed to be due by deposit in court or bonding. Any amount so paid or deposited by Lessor, and all costs and other expenses related thereto, including reasonable attorneys' fees, in defending any action or in procuring the discharge of such lien, with all necessary disbursements in connection therewith, together with interest thereon at the domestic prime interest rate as published in the Wall Street Journal, plus one and one-half percent (1.5%) per annum (subject to and limited by applicable usury laws) from the date of payment or deposit, until repaid to Lessor, shall be payable by Lessee to Lessor upon demand.

ARTICLE IX.

DEVELOPMENT OF FACILITY

Section 9.01. Construction of the Facility.

9.01.1 Proposed Modifications. Lessee's proposed modifications to the Existing Plant (see **Exhibit 2**) are generally described in **Exhibit 3** and shall include one or more of the following: (i) alterations to the Existing Boiler, combustion systems, feed water systems, cooling water facilities, instrumentation and emission controls to allow combustion of biomass fuel and delivery of steam to the proposed Steam Turbine Genset component of the Facility; (ii) construction of biomass receiving, handling, storage and delivery facilities at the Existing Plant or elsewhere on the Site to enable deliveries of the quantities of biomass fuel required to operate the modified Existing Plant using such biomass as fuel; and (iii) construction of the Related Facilities.

9.01.2 Condition of Site. Lessee shall keep the Site (or shall cause the Site to be kept) in a neat and orderly condition during any construction of modifications to the Existing Plant. Lessee shall cause its contractors and subcontractors performing any such

construction to do so in compliance with Prudent Electric Practices, all Applicable Laws and all Environmental Laws.

9.01.3 Government Approvals / Environmental Permits. Lessee shall obtain (or shall cause to be obtained) all necessary Government Approvals and Environmental Permits for the design, construction, startup, placing in service, operation and maintenance of the modifications to the Existing Plant. Lessor agrees to cooperate fully and promptly with Lessee in its efforts to obtain such necessary Government Approvals and Environmental Permits. To the extent permitted by law, all Government Approvals and Environmental Permits for the modification of the Existing Plant shall be in the name of and for the benefit of Lessee or a party designated by Lessee.

9.01.4 Right to Modify Existing Plant. Lessee shall have the right to upgrade, update, expand, replace, make additions to, or otherwise modify the Existing Plant, in Lessee's sole discretion. Modification of the Existing Plant must comply with Prudent Electrical Practices and all Applicable Laws.

9.01.5 Disposal of Hazardous Materials. In connection with construction of modifications to the Existing Plant and any maintenance of the Existing Plant, Lessor shall be responsible and liable for disposal of, and shall reimburse Lessee (or Lessee may reduce its payments to Lessor by all amounts necessary to reimburse Lessee hereunder) for the costs Lessee incurs to dispose of: (i) any components of the Existing Plant which Lessee elects to no longer utilize in its operations of the Existing Plant (with or without modifications) which are determined to be Hazardous Materials, and (ii) any Hazardous Materials located within the Existing Plant or otherwise located on or under the surface of the Site which are disturbed by the construction, operation or maintenance of the Facility.

9.01.6 Lessor's Review of Design and Construction of the Facility. Lessee shall provide a copy to Lessor of Lessee's proposed design, engineering and construction plans for the Facility at least thirty (30) days prior to the commencement of such construction, thereby providing sufficient time for Lessor to review and comment on such proposed plans prior to the commencement of construction of the Facility.

9.01.7 Selection of General Contractor. Lessee will tentatively identify one or more general contractors that meets the Construction Contractor Qualifications shown in **Exhibit 13**. Lessee shall notify Lessor of such selection and, for a period of fourteen (14) days thereafter, Lessor shall have the right to confirm that such contractor or contractors meets the Construction Contractor Qualifications. Should Lessor challenge any such contractors reasonable ability to satisfy the Construction Contractor Qualifications, within such fourteen (14) days, then Lessee and Lessor shall work to eliminate Lessor's reason for challenging such contractors qualifications. Should Lessor and Lessee fail to eliminate Lessor's valid challenge of such contractor's ability to satisfy the Construction Contractor Qualifications then Lessee shall not use such contractor until such contractor can demonstrate its qualifications. Lessee shall be permitted to select any contractor that can satisfy the Construction Contractor Qualifications shown in **Exhibit 13**.

9.01.8 Plans Required. Lessee shall provide Lessor with a copy of the as-built plans and specifications of the construction and modifications to the Existing Plant, as well as a list of the equipment installed as part of the Facility. Lessee shall provide Lessor with "AS-BUILT" plans and specifications for all modifications installed on the Site as part of the Existing Plant or the Facility within a reasonable time after completion.

Section 9.02. Construction of Modifications to Facility.

9.02.1 Lessor's Prior Consent; Plans Required. After the Facility has been constructed, Lessee shall not, without Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, make any material alterations, improvements, or additions in, to or about the Site which either increase the generating capacity of the Facility by more than twenty-five percent (25%) or which constitute construction of any new or different business (hereinafter collectively "**Alterations**"), except in conformance with this **Section 9.02.1**. For the avoidance of doubt, modifications to the Facility or the Existing Plant that improve its efficiency or reduce environmental emissions, and which do not otherwise result in an increase in the generating capacity of the Facility by more than twenty-five percent (25%) shall not be considered Alterations that are subject to this **Section 9.02**. Lessee shall provide Lessor with notice of and proposed plans for all Alterations Lessee desires to make at least thirty (30) days prior to Lessee's commencement thereof, and Lessee shall provide Lessor with "AS-BUILT" plans and specifications for all Alterations within a reasonable time after completion of construction. Lessee agrees that with respect to any Alteration proposed by Lessee, Lessee will comply with all of the following requirements: (a) Lessee will tentatively select a general contractor that meets the Construction Contractor Qualifications shown in **Exhibit 13** and will notify Lessor of Lessee's tentative selection of a contractor prior to the commencement of such Alterations so that Lessor may comment on such selection; and (b) that such Alterations shall comply with Applicable Laws and Prudent Electrical Practices. Any Alterations required by any Regulating Entity, or any revisions required by any Regulating Entity to detailed plans previously approved by Lessor, shall be given to Lessor prior to the commencement of any such Alteration.

9.02.2 Notice of Work. Before commencing any such work or construction in or about the Site Lessee shall notify Lessor at least fourteen (14) days in advance in writing of the expected date of commencement thereof. Lessor shall have the right at any time and from time to time to post and maintain on the Site such notices as Lessor deems necessary to protect the Site and Lessor from the liens of mechanics, laborers, materialmen, suppliers or vendors. Lessee agrees to indemnify and hold Lessor harmless against any claims or demands whatsoever arising by virtue of Lessee's construction on the Site, including, but not limited to, any mechanic's lien claims which may be filed against the Site as a result of work performed on the Site during such time. In the event a mechanic's lien or judgment thereon is claimed, asserted or obtained upon the Site by virtue of Lessee's construction described herein, Lessee shall, within thirty (30) days after Lessor's notification and demand has been served upon Lessee, satisfy, pay, bond against or around, or insure over or otherwise stay the execution of any such claim or judgment.

9.02.3 Manner of Construction. If Lessee or a contractor employed by Lessee shall construct such Alterations, such Alterations and any utility installations which must be done as a part thereof, shall be performed using Prudent Electrical Practices, and Lessee and Lessee's contractor shall diligently prosecute such construction to completion. Lessee shall provide a complete set of As-Built drawings to Lessor for such Alterations promptly following the completion thereof.

9.02.4 Compliance. Any such Alterations shall be performed and done in substantial accordance with the laws and ordinances relating thereto, and with the requirements of Lessor and all carriers of insurance on the Site and the Building, and the Board of Underwriters, Fire Rating Bureau, or similar organization.

9.02.5 Alterations Covered by Insurance. In the event that any Alterations to the Site are constructed pursuant to the terms and provisions of this **ARTICLE IX**, Lessee agrees upon its part to carry such insurance as required by **ARTICLE X**, below.

9.02.6 Condition of Site During Construction. Lessee shall keep the Site (or shall cause the Site to be kept) in a neat and orderly condition during any construction. Lessee shall cause its contractors and subcontractors performing any such construction to do so in compliance with Prudent Electrical Practices and all Applicable Laws and Environmental Laws.

9.02.7 Governmental Permits / Licenses, Etc. Lessee shall obtain (or shall cause to be obtained) all necessary Government Approvals and Environmental Permits for the Alterations of the Facility. Lessor agrees to cooperate fully and promptly with Lessee in its efforts to obtain such necessary approvals, permits, licenses, exemptions and certifications. To the extent permitted by law, all permits, licenses, exemptions and certifications for the Alterations to the Facility shall be in the name of and for the benefit of Lessee or a party designated by Lessee.

ARTICLE X.

INSURANCE

Section 10.01. Lessee's Coverage. As to all activities hereunder, the following insurance shall be obtained and maintained in force beginning with the Commencement Date and thereafter during the Term of this Lease so long as such insurance is available at commercially reasonable rates:

10.01.1 Commercial General Liability. Lessee shall carry and maintain in effect Commercial General Liability insurance including, but not limited to, coverage for premises/operations, excavation, collapse and underground hazards, products/completed operations, broad form property damage (including blanket contractual liability), acts of independent contractors, and bodily injury and property damage, providing for minimum limits of One Million Dollars (\$1,000,000.00) annually for bodily injury, including death, and property damage, arising from any one occurrence, a Two Million Dollar

(\$2,000,000.00) aggregate limit, and a deductible of not greater than One Hundred Thousand Dollars (\$100,000.00) per loss.

10.01.2 Excess General Liability. Lessee shall carry and maintain in effect liability insurance on an "occurrence" basis pursuant to an excess liability policy with limits of not less than Ten Million Dollars (\$10,000,000.00) per occurrence and which follows and becomes payable upon an event otherwise covered by the commercial general liability policy, the employer's liability policy, and the automobile liability policy immediately upon exhaustion of the limits set forth in these policies.

10.01.3 Automobile Liability. Lessee shall carry and maintain in effect Automobile Liability insurance covering all owned, non-owned and hired automobiles with minimum insurance limits of One Million Dollars (\$1,000,000.00) for bodily injury and property damage arising from any one occurrence with a deductible of not greater than One Hundred Thousand Dollars (\$100,000.00) per loss and containing appropriate no-fault insurance provisions.

10.01.4 Workers' Compensation Insurance. Lessee shall carry and maintain for its employees Workers' Compensation insurance in accordance with State and Federal laws including statutory Indiana benefits and other states' endorsement, and benefits that may fall under the jurisdiction of the U.S. Longshoremen's and Harbor Worker's Act covering loss resulting from injury, sickness, disability or death; and Employer's Liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000.00) each accident or disease or the minimum limit necessary to meet the underlying requirements of the excess liability carrier.

10.01.5 Builder's Risk/All Risk Insurance. Lessee, or its general contractor(s), shall, at its sole cost and expense, arrange for: (A) builders' risk insurance for the modifications to the Existing Plant and for construction of the Facility until the date that Lessee determines that the modifications to the Existing Plant and the Facility are commercially operational on an "all risk basis" in a completed value form with "extended coverage" providing: (i) coverage for Existing Plant and the Facility which insurance shall include coverage for removal of debris (which debris arises as a result of an insured loss), insuring the buildings, structures, boiler and machinery, equipment, facilities, fixtures and other properties constituting a part of the Site, (ii) off-Site coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000.00), (iii) transit coverage in an amount not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per conveyance per occurrence, PROVIDED, HOWEVER, Lessee shall obtain a rider increasing the transit coverage for each piece of equipment to be shipped or otherwise delivered to the Site with a value greater than Two Hundred Fifty Thousand Dollars (\$250,000.00) to an amount equal to the value of such piece of equipment, (iv) coverage for operational testing, and (v) coverage for collapse; all such policies may have a deductible of not greater than Two Hundred Fifty Thousand Dollars (\$250,000) per loss; and shall cover the replacement cost of the Existing Plant and the Facility, with sublimits as appropriate, (except as otherwise provided in (iii) above); and (B) after the date that Lessee determines that the Facility and the modifications to the Existing Plant are commercially operational, an all-risk property insurance policy, including Boiler and

Machinery, providing coverage, in the minimum amount of the full replacement cost of the Facility, with sublimits as appropriate, in respect of physical loss or damage to real or personal property, and providing for business interruption coverage in an amount each policy year equal to the reasonably expected Gross Revenues for such year less reasonably expected noncontinuing expenses for such year (which expected Gross Revenues and noncontinuing expenses shall be annualized if such policy year consists of less than twelve months) with a deductible of not more than Two Million, Five Hundred Thousand dollars (\$2,500,000) per occurrence, except for Time Element coverage shall contain a deductible not to exceed 60 days, and flood and windstorm with a deductible of two percent (2%) of the values.

10.01.6 Policy Terms. Each liability policy described above: (i) shall be primary, without right of contribution from any other insurance which may be carried by a Party, and (ii) shall name Lessor as additional insured to the extent of the indemnity obligations assumed hereunder with respect to liability coverage. All property insurance coverage shall be on a “no co-insurance or self-insurance (other than deductibles)/replacement cost” basis, with appropriate sublimits, and such insurance carried by Lessee may name financial institutions providing financing for the Facility or the modifications to the Existing Plant as loss payee as their interests may appear.

Section 10.02. Lessor’s Insurance. Lessor shall obtain insurance coverage with respect to this Lease with limits and coverages to its satisfaction.

Section 10.03. Waiver of Subrogation. All policies obtained hereunder shall have a provision mutually waiving rights of subrogation by the insurer against the parties hereto.

Section 10.04. Certificates. Prior to commencement of construction of the Facility or modifications to the Existing Plant, each Party shall provide the other Party hereto with written evidence of the insurance required in **Section 10.01**, above, in the form of appropriate insurance certificates specifying amounts of coverage and expiration dates of all policies in effect. Said certificates shall indicate that no insurance will be cancelled or materially changed during the term of this Lease without thirty (30) days prior written notice to the other Party. Neither Party shall intentionally perform any act that would invalidate the policies which the Parties are obliged to obtain hereunder, or would increase the premiums payable by the other Party under such policies unless the Party whose acts cause the increase in premiums reimburses the other Party for such increase. Should either Party at any time neglect or refuse to provide any insurance required hereunder, or should any insurance be cancelled, the other Party shall have the right, but not the obligation, to procure insurance and the costs thereof, including premiums, claim payments, and defense costs associated with the loss of such coverage, shall be reimbursed to such Party upon demand therefor.

Section 10.05. Waiver of Insurance. In the event any insurance (including the limits of deductibles thereof) hereby required to be maintained, other than insurance required by law to be maintained, shall not be commercially available and commercially feasible in the commercial insurance market, neither Party shall unreasonably withhold its consent to waive such requirement to the extent the maintenance thereof is not so available; PROVIDED, HOWEVER, that the Party desiring such waiver shall first request any such waiver in writing delivered to the

other Party explaining in detail the basis for such conclusions. Any such waiver shall be effective only so long as such insurance shall not be available and commercially reasonable.

Section 10.06. Insurance Requirements – Phase I. Lessee or any contractor or subcontractor, consultant or third party who desires to access or conduct activities at the Site during Phase I shall be required to provide proof of insurance in compliance with the insurance coverages under **Section 10.01** or, alternatively, with the minimum insurance requirements of the Lessor which are set forth on **Exhibit 7**. Additionally, said third party or Lessee (if Lessee has not met the insurance requirements under **Section 10.01**) shall further execute any and all access agreements, releases or other forms required by the Lessor in its safety department.

ARTICLE XI.

DAMAGE OR DESTRUCTION OF EXISTING PLANT OR FACILITY

On or after the Commencement Date, if the Existing Plant, the Facility or any part thereof is damaged or destroyed by any Casualty, Lessee shall have the right, but no obligation, to repair and restore the Existing Plant or the Facility, as applicable, or to construct and operate such new facility as it deems appropriate. If the Existing Plant or the Facility is damaged or destroyed and Lessee elects not to repair or restore the Existing Plant or the Facility, as applicable, or to construct a new facility, Lessee shall have the right to terminate this Lease, without penalty, effective as of the date of Casualty, by giving written notice of termination to Lessor. If Lessee exercises its termination right as provided in the preceding sentence, Lessee shall surrender the Site, the Existing Plant and Facility as provided in **ARTICLE VI**, above.

After the Commencement Date, Lessor shall not have any obligation to repair or replace the Existing Plant.

ARTICLE XII.

LIABILITIES

Section 12.01. Liabilities to Third Parties. Lessee shall indemnify, defend and hold Lessor and Lessor's Parties harmless from any and all third party claims, losses, expenses, liabilities, actions, suits, or judgments for personal injury or property damage to the extent arising out of or related to Lessee's or Lessee's Parties' ownership, operation, use or maintenance of the Existing Plant, the Facility, or the Site. Lessor shall indemnify, defend and hold Lessee and Lessee's Parties harmless from any and all third party claims, losses, expenses, liabilities, actions, suits, or judgments for personal injury or property damage to the extent arising: (i) after the Effective Date and prior to the Commencement Date, or (ii) after the Commencement Date and arising out of or related to any act or omission of Lessor or Lessor's Parties with respect to the Facility, the Site or Related Facilities. The provisions of this **Section 12.01** shall survive the expiration or termination of the Term.

Section 12.02. Environmental and Other Liabilities. Lessor shall indemnify, defend and hold Lessee and Lessee's Parties harmless from and against any and all liability to the extent

arising out of: (i) a breach of any representation or warranty made by Lessor in **ARTICLE XXII** below, (ii) any Environmental Liability or Release on or affecting the Site or the Existing Plant existing or arising on or prior to the Commencement Date or caused or permitted by Lessor or Lessor's Parties or otherwise arising from Lessor's or Lessor's Parties' actions or omissions, and/or (iii) any Environmental Liability with regard to any violation or alleged violation of any Environmental Laws by Lessor or Lessor's Parties, or any actual, threatened or alleged violation of any Environmental Laws by Lessor or Lessor's Parties. Lessee shall indemnify, defend and hold Lessor and Lessor's Parties harmless from and against any and all liability to the extent arising out of: (i) any Environmental Liability or Release on or affecting the Site, the Existing Plant or the Facility or Related Facilities occurring during the Term to the extent caused by Lessee or Lessee's Parties, and/or (ii) any Environmental Liability with regard to any violation or alleged violation of any Environmental Laws to the extent caused by Lessee or Lessee's Parties, or any actual, threatened or alleged violation of any Environmental Laws to the extent caused by Lessee or Lessee's Parties. The provisions of this **Section 12.02** shall survive the expiration or termination of the Term.

12.02.1 Environmental Audit of Site and Existing Plant. Lessor and Lessee shall agree to have performed an environmental audit of the Site and Existing Plant prior to the Commencement Date by a third-party consultant mutually agreeable to Lessor and Lessee. Lessee shall be solely responsible for the cost and expense of such environmental audit. Lessor and Lessee agree that the results of said environmental audit shall provide a baseline in the identification of any existing Environmental Liability under this Lease for Lessor under this **Section 12.02** and the obligations to indemnify Lessee with respect thereto. Conversely, the results of the environmental audit should further provide a baseline for any future Environmental Liability that may arise due to the operations of the Facility by Lessee at the Site following the Commencement Date.

Section 12.03. Consequential Damages. Notwithstanding anything to the contrary in this Lease, neither Party hereto shall be liable to the other for consequential damages or indirect damages, including, but not limited to, loss of use or loss of profit or revenue.

ARTICLE XIII.

INDEMNIFICATION AND LIMITATION OF LIABILITY

Section 13.01. Indemnification by Lessee. Except as otherwise set forth in this Lease and except to the extent that a matter is covered by insurance required to be obtained hereunder, Lessee shall defend, indemnify and hold harmless Lessor, its respective officials, officers, employees, agents, representatives, consultants, contractors and subcontractors (individually, a "**Lessor Indemnitee**," and collectively, the "**Lessor Indemnitees**") from and against any and all liabilities, actions, damages, claims, lawsuits, demands, judgments, suits, losses, deficiencies, obligations, fines, penalties, costs and expenses (including reasonable legal, accounting and consulting fees) (collectively, "**Losses**"), to the extent arising out of or relating to, directly or indirectly: (i) the negligence or misconduct of Lessee or any of its officers, members, employees, agents, representatives, consultants, contractors or subcontractors in connection with the performance by Lessee of the terms and provisions of this Lease; or (ii) any inaccuracy or misrepresentation in or breach of any representation or warranty made by Lessee in this Lease or

in any document, certificate or affidavit delivered by Lessee pursuant to the terms and provisions of this Lease; PROVIDED HOWEVER, Lessee's indemnity shall not extend to any matter for which Lessor is required to indemnify Lessee hereunder.

Lessee shall use reasonable efforts to incorporate this indemnification obligation in all subcontracts entered into with suppliers of materials or services, and all labor organizations who furnish skilled and unskilled labor, or who may perform any such labor or services in connection with a contract entered into hereunder. Lessee shall require that each agreement that it should enter into with any subcontractor shall include the following language: "*Subcontractor shall defend, indemnify and hold harmless Lessor, its respective officials, officers, employees, agents, representatives, consultants, contractors and subcontractors (individually, a "Lessor Indemnitee," and collectively, the "Lessor Indemnitees") from and against any and all liabilities, actions, damages, claims, lawsuits, demands, judgments, suits, losses, deficiencies, obligations, fines, penalties, costs and expenses (including reasonable legal, accounting and consulting fees) (collectively, "Losses"), to the extent arising out of or relating to, directly or indirectly, the negligence or misconduct of Subcontractor or any of its officers, members, employees, agents, representatives, consultants, contractors or subcontractors in connection with the performance by Subcontractor of the terms and provisions of the subcontract.*"

The indemnification obligations of Lessor and Lessee under this **ARTICLE XIII** shall not be limited in any way by any limitation on the amount or type of damages, equitable relief, compensation or benefits payable by or for Lessee, any subcontractor or any subcontractor of a subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts. Lessor shall promptly notify Lessee of all notices of claims and tender the defense of claims. The Parties agree to exercise all reasonable efforts to cooperate with one another to the extent their respective interests may appear.

Lessee's indemnity obligation includes indemnification for all reasonable expenses, court costs and attorney fees, including those incidental to appeals incurred by or imposed upon Lessor Indemnitees in connection with enforcement or defense of Lessor Indemnitees' rights to indemnity hereinabove provided. In addition, Lessee agrees that Lessor Indemnitees may employ any attorney (or attorneys) of their choice and/or may use its in-house counsel in a matter to enforce or defend Lessor Indemnitees' right to the indemnity hereinabove provided. However, if Lessor Indemnitees engage their own legal counsel, and Lessee has engaged or offered to engage legal counsel to defend Lessor Indemnitees in the matter, Lessor Indemnitees shall bear their own costs and expenses of their legal counsel, unless Lessee's and Lessor Indemnitees' positions in the matter are in conflict, in which case all reasonable costs and expenses of Lessor Indemnitees' legal counsel shall be borne by Lessee.

Section 13.02. Indemnification by Lessor. To the extent permitted by Applicable Law, except to the extent a matter is covered by insurance required to be obtained hereunder, Lessor shall protect, indemnify and hold harmless Lessee and its officials, officers, employees, agents, representatives, consultants, contractors and subcontractors (individually, a "**Lessee Indemnitee**" and collectively, the "**Lessee Indemnitees**") from and against any and all Losses arising out of or relating to, directly or indirectly: (i) the negligence or misconduct of Lessor or any of its officials, employees, agents, representatives, engineers, consultants, contractors or subcontractors in connection with the performance by Lessor of the terms and provisions of this

Lease; or (ii) any inaccuracy or misrepresentation in or breach of any representation or warranty made by Lessor in this Lease or in any document, certificate or affidavit delivered by Lessor pursuant to the terms and provisions of this Lease; PROVIDED, HOWEVER, Lessor's indemnity shall not extend to any matter for which Lessee is required to indemnify Lessor hereunder.

Lessor's indemnity obligation includes indemnification for all reasonable expenses, court costs and attorney fees, including those incidental to appeals incurred by or imposed upon Lessee Indemnitees in connection with enforcement or defense of Lessee Indemnitees' rights to indemnity hereinabove provided. In addition, Lessor agrees that Lessee Indemnitees may employ any attorney (or attorneys) of their choice and/or may use its in-house counsel in a matter to enforce or defend Lessee Indemnitees' right to the indemnity hereinabove provided. However, if Lessee Indemnitees engage their own legal counsel, and Lessor has engaged or offered to engage legal counsel to defend Lessee Indemnitees in the matter, Lessee Indemnitees shall bear their own costs and expenses of their legal counsel, unless Lessor's and Lessee Indemnitees' positions in the matter are in conflict, in which case all reasonable costs and expenses of Lessee Indemnitees' legal counsel shall be borne by Lessor.

Section 13.03. Procedure in Event of Indemnity. Notice to the indemnifying party shall be given promptly after receipt by any Lessor Indemnitee or any Lessee Indemnitee of actual knowledge of the commencement of any action or the assertion of any claim that will likely result in a claim by it for indemnity pursuant to this Lease. Such notice shall set forth in reasonable detail the nature of such action or claim to the extent known, and include copies of any written correspondence from the party asserting such claim or initiating such action. The indemnifying party shall be entitled, at its own expense, to participate in the defense of such action or claim or, if: (a) the action or claim involved seeks (and continues to seek) solely monetary damages, (b) the indemnifying party is obligated to indemnify and hold harmless the other party with respect to such damages in their entirety pursuant to **Section 13.01** or **Section 13.02** hereof, and (c) the indemnifying party shall admit in writing its obligation to indemnify in connection therewith, then such party shall be entitled to assume and control such defense with counsel chosen by such party, provided, that a decision or judgment with respect to such action or claim will not have any direct or indirect material adverse effect upon the person seeking indemnification. The person seeking indemnification shall be entitled to participation therein after such assumption, the costs of such participation following the assumption to be at its own expense. Upon assuming such defense, the indemnifying party shall agree to be fully responsible for, and to pay, the entire amount of any monetary judgment or settlement, and shall have full rights to enter into any monetary compromise or settlement which is dispositive of the matters involved; provided that such settlement will not have any direct or indirect material adverse effect upon the person seeking indemnification. In the event that the indemnifying party assumes the defense of such action or claim, it shall be conducted by counsel chosen by such party and approved by the party seeking indemnification, which approval shall not be unreasonably withheld.

13.03.1 With respect to actions as to which: (i) the indemnifying party does not have the right to assume the defense, or (ii) it shall not have exercised its right to assume the defense, the party seeking indemnification shall assume and control the defense of and contest such action with counsel chosen by it and approved by the indemnifying

party, which approval shall not be unreasonably withheld. The Indemnifying party shall be entitled to participate in the defense of such action, the cost of such participation to be at its own expense. The indemnifying party shall be obligated to pay the reasonable attorneys' fees and expenses of the party seeking indemnification to the extent that such fees and expenses related to claims as to which indemnification is payable under **Section 13.01** or **Section 13.02** hereof, as such expenses are incurred. The party seeking indemnification shall have full rights to dispose of such action and enter into any monetary compromise or settlement, PROVIDED, HOWEVER, that in settling any action in respect of which indemnification is payable under **Section 13.01** or **Section 13.02** hereof, it shall act reasonably and in good faith.

13.03.2 Both the indemnifying party and the indemnified party shall cooperate fully with one another in connection with the defense, compromise or settlement of any such claim or action, including without limitation, by making available to the other all pertinent information and witnesses within its control.

Section 13.04. Environmental Indemnification. Lessee shall not cause or permit any Hazardous Materials to be brought upon, kept or used in or about the Facility, by Lessee, its agents, employees, contractors, subcontractors or invitees, except in compliance with all Applicable Laws and with the prior written consent of Lessor (which Lessor shall not unreasonably withhold as long as Lessee demonstrates to Lessor's reasonable satisfaction that such Hazardous Materials is necessary or useful to Lessee's business in accordance with Prudent Electrical Practices and will be used, kept and stored in a manner that complies with Prudent Electrical Practice and all Applicable Laws regulating any such Hazardous Materials so brought upon or used or kept in or about the Facility)); provided, however, that Lessor hereby consents to Lessee causing or permitting Fuel to be brought upon, kept and used in and about the Facility, as well as other Hazardous Materials normally used in the operation and maintenance of the Existing Plant, the Facility, the Modified Boiler and the Related Facilities. If Lessee breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Materials within the Facility caused or permitted by Lessee results in contamination of the Facility or the environment, or if contamination of the Facility or the environment by Hazardous Materials otherwise occurs for which Lessee is responsible to Lessor for damage resulting therefrom, in addition to and not in limitation of this **ARTICLE XIII**, Lessee shall indemnify, defend and hold Lessor Indemnitees harmless from and against any and all Losses, (including, without limitation, diminution in value of the Facility and sums paid in settlement of claims, attorneys' fees, court costs, consultant fees and expert fees) which arise during or after the Term as a result of such contamination. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Regulating Entity because of Hazardous Materials present in the soil or ground water on, under or within the Facility or the environment resulting from Lessee's breach of its obligations pursuant to this Lease, or the presence of Hazardous Materials within the Facility caused or permitted by Lessee or contamination of the Facility or the environment by Hazardous Materials for which Lessee is otherwise responsible to Lessor. Without limiting the foregoing, if the presence of any Hazardous Materials on, under or within the Facility or the environment caused or permitted by Lessee results in any contamination of the Facility or the environment, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Facility to the condition existing prior to the introduction of any such

Hazardous Materials to the Facility and shall promptly take all actions at its sole cost and expense as are necessary to remediate the environment in accordance with all Applicable Laws; provided that Lessor's approval of such action shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any adverse long-term or short-term effect on the Facility. Lessee's cleanup and remedial obligations as set forth above shall not extend beyond those cleanup and remedial obligations required by any Regulating Entity pursuant to Applicable Law or as otherwise required pursuant to Applicable Law.

Notwithstanding any provision to the contrary contained in this **ARTICLE XIII** and provided that Lessee is otherwise in compliance with the terms and provisions of this Lease in all material respects, Lessee shall not be liable to Lessor: for any Hazardous Materials anywhere within the subsurface of the Facility which existed prior to the Commencement Date to the extent Lessee has not aggravated or exacerbated such pre-existing environmental conditions.

Section 13.05. Remedies Cumulative. The remedies provided for herein shall be cumulative.

Section 13.06. Limitation of Liability.

13.06.1 Pre-Existing Conditions. Lessee shall not be responsible for any fines, penalties or other costs connected with any complaint or a violation of any law, regulation, guideline, permit, judgment or order in effect or in existence on the date prior to the Commencement Date of this Lease or which arise from acts or omissions occurring prior to the Commencement Date of this Lease.

13.06.2 Survival. This **ARTICLE XIII** shall survive the termination or expiration of this Lease.

ARTICLE XIV.

COORDINATION COMMITTEE

Section 14.01. Coordination Committee.General. The Lessor Representatives and the Lessee Representatives are herein referred to individually as a "**Project Representative**" and collectively as the "**Project Representatives**". Each party hereby appoints its respective Project Representatives (as designated from time to time under **Section 14.02**) as members of a Facility coordination committee (the "**Coordination Committee**"). The purposes and responsibilities of the Coordination Committee shall be:

- (i) to provide coordination between Lessor's continued operation of the coal-fired boiler-generator ("**Existing Boiler**") after the Lease Effective Date and Lessee's need for access to the Existing Boiler and associated facilities for the initial design and engineering of the Facility until such time as Lessee assumes operational control of the Existing Boiler in accordance with the terms of this Lease:

- (ii) to provide periodic updates to Lessor on Lessee's design and engineering work on the Facility;
- (iii) to coordinate the parties' respective communications and dealings with any community groups or other special interest groups relating to the Facility;
- (iv) subject to **ARTICLE XXV**, to provide a mechanism for the parties to discuss material developments relating to the Facility, including matters relating to any utility services provided by Lessor to Lessee with respect to the Facility;
- (v) to facilitate discussion between the parties relative to any matter under this Lease requiring either party to obtain any Approval from the other Party; and
- (vi) such other matters related to the construction or operation of the Facility as the parties may from time to time mutually agree in writing.

Lessor and Lessee agree that each shall have the right to compensate their Project Representative, but neither shall provide any compensation to the Project Representative of the other party.

Section 14.02. Procedures. Each Project Representative may at any time and from time to time designate an alternate to serve on behalf of such Project Representative. The Coordination Committee shall: (i) meet no less frequently than quarterly (unless the parties agree otherwise), (ii) meet either in person or by telephone or video conference and (iii) otherwise specify the procedures for the conduct of its meetings, including the recording of minutes, the appointment of sub-committees (if necessary) and any other similar matters designated by the Coordination Committee. Except as expressly provided herein, the Coordination Committee shall have no authority in any manner to modify or otherwise alter the rights and obligations of the parties under this Lease. No decision by the Coordination Committee shall be binding upon the parties unless the decision is unanimously approved by all Coordination Committee members. If the opinion of the Coordination Committee on any issue is not unanimous, such issue, if deemed material, shall be referred to senior representatives of the parties for resolution in accordance with **ARTICLE XV**.

Section 14.03. Project Representatives.

14.03.1 Lessor Representatives. On the Lease Effective Date, Lessor shall appoint two representatives to serve on the Coordination Committee (each, a "**Lessor Representative**", and together, the "**Lessor Representatives**"), and each Lessor Representative shall be authorized to take all actions required of a member of the Coordination Committee on behalf of Lessor. Lessor shall promptly provide notice of such appointments to the Lessee. Lessor may change either or both of the Lessor Representatives at any time and from time to time by notice to the Lessee, and may designate an alternate Lessor Representative who shall have the same authority as the Lessor Representatives hereunder.

14.03.2 Lessee Representatives. On the Lease Effective Date, Lessee shall appoint two representatives to serve on the Coordination Committee (each, a “**Lessee Representative**”, and together, the “**Lessee Representatives**”), and each Lessee Representative shall be authorized to take all actions required of a member of the Coordination Committee on behalf of the Lessee. Upon the selection of a Plant Operator by Lessee, one of the Lessee Representatives shall be the Plant Manager for the Facility. Lessee shall promptly provide notice of such appointment to the Lessor. Lessee may change either or both of the Lessee Representatives at any time and from time to time by notice to Lessor, and may designate an alternate Lessee Representative who shall have the same authority as the Lessee Representatives hereunder. During Phase I and Phase II, Joseph P. Catasein shall be one of the two Lessee Representatives. During the first twelve months following the Commercial Operation Date, Mr. Catasein shall serve as the non-voting chairman of the Coordination Committee and the Lessee shall appoint two voting representatives as provided for above.

Section 14.04. Coordination Committee – Management Decisions. Lessor and Lessee agree that those management decisions identified on **Exhibit 14**, as amended from time to time, and as identified by the Coordination Committee under this **ARTICLE XIV** shall be decisions over which the Coordination Committee may exercise its discretion in establishing policies that must be followed by Lessee under the Lease.

ARTICLE XV.

DISPUTE RESOLUTION.

Section 15.01. General. Any Dispute under this Lease shall be resolved exclusively as set forth in this **ARTICLE XV**. As used herein, “**Dispute**” shall mean any disagreement between Lessor and Lessee regarding a Party’s rights, liabilities or obligations under the Lease.

Section 15.02. Senior Executive Discussions. Upon the written request of any Party, a senior officer of Lessor no less than Chairman of the USB, General Manager of the Jasper Municipal Utilities, or Mayor of the City of Jasper, as representative of Lessor, and an officer of Lessee, as representative of Lessee, shall meet and attempt to resolve any Dispute referred to them. If such Dispute is not resolved by discussions among such senior executives within thirty (30) days after a Party’s written request was made, and if any Party desires to refer such matter to arbitration for final resolution thereof, such Party may submit the matter to binding arbitration in accordance with the provisions set forth in **Section 15.05** unless this Lease requires that such Dispute be resolved pursuant to **Section 15.03** or **Section 15.04**.

Section 15.03. Referral to Independent Engineer. The provisions of this **Section 15.03** shall apply to the resolution of any Dispute under this Lease arising from any matter for which this Lease provides that such Dispute be resolved by the Independent Engineer. Lessor and Lessee shall have the right to appoint, by mutual Agreement, the Independent Engineer; PROVIDED, HOWEVER, if Lessor and Lessee cannot agree on the Independent Engineer, Lessor and Lessee each shall nominate an independent engineer, and the two appointed independent engineers shall, in turn, select an engineer who shall be qualified to serve as the Independent Engineer for purposes of this **Section 15.03**. Upon the written request of any Party,

the Dispute shall be submitted to the Independent Engineer to determine the matter subject to Dispute. The Independent Engineer's authority shall extend only to resolving technical, engineering, performance and related matters required to resolve the subject Dispute. The parties shall instruct the Independent Engineer to render a decision within sixty (60) days of its selection by giving written notice of its decision to Lessor and Lessee. During such sixty (60) day period, the parties shall permit the Independent Engineer to review all information available to the parties relating to the Dispute and the basis therefor. The resolution of disputed items by the Independent Engineer shall be final and binding upon the parties. The fees and expenses of the Independent Engineer shall be borne fifty percent (50%) by Lessor and fifty percent (50%) by Lessee.

Section 15.04. Referral to Independent Auditor. The provisions of this **Section 15.04** shall apply to the resolution of any Dispute under this Lease arising from any matter for which this Lease provides that such Dispute be resolved by the Independent Auditor. Lessor and Lessee shall have the right to appoint, by mutual agreement, the Independent Auditor; PROVIDED, HOWEVER, if Lessor and Lessee cannot agree on the Independent Auditor, Lessor and Lessee each shall nominate an independent auditor, and the two appointed independent auditors shall, in turn, select an auditor who shall be qualified to serve as the Independent Auditor for purposes of this **Section 15.04**. Upon the written request of any Party, the Dispute shall be submitted to the Independent Auditor to determine the matter subject to Dispute. The Independent Auditor's authority shall extend only to resolving accounting and related financial matters required to resolve the subject Dispute. The parties shall instruct the Independent Auditor to render a decision within sixty (60) days of its selection by giving written notice of its decision to Lessor and Lessee. During such sixty (60) day period, the parties shall permit the Independent Auditor to review all information available to the parties relating to the Dispute and the basis therefor. The resolution of disputed items by the Independent Auditor shall be final and binding upon the parties. The fees and expenses of the Independent Auditor shall be borne fifty percent (50%) by Lessor and fifty percent (50%) by Lessee.

Section 15.05. Arbitration. If any Dispute is not resolved pursuant to the provisions of **Section 15.02** and is not subject to resolution pursuant to **Section 15.03** or **Section 15.04**, upon notice from any Party that it desires to commence an arbitration with respect to such Dispute (such notice, an "**Arbitration Demand**"), the parties' exclusive means of resolving such Dispute shall be to refer the matter to binding arbitration conducted in Indianapolis, Indiana, in accordance with the Rules, pursuant to the following procedures:

(a) Selection of Arbitrators. Subject to the foregoing, the arbitration shall be conducted before one (1) arbitrator. Each Party shall attempt in good faith to agree on the selection of one (1) neutral arbitrator in accordance with the Rules. If, within sixty (60) days following an Arbitration Demand, the parties have failed to agree on an arbitrator, then each Party shall select one neutral arbitrator in accordance with the Rules, the two arbitrators shall then appoint a neutral third arbitrator who shall serve as chairperson and the arbitration shall be conducted before such panel of three (3) arbitrators. If within thirty (30) days following the determination to use three (3) arbitrators, a Party has failed to appoint an arbitrator, then such arbitrator shall be appointed by the AAA upon the written request of the other Party, within thirty (30) days of such request; and if, within sixty (60) days following the appointment of the first two

arbitrators, such two arbitrators have failed to appoint the chairperson, then the chairperson shall be appointed by the AAA upon the written request of either Party, within thirty (30) days of such request. In any such case, the arbitration hearing shall be commenced as expeditiously as is reasonably possible (in the case an arbitration panel is appointed, after selection of the chairperson) as determined by the arbitrator(s), and a reasoned award shall be rendered, if possible, no later than thirty (30) days following the close of the hearing.

(b) Qualification of Chairperson. In the case an arbitration panel is appointed, the chairperson of the arbitration panel shall be experienced with the laws of the State of Indiana and shall be a retired judge with experience in large commercial cases or a practicing commercial lawyer with a minimum of fifteen years of litigation experience.

(c) Proceedings, Awards and Judgments. Notwithstanding the foregoing, by agreeing to arbitration, the parties do not intend to deprive any court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court of competent jurisdiction, the arbitrator or arbitration panel, as applicable, shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any Party to respect the arbitration panel's orders to that effect. Any reasoned decision or award of the arbitrator or arbitration panel, as applicable, hereunder shall be final and binding on the parties, and judgment upon awards or orders for enforcement may be entered by any court of competent jurisdiction, and execution may be had in accordance with the law of execution generally applied in the jurisdiction or jurisdictions where enforcement is sought.

(d) Consolidation. In order to facilitate the comprehensive resolution of related disputes, and upon the request of any Party participating in the arbitration proceeding, the arbitrator or arbitration panel, as applicable, shall consolidate the arbitration proceeding with any other arbitration proceeding involving Lessor (or any other municipal entity related to the City of Jasper, Indiana) and Lessee (or any of its Affiliates) relating to this Lease, any other contract between them, any municipal permit or authorization, or any municipal tax matter, if the arbitrator(s) determine that: (i) there are issues of fact or law common to the proceedings so that a consolidated proceeding would be more efficient than separate proceedings, and (ii) no Party or its Affiliates would be prejudiced as a result of such consolidation through undue delay or otherwise. In the event of different rulings on this question by the arbitrator or arbitration panel, as applicable, constituted hereunder and an arbitrator or panel constituted under any other contract between them, any municipal permit or authorization, or any municipal tax matter, the ruling of the arbitrator or arbitration panel constituted first in time shall control. In the case of a consolidated proceeding, the parties shall determine which arbitrator or arbitration panel shall preside within twenty (20) days of the order of consolidation. Failing the parties' agreement within such time period, the arbitrator or arbitration panel for the consolidated proceeding shall be the arbitrator or arbitration panel constituted first in time.

(e) Discovery. Notwithstanding any Rules to the contrary, it is the intent of the parties that in connection with any Dispute hereunder, the parties shall be allowed to conduct depositions and serve written discovery, including requests for production of documents.

Section 15.06. Pendency of Dispute. The existence of a Dispute or the pendency of the Dispute settlement or resolution procedures set forth above shall not in and of themselves relieve or excuse any Party from its ongoing duties and obligations under this Lease.

Section 15.07. Right to Pursue Litigation. Notwithstanding the foregoing agreements under this **ARTICLE XV** to use arbitration to resolve any Dispute, Lessor and Lessee shall have the right in connection with any Lessor Event of Default or any Lessee Event of Default set forth in **ARTICLE XVI**, or otherwise in connection with a Party's failure to perform its obligations under the Lease, to commence an action in equity or at law seeking to enforce the Lease and compel the other Party to perform its obligations hereunder in any court of competent jurisdiction.

ARTICLE XVI.

DEFAULT

Section 16.01. Lessee Events of Default. The following events shall be deemed to be events of default by Lessee ("**Lessee Events of Default**") under this Lease regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceeding, which has or might have the effect of preventing Lessee from complying with the terms of this Lease:

(a) Failure to pay any payment required to be made hereunder, including taxes or any other sum to be paid hereunder within ten (10) days after the date the same is due which shall have remained unpaid for twenty (20) days after written notice of such failure has been given to Lessee by Lessor;

(b) Failure to comply in any material respect with any material term, provision or covenant of this Lease, other than the payment of sums to be paid hereunder, without curing such failure within thirty (30) days after due written notice thereof from Lessor; or if such failure cannot reasonably be cured within the said thirty (30) days and Lessee shall not have commenced to cure such failure within said period and shall not thereafter with reasonable diligence and good faith proceed to cure such failure; and/or

(c) Failure of Lessee to have obtained written commitments from property owners or lessees for: (i) a minimum of 25% of the expected initial annual acreage required to grow biomass fuel for the Modified Boiler by no later than May 1, 2013; (ii) an additional fifty percent (50%) of the initial annual acreage required to grow biomass fuel for the Modified Boiler by no later than May 1, 2014; and (iii) the remaining initial annual acreage required to supply one hundred percent (100%) of the biomass fuel for the Modified Boiler by no later than May 1, 2015; PROVIDED, HOWEVER, that if Lessee fails to satisfy the minimum expected initial annual acreage requirement of **Section 16.01(c)(i)**, but does obtain written commitments from property owners or lessees for a

minimum of fifteen percent (15%) of the expected initial annual acreage by such date, then such event shall not be Lessee Event of Default, provided that Lessee satisfies the requirements of **Section 16.01(c)(ii)** plus any shortfall from **Section 16.01(c)(i)** from the prior year and Lessee provides regular monthly updates to Lessor regarding its efforts to obtain such commitments; provided, further, that if Lessee is unable to satisfy any one or more of the Conditions Precedent under **Section 3.03** by October 1, 2012, then the date set forth above in **Section 16.01(c)(i)** shall be extended by twelve (12) months to May 1, 2014. Presently, such acreage amounts are estimated to be 2,250 acres, 4,500 acres and 2,250 acres, respectively. Each such acreage amount to be prorated if the Modified Boiler is determined using Prudent Electrical Practices to be derated from its current rating of 192 MMBtu/hr of Fuel input.

(d) Failure to comply with the obligations set forth under **Section 3.03.6**.

Section 16.02. Lessor's Remedies. Upon the occurrence of any Lessee Event of Default, Lessor may, at its option, and in addition to and cumulatively of any other rights Lessor may have at law or in equity or under this Lease: (i) cure such Lessee Event of Default on Lessee's behalf, in which event Lessee shall reimburse Lessor on demand for all sums so expended by Lessor; (ii) waive such Lessee Event of Default; (iii) terminate this Lease by notice to Lessee and in conformity with procedures required hereby and by Applicable Law; or (iv) enforce, by all proper and legal suits and other means, its rights hereunder, including the collection of sums due hereunder, in which event Lessor shall have all remedies available at law or in equity, and should it be necessary for Lessor to take any legal action in connection with such enforcement, Lessee shall pay Lessor all reasonable attorneys' fees so incurred, all without prejudice to any remedies that might otherwise be used by Lessor for recovery or arrearages of sums due hereunder, damages as herein provided, or breach of covenant.

Section 16.03. Lessor Events of Default. The following events shall be deemed to be events of default by Lessor ("**Lessor Events of Default**") under this Lease regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceeding which have or might have the effect of preventing Lessor from complying with the terms of this Lease:

(a) Failure to pay any payment required to be made hereunder within ten (10) days after the date the same is due which shall have remained unpaid for twenty (20) days after written notice of such failure has been given to Lessor by Lessee; and/or

(b) Failure to comply in any material respect with any material term, provision or covenant of this Lease, other than the payment of sums to be paid hereunder, without curing such failure within thirty (30) days after due written notice thereof from Lessee; or if such failure cannot reasonably be cured within the said thirty (30) days and Lessor shall not have commenced to cure such failure within said period and shall not thereafter with reasonable diligence and good faith proceed to cure such failure.

Section 16.04. Lessee's Remedies. Upon the occurrence of any Lessor Event of Default, Lessee may, at its option, and in addition to and cumulatively of any other rights Lessee may have at law or in equity or under this Lease: (i) cure such Lessor Event of Default on Lessor's behalf, in which event Lessor shall reimburse Lessee on demand for all sums so expended by

Lessee; or (ii) waive such Lessor Event of Default; (iii) terminate this Lease by notice to Lessor and in conformity with procedures required hereby and by Applicable Law, or (iv) enforce, by all proper and legal suits and other means, its rights hereunder, including the right to possess, occupy and use the Site and the Existing Plant, collection of sums due hereunder, or any other failure of Lessor to perform its obligations under the Lease, in which event Lessee shall have all remedies available at law or in equity, and should it be necessary for Lessee to take any legal action in connection with such enforcement, Lessor shall pay Lessee all reasonable attorneys' fees so incurred, all without prejudice to any remedies that might otherwise be used by Lessee for recovery or arrearages of sums due hereunder, damages as herein provided, or breach of covenant.

ARTICLE XVII.

FORCE MAJEURE

Section 17.01. Force Majeure. The performance of each Party's respective obligations under this Lease, other than failure or delay in payment of obligations, shall be excused during such times and to the extent such performance is prevented by reason of Force Majeure.

Section 17.02. Resumption of Performance. The Party whose performance is suspended, prevented or delayed by Force Majeure shall promptly notify the other Party of such occurrence and its estimated duration. Subject to any rights of termination under this Lease, such Force Majeure shall be promptly remedied, if and to the extent reasonably possible.

ARTICLE XVIII.

CONDEMNATION

Section 18.01. Proceeds of Condemnation / Transfer. If at any time the Site, the Existing Plant, the Facility or any portion thereof is condemned or transferred in lieu of condemnation, the net proceeds of such condemnation or transfer shall be divided between Lessor and Lessee (or Lessee's designee) in the proportions specified in the condemnation award or agreement of transfer or, if not so specified, in proportion to the fair value of Lessor's and Lessee's respective interests in the Site, the Existing Plant and the Facility, PROVIDED, HOWEVER, that to the extent that the net proceeds of any condemnation or transfer in lieu of condemnation are applicable to the Facility, modifications to the Existing Plant, or improvements constructed by or on behalf of Lessee on the Site and/or the Related Facilities, such proceeds shall be paid solely to Lessee or Lessee's designee. For the purpose of this **ARTICLE XVIII** the net proceeds of a condemnation or transfer in lieu of condemnation shall mean the total proceeds of such condemnation or transfer less the costs and expenses incurred in connection therewith (including legal fees).

Section 18.02. Status of Lease. If the entire Site or the Existing Plant is condemned or transferred in lieu of condemnation, the Term shall terminate at the time title vests in the condemning authority. If a portion of the Site or the Existing Plant is condemned or transferred in lieu of condemnation, the Lease shall continue in full force and effect with respect to that portion of the Site and the Existing Plant which has not been so condemned or transferred, and

Rent shall abate with respect to that portion of the Site or the Existing Plant which has been so condemned or transferred. Notwithstanding the foregoing, Lessee may terminate this Lease without penalty by giving written notice of termination to Lessor if more than thirty percent (30%) of the Site, the Existing Plant and the Facility is condemned and the remainder available is not suitable for Lessee's intended use following such condemnation or transfer in lieu thereof.

ARTICLE XIX.

MAINTENANCE

Section 19.01. Maintenance. On and after the Commencement Date and continuing for the Term, and subject to Lessor's compliance with its obligations under **Section 2.03.2** and **Section 5.02**, Lessee, at its own cost and expense and without any obligation or liability whatsoever on the part of Lessor, shall provide, or cause to be provided, all maintenance of the Facility, the Modified Boiler, the Related Facilities and the Site to provide for the safe, reliable and efficient operation of the Facility, the Modified Boiler, the Related Facilities and the Site in accordance with Prudent Electrical Practice. Lessee shall also provide, or cause to be provided, at its sole cost and expense, all labor, materials, parts, equipment and supplies required to perform maintenance to the Facility, the Modified Boiler, the Related Facilities and Site.

Section 19.02. Maintenance Schedule. Maintenance shall be performed hereunder at intervals appropriate to the usage and service of the Facility, the Modified Boiler, the Related Facilities and the Site in accordance with Prudent Electrical Practice and all manufacturers' recommendations and warranties, and as necessary to maintain the reliability of the Facility, the Modified Boiler, the Related Facilities and the Site.

Section 19.03. Replacement of Equipment. Lessee shall replace any aged or defective equipment or other components of the Facility, the Modified Boiler, and the Related Facilities in need of replacement, whether caused by Force Majeure or otherwise, in accordance with the terms and conditions of this Lease and Prudent Electrical Practice. For the avoidance of doubt, in appropriate circumstances, Prudent Electrical Practice may allow Lessee to replace aged or defective equipment with used equipment, *i.e.*, new equipment shall not always be required. Lessee shall also, at its sole cost and expense, provide all labor, materials, parts, equipment and supplies required by Lessee to perform its obligations pursuant to this **Section 19.03** with respect to any aged or defective equipment or other components of the Existing Plant.

ARTICLE XX.

DEFENSE OF LAWSUITS AND RELATED PROTESTS AND LITIGATION

Lessor and Lessee agree to jointly oppose any lawsuit, appeal, protest or challenge to this Lease, the Jasper Clean Energy Center or any Government Approval in which both Lessor and Lessee are named defendants (or in the event the Lessor, alone, is a named defendant) ("**Protest(s)**"). Lessee shall fund the first Twenty-Five Thousand Dollars (\$25,000.00) of any legal fees and costs reasonably incurred in response to any such individual and separate Protest(s) and, thereafter, for any legal fees and costs reasonably incurred in response to any such individual and separate Protests that cost more than such Twenty-Five Thousand Dollars

(\$25,000.00), Lessor and Lessee shall each pay for one-half (1/2) of any legal fees and costs reasonably incurred in response to all such Protests until the Lessor has incurred in aggregate a maximum of Two Hundred Thousand Dollars (\$200,000.00) in such legal fees and costs for all Protests. In operation, Lessee shall initially pay for Lessor's fifty percent (50%) share of such legal fees and costs and Lessor shall reimburse Lessee through a reduction in the next annual Rent payment. Lessee shall provide reasonable written evidence of the legal fees and cost incurred during the prior Contract Year at least thirty (30) days prior to the date the Rent payment is due. Thereafter, Lessee may continue to fund all of the legal fees and costs incurred in response to any such Protest(s) or Lessee may terminate this Lease without any additional liability to Lessee under this Lease, and Lessor shall return any Letter of Credit or other credit support that Lessee may have provided to Lessor under this Lease. For purposes of clarity, Lessor shall be responsible for all legal fees and costs associated with Lessor's obligations under this Lease, and Lessee shall be responsible for all legal fees and costs associated with Lessee's obligations under this Lease.

ARTICLE XXI.

MORTGAGE OF LESSEE'S INTEREST

Section 21.01. Financing. Lessee intends to finance a portion of the cost of the Facility and the modifications to the Existing Plant, possibly in a sale-leaseback financing structure, with one or more financial institutions, leasing companies, institutions or affiliates or subsidiaries thereof (each a "**Financing Party**", collectively, the "**Financing Parties**") and in connection therewith Lessee intends to enter into various agreements and execute various documents relating to such financing, which documents may, among other things, assign this Lease to a Financing Party, grant a sublease in the Site or the Existing Plant and a lease of the Facility from such Financing Party to Lessee, grant the Financing Parties a sublease or other real property interest in Lessee's interests in and to the Site or the Existing Plant, grant a first priority security interest in Lessee's interest in the Facility and/or this Lease and Lessee's other interests in and to the Site or the Existing Plant, including, but not limited to, any easements, rights of way or similar interests (such documents, "**Financing Documents**"). Lessor acknowledges notice of the foregoing plans of Lessee to enter into the Financing Documents described above, and Lessor agrees to cooperate with Lessee and the Financing Parties (including any prospective Financing Parties) to review and consent to such subordination agreements, consents, estoppels and other acknowledgements of the foregoing as Lessee or the Financing Parties may reasonably request, including a consent and agreement substantially in the form of the Consent and Agreement attached as **Exhibit 15**. Lessor acknowledges that Lessee will be required to maintain the confidentiality of its Financing Documents and, accordingly, Lessee will allow Lessor to review in Lessee's offices, but not copy or reproduce, such Financing Documents, and Lessor acknowledges that such Financing Documents may have proprietary information related to the Financing Parties redacted therefrom.

Section 21.02. Termination. Lessor agrees that it shall not terminate this Lease unless it has given each Financing Party at least ninety (90) days' (thirty (30) days in the case of a default in payment by Lessee) prior written notice of its intent to terminate this Lease and the Financing Parties fail to cure the condition giving rise to such right of termination within such time period.

Section 21.03. Default. If the default under this Lease is of such a nature that it cannot be practicably cured without first taking possession of the Facility, including the Existing Plant, and the Site or if such default is of a nature that is not susceptible of being cured by the Financing Parties, then Lessor shall not be entitled to terminate this Lease by reason of such default if and so long as the Financing Parties proceed diligently to attempt to obtain possession of the Facility, including the Existing Plant, and the Site pursuant to the rights of the Financing Parties under the Financing Documents and upon obtaining such possession, the Financing Parties shall proceed diligently to cure such default if such default is susceptible of being cured by the Financing Parties.

Section 21.04. Possession. The Financing Parties shall not be required to continue to proceed to obtain possession, or to continue in possession of the Site or the Existing Plant, pursuant to the foregoing **Section 21.03** if and when such default is cured. If the Financing Parties, or a purchaser through foreclosure under the Financing Documents or otherwise, shall: (x) acquire title to the Facility and the leasehold estate created by this Lease, (y) cure all defaults which are susceptible of being cured by the Financing Parties or such purchaser, as the case may be (including without limitation, the payment of all monetary obligations of Lessee referred to in **Section 21.02**, above), and (z) assume all the obligations of Lessee hereunder, then (i) any default of Lessee which is not susceptible of being cured by the Financing Parties or such purchaser, as the case may be, shall no longer be deemed to be a default under this Lease, and (ii) Lessor shall recognize the Financing Parties or such purchaser, as the case may be, as if such Party had been Lessee under this Lease.

ARTICLE XXII.

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 22.01. Representations and Warranties of Lessor. Lessor represents and warrants, as of the Effective Date and as of the Commencement Date, that Lessor owns fee title to the Site and the Existing Plant free and clear of any lien, interest or encumbrance, subject only to the matters and exceptions approved in writing by Lessee on or before the Commencement Date and shown in that certain Commitment for Title Insurance prepared by a title insurance company mutually acceptable to Lessor and Lessee ("**Title Company**"). Lessee may obtain for itself and/or any Financing Party, at Lessee's expense, an ALTA Extended Coverage policy of title insurance in a form and with exceptions acceptable to Lessee and/or such Financing Party in its sole discretion (the "**Title Policies**"). Lessor agrees to cooperate fully and promptly with Lessee in its efforts to obtain the Title Policies, and Lessor shall take such actions as Lessee or any Financing Party may reasonably request in connection therewith. Lessor represents and warrants that there are no pending or threatened claims, actions or suits affecting the Site, the Existing Plant, or Lessor's interest in the Site and the Existing Plant, except those documented under **Section 2.03.3**; the execution, delivery and performance by it under this Lease have been duly authorized by all necessary action by Lessor and do not violate any provision of any current law applicable to Lessor, the Site or any order, judgment or decree of any court or other agency presently binding on Lessor or conflict with or result in a breach of or constitute a default under any contractual obligation of Lessor; and this Lease is the legally valid and binding obligation of Lessor enforceable against it in accordance with its terms except as enforcement may be limited

by bankruptcy, insolvency, or reorganization, moratorium or similar laws or equitable principles relating or limiting creditors rights generally.

Section 22.02. Environmental Representations and Warranties of Lessor. Lessor represents and warrants that, as of the Effective Date and as of the Commencement Date: (i) the Site and the Existing Plant are free of known or identified Hazardous Materials, no Hazardous Materials have ever been disposed upon the Site, no unpermitted Release has occurred on the Site and Hazardous Materials have not migrated to the Site, (ii) the Site and the Existing Plant are in compliance with all Environmental Laws, (iii) neither the Site nor the Existing Plant are subject to any Environmental Liability, threatened Environmental Liability or alleged Environmental Liability, and (iv) Lessor has not received notice of any violation of Environmental Laws affecting the Site, or, if received, has been disclosed to Lessee. Notwithstanding the foregoing, Lessee acknowledges that the Site has been utilized as a coal fired electric generation facility since 1969, and that coal and coal byproducts are currently stored and located at the Site.

Section 22.03. Materiality of Representations. The representations and warranties enumerated in **Section 22.01** and **Section 22.02** hereof are material for purposes of this Lease, and misrepresentations are grounds for an Event of Default hereunder.

Section 22.04. No Breach of Representations and Warranties. Lessor's representations and warranties contained in this Lease shall be true on the Commencement Date as if such representations and warranties were made at such time.

Section 22.05. Representations and Warranties of Lessee. Lessee represents and warrants that the following are true and correct on the date hereof and shall be true and correct as if such representations and warranties have been made on the Commencement Date:

(a) Authority. Lessee has full right, power and authority to execute, deliver and perform this Lease and all actions and transactions contemplated hereby;

(b) Organization in Good Standing. Lessee is duly organized, validly existing and in good standing under the laws of the State of Indiana; and

(c) Validity. This Lease constitutes a valid and binding obligation of Lessee, enforceable in accordance with its terms. Neither the execution and delivery nor the performance of this Lease will result in the breach of any term or provision of any contract, agreement or other instrument, or any judgment, decree or order of any court to which Lessee is a party, and a consent or authorization of any person, firm or corporation pursuant to any of the aforementioned instruments is not required as a condition precedent to the consummation by Lessee of this Lease or the transactions contemplated hereby.

ARTICLE XXIII.

UTILITIES; ELECTRIC INTERCONNECTION; GAS INTERCONNECTION

Section 23.01. Utilities. Lessee shall pay for all Utility Services supplied to the Site, the Existing Plant and the Facility during the Term pursuant to the rates and terms of the various Utility Services provided by the City of Jasper to other industrial customers.

Section 23.02. Utility Service. Lessor shall cause its affiliated municipal utilities to provide necessary Utility Services to Lessee in connection with the normal policies and procedures and applicable ordinances and resolutions of the Lessor and the USB as required to meet all the requirements of the Facility, including the Existing Plant and any modifications thereto.

Section 23.03. Storm Water Management. Lessee shall be responsible for the design of the storm water management system for the Site and the Facility. Lessee shall be responsible for obtaining any and all approvals or permits related to the storm water management for this Site and the Facility from the responsible Regulating Entity. Lessor shall cause its departments and employees to use reasonable commercial efforts to assist the Lessee in obtaining any necessary permits. Lessee shall be responsible for all costs related to the design, development and obtaining of storm water plans and permits.

Section 23.04. Electrical Service Line and Interconnection Facilities. Lessor shall cause its electric utility department to assist with the necessary easements for the construction and continued operation of the Transmission Facilities, including a new 69 kV electric service line extending from the Facility to the Jasper North, Substations and space at the Jasper North Substation for any related electrical interconnection facilities and telecommunication and control equipment necessary to deliver 75 MW of electrical capacity and the corresponding electric energy to the MISO grid through the designated Substation. All such actions and efforts shall be at the sole cost and expense of Lessee. Lessor and Lessee have set forth their agreement to pursue and develop this 69 kV service line as set forth in **Exhibit 10**. Such electrical service line and interconnection facilities will also be designed to accommodate provision of service from the Facility to USB and its customers during a Blackout Event.

Section 23.05. Natural Gas Transportation Facilities and Services. Lessor shall, through its USB, enter into the necessary agreements to provide firm natural gas transportation service to the Facility, including the design and construction of a natural gas pipeline using Good Engineering Practice capable of delivering up to 675 MMBtu per hour and up to 16,200 MMBtu per day of natural gas from the interstate pipeline facilities of ANR Pipeline Company, Texas Eastern Transmission LP, or both to the Facility. Lessor and Lessee have set forth their agreement to pursue the development and maintenance of this natural gas pipeline in **Exhibit 9**. All such actions and efforts shall be at the sole cost and expense of Lessee.

ARTICLE XXIV.

TAXES

Section 24.01. Tax Abatement. Lessor shall cooperate with Lessee in its actions to pursue tax abatement (at Lessee's sole cost and expense) with respect to the Facility, the Related Facilities and the Modified Boiler by furnishing relevant data, documents, information, and assistance (which shall not include lobbying or testifying on behalf of the Jasper Clean Energy Center). Lessee covenants and agrees not to pursue tax abatement as to any portion of the Existing Plant other than the Modified Boiler.

Section 24.02. Covenant to Pay Taxes and Assessments. Lessee shall pay the Taxes and Assessments, as hereinafter defined, which accrue during or are attributable to the Term. "**Taxes and Assessments**" shall mean all taxes, assessments or other impositions, general or special, ordinary or extraordinary, of every kind or nature, which may be levied, assessed or imposed upon or with respect to the Site, the Existing Plant or any part thereof, or upon the Facility or any buildings, improvements, fixtures, equipment or personal property of Lessee at any time situated thereon, including, but not limited to, any ad valorem and inventory taxes. Subject to the provisions of **Section 24.03**, below, Lessee shall not be responsible for the payment of any income or similar tax due and payable on Lessor's receipt of the rental payments under this Lease. Lessee shall pay all Taxes and Assessments as they become due and payable and, upon request, shall provide Lessor with appropriate evidence of their payment.

Section 24.03. Proration at Commencement and Expiration of Term. Taxes and Assessments shall be prorated between Lessor and Lessee for the year in which the Term commences and for the year in which the Term expires as of, respectively, the Commencement Date and the date of expiration of the Term, except as hereafter provided. For the year in which the Term commences, Lessee shall be liable without proration for the full amount of Taxes and Assessments relating to improvements, fixtures, equipment or personal property installed by or on behalf of Lessee. For the year in which the Term expires, Lessee shall be liable without proration for the full amount of Taxes and Assessments relating to any improvements, fixtures equipment or personal property which Lessee is required to remove pursuant to the terms of this Lease. Proration of Taxes and Assessments shall be paid and appropriate adjustment and payment shall be made on the basis of actual Taxes and Assessments. Lessee's pro rata share of Taxes and Assessments for the year in which the Term commences and expires shall be paid and appropriate adjustment and payment shall be made between the parties, at the time the actual Taxes and Assessments are known, as may be necessary to accomplish proration, as herein provided.

Section 24.04. Substitute Taxes. If at any time during the Term the laws concerning the methods of real property taxation prevailing at the Commencement Date are changed so that a tax or excise on rents or any other such tax, however described, is levied or assessed against Lessor as a direct substitution in whole or in part for any real property taxes, Lessee shall pay before delinquency (but only to the extent it can be ascertained that there has been a substitution and that as a result Lessee has been relieved from the payment of real property taxes it would otherwise have been obligated to pay) the substitute tax or excise on rents. Lessee's share of any

tax or excise on rent shall be substantially the same as, and a substitute for, the payment of such real property taxes as provided in this Lease.

Section 24.05. Lessee's Right to Contest Taxes. Without limiting the right of Lessor to contest any Taxes and Assessments levied against the Site or the Existing Plant, Lessee shall have the right to contest any Taxes or Assessments payable by Lessee, provided, Lessee shall, in good faith and with due diligence, contest the same or the validity thereof by appropriate legal proceedings which shall have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment. Lessee shall have the right, at its sole expense, to institute and prosecute, in Lessor's name, any suit or action to contest any tax or assessment payable by Lessee or to recover the amount of any such tax or assessment but, in such event, Lessee hereby covenants and agrees to indemnify and save Lessor harmless from any and all reasonable and documented costs and expenses, including attorneys' fees, in connection with any such suit or action. Any funds recovered by Lessee as a result of any such suit or action shall belong to Lessee except to the extent any such recovery relates to a period of time which is not part of the Term. Any part of such recovery relating to a period not part of the Term shall be paid to Lessor.

ARTICLE XXV.

ADDITIONAL COVENANTS AND CONDITIONS OF LESSEE

Section 25.01. Fuel Source. Lessee agrees, as more fully described herein, to limit the primary fuel source for the operation of the Facility to natural gas and for the operation of the Modified Boiler to a mutually agreed upon "closed-loop biomass" crop. Lessee and Lessor agree that the "closed-loop biomass" crop to be mutually agreed upon and to be used as the primary fuel in connection with the Modified Boiler shall be *Miscanthus x giganteus* including any subsequently improved or beneficially modified form. The use of other closed-loop biomass crops shall be subject to the approval of Lessor, which approval shall not be unreasonably withheld but shall be subject to the determination that proposed closed-loop biomass crop is (i) not listed as invasive by the Indiana Department of Agriculture; (ii) contains similar or improved chemical constituents; (iii) the combustion of which will not result in the violation of the Voluntary Compliance Level for emissions under this Lease or the air emissions permits issued by the IDEM.

Section 25.02. Emergency Power. Lessor desires to be able to obtain electric energy generated from this Facility in the event that Lessor and the USB are cut off from the grid because of a Force Majeure or a transmission outage ("**Blackout Event**"), PROVIDED, HOWEVER, that any deliveries of electric energy from the Facility to Lessor during a Blackout Event may be interrupted if and to the extent that electric capacity, energy or ancillary services from the Facility are required by MISO or any Regulating Entity to be diverted to other uses or the Facility is ordered to cease generating in order to protect the transmission grid or to provide black start to other larger electric generators in order to restore the bulk power system. Lessee agrees that it shall use commercially reasonable efforts to assist Lessor in obtaining the right to purchase such energy during a Blackout Event from the third party purchasing the electric energy output from the Facility pursuant to Lessee's long term Power Purchase and Sales Agreement. Lessor shall be responsible for negotiating any terms and conditions for its contract

with IMPA or any subsequent electric power supplier providing for Lessor to utilize the output of the Facility.

Section 25.03. Extension of IMPA Contract. Lessor represents that its Capacity and Emergency Purchase Dispatch Agreement dated September 21, 2007, between Lessor and the Indiana Municipal Power Agency (“**IMPA**”), shall expire on May 31, 2012 (“**IMPA Contract**”). Lessor must provide notice to IMPA on or before January 1, 2012, if Lessor desires to extend the IMPA Contract. Lessor shall provide notice to Lessee at least five (5) business days before pursuing an extension with IMPA of the IMPA Contract. Lessor shall have the right to extend the power sales contract for a limited term, which shall expire no later than September 1, 2012; PROVIDED, HOWEVER, if Lessor does not extend the IMPA Contract during this period of time at the request of Lessee, Lessee shall agree to reimburse Lessor for any capacity revenues that would have been received by Lessor from IMPA during the extension period.

Section 25.04. Change of Law. Notwithstanding **Section 28.03**, Lessor and Lessee acknowledge and agree that their respective benefits and burdens under this Lease could be affected by any Change of Law that occurs after the Effective Date, to the extent that any such Change of Law imposes any material burden or cost on the Lessor or the Lessee in connection with its obligations under this Lease. Accordingly, Lessor and Lessee shall amend this Lease if there occurs any such Change of Law, so that the Lease will acknowledge and address such Change of Law and ensure that the respective benefits and burdens of Lessor and Lessee under this Lease, prior to such Change of Law, shall be essentially the same after such Change of Law.

Section 25.05. Tax Credit Related Modifications Lessor and Lessee agree and acknowledge that Lessee’s sale of the electric energy, the associated electric capacity and environmental attributes (the “**Products**”) generated by the Facility to potential buyers will be in a price competitive environment. The availability of the respective economic benefits of the Facility to Lessor and its residents, the agricultural community and the Lessee are made possible by Lessee’s ability to sell the Products under a long term sales and purchase agreement to a third-party purchaser. Lessee’s ability to sell such Products to a third-party purchaser are enhanced if Lessee and the Facility can take full advantage of all available federal tax credits to reduce Lessee’s cost of generating the Products, including Federal tax credits available for the electric energy generated by the Facility using steam produced by the Modified Boiler using “closed- loop biomass” as Fuel. Accordingly, Lessor and Lessee agree to use all commercially reasonable efforts in connection with all Applicable Laws to modify the terms of this Lease to the extent reasonably necessary for Lessee and the Facility to qualify for such federal tax credits, including causing a sale by Lessor to Lessee of certain equipment in lieu of Lessor leasing such equipment to Lessee.

In addition, in preparing any such modifications to this Lease, Lessor and Lessee shall ensure that the respective benefits and burdens of Lessor under this Lease, prior to such modifications, shall be essentially the same after such modifications.

Section 25.06. Right of Lessor to Review Lessee’s Choice of Management Company. Lessee shall select a third party consulting firm or management entity to provide day-to-day management of the Facility and the Modified Boiler. Such firm shall have the qualifications necessary to reliably and efficiently operate a solid fuel boiler and a natural gas-fired combustion

turbine, as more fully specified in **Exhibit 19**. Such firm shall have the expertise, personnel and financial support necessary to reliably and efficiently manage the day-to-day operation and maintenance of the Facility and Modified Boiler in compliance with Prudent Electrical Practice, Applicable Law, Environmental Laws, Government Approvals, Environmental Permits, and the terms and provisions of this Lease. Lessor shall have the right to review Lessee's proposed choice of such firm or entity (or list of entities) and, to the extent that Lessor provides reasonable objections, based on the Qualifications of Facility Manager set forth in **Exhibit 19**, to Lessee's choice of such firm or entity, then Lessee shall use commercially reasonable efforts to modify its choice to accommodate such reasonable objections. Lessor's right to review Lessee's choice of a firm or entity shall only apply to the firm or entity selected by Lessee to operate and manage the Facility, and shall not apply to any individual or group of individuals who are appointed or selected by the firm or entity managing the Facility on behalf of Lessee. Lessor's right of approval under this subsection shall apply to each and every firm or entity selected by Lessee to manage and operate the Facility. Lessee shall provide not less than thirty (30) days notice in each instance when it has selected a new firm or entity to manage and operate the Facility, and Lessor thereafter shall have thirty (30) days to provide its objections, if any, to the proposed firm or entity. With said notice of the selection of the proposed firm or entity, Lessee shall use commercially reasonable efforts to assist Lessor in obtaining any and all background information which would be instructive or helpful to Lessor in connection with its review under this section.

Section 25.07. Restriction on Hiring. Lessee agrees not to hire as an employee, or to contract with as an independent contractor to provide consulting services: (i) elected officials of the Lessor and members of the USB for a period of three (3) years following the earlier date of the termination or expiration of the elected official's position with the Lessor or the member's position on the USB; (ii) any appointed officials or representatives of Lessor serving on any board or council of Lessor (excluding those persons subject to **Section 25.07(i)** for a period of one (1) year following the date of the earlier termination or expiration of the official's or representative's position of such council or board; (iii) or any individual who has voluntarily terminated their employment with Lessor, including an employee of any utilities owned or operated by the Lessor, for a period of one (1) year following the date of termination of the individual's employment or the termination or expiration of the individual's membership on any council or board of the Lessor. Lessor and Lessee agree that the restrictions under this **Section 25.07** shall also apply to third party services that may be provided to Lessee by any former employee, representative, appointed or elected official of Lessor directly to Lessee or as part of a consulting contract or other services contract between Lessee and any third party. Notwithstanding the foregoing, Lessor and Lessee acknowledge and agree that this **Section 25.07** shall not apply to any current or former employees of Lessor (including any employees of any Lessor-owned or operated utilities) who previously worked at the Existing Plant, who may be offered employment in accordance with **Exhibit 20** hereto. Notwithstanding the foregoing, this provision shall not apply to any employee of Lessor whose employment has been terminated by Lessor and said termination was unrelated to any alleged or actual misconduct or malfeasance involving, directly or indirectly, the Lessee. Additionally, Lessor and Lessee may mutually waive the application of this provision as to any person. Furthermore, this provision shall not apply to contracts or leases for the growth of closed loop biomass in connection with the Project.

Section 25.08. Reporting and Plan Requirements. Lessee shall be obligated to make reports regarding the status of the Facility and its obligations under the Lease in accordance with

the requirements set forth in **Exhibit 16**. The reporting requirements shall change depending upon which phase of the Lease is currently in effect. The frequency and content of the different types of status reports to be completed by the Lessee are identified in **Exhibit 16**.

Section 25.09. Emissions. Lessee agrees that the Facility's emissions shall be governed by the requirements set forth in **Exhibit 17**. Lessee shall meet the permit and operating emission levels set forth in **Exhibit 17**.

Section 25.10. Sustainability; Fire Protection and Training. Lessee agrees to utilize industry leading sustainability guidelines and processes in the design and operation of the Facility to the extent commercially feasible. Lessee shall comply with the guidelines for sustainability as set forth in **Exhibit 18**. Additionally, Lessee shall meet the requirements for fire protection and training for this Facility and Related Facilities as set forth in **Exhibit 18**.

ARTICLE XXVI.

ASSIGNMENT

Subject to the rights of Lessor under **ARTICLE XXVIII**, neither Party may assign, sublease, mortgage, pledge, or transfer its interest in the Site, the Existing Plant or this Lease without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, that notwithstanding the foregoing, Lessee may assign, sublease, mortgage, pledge or transfer its interest in the Site, the Existing Plant and this Lease without Lessor's prior written consent: (i) as contemplated by **ARTICLE XXI** above in connection with any financing of the Facility, the modifications to the Existing Plant, or any portion thereof, or (ii) to an Affiliate of Lessee or to an Affiliate of any Financing Party.

ARTICLE XXVII.

LETTERS OF CREDIT AND SINKING FUND

Section 27.01. Phase I Credit Support. During Phase I of the Term of this Lease, while Lessee pursues the development of the Facility, Lessee shall make quarterly Lease Option Payments to Lessor pursuant to **Section 2.04**. During Phase I, Lessee shall not be required to provide any additional credit support to Lessor.

Section 27.02. Phase II: Letter of Credit. During Phase II of the Term of this Lease, as provided for in Section 6.03.6, Lessee shall provide to Lessor an irrevocable, non-transferable direct draw letter of credit, which shall be for a minimum period of one (1) year, and shall be renewed, replaced or extended by Lessee, no later than thirty (30) days prior to its expiration, in a form satisfactory to Lessor and substantially in the form of **Exhibit 21** hereto, and in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) (the "**Phase II Letter of Credit**"), which as specified in **Section 6.03.2** is equal to the Construction Liquidated Damages. The bank issuing such Phase II Letter of Credit shall be a major commercial bank with a credit rating by S&P of at least A- and by Moody's of at least A1, and shall have assets of at least Two Billion Dollars (\$2,000,000,000.00). Each such bank shall be instructed that it is to honor any draft Lessor may present, without prior notice to the issuer. Also, such bank shall be instructed

that it shall have no objection rights to payment to Lessor and that Lessee shall not have first claim rights to such Phase II Letter of Credit. If the Phase II Letter of Credit is not renewed by the bank and a substitute Phase II Letter of Credit is not received by Lessor at least thirty (30) days before the expiration date of the then-effective Phase II Letter of Credit (or if Lessor does not receive an irrevocable commitment from another bank acceptable to Lessor to issue a replacement standby Phase II Letter of Credit, effective upon the expiration of the then-effective Phase II Letter of Credit), then Lessor shall be able to draw on the Phase II Letter of Credit in full, regardless whether Lessee is in default, and hold such amounts as cash collateral.

Section 27.03. Phase III and IV: Sinking Fund and Phase III Letter of Credit. During Phase III and Phase IV of the Term of this Lease, *i.e.*, from the Commercial Operation Date until the end of Phase IV, Lessee shall provide to Lessor an irrevocable, non-transferable direct draw letter of credit, in a form satisfactory to Lessor and substantially in the form of **Exhibit 21** hereto, and in the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000) (the "**Phase III Letter of Credit**"), which as specified in **Section 6.03.4** is equal to the Remaining Equipment Liquidated Damages. In addition, Lessee shall fund a Sinking Fund in accordance with **Section 6.03.7**. Furthermore, Lessee shall have the right at any time to provide a cash deposit or cash equivalent escrow deposit in favor of Lessor in lieu of the Phase III Letter of Credit, in an amount equal to the then-effective stated amount of such Phase III Letter of Credit. Upon receipt of documentary evidence of Lessee's deposit of such funds in an account for the benefit of Lessor, Lessor shall return the Phase III Letter of Credit to Lessee.

If Lessee operates the Facility for the Term of the Lease and fulfills its obligations during Phase IV at the end of the Term of the Lease, or if the Lease is terminated early due to a Lessor Event of Default, then Lessor shall return the Phase III Letter of Credit (or cash or cash equivalent escrow deposit) to Lessee and Lessee may retain the Sinking Fund for its own use.

The bank issuing such Phase III Letter of Credit shall be a major commercial bank with a credit rating by S&P of at least A- and by Moody's of at least A1, and shall have assets of at least Two Billion Dollars (\$2,000,000,000.00). Each such bank shall be instructed that it is to honor any draft Lessor may present, without prior notice to the issuer. Also, such bank shall be instructed that it shall have no objection rights to payment to Lessor and that Lessee shall not have first claim rights to such Phase III Letter of Credit. If the Phase III Letter of Credit is not renewed by the issuing bank and a substitute Phase III Letter of Credit is not received by Lessor at least thirty (30) days before the expiration date of the then-effective Phase III Letter of Credit (or if Lessor does not receive an irrevocable commitment from another bank acceptable to Lessor to issue a replacement standby Phase III Letter of Credit, effective upon the expiration of the then-effective Phase III Letter of Credit), then Lessor shall be able to draw on the Phase III Letter of Credit in full, regardless whether Lessee is in default, and hold such amounts as cash collateral. The terms and conditions for Lessor's access to any cash deposit or cash equivalent escrow that Lessee may substitute for the Phase III Letter of Credit shall be subject to the same or similar rights of access by Lessor as set forth above.

ARTICLE XXVIII.

RIGHT OF FIRST REFUSAL

Section 28.01. Right of First Refusal. Should Lessor receive an offer to purchase the Site and/or the Existing Plant from any third party during the Term (a “**Bona Fide Offer**”), Lessor shall promptly give written notice and a copy of such Bona Fide Offer to Lessee, and Lessee shall have the right of first refusal (the “**Right of First Refusal**”) to purchase the Site and/or the Existing Plant, as applicable, by giving written notice to Lessor that Lessee elects to purchase the Site and/or the Existing Plant upon the terms set forth in the Bona Fide Offer no later than thirty (30) days after Lessee’s receipt of the Bona Fide Offer from Lessor. If Lessee does not elect to purchase the Site and/or the Existing Plant pursuant to the Right of First Refusal, then Lessor may sell the Site and/or the Existing Plant to such third party, subject to **ARTICLE XXVI** above and subject to the terms and conditions of this Lease, including without limitation, the options in **Section 28.04** and **Section 6.01**; provided, that if there is any change to the terms of the Bona Fide Offer, Lessor shall promptly send Lessee a copy of the revised Bona Fide Offer and Lessee shall have a Right of First Refusal to purchase the Site and/or the Existing Plant, as applicable, according to the terms of the revised Bona Fide Offer under the procedure set forth in this **Section 28.01**.

Section 28.02. Closing. If Lessee elects to purchase the Site or the Existing Plant pursuant to the Right of First Refusal, the closing of the sale (the “**Closing**”) shall be conducted as follows:

28.02.1 Closing shall take place at a time and in a location mutually acceptable to the Parties hereto; provided, that Closing shall take place no later than the expiration of the then current Term hereof unless extended in writing by the Parties.

28.02.2 Lessor shall deliver marketable title to the Site and the Existing Plant, as applicable, to Lessee by Warranty Deed, free and clear of all liens and other encumbrances, other than those created or approved by Lessee, as evidenced by an ALTA Extended Coverage Owner’s policy of title insurance in the full amount of the purchase price issued by a title company approved by Lessee and in a form approved by Lessee in its sole discretion.

28.02.3 Except as otherwise provided by this Lease, Lessor and Lessee shall share all closing costs in accordance with the custom and practice in Dubois County, Indiana.

28.02.4 The sale of the Site or the Existing Plant to Lessee shall be made subject to the following representations and covenants by Lessor as “seller” effective as of the date of Closing:

- (i) Lessor has marketable, fee simple title to the Site and the Existing Plant, as applicable, and Lessor has full power and authority to sell the Site and the Existing Plant, as applicable. The documents delivered by Lessor at closing will be duly authorized, executed

and delivered by Lessor, and will be the legal, valid and binding obligations of Lessor.

- (ii) Lessor has not sold, transferred, pledged or assigned its interests in the Site or the Existing Plant to any person and, except for the interests of Lessee under the Lease, no such person has any interest, right or claim in and to the Site or the Existing Plant. There are no claims or judgments, pending or threatened suits, actions, arbitrations or proceedings, or any governmental investigations affecting the Site or the Existing Plant, and no notice of proposed condemnation or other taking or notice of violation of any ordinances, laws, or regulations have been received by Lessor with respect to the Site or the Existing Plant.
- (iii) Each of the representations and covenants made by Lessor shall be true and correct in all respects on the date of Closing and shall survive the Closing. Lessor shall indemnify Lessee and Lessee's Parties for, and hold it harmless from, any claims, damages, liabilities, costs and expenses, arising from or under, or by reason of any breach of, Lessor's representations or covenants.

28.02.5 Closing shall be conditioned upon receipt of all necessary approvals necessary to make the Site a separate legal parcel of land in compliance with all applicable State of Indiana, local and/or municipal subdivision regulations, subject to conditions acceptable to Lessee in its sole discretion, and recordation of a parcel map or other document if required by applicable law. At such Closing, the Parties shall terminate the Lease, Lessor shall return to Lessee any Phase I Letter of Credit or Phase II Letter of Credit then in effect, Lessor shall execute such documents as are necessary to terminate any rights it may then have to the Sinking Fund, and the Parties shall enter into any replacement agreements necessary for Lessee to continue to construct, operate and maintain the Facility, the Modified Boiler, and the Related Facilities and to sell the electrical output of the Jasper Clean Energy Center into the available wholesale markets.

Section 28.03. Compliance with Applicable Law. The rights and obligations under this **ARTICLE XXVIII** shall be subject to the ability of Lessor to provide said right of first refusal under Applicable Law.

Section 28.04. Option to Purchase Facility. No more than 12 months prior to the expiration of the Term and no less than 9 months prior to the expiration of the Term, Lessor may notify Lessee that Lessor desires to purchase the Facility for an amount equal to the fair market value of the Facility. If Lessor and Lessee are unable to agree, within thirty (30) days after Lessor delivers notice of its desire to purchase the Facility under this **Section 28.04** upon the fair market value of the Facility as of the expiration of the Term, then Lessor and Lessee shall submit that question to binding arbitration by an independent arbitrator. Pending resolution of such arbitration, this Lease shall remain in effect and all of Lessee's obligations under **Section 28.02.5** to decommission, dismantle and remove the Facility shall be suspended until completion of such binding arbitration. Upon completion of such arbitration and payment by Lessor to Lessee of the

amounts determined by such arbitration, this Lease shall expire and title to and ownership of the Facility shall pass from Lessee to Lessor.

ARTICLE XXIX.

MISCELLANEOUS

Section 29.01. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been given or made three (3) days after being deposited in the United States mail, certified or registered with appropriate postage prepaid or, if delivered by hand or by telex, telecopy or other wire transmission service, when received, addressed as follows:

If to Lessor:

The City of Jasper
c/o Jasper Municipal Electric Utility
Attn: Gerald W. Hauersperger, General Manager
610 Main Street
P.O. Box 750
Jasper, IN 47547-0750
Facsimile: (812) 482-2811

With a copy to:

Sandra K. Hemmerlein, Esq.
City Attorney, City of Jasper
P.O. Box 29
610 Main Street
Jasper, IN 47547-0029
Fax: (812) 482-5047

Bingham McHale LLP
Attn: William J. Kaiser, Jr., Esq.
212 West 6th Street
Jasper, IN 47546
Facsimile: (812) 482-2017

If to Lessee:

Jasper Clean Energy LLC
Attn: Joseph P. Catasein
6 Concourse Parkway, Suite 21-130
Atlanta, GA 30328
Facsimile: (404) 806-6192

With a copy to:

Phillip G. Lookadoo, Esq.
Reed Smith LLP
1301 K Street, N.W., Suite 1100 East Tower
Washington, D.C. 20005
Phone: (202) 414-9211

or to such other address as either Party shall from time to time designate in writing to the other Party.

Section 29.02. Counterparts. This Lease may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 29.03. Amendments. Neither this Lease nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought.

Section 29.04. Successors and Assigns. The terms of this Lease shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

Section 29.05. Attorney's Fees. If either Party commences an action or proceeding against the other Party arising out of or in connection with this Lease, or institutes any proceeding in a bankruptcy or similar court which has jurisdiction over the other Party or any or all of its property or assets, the prevailing Party in such action or proceeding and in any appeal in connection therewith shall be entitled to have and recover from the unsuccessful Party reasonable attorneys' fees, court costs, expenses and other costs of investigation and preparation. If such prevailing Party recovers a judgment in any such action, proceeding, or appeal, such attorneys' fees, court costs and expenses shall be included in and as a part of such judgment.

Section 29.06. Interpretation. The Parties acknowledge that this Lease, as executed, is the product of negotiations between Lessor and Lessee and that it shall be construed fairly, in accordance with its terms, and shall not be construed for or against either Party. No inferences as to the intention of the Parties shall arise from the deletion of any language or provisions of this Lease.

Section 29.07. Memorandum of Lease. The Parties shall not record this Lease in its entirety. Concurrently with the execution of this Lease, Lessor and Lessee shall execute, acknowledge before a notary public, in recordable form, and deliver a short form memorandum of lease in the form of **Exhibit 8**, attached hereto and incorporated herein, which shall be recorded by Lessee in the Official Records.

Section 29.08. Severability. If any term or provision of this Lease is, to any extent, determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of

this Lease shall not be affected thereby, and each remaining term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 29.09. Time is of the Essence. Time is of the essence of this Lease and each and every provision of this Lease.

Section 29.10. Consent and Approvals. Any consent or approval that a Party is obligated to give to the other Party shall not be unreasonably withheld or delayed, subject to any specific provision to the contrary contained in this Lease.

Section 29.11. Entire Agreement. This Lease, including any exhibits and attachments hereto, constitutes the entire agreement between Lessor and Lessee relative to the matters and transactions contemplated herein. Lessor and Lessee agree hereby that all prior or contemporaneous oral or written agreements, or letters of intent, between and among themselves or their agents including any leasing agents and representatives, relative to such matters and transactions are merged in or revoked by this Lease.

Section 29.12. Governing Law. This Lease and all provisions hereof, shall be governed by and interpreted in accordance with the laws of the State of Indiana, notwithstanding the choice of law rules of any other state or jurisdiction .

Section 29.13. Further Assurances. Each Party agrees to execute and deliver any instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Lease. Lessor shall execute such further instruments and documents and take such action as may be reasonably requested by Lessee and not inconsistent with the provisions of this Lease and not involving the assumption of obligations other than those provided for in this Lease to carry out the intent of this Lease.

Section 29.14. Consent to Jurisdiction. The parties agree that any action or proceeding permitted by the terms of this Lease to be filed in a court, which action or proceeding is brought to enforce, challenge or construe the terms or making of this Lease, and any claims arising out of or related to this Lease, shall be exclusively brought and litigated exclusively in a state court having subject matter jurisdiction and located in Dubois County, Indiana or the United States District Court for the Southern District of Indiana. Each Party hereby irrevocably waives any objection or defense which it may now or hereafter have of improper venue, forum non conveniens, or lack of personal jurisdiction.

Section 29.15. Waiver of Immunity. In signing this Lease, Lessor shall be construed to be bound by the terms of this Lease and to have waived any immunity or defense conferred by law upon or otherwise available to Lessor, its agencies, departments, officers, employees and duly authorized agents as against Lessee or any Person. Notwithstanding the foregoing and anything contained herein to the contrary, such waiver of immunity or defense shall be limited as follows: for the Term of the Lease and for a period of eighteen (18) months following the Term of the Lease, Lessee (and not any of its affiliates, successors, assigns, owners, directors or managers, employees or duly authorized agents) may bring a contract claim against Lessor which is related to or arises out of or under the Lease during the effective period of the Lease, including (i) any action to compel Lessor to perform its obligations under the Lease and to ensure Lessee's quiet

possession and enjoyment of the Site and the Existing Plant for the Term of the Lease, and (ii) any action for damages or other amounts owed by Lessor to Lessee under the Lease; PROVIDED, HOWEVER, that Lessor's liability for monetary damages arising under the Lease shall not exceed \$500,000.00 for any claim arising during Phase II, and \$1.5 Million for any claim arising during Phase III.

Section 29.16. Liability of Officers and Employees. No member of the USB nor any director, officer, agent, consultant, elected or appointed official, representative or employee of either Party shall be charged personally by the other or held contractually liable thereto under any term or provision of this Lease, because of either Party's execution or attempted execution or because of any breach or alleged breach thereof; PROVIDED, HOWEVER, that all Persons remain responsible for any of their own criminal actions.

Section 29.17. Third Party Beneficiary. This Lease is intended to be solely for the benefit of Lessee and Lessor and their successors and permitted assigns and is not intended to and shall not confer any rights or benefits on any third party not a signatory hereto, except as specifically set forth herein.

Section 29.18. Recitals. The parties agree that the foregoing recitals in the preamble of this Lease are true and correct and are incorporated in this Lease by this reference.

[The Remainder of this Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the Parties have caused this Agreement for the Lease, Improvement and Operation of the Jasper Clean Energy Facility to be executed by their duly authorized representatives as of December 29, 2011.

“Lessor”

The City of Jasper, Indiana

By: Utility Service Board of the City
of Jasper, Indiana

By: Wayne P. Schuetter
Wayne P. Schuetter, Chairman

“Lessee”

Jasper Clean Energy LLC

By: Renewable Technology Integrators, LLC,
Its sole Member

By: Joseph P. Catasein
Joseph P. Catasein
Its sole Member

Attest:

Michael J. Harder
Michael J. Harder, Secretary

PURSUANT TO CITY COUNCIL RESOLUTION 2011-10 , ADOPTED AND APPROVED ON
AUGUST 5, 2011.

CITY OF JASPER INDIANA

William J. Schmitt
William J. Schmitt, Mayor

Attest:

Juanita S. Boehm
Juanita S. Boehm, Clerk-Treasurer

EXHIBIT 1
(2 of 2 Pages)

SITE DESCRIPTION.

A part of the South Half of Section Twenty-five (25), Township One (01) South, Range Five (05) West, Bainbridge Civil Township, Dubois County, Indiana and being more particularly described as follows:

Commencing at the northwest corner of the East Half of the Northeast Quarter of the Southwest Quarter of said Section 25; thence North 86 degrees 08 minutes 30 seconds East 410.95 feet along the north line of said half-quarter-quarter section to the Point of Beginning; thence continuing North 86 degrees 08 minutes 30 seconds East 399.52 feet along the north line of said half-quarter-quarter section and the north line of the Northwest Quarter of the Southeast Quarter of said Section 25; thence South 34 degrees 52 minutes 40 seconds East 65.77; thence South 42 degrees 32 minutes 37 seconds East 75.94 feet; thence South 87 degrees 04 minutes 17 seconds East 148.53 feet to a point on a curve to the right having a radius of 1369.83 feet and subtended by a 658.16 foot long chord with a bearing of South 33 degrees 30 minutes 41 seconds West, also being the west right-of-way of the Indiana Railway Museum, Inc. as recorded in Deed Book 234, Page 386 of the Dubois County Recorder's Office; thence southwesterly along said curve, also being said railway right-of-way, through a central angle of 27 degrees 48 minutes 02 seconds and an arc length of 664.66 feet to an existing iron pipe occupying the southeast corner of the Steven H. and Judith Heidorn tract as recorded in Deed Book 163, Page 163 of the Dubois County Recorder's Office; thence North 40 degrees 27 minutes 12 seconds West 158.19 feet along the east line of said Heidorn tract to an existing iron pipe; thence South 89 degrees 14 minutes 44 seconds West 160.00 feet to the northwest corner of said Heidorn tract; thence North 01 degrees 05 minutes 23 seconds West 521.20 feet to the Point of Beginning and containing 6.546 acres, more or less.

EXHIBIT 2

DESCRIPTION OF EXISTING PLANT

The Existing Plant is located on East 15th Street, within the city limits of Jasper, Indiana. The Existing Plant was put into service in 1968 and consists of a Riley coal stoker boiler and a General Electric non-reheat steam turbine with an air-cooled generator. Natural gas fuel is used as the fuel source during unit startup. Generator output power enters the distribution system at one of several overhead distribution lines. Minimum stable load for the unit is approximately 5 MW (megawatts).

Cycle heat is rejected to a surface condenser. Cooling water for heat rejection is accomplished using a wet, mechanical draft cooling tower. Makeup water to the plant is supplied by the City. Cycle makeup water is supplied by a demineralizer water treatment system. All plant water blowdown goes to the city sanitary sewer.

The primary fuel for the plant is bituminous coal delivered to the Facility by a local trucking company. Coal handling equipment is in place to move the coal from the storage pile to the boiler for combustion. The bottom ash and fly ash systems collect and transport the ash to a storage bin onsite, which is then sold and hauled away to a concrete manufacturing plant. The boiler is fitted with a gas burner. Natural gas fuel is used only during startup operations.

Existing Plant Systems Include:

1. Riley coal stoker moving grate boiler, initially placed into service in 1968, rated for 140,000 lb/h steam at 625 psig (pounds per square inch gauge) and 825° F at a fuel input of 192 mmBtus per hour;
2. Steam turbine rated at a pressure of 600 psig and 825° F and air cooled electric generator rated at 14,500 kW at 13,200 volts.
3. Mechanical forced draft cooling tower, pumps and piping systems;
4. Stoker coal fuel supply system, including stokers, conveyers, bunkers and outdoor storage,
5. Fly ash and bottom ash collection, handling and disposal systems.
6. Emissions control equipment consisting of instrumentation, a multi-cyclone separator, electric precipitator and emissions monitoring equipment;
7. Boiler water supply system, UPS and waste water treating system;
8. Natural gas supply system;
9. Induced and forced draft fans and systems;
10. Electric switchgear, motor control centers, protective devices, bus work, cabling systems, metering, telecommunications equipment and controls;
11. 176 foot tall stack, power plant building, HVAC systems, concrete pads and roadways;
12. City supplied Utility receiving and handling systems;
13. Approximately 6.5 acres of land.

EXHIBIT 3

DESCRIPTION OF FACILITY, RELATED FACILITIES AND TRANSMISSION FACILITIES; AND FACILITY MAP

Facility

- New natural gas fueled Gas Turbine Generator and associated Waste Heat Recovery Steam Generator, Control Building, Stack, Inlet Air Chilling System, Boost Gas Compressor, optional backup fuel capability/storage tank facilities, foundations, piping, cabling/wiring, instrumentation and controls;
- Solar PV Array System on fuel processing facility, inverters, protective devices and other associated equipment;

Related Facilities

- New Steam Turbine Generator and associated Steam Condenser, foundations, piping, cabling/wiring, instrumentations and controls;
- Upgrade the existing boiler tubes, piping, fuel feeders, exchangers, drums, instrumentation, controls and emission control equipment including flue gas recirculation, under/over fire air systems, ID and FD fan upgrades, acid gas treating, NOx and Particulate Controls;
- Upgrade existing boiler water treatment equipment, water tanks, mechanical forced draft cooling towers, pumps, piping, foundations, UPS, electric switchgear, motor control centers, protective devices, bus work, cabling systems, metering, telecommunications equipment and controls;
- New “Black Start” diesel generator set and supporting facilities;
- Emergency Fire Water Pump, foundation and supporting facilities;
- Diesel fuel capability/storage tank facilities;
- New generating plant substation, protective devices, foundations and supporting facilities;
- New biomass fuel receiving, storage and processing facility, solar thermal collector facility heating system, receiving scales and requisite roadways;
- Fire Protection Systems.

Transmission Facilities

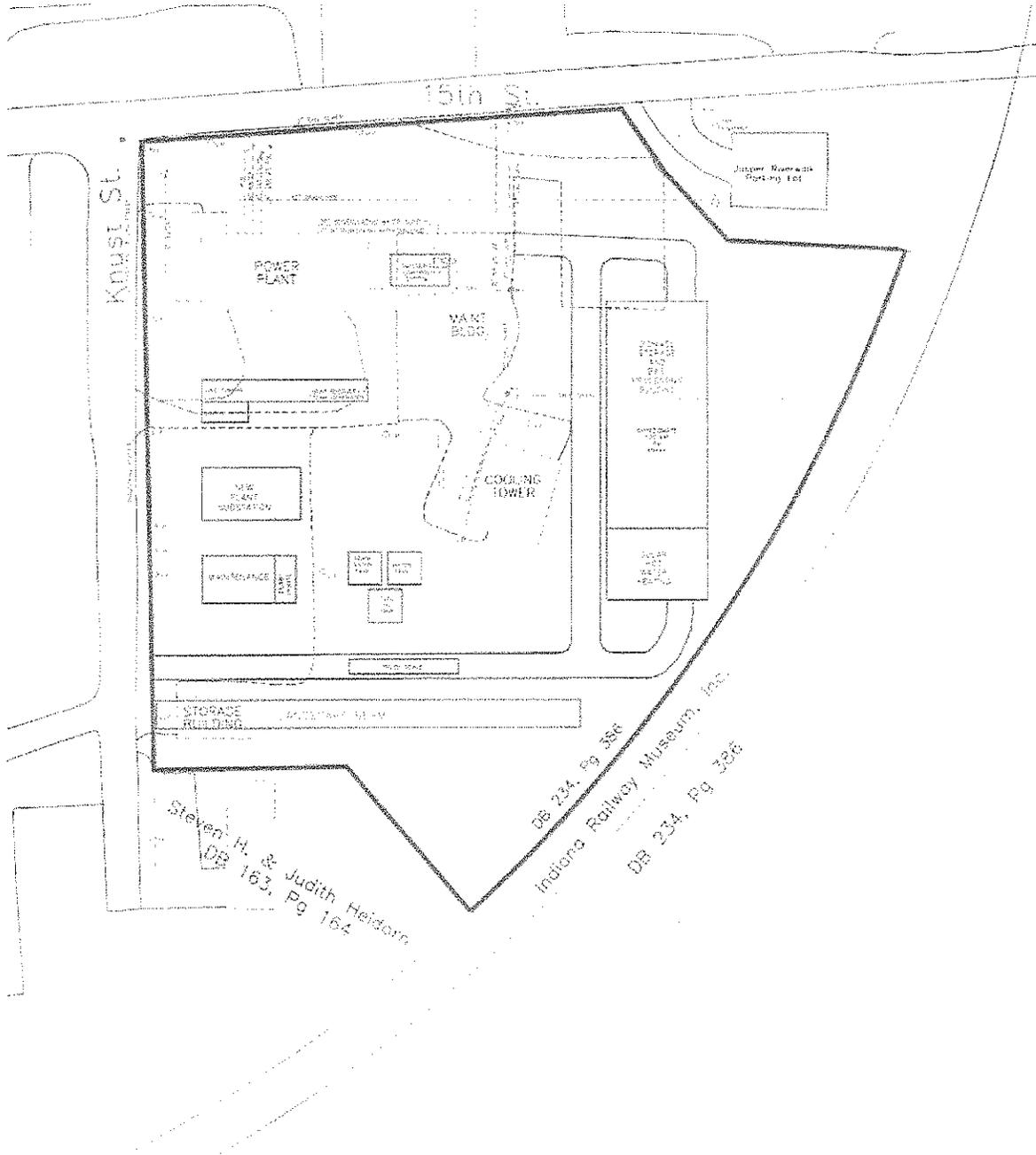
- New 69 kV electric service line (“69 kV Service Line”) from the Site to an interconnection with the 69 kV transmission grid at the Jasper North Substation, protective devices and telecommunications equipment (as described in Exhibit 10);
- New high-pressure natural gas service line from the Site to an interstate pipeline (as described in **Exhibit 9**).

Any portion of the equipment previously comprising the Existing Plant which is replaced or substituted as a result of the System and Improvements above will be the property of Lessee, and any funds or other value from the sale or scrapping of such equipment (*i.e.*, existing steam turbine generator set) will be for Lessee's account.

Facility Map

Lessee shall provide a Facility Map, which will be updated periodically to show the location of equipment and facilities at the Site and new equipment and facilities as installed by Lessee. The Facility Map will also indicate what equipment is to be removed at the end of the Lease if Lessor elects not to purchase the Facility.

FACILITY MAP



Steven H. & Judith Heidorn
DB 163, Pg 164

DB 234, Pg 356
Indiana Railway Museum, Inc.
DB 234, Pg 336

EXHIBIT 4

DESCRIPTION OF MODIFIED BOILER

A. Modified Boiler

1. Riley coal stoker moving grate boiler, initially placed into service in 1968;
2. Boiler life extension improvements which will include maintenance and or replacement of boiler tubes, drums, exchangers and piping;
3. Upgrade to boiler instrumentation and controls;
4. Boiler conversion to combust closed loop biomass fuels which will include connections for new burner systems, flue gas recirculation, fuel supply systems, combustion over/under air systems, soot blowers, and other requisite boiler improvements;

EXHIBIT 5

DESCRIPTION OF REMAINING EQUIPMENT

Description of Systems and Equipment to Remain at end of Lease:

1. Operating Boiler Plant including Emissions Control Equipment capable of burning the Fuel that was utilized during Phase III of the Lease and capable of producing the steam required to satisfy the requirements of 4., below.
2. Operational Boiler Feedwater Treatment System, Water Tanks, Waste Water Treatment System and Storm Water disposal Facilities
3. Operating Biomass Receiving, Processing and Storage Facility capable of meeting the Fuel requirements of the Boiler Plant in 1., above.
4. Operating Steam Turbine Generator and associated controls and switchgear necessary to generate electricity in the amount required by the definition of Remaining Equipment in accordance with **Section 6.01(ii)** of the Lease.
5. Operating 69 kV Service Line and Protective Devices capable of delivering the electricity generated in 4, above, to the MISO 69 kV electric grid.
6. Lessor shall have the option to purchase spare parts from Lessee at Lessee's book value.
7. Truck Weighing Station.
8. As Built Drawings and Specifications, Engineering Diagrams, Permitting Documents and Operating Manuals.
9. Lessee shall assign to Lessor its permits for the operation of the Remaining Equipment unless prohibited by applicable regulatory statutes.

EXHIBIT 6

COMMON COUNCIL RESOLUTION
and
UTILITY SERVICE BOARD RESOLUTION

[SEE ATTACHED]

RESOLUTION NO. 2011 - 10

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF JASPER
APPROVING THE LEASE BETWEEN THE CITY OF JASPER BY AND THROUGH
ITS UTILITY SERVICE BOARD AND JASPER CLEAN ENERGY LLC FOR THE
JASPER POWER PLANT**

WHEREAS, the City of Jasper, Indiana owns, operates and maintains municipal utilities, including an Electric Utility, by and through the Utility Service Board of the City of Jasper, Indiana ("Board"); and,

WHEREAS, the City of Jasper, as a part of its Electric Utility, has owned, operated and maintained its current 15 MW electric power generation plant and surrounding property ("Power Plant") fired by coal since 1968; and

WHEREAS, the City of Jasper became a member of the Indiana Municipal Power Agency ("IMPA") effective January 1, 2008 and now purchases all of its electricity through IMPA; and

WHEREAS, the City of Jasper has the ability to sell any electricity generated at the Power Plant on the open market; and

WHEREAS, the City of Jasper has an agreement with IMPA to provide capacity to the Midwest Independent Transmission System Operator ("MISO") grid when called upon to do so and the City is compensated for being available on stand-by; and

WHEREAS, because of its status as a standby provider of capacity to MISO since becoming a member of IMPA for electric supply and due to the impact of economic conditions on the energy market, the City has not been operating its Power Plant in the last couple of years as desired, resulting in the Power Plant becoming a stranded asset; and

WHEREAS, in order for the Board to better assess the future utilization of the Power Plant, the Board contracted with Black & Veatch on October 23, 2009, to complete an assessment of the condition of the Power Plant; and

WHEREAS, the Board requested Expressions of Interest from companies interested in providing ideas and options for utilization of the Power Plant on or about February 23, 2010, and the Board received approximately six (6) replies to this Request; and

WHEREAS, the Board requested Proposals for utilization of its Power Plant on or about April 30, 2010, and received four (4) proposals containing various options such as a sale of the Power Plant, partnering on an alternate utilization of the Power Plant, and a lease of the Power Plant; and

WHEREAS, the Board held a public hearing on October 11, 2010, pursuant to I.C. 36-1-11-3(b) to consider the 'disposal' of the Power Plant; and

WHEREAS, on October 18, 2010, the Board recommended to the Mayor of the City of Jasper the 'disposal' of the Power Plant, and the Mayor and Common Council of the City of Jasper ("Council") approved same on October 20, 2010; and

WHEREAS, on October 25, 2010, the Board determined that a lease would be the 'disposal' of the Power Plant property that it would like to further investigate and recommended same to the Mayor, including adopting Resolution USB 2010-18 setting forth the reasons why using the alternate lease procedure under I.C. 36-1-11-12 would be appropriate and rejected all of the proposals received pursuant to the April 30, 2010 Request for Proposals; and

WHEREAS, on October 25, 2010, the Mayor and Council authorized disposal of the Power Plant using the alternate lease procedure; and

WHEREAS, on October 27, 2010, the Board requested proposals for alternate solutions for utilization of the Power Plant through lease of the Power Plant under I.C. 36-1-11-12; and

WHEREAS, on December 20 and 22, 2010, respectively, the Board and the Council chose the proposal to lease the Power Plant submitted by Twisted Oak Corporation to research and consider further; and

WHEREAS, Twisted Oak Corporation proposes to operate the Power Plant through an Indiana limited liability company known as Jasper Clean Energy LLC, and to convert the coal-fired boiler to a

biomass boiler burning miscanthus grass along with adding a natural gas turbine to produce a combined total of 75 MW of energy; and

WHEREAS, the Council collectively, and members individually, the Board collectively, and members individually, and other City representatives, held informational meetings, public hearings and question and answer sessions with regards to the lease of the Power Plant on October 11, 2010, February 8, 2011 and July 26, 2011, respectively, accepted the public's comments at many of their regular monthly public meetings, met and discussed with community members about their concerns, received and considered e-mails, phone calls, and letters from community members, researched and investigated the concerns of the public, Council and Board, through consultations with the Dubois County Health Department, the Purdue Extension Office and other operating biomass facilities in Indiana, Vermont, and Europe, reviewed and analyzed the report from H.J. Umbaugh and Associates obtained by the Board with regards to the proposed projects' impact on utility rates, received and reviewed a commissioned report from Dr. Christopher Shaddix, a scientist who studies combustion of coal and biomass fuels, to the Board which analyzed the technology proposed to be used at the Power Plant including resulting emissions and subsequently interviewed Dr. Shaddix to further analyze the results of his report including the resulting emissions, consulted with Indiana Department of Environmental Management ("IDEM") representatives on Dubois County's PM 2.5 emissions, met with and discussed potential health impacts with members of the local medical and health community, received and reviewed the economic analysis provided by Bingham Economic Development Advisors to the Board; and

WHEREAS, in order to keep the citizens of Jasper and the public informed about the proposed project, the City placed numerous documents and reports on its website, held numerous press conferences with the local media and published a full-page advertisement with the local newspaper outlining basic facts about the proposed project; and

WHEREAS, pursuant to the terms of the lease agreement, before the Commencement Date of the Lease, Jasper Clean Energy LLC, must satisfy numerous conditions precedent, including, but not limited to, obtaining an interconnect agreement with MISO, entering into a Power Sales Agreement, obtaining environmental permits through IDEM, and obtaining financing to fund construction of the Facility and Modified Boiler; and

WHEREAS, the Council finds that it is in the best interests of the citizens of the City of Jasper to enter into the Lease Agreement with Jasper Clean Energy LLC for the Power Plant.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF JASPER, INDIANA, AS FOLLOWS:

Section 1. That the Agreement for the Lease, Improvement and Operation of the Jasper Clean Energy Facility ("Lease Agreement") between the City, by and through the Board, (as "Lessor") and Jasper Clean Energy LLC (as "Lessee"), a copy of which is attached hereto as an exhibit, has resulted from the City's use of the alternative procedure for the lease of property owned by the City, as specified in IC 36-1-11-12, that all requirements of such alternative procedure have been fulfilled by the City, the required determinations under said alternative procedure have been made by the City, all other actions required to be taken by the City pursuant to IC 36-1-11 have been properly performed by the City, and, as a result, said Lease Agreement, the lease of property belonging to the City described in said Lease Agreement, and all the terms and provisions applicable to the City as the Lessor under said Lease Agreement be, and the same hereby are, a valid and binding contract of the City enforceable in accordance with the terms of said Lease Agreement, approved in their entirety, and binding upon the City for the full term, including any applicable extension(s) thereof, of the Lease Agreement, as set forth in said Lease Agreement.

Section 2. That the term of said Lease Agreement, and any extension(s) thereof exercised by the Lessee in accordance with the provisions of said Lease Agreement, the option of the Lessee to purchase property of the City in accordance with the provisions set forth in said Lease Agreement, and the provisions for the reconveyance or return of property to the City at the end of the term, or any applicable extension(s) thereof, be, and the same hereby are, approved in their entirety and shall be binding upon the City for the full term, including any applicable extension(s) thereof, of the Lease Agreement, as set forth in said Lease Agreement.

Section 3. That the Lessee's assignment of said Lease Agreement to one or more third parties providing debt and/or equity financing for the construction and/or term financing of the power plant, comprising a natural gas-fueled combustion turbine driven electric generator, steam turbine driven electric generator, and biomass-fueled boiler along with associated supporting equipment (the "Facility"), proposed to be constructed by Lessee under said Lease Agreement be, and the same hereby is, approved and shall be binding upon the City for the full term, including any applicable extension(s), of the Lease Agreement, as set forth in said Lease Agreement.

Section 4. That the Lessor's warranty and covenant in said Lease Agreement that, with respect to the City's contractual obligations under and performance of the Lease Agreement, the City reserves the right to claim immunity pursuant to the terms and conditions set forth under the Lease Agreement and the City will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself from: (a) any lawsuit, (b) jurisdiction of any court as allowed under the Lease Agreement, (c) relief by way of injunction, order for specific performance or recovery of Lessee's property, or (d) execution or enforcement of any judgment, be, and the same hereby are, approved and shall be binding upon the City for the full term, including any applicable extension(s), of the Lease Agreement, as set forth in said Lease Agreement.

Section 5. That pursuant to I.C. 36-1-11-3(c)(2) and I.C. 36-1-11-10(f), approval is hereby given for the Board to enter into the said Lease Agreement and the Chairman and Secretary of the Utility Service Board of the City of Jasper, be, and hereby are, authorized to execute and deliver the aforementioned Lease Agreement on behalf of the City in substantially the same form as attached hereto with any changes prior to execution which are approved by legal counsel for the City, and upon such execution and delivery of said Lease Agreement, the City shall be bound by the terms and provisions set forth in said Lease Agreement, and the City shall fully perform all the rights and obligations of the Lessor as set forth in said Lease Agreement, for the full term, including any applicable extension(s) thereof, of said Lease Agreement.

Section 6. That all of the prior acts of the Mayor, the City Attorney, and any other officers or representatives of the City or the Council, taken with respect to the City's request for proposals, all related public notices and public meetings, and all negotiations of said Lease Agreement be, and the same hereby are, approved, ratified, and confirmed.

Section 7. All resolutions or parts thereof in conflict herewith are hereby repealed.

Section 8. This Resolution shall be in full force and effect from and of its date of adoption by the Common Council and approval by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Jasper, Indiana, this 5TH day of AUGUST, 2011.

THE COMMON COUNCIL OF
THE CITY OF JASPER, INDIANA

AYE

NAY

John J. Schroeder
JOHN J. SCHROEDER

David L. Prechtel
DAVID L. PRECHTEL

Thomas R. Schmidt
THOMAS R. SCHMIDT

A. A. Schitter
AMBROSE A. SCHITTER

Kevin M. Manley
KEVIN M. MANLEY

Randall J. Buchta
RANDALL J. BUCHTA

Raymond H. Howard
RAYMOND H. HOWARD

Presented by me to the Mayor of the City of Jasper on the 5TH day of AUGUST, 2011, at the hour of 6:30 o'clock P.M.

Juanita S. Boehm
Juanita S. Boehm, Clerk Treasurer

This Resolution approved and signed by me as the Mayor of the City of Jasper, Indiana,
this 5th day of August, 2011, at 5 : 31 o'clock P.M.

William J. Schmitt
William J. Schmitt, Mayor

ATTEST:

Juanita S. Boehm
Juanita S. Boehm, Clerk-Treasurer

RESOLUTION NO. USB 2011- 7
A RESOLUTION OF THE UTILITY SERVICE BOARD OF THE CITY OF JASPER
APPROVING THE LEASE AGREEMENT BETWEEN THE CITY OF JASPER ACTING BY
AND THROUGH ITS UTILITY SERVICE BOARD AND JASPER CLEAN ENERGY LLC
FOR THE JASPER POWER PLANT

WHEREAS, the City of Jasper, Indiana owns, operates and maintains municipal utilities, including an Electric Utility, by and through the Utility Service Board of the City of Jasper, Indiana ("Board"); and,

WHEREAS, the City of Jasper, as a part of its Electric Utility, has owned, operated and maintained its current 15 MW electric power generation plant and surrounding property ("Power Plant") fired by coal since 1968; and

WHEREAS, the City of Jasper became a member of the Indiana Municipal Power Agency ("IMPA") effective January 1, 2008 and now purchases all of its electricity through IMPA; and

WHEREAS, the City of Jasper has the ability to sell any electricity generated at the Power Plant on the open market; and

WHEREAS, the City of Jasper has an agreement with IMPA to provide capacity to the Midwest Independent Transmission System Operator ("MISO") grid when called upon to do so and the City is compensated for being available on stand-by; and

WHEREAS, because of its status as a standby provider of capacity to MISO since becoming a member of IMPA for electric supply and due to the impact of economic conditions on the energy market, the City has not been operating its Power Plant in the last couple of years as desired, resulting in the Power Plant becoming a stranded asset; and

WHEREAS, in order for the Board to better assess the future utilization of the Power Plant, the Board contracted with Black & Veatch on October 23, 2009, to complete an assessment of the condition of the Power Plant; and

WHEREAS, the Board requested Expressions of Interest from companies interested in providing ideas and options for utilization of the Power Plant on or about February 23, 2010, and the Board received approximately six (6) replies to this Request; and

WHEREAS, the Board requested Proposals for utilization of its Power Plant on or about April 30, 2010, and received four (4) proposals containing various options such as a sale of the Power Plant, partnering on an alternate utilization of the Power Plant, and a lease of the Power Plant; and

WHEREAS, the Board held a public hearing on October 11, 2010, pursuant to I.C. 36-1-11-3(b) to consider the 'disposal' of the Power Plant; and

WHEREAS, on October 18, 2010, the Board recommended to the Mayor of the City of Jasper the 'disposal' of the Power Plant, and the Mayor and Common Council of the City of Jasper ("Council") approved same on October 20, 2010; and

WHEREAS, on October 25, 2010, the Board determined that a lease would be the 'disposal' of the Power Plant property that it would like to further investigate and recommended same to the Mayor, including adopting Resolution USB 2010-18 setting forth the reasons why using the alternate lease

procedure under I.C. 36-1-11-12 would be appropriate and rejected all of the proposals received pursuant to the April 30, 2010 Request for Proposals; and

WHEREAS, on October 25, 2010, the Mayor and Council authorized disposal of the Power Plant using the alternate lease procedure; and

WHEREAS, on October 27, 2010, the Board requested proposals for alternate solutions for utilization of the Power Plant through lease of the Power Plant under I.C. 36-1-11-12; and

WHEREAS, on December 20 and 22, 2010, respectively, the Board and the Council chose the proposal to lease the Power Plant submitted by Twisted Oak Corporation to research and consider further; and

WHEREAS, Twisted Oak Corporation proposes to operate the Power Plant through an Indiana legal liability company known as Jasper Clean Energy LLC, and to convert the coal-fired boiler to a biomass boiler burning miscanthus grass along with adding a natural gas turbine to produce a combined total of 75 MW of energy; and

WHEREAS, the Council collectively, and members individually, the Board collectively, and members individually, and other City representatives, held informational meetings, public hearings and question and answer sessions with regards to the lease of the Power Plant on October 11, 2010, February 8, 2011 and July 26, 2011, respectively, accepted the public's comments at many of their regular monthly public meetings, met and discussed with community members about their concerns, received and considered e-mails, phone calls, and letters from community members, researched and investigated the concerns of the public, Council and Board, through consultations with the Dubois County Health Department, the Purdue Extension Office and other operating biomass facilities in Indiana, Vermont, and Europe, reviewed and analyzed the report from H.J. Umbaugh and Associates obtained by the Board with regards to the proposed projects' impact on utility rates, received and reviewed a commissioned report from Dr. Christopher Shaddix, a scientist who studies combustion of coal and biomass fuels, to the Board which analyzed the technology proposed to be used at the Power Plant including resulting emissions and subsequently interviewed Dr. Shaddix to further analyze the results of his report including the resulting emissions, consulted with Indiana Department of Environmental Management ("IDEM") representatives on Dubois County's PM 2.5 emissions, met with and discussed potential health impacts with members of the local medical and health community, received and reviewed the economic analysis provided by Bingham Economic Development Advisors to the Board; and

WHEREAS, in order to keep the citizens of Jasper and the public informed about the proposed project, the City placed numerous documents and reports on its website, held numerous press conferences with the local media and published a full-page advertisement with the local newspaper outlining basic facts about the proposed project; and

WHEREAS, pursuant to the terms of the lease agreement, before the Commencement Date of the Lease, Jasper Clean Energy LLC, must satisfy numerous conditions precedent, including, but not limited to, obtaining an interconnect agreement with MISO, entering into a Power Sales Agreement, obtaining environmental permits through IDEM, and obtaining financing to fund construction of the Facility and Modified Boiler; and

WHEREAS, the Utility Service Board finds that it is in the best interest of the Electric Utility ratepayers and other utility ratepayers to enter into the Lease Agreement with Jasper Clean Energy LLC for the Jasper Power Plant.

NOW THEREFORE, BE IT RESOLVED BY THE UTILITY SERVICE BOARD OF THE CITY OF JASPER, that:

1. That the Agreement for the Lease, Improvement And Operation of the Jasper Clean Energy Facility ("Lease Agreement") between the City, by and through the Board (as "Lessor") and Jasper Clean Energy LLC (as "Lessee"), a copy of which is attached hereto as an exhibit, has resulted from the City's use of the alternative procedure for the lease of property owned by the City, as specified in IC 36-1-11-12, that all requirements of such alternative procedure have been fulfilled by the City, the required determinations under said alternative procedure have been made by the City, all other actions required to be taken by the City pursuant to IC 36-1-11 have been properly performed by the City, and, as a result, said Lease Agreement, the lease of property belonging to the City described in said Lease Agreement, and all the terms and provisions applicable to the City as the Lessor under said Lease Agreement be, and the same hereby are, a valid and binding contract of the City enforceable in accordance with the terms of said Lease Agreement, approved in their entirety, and binding upon the City for the full term, including any applicable extension(s) thereof, of the Lease Agreement, as set forth in said Lease Agreement.

2. That the term of said Lease Agreement, and any extension(s) thereof exercised by the Lessee in accordance with the provisions of said Lease Agreement, the option of the Lessee to purchase property of the City in accordance with the provisions set forth in said Lease Agreement, and the provisions for the reconveyance or return of property to the City at the end of the term, or any applicable extension(s) thereof, be, and the same hereby are, approved in their entirety and shall be binding upon the City for the full term, including any applicable extension(s) thereof, of the Lease Agreement, as set forth in said Lease Agreement.

3. That the Lessee's assignment of said Lease Agreement to one or more third parties providing debt and/or equity financing for the construction and/or term financing of the power plant, comprising a natural gas-fueled combustion turbine driven electric generator, steam turbine driven electric generator, and biomass-fueled boiler along with associated supporting equipment (the "Facility"), proposed to be constructed by Lessee under said Lease Agreement be, and the same hereby is, approved and shall be binding upon the City for the full term, including any applicable extension(s) thereof, of the Lease Agreement, as set forth in said Lease Agreement.

4. That the Lessor's warranty and covenant in said Lease Agreement that, with respect to the City's contractual obligations under and performance of the Lease Agreement, the City reserves the right to claim immunity pursuant to the terms and conditions set forth under the Lease Agreement and the City will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself from (a) any lawsuit, (b) jurisdiction of any court as allowed under the Lease Agreement, (c) relief by way of injunction, order for specific performance or recovery of Lessee's property, or (d) execution or enforcement of any judgment, be, and the same hereby are, approved and shall be binding upon the City for the full term, including any applicable extension(s) thereof, of the Lease Agreement, as set forth in said Lease Agreement.

5. That the Chairman and the Secretary of the Utility Service Board of the City of Jasper, be, and hereby are, authorized to execute and deliver the aforementioned Lease Agreement on behalf of the City in substantially the same form as attached hereto with any changes prior to execution which are approved by legal counsel for the City, if said Lease is also approved by the Common Council pursuant to I.C. 36-1-11-3(c)(2) and I.C. 36-1-11-10(f), and upon such execution and delivery of said Lease Agreement, the City shall be bound by the terms and provisions set forth in said Lease Agreement, and the City shall fully perform all the rights and obligations of the Lessor as set forth in said Lease Agreement, for the full term, including any applicable extension(s) thereof, of said Lease Agreement.

6. That all of the prior acts of the Chairman of the Board, the City Attorney, and any other officers or representatives of the City or the Board, taken with respect to the City's request for proposals, all related public notices and public meetings, and all negotiations of said Lease Agreement be, and the same hereby are, approved, ratified, and confirmed.

7. That the Board agrees to forward the Lease to the Jasper Common Council for approval as required by I.C. 36-1-11-3(c)(2) and I.C. 36-1-11-10(f).

8. All resolutions or parts thereof in conflict herewith are hereby repealed.

9. This resolution shall be in full force and effect upon adoption.

PASSED AND ADOPTED this 5th day of August, 2011.

UTILITY SERVICE BOARD OF
THE CITY OF JASPER, INDIANA

YES

NO

Wayne P. Schuetter
Wayne P. Schuetter, Chairman

Rick Stradtner
Rick Stradtner, Vice-Chairman

Mike Harder
Mike Harder, Secretary

Kenneth R. Sendelweck
Kenneth R. Sendelweck, Member

Greg Kroedel
Greg Kroedel, Member

Alexander Emmons
Alexander Emmons, Member

Doug Schulte
Doug Schulte, Member

EXHIBIT 7

MINIMUM INSURANCE REQUIREMENTS

[SEE ATTACHED]

City of Jasper
 Supplier / Contractor / Sub-Contractor Minimum Insurance Requirements

Jasper Clean Energy Center

It is the policy of the City of Jasper that complete Certificates of Insurance and/or Insurance Requirements must be on file before any work can commence.

Comprehensive General Liability
 (Including Blanket Contractual Liability and Contractor's Protective Liability, Products Liability and/or Completed Operations)

Combined Single Limit/Per Occurrence \$2,000,000
 (Per Occurrence - not Aggregate Amount)

Automobile Liability
 (Including Non-Owned Automobile Liability) - Per Occurrence

Combined Single Limit/Per Occurrence \$1,000,000

Workers Compensation and Occupational Disease

Proof of Statutory Compliance

Employer's Liability Statutory

Accident per Employee [Minimum] \$500,000
 Disease - Aggregate [Minimum] \$500,000
 Disease per Employee [Minimum] \$500,000

Under the provisions of IC 22-3-2-14.5 and/or IC 22-3-7-34.5, an *Independent Contractor* performing the work in person may provide a valid *Independent Contractor Affidavit of Exemption*, stamped by the Indiana Worker's Compensation Board, in lieu of proof of Worker's Compensation Insurance coverage as stated above.

* It is essential that you verify with your insurance company that the City of Jasper is named Additional Insured on above policies (Excluding Automobile Liability and Worker's Compensation) and that the City of Jasper is identified as a Certificate Holder. For these purposes, the City's name and address should appear as shown:

City of Jasper
 c/o Department of Personnel / Safety / Loss Control
 P.O. Box 29
 Jasper, IN 47547-0029

Any questions regarding these requirements should be directed to:
 Department of Personnel / Safety / Loss Control
 (812) 482-4255
 Fax: (812) 482-2674

inc: C of I Form - Jasper Clean Energy Center.doc (6/11)

City of Jasper
Minimum Insurance Requirements ~ Consultants - Engineers - Architects

Jasper Clean Energy Center

Certificates of Insurance and/or Insurance Requirements listed below must be on file with the Department of Personnel/Safety before any work can commence.

*Comprehensive General Liability

Each Occurrence (Bodily Injury and Property Damage) \$1,000,000
 General Aggregate \$2,000,000

Excess or Umbrella Liability

Each Occurrence \$1,000,000
 General Aggregate \$2,000,000

Automobile Liability

(Including Non-Owned Automobile Liability) - Per Occurrence

Property Damage/Per Occurrence \$500,000
 Combined Single Limit(Bodily Injury and Property Damage)/Per Occurrence \$500,000

Workers Compensation and Occupational Disease

Proof of Statutory Compliance

Employer's Liability Statutory

Accident per Employee [Minimum] \$500,000
 Disease - Aggregate [Minimum] \$500,000
 Disease per Employee [Minimum] \$500,000

Under the provisions of IC 22-3-2-14.5 and/or IC 22-3-7-34.5, an *Independent Contractor* performing the work in person may provide a valid *Independent Contractor Affidavit of Exemption*, stamped by the Indiana Worker's Compensation Board, in lieu of proof of Worker's Compensation Insurance coverage as stated above.

Other

Professional Liability - Errors and Omissions \$1,000,000

The City of Jasper must be named as Additional Insured on above policies (Excluding Professional Liability) and that the City of Jasper is identified as a Certificate Holder. For these purposes, the City's name and address should appear as shown:

City of Jasper
 c/o Department of Personnel / Safety/Loss Control
 P.O. Box 29
 Jasper, IN 47547-0029

Any questions regarding these requirements should be directed to:
 Department of Personnel / Safety/Loss Control
 (812) 482-4255
 Fax: (812) 482-2674

set C of I Forms - Jasper Clean Energy Center.doc (6/11)

EXHIBIT 8

FORM OF MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into this ____ day of _____, 2011, by and between THE CITY OF JASPER, acting by and through the Utility Service Board of the City of Jasper (hereinafter referred to as "**Lessor**"), and JASPER CLEAN ENERGY LLC, an Indiana limited liability company, (hereinafter referred to as "**Lessee**").

WITNESSETH:

WHEREAS, Lessor and Lessee have entered into a certain Agreement for the Lease, Improvement and Operation of the Jasper Clean Energy Facility dated _____, 2011, (hereinafter referred to as the "**Lease**") regarding real estate located in Dubois County, Indiana, and more particularly described in the **Exhibit A**, attached hereto and incorporated herein by reference (hereinafter referred to as the "**Leased Premises**");

WHEREAS, Lessee has agreed to construct and operate a hybrid renewable energy project on the Lease Premises as more fully described within the Lease; and

WHEREAS, Lessor and Lessee desire to enter into and record this Memorandum of Lease acknowledging the obligations and covenants set forth in the Lease.

NOW, THEREFORE, in consideration of these premises and the undertakings of the parties hereto, the parties hereby state as follows:

1. The Effective Date of the Lease is _____ and the Commencement Date of the Lease shall be effective as set forth in Section 3.01 of the Lease and shall be for a term of twenty (20) years from the "**Commercial Operation Date**", as that term is defined in the Lease. Lessee may elect to extend the term of this Lease for up to two (2) time periods of not more than five (5) years each.

2. This Memorandum of Lease is prepared for recording pursuant to Indiana Code § 32-31-2-1 and Indiana Code § 36-2-11-20 to put all persons on notice of the existence of the above-noted Lease and the rights and obligations of the parties under the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Lease to be executed by their duly authorized representatives the day and year first above written.

“LESSOR”

“LESSEE”

The City of Jasper, Indiana

Jasper Clean Energy LLC

By: Utility Service Board
of the City of Jasper, Indiana

By: Renewable Technology Integrators, LLC,
Its sole Member

By: _____
Wayne P. Schuetter, Chairman

By: _____
J.P. Catasein
Its sole Member

Attest:

Michael J. Harder, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF DUBOIS)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Wayne P. Schuetter, known to me and known by me to be the Chairman of the Utility Service Board of the City of Jasper, Indiana, and acknowledged the execution of the foregoing on behalf of the Utility Service Board of the City of Jasper.

WITNESS, my hand and Notarial Seal this _____ day of _____, 2011.

My Commission Expires:

Notary Public - Written

My County of Residence:

Notary Public - Printed

NOTARY: AFFIX SEAL

STATE OF INDIANA)
) SS:
COUNTY OF DUBOIS)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, known to me and known by me to be the _____ of Jasper Clean Energy LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing on behalf of said limited liability company.

WITNESS, my hand and Notarial Seal this _____ day of _____, 2011.

My Commission Expires:

Notary Public - Written

My County of Residence:

Notary Public - Printed

NOTARY: AFFIX SEAL

THIS INSTRUMENT PREPARED BY WILLIAM J. KAISER, JR., ATTORNEY AT LAW,
BINGHAM McHALE LLP, 212 WEST 6TH STREET, JASPER, INDIANA 47546.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. William J. Kaiser, Jr., Attorney-at-Law, Preparer.

EXHIBIT A
to
Memorandum of Lease

A part of the South Half of Section Twenty-five (25), Township One (01) South, Range Five (05) West, Bainbridge Civil Township, Dubois County, Indiana and being more particularly described as follows:

Commencing at the northwest corner of the East Half of the Northeast Quarter of the Southwest Quarter of said Section 25; thence North 86 degrees 08 minutes 30 seconds East 410.95 feet along the north line of said half-quarter-quarter section to the Point of Beginning; thence continuing North 86 degrees 08 minutes 30 seconds East 399.52 feet along the north line of said half-quarter-quarter section and the north line of the Northwest Quarter of the Southeast Quarter of said Section 25; thence South 34 degrees 52 minutes 40 seconds East 65.77; thence South 42 degrees 32 minutes 37 seconds East 75.94 feet; thence South 87 degrees 04 minutes 17 seconds East 148.53 feet to a point on a curve to the right having a radius of 1369.83 feet and subtended by a 658.16 foot long chord with a bearing of South 33 degrees 30 minutes 41 seconds West, also being the west right-of-way of the Indiana Railway Museum, Inc. as recorded in Deed Book 234, Page 386 of the Dubois County Recorder's Office; thence southwesterly along said curve, also being said railway right-of-way, through a central angle of 27 degrees 48 minutes 02 seconds and an arc length of 664.66 feet to an existing iron pipe occupying the southeast corner of the Steven H. and Judith Heidorn tract as recorded in Deed Book 163, Page 163 of the Dubois County Recorder's Office; thence North 40 degrees 27 minutes 12 seconds West 158.19 feet along the east line of said Heidorn tract to an existing iron pipe; thence South 89 degrees 14 minutes 44 seconds West 160.00 feet to the northwest corner of said Heidorn tract; thence North 01 degrees 05 minutes 23 seconds West 521.20 feet to the Point of Beginning and containing 6.546 acres, more or less.

EXHIBIT 9

NATURAL GAS PIPELINE AGREEMENT

This Letter Agreement entered into between The City of Jasper, Indiana by the Utility Service Board of the City of Jasper, Indiana (“**USB**”) and Jasper Clean Energy LLC (“**JCE**”), collectively called (the “**Parties**”) is intended to outline the principle provisions under which the USB and JCE will cause the design, obtaining of rights of way, permitting, construction, operation and maintenance of a high pressure natural gas pipeline and measurement facilities to extend from either or both Texas Eastern Transmission LP or ANR Pipeline Company or their successors to the Jasper Clean Energy Center located as specified in Exhibit A (the “**Pipeline**”).

The Parties agree to the following:

1. Construction Cost Responsibility - All direct Third Party costs and the agreed upon indirect costs (including agreed upon costs of the USB/ City of Jasper employees) of all activities relating to the design, obtaining rights of way, permitting, and construction shall be the obligation of JCE. The Parties will use all reasonable commercial efforts to minimize the total cost of the Pipeline.
2. Design and Construction Standards – The Parties will cause the Pipeline to be designed and constructed to meet the natural gas pressure (maximum allowable operating pressure and pressure drop at maximum volumes), volume requirements and metering and telecommunications requirements as specified by JCE pursuant to Good Engineering Practices and all applicable codes and standards. USB will have the right to approve the Design and Construction of the Pipeline, such approval to be on a timely basis and shall not be unreasonably withheld.
3. Construction – The Parties will cause the Pipeline to be constructed to meet JCE’s development schedule.
4. Ownership – USB shall have title to the Pipeline.
5. Operations and Maintenance – USB will operate and cause the maintenance of the Pipeline in accordance with Good Engineering Practices and in accordance with requirements of either Texas Eastern Transmission LP or ANR Pipeline Company or their successors as such requirements might apply.
6. Operating and Maintenance Fee – JCE will be responsible for all costs associated with the operations and maintenance of the Pipeline. USB will provide for the operations and maintenance of the Pipeline at its non-discriminatory cost of service rates. A rate study will be conducted by Lessor at the expense of Lessee.
7. Gas Scheduling – JCE will cause all natural gas required as Fuel for the Facility to be scheduled for delivery through the Pipeline to the Facility.
8. Risk of Gas Loss – USB, as the operator of the Pipeline will have the risk of loss of the natural gas while it is in the control of the operator.
9. Term – The Term of this Agreement will be co-terminus with the Lease.
10. Third Party Option – JCE will have the option to enter into a separate agreement with a third party (“Third Party Agreement”) to provide for the Design, Construction,

Ownership, Maintenance and Operations of the Pipeline. USB will assist JCE and such Third Party in obtaining the rights of way for the routing of the Pipeline. USB will be compensated for all efforts and costs in accordance with Paragraph 1, above. JCE will assign all rights to the Pipeline and the Third Party Agreement to the USB at the end of the Term.

11. USB Use of the Pipeline – USB will have the right to use any excess capacity in the Pipeline subject to JCE’s first right of use for any and all pipeline capacity.
12. Law – This Agreement will be governed by the laws of the State of Indiana.
13. Assignment – JCE shall have the right to assign this Agreement to its lenders in conjunction with the financing of the Jasper Clean Energy Center.
14. Additional Provisions – The Parties agree to negotiate in good faith to amend this Agreement to include additional provisions that either the USB or JCE might require to cause the effective operation of this agreement.
15. To the extent not included in this Letter Agreement such other operating provisions which are part of the Lease Agreement shall govern.

Dated

Signatures

EXHIBIT 10

69 kV SERVICE LINE AGREEMENT

This Letter Agreement entered into between The City of Jasper, Indiana by the Utility Service Board of the City of Jasper, Indiana (“**USB**”) and Jasper Clean Energy LLC (“**JCE**”), collectively called (the “**Parties**”) is intended to outline the principle provisions under which the USB and JCE will cause the design, obtaining of rights of way, permitting, construction, operation and maintenance of a new 69 kV electric transmission line, poles, protective devices and facilities to extend from Jasper Clean Energy Center located as specified in Exhibit A to the City of Jasper North Substation (the “**Interconnect Line**”).

The Parties agree to the following:

1. Construction Cost Responsibility - All direct Third Party costs and the agreed upon indirect costs (including agreed upon costs of the USB/ City of Jasper employees) of all activities relating to the design, obtaining rights of way, permitting, and construction of the Interconnect Line shall be the obligation of JCE. The Parties will use all reasonable commercial efforts to minimize the total cost of the Interconnect Line.
2. Design and Construction Standards – The Parties will cause the Interconnect Line to be designed and constructed to meet the electrical requirements as specified by JCE pursuant to Prudent Electric Practices and all applicable codes and standards. USB will have the right to approve the Design and Construction of the Interconnect Line, such approval to be on a timely basis and shall not be unreasonably withheld.
3. North Jasper Substation Interconnection – JCE will cause the interconnection of the Interconnect Line with the Vectren 69 kV Transmission Line on the Vectren side (aka supply side or high side) of the North Jasper Substation. JCE shall cause the design of the interconnection facilities including breakers, switches and other requisite equipment to accommodate the supply of electric energy produced by the Jasper Clean Energy Center to USB and its customers during a Blackout Event. USB will provide sufficient space at the North Jasper Substation for the aforementioned interconnection facilities and for any associated metering and telecommunications equipment.
4. Construction – The USB will use commercially reasonable efforts to assist JCE in obtaining the requisite rights of way to permit the Interconnect Line to be constructed to meet JCE’s development schedule.
5. Ownership – JCE or a designated Third Party will have title to the Interconnect Line.
6. Operations and Maintenance – JCE will cause the operation and maintenance of the Interconnect Line in accordance with Prudent Electrical Practices.
7. Term – The Term of this Agreement will be co-terminus with the Lease.
8. Third Party Option – JCE will have the option to enter into a separate agreement with a third party (“Third Party Agreement”) to provide for the Design, Construction, Ownership, Maintenance and Operations of the 69 kV Service Line. USB will assist JCE and such Third Party in obtaining the rights of way for the routing of the 69 kV Service Line. USB will be compensated for all efforts and costs in accordance with Paragraph 1

above. JCE will assign all rights to the 69 kV Service Line and the Third Party Agreement to the USB at the end of the Term.

9. Law – This Agreement will be governed by the laws of the State of Indiana.

10. Assignment – JCE shall have the right assign this Agreement to its lenders in conjunction with the Financing of the Jasper Clean Energy Center.

11. Additional Provisions – The Parties agree to negotiate in good faith to amend this Agreement to include additional provisions that either the USB or JCE might require to cause the effective operation of this agreement.

12. To the extent not included in this Letter Agreement such other operating provisions which are part of the Lease Agreement shall govern.

Dated

Signatures

EXHIBIT 11

UTILITY REPRESENTATION LETTER

[SEE ATTACHED]



Utility Representation Letter

ELECTRIC • WATER • NATURAL GAS • WASTEWATER



JASPER MUNICIPAL UTILITIES

P.O. Box 750 • 610 Main Street • Jasper, Indiana 47547-0750

Phone (812) 482-9131 • Fax (812) 482-2811

www.jasperindiana.gov

July 20, 2011

Jasper Clean Energy, LLC
Attn: Jay Catascin
9755 Huntcliff Trace
Sandy Springs, GA 30350

RE: Jasper Clean Energy Facility
1165 East 15th Street, Jasper, Indiana

Dear Mr. Catascin:

Pursuant to your request, the Jasper Municipal Utilities is making the following representations as to the availability of utilities to serve the property at 1165 East 15th Street, Jasper, Indiana ("Site").

The Site is adequately served by Jasper Municipal Utilities as identified below:

I. UTILITIES AVAILABLE AT SITE (Location):

Electricity

The Site is served by three separate electric service lines as follows:

- 13,800 volt electric service line (skyline feed)
- 13,800 volt electric service line (express feed)
- 13,800 volt electric service line (industrial feed)

Natural Gas

The Site is served by a 4 inch gas service line @ 250 lbs. PSIG, and a 4 inch gas service line @ 25 lbs. PSIG.

Water

The Site is served by both an 8 inch water line from the North and a 16 inch water line from the East.

Sanitary Sewer

The Site accesses a sanitary sewer line which is located along the North property line, and this sanitary sewer line is a 12 inch line.

II. ABILITY TO PROVIDE ADEQUATE FACILITY SERVICES [Capacity]:

Water

Water Supply (Max Conditions)

- GPM = 425
- GPH = 25,500
- GPD = 600,000

Sanitary Sewer

Waste Water (Max Conditions)

- GPM = 30
- GPH = 1,800
- GPD = 42,000

The Jasper Municipal Utilities also has adequate capacity to provide natural gas and electric for the general operations of the Site required for construction and operation, NOT INCLUDING the natural gas required for the manufacture of electricity.

Finally, we have provided a site map, which identifies the locations of the utility service lines serving the Site.

If you have any questions, please do not hesitate to contact the undersigned at 812-482-4255.

Sincerely,


Gerald Haversperger,
General Manager of Utilities

Attachment – Site Diagram

Attachment
to
Utility Representation Letter

SITE DIAGRAM

JASPER MUNICIPAL ELECTRIC UTILITY	STORM WATER SITE MAP	
	BOYAN ENGINEERING CO., INC. 1010 1st St. N.E. Grand Rapids, MI 49503 Phone: 616-451-4511 Fax: 616-451-4512	

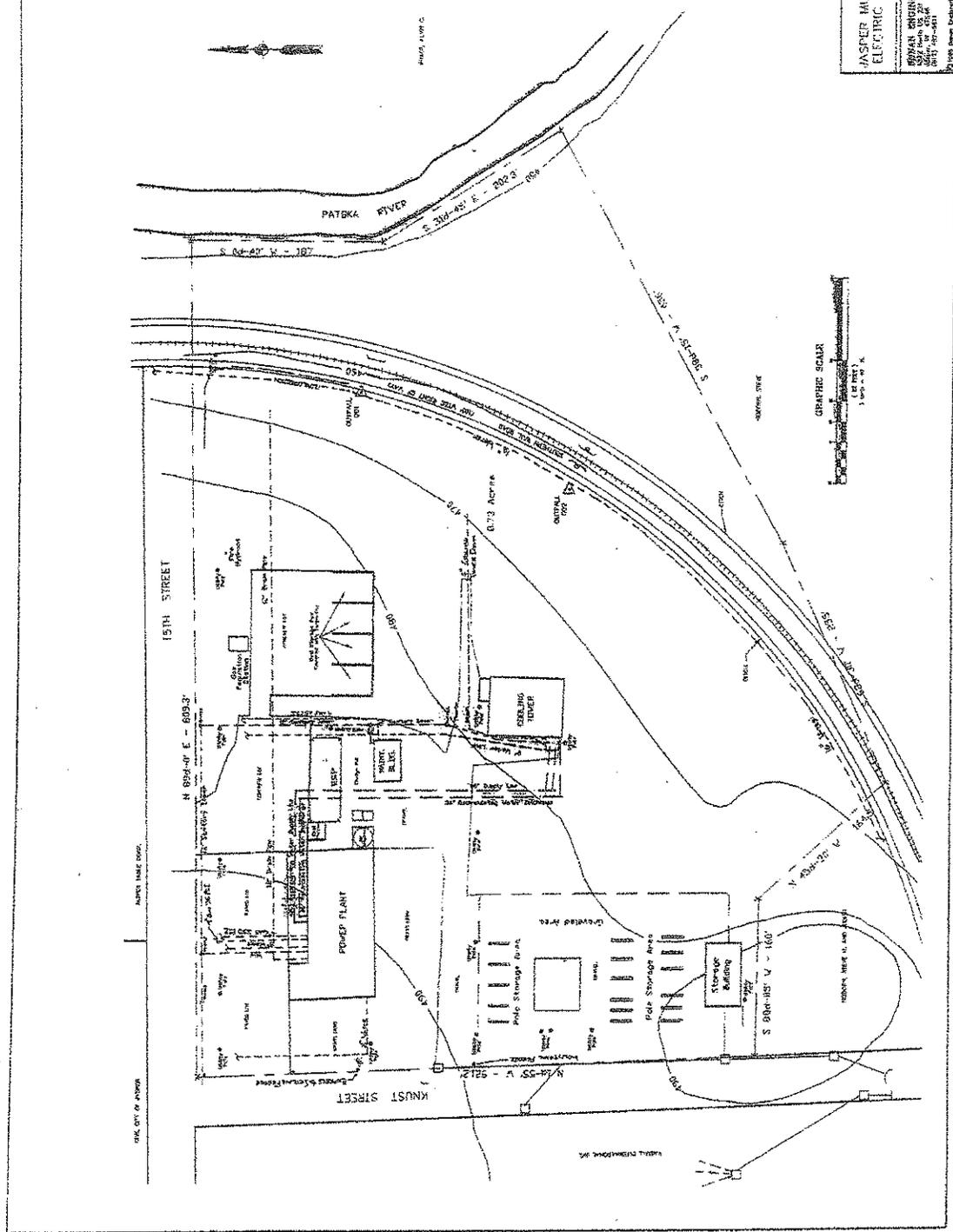


EXHIBIT 12

FORM OF DEPOSIT ACCOUNT CONTROL AGREEMENT FOR SINKING FUND

DEPOSIT ACCOUNT CONTROL AGREEMENT

This DEPOSIT ACCOUNT CONTROL AGREEMENT (this "Agreement"), dated as of _____, 2011, is entered into by and among Jasper Clean Energy LLC ("Debtor"), The City of Jasper, Indiana (the "Secured Party"), and _____[BANK], as account intermediary (in such capacity, "Intermediary").

PRELIMINARY STATEMENTS

A. Intermediary has established deposit account number _____ in the name of Debtor (the "Account").

B. Debtor has granted Secured Party a continuing security interest in the Account, all free credit balances and cash held thereunder, and all proceeds thereof pursuant to the Agreement for the Lease, Improvement and Operation of the Jasper Clean Energy Facility, dated as of _____, 2011, by and between Debtor and Secured Party.

C. Secured Party, Debtor and Intermediary are entering into this Agreement to provide for the control of the Account and to perfect the security interest of Secured Party in the Account, all free credit balances and cash held thereunder, and all proceeds thereof.

NOW, THEREFORE, the parties hereto hereby agree as follows:

Section 1. The Account. Debtor hereby acknowledges and agrees that Debtor has granted a continuing security interest in the Account, all free credit balances and cash held thereunder, and all proceeds thereof (collectively, the "Account Collateral") to Secured Party. Debtor hereby represents and warrants to Secured Party that the Account Collateral is free and clear of all liens, security interests, encumbrances, and claims whatsoever, except for the security interest in favor of Secured Party and claims in favor of Intermediary permitted under Section 2 below. Intermediary hereby represents and warrants to Secured Party and Debtor that (a) the Account has been established in the name of Debtor as recited above, (b) all free credit balances thereunder are valid and legally binding obligations of Intermediary, and (c) except for the claim and interest of Secured Party and Debtor in the Account Collateral (subject to any claim in favor of Intermediary permitted under Section 2 below), Intermediary does not know of any claim to or interest in the Account Collateral.

Section 2. Priority of Lien. Intermediary hereby acknowledges the security interest in the Account Collateral granted to Secured Party by Debtor. Intermediary hereby waives and releases all liens, security interests, encumbrances, claims and rights of set-off it may now or hereafter have against the Account Collateral, except that Intermediary retains its prior lien on the Account Collateral to secure payment of its customary fees and commissions. Intermediary agrees to notify Secured Party and Debtor in the event any such fees and commissions described above are 10 days or more past due and owing and of the exercise of any such lien against the Account Collateral.

Section 3. Control. Debtor hereby irrevocably directs Intermediary to, and Intermediary hereby agrees that it will comply with all instructions originated by Secured Party concerning the Account and all Account Collateral without further consent by Debtor. Except as otherwise provided below, Intermediary will also comply with instructions concerning the Account and the Account Collateral originated by Debtor, until such time as Secured Party delivers a written notice to Intermediary that Secured Party is thereby exercising exclusive control over the Account; *provided, however,* that Intermediary shall not permit Debtor to withdraw any free credit balance, cash, other financial assets or any proceeds thereof from the Account unless the same are remitted to an account maintained by Debtor with [_____] (Bank)] or any other account approved in writing by the Secured Party. Such notice may be referred to herein as the "Notice of Exclusive Control." After Intermediary receives a Notice of Exclusive Control and has had a reasonable opportunity to comply (but no later than on the business day following receipt), it will cease complying with other instructions concerning the Account originated by Debtor. Intermediary shall be entitled to rely upon any instruction concerning the Account or any Notice of Exclusive Control that it reasonably believes to be from Secured Party. Until Intermediary receives a Notice of Exclusive Control, Intermediary shall be entitled to continue to act on such instructions from Debtor as are delivered in form satisfactory to Intermediary.

Section 4. Statements, Confirmations and Notices of Adverse Claims. Intermediary will send copies of all statements, confirmations and other correspondence concerning the Account Collateral simultaneously to each of Debtor and Secured Party at the address set forth on the signature page of this Agreement under such party's name. Upon receipt of written notice of any lien, security interest, encumbrance or adverse claim against the Account Collateral or any part thereof, Intermediary will promptly notify Secured Party and Debtor thereof.

Section 5. Representations of Intermediary. Intermediary represents and warrants to Secured Party and Debtor that (a) it has full power and authority to enter into this Agreement and perform its obligations hereunder; (b) the execution, delivery and performance of this Agreement by the Intermediary has been duly authorized by all necessary action; and (c) this Agreement is the legal, valid and binding obligation of Intermediary, enforceable against the Intermediary in accordance with its terms.

Section 6. Limited Responsibilities of Intermediary. Except for permitting a withdrawal or payment in violation of Section 3 above or permitting a withdrawal to Debtor in violation of Section 2 above, Intermediary shall have no responsibility or liability to Secured Party for complying with instructions concerning the Account Collateral from Debtor which are received by Intermediary before Intermediary receives a Notice of Exclusive Control and has had a reasonable opportunity to act on it (which shall in no event be later than the business day following receipt). Intermediary shall have no responsibility or liability to Debtor for complying with a Notice of Exclusive Control or complying with instructions concerning the Account Collateral originated by Secured Party, even if Debtor notifies Intermediary that Secured Party is not legally entitled to originate any such instruction or Notice of Exclusive Control, unless Intermediary has been served with an injunction, restraining order or other legal process issued by a court of competent jurisdiction (herein, a "Court Order") enjoining it from complying and has had a reasonable opportunity to act on such Court Order. Intermediary shall have no responsibility or liability to Debtor or Secured Party with respect to the value of the Account Collateral. This Agreement does not create any obligation or duty of Intermediary other than those expressly set forth hereto, and no implied covenants or obligations shall be read into this Agreement against the Intermediary.

Section 7. Indemnification of Intermediary and Secured Party. Debtor hereby agrees to indemnify and hold harmless each of Intermediary and Secured Party, and their respective directors, officers, agents, and employees, from and against any and all claims, causes of action, liabilities, lawsuits, demands and damages (including, without limitation, reasonable attorneys' fees and court costs) in connection with or arising out of or relating to this Agreement or any action taken or not taken pursuant hereto, except to the extent arising out of the gross negligence or willful misconduct of the indemnified person. The indemnification obligations set forth in this paragraph shall survive termination of this Agreement.

Section 8. Tax Reporting. All items of income, gain, expense and loss recognized in the Account shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of Debtor.

Section 9. Customer Agreement. In the event of a conflict between this Agreement and any other agreement between Intermediary and Debtor, the terms of this Agreement will prevail; *provided, however,* that this Agreement shall not alter or affect any mandatory arbitration provision currently in effect between Intermediary and Debtor pursuant to a separate agreement.

Section 10. Termination. Unless earlier terminated by Intermediary pursuant to this Section, this Agreement shall continue in effect until Secured Party has notified Intermediary in writing that this Agreement, or its security interest in the Account Collateral, is terminated. Upon receipt of such notice the obligations of Intermediary under Sections 2, 3 and 4 above with respect to the operation and maintenance of the Account Collateral after the receipt of such notice shall terminate, Secured Party shall have no further right to originate instructions concerning the Account Collateral, and any previous Notice of Exclusive Control delivered by Secured Party shall be deemed to be of no further force and effect. Intermediary reserves the right to terminate this Agreement upon 30 days prior written notice to Secured Party and Debtor. Upon receipt of such notice, whether or not a default exists under the agreement between Debtor and Secured Party, Secured Party is hereby authorized to issue a Notice of Exclusive Control and take such steps as Secured Party may require to protect its security interest in the Account Collateral, including, but not limited to, transferring all of the credit balances in the Account to another deposit account in the name of Secured Party or its designee. No notice of termination given by Debtor shall be effective until consented to by Secured Party in writing.

Section 11. Complete Agreement. This Agreement and the instructions and notices required or permitted to be executed and delivered hereunder set forth the entire agreement of the parties with respect to the subject matter hereof, and, subject to Section 9 above, supersede any prior agreements (written or oral) and contemporaneous oral agreements concerning the subject matter hereof. There are no oral conditions precedent to the effectiveness of this Agreement.

Section 12. Amendments. No amendment, modification or (except as otherwise specified in Section 11 above) termination of this Agreement, nor any assignment of any rights hereunder (except to the extent contemplated by Section 14 below), shall be binding on any party hereto unless it is in writing and is signed by the party to be bound. No waiver of any rights hereunder shall be binding on any party hereto unless such waiver is in writing and signed by the party against whom enforcement is sought.

Section 13. Severability. If any term or provision set forth in this Agreement shall be invalid or unenforceable, the remainder of this Agreement, other than those provisions held

invalid or unenforceable, shall be construed in all respect as if such invalid or unenforceable term or provision were omitted.

Section 14. Successors. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors or heirs and personal representatives. This Agreement may be assigned by Secured Party to any successor holder of the obligations secured by the Account Collateral, *provided* such assignment shall not be binding upon Intermediary until written notice of such assignment is given by Secured Party to Intermediary.

Section 15. Notices. Except as otherwise expressly provided for herein, any notice, order, instruction, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error free receipt is received, or upon receipt of notice sent by a recognized overnight courier or by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth under such party's name appearing on its signature page to this Agreement. Any party may change his address for notices in the manner set forth above.

Section 16. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterpart signature pages, each constituting an original, but all together one and the same instrument.

Section 17. Choice of Law. Regardless of any provision in any other agreement relating to the Account and the Account Collateral, the parties hereto agree that this Agreement, and the establishment and maintenance of the Account, and all interests, duties, and obligations with respect to the Account and the Account Collateral, shall be governed by the internal laws of the State of [_____]. The State of [_____] shall be deemed to be Intermediary's location for the purposes of this Agreement and the perfection and priority of Secured Party's security interest in the Account Collateral.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first written above.

JASPER CLEAN ENERGY LLC, as Debtor

By

Name

Title

Address:

Telephone: ()

Telecopy: ()

THE CITY OF JASPER, INDIANA, as Secured Party

By

Name

Title

Address:

Telephone: ()

Telecopy: ()

_____, as Intermediary

By

Name

Title

Address:

Telephone: ()

Telecopy: ()

EXHIBIT 13

CONSTRUCTION CONTRACTOR QUALIFICATIONS

Plant Constructor Qualifications and Experience

A qualified construction contractor will have demonstrated capabilities and experience satisfactory to construct the Jasper Clean Energy Center using Prudent Electrical Practices. Such capabilities and experience will be demonstrated by:

1. Experience in the construction of natural gas combustion turbine combined cycle power plants and related emissions control equipment;
2. Experience in the construction/repair of solid fueled boilers and emissions equipment;
3. References' demonstrating the proposed constructor has constructed power plants using "Prudent Utility Practices";
4. Sufficient financial resources necessary to fulfill the requirements of the Construction Agreement;
5. Represent and warrant that it has not been cited for material environmental operating permit violation or convicted of a criminal wrongdoing in the past 5 years;

A proposed company submitted to fill the role of a qualified construction contractor will be required to provide references and certifications demonstrating they reasonably satisfy the above requirements.

EXHIBIT 14

MANAGEMENT AREAS OF COORDINATION COMMITTEE

Truck Routes

- All delivery vehicles transporting Fuel to the Site and removing ash from the Site shall utilize Cathy Lane and 30th Street.

EXHIBIT 15

FORM OF CONSENT AND AGREEMENT

[TO BE INSERTED BY PARTIES AT LATER DATE UPON AGREEMENT]

REPORTING AND PLAN REQUIREMENTS**Report Plans for Phase I (Development Period), Phase II (Construction Period), Phase III (Project Operations Period) and Phase IV (Retirement Period).**

Lessee shall prepare periodic written Status Reports to update the Coordination Committee during the Phase I, Phase II, Phase III and Phase IV Periods. The reports shall be sent via email in the form of a single Adobe Acrobat file or facsimile to the members of the Coordination Committee, as noted in **Section 14.01**. Lessee's obligation to submit such reports to the Coordination Committee shall begin on the first day of the first full calendar month after the Effective Date of this Agreement. The frequency and contents of such Status Reports (where applicable) shall be as follows:

A. Phase I Period (Development Period)

- a. Frequency shall be monthly and due upon the 5th business day following the period reported upon.
- b. Contents
 - i. Brief description of the Facility and Related Facilities.
 - ii. Site Plan of the Facility and Related Facilities.
 - iii. Description of any planned changes to the Facility, Related Facilities and Site Plan as Described in **Exhibit 3**.
 - iv. Status of progress towards achieving Conditions Precedent specified in **Section 3.03** and Bar chart schedule showing progress on achieving the Conditions Precedent.
 - v. PERT or GANT chart showing critical path schedule of major Development items and activities.
 - vi. Summary of material activities during the previous period.
 - vii. Forecast of activities scheduled for the current period.
 - viii. Enumeration and schedule of any support or actions requested of LESSOR.

B. Phase II Period (Construction and Startup Report)

- a. Frequency shall be weekly and due upon the 2nd business day following the period reported upon.
- b. Contents
 - i. Brief description of Facility, Modified Boiler and Related Facilities.
 - ii. Site Plan of the Facility, Modified Boiler and Related Facilities.
 - iii. Brief description of Construction Plan for the Facility, Modified Boiler and Related Facilities.
 - iv. PERT or GANT chart showing critical path schedule of major Construction items and activities.
 - v. Written description about the progress relative to Lessee's Construction Schedule.
 - vi. Summary of activities during the previous period.
 - vii. Forecast of activities scheduled for the current period.

- viii. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, Modified Boiler and Related Facilities.
- ix. Enumeration and schedule of any support or actions requested of Lessor.

C. Phase III Period (Operations Report)

Operations Report

- a. Frequency shall be monthly and due upon the 5th business day following the period reported upon
- b. Contents
 - i. Brief description of operations of Facility, Modified Boiler and Related Facilities during the period.
 - ii. Description of any planned Maintenance scheduled during the next six (6) months requiring permits or involvement by the City or the Utility Service Board.
 - iii. Description of any planned tests that might cause the Facility, the Modified Boiler or the Related Facilities to materially deviate from their normal operations.
 - iv. Report of environmental emissions incidents required to be reported to the IDEM.

Emissions Reports

- a. Frequency
 - a. Monitoring of CO Emissions – Daily 6 minute CO Emissions records to be supplied to the USB or its designee by noon of the 2nd business day (Monday through Friday except for recognized NERC Holiday) following the day the CO emissions were recorded. I.e. reports for Thursday Activity will be due by noon on the following Monday, Friday/Saturday/Sunday activity will be required by noon on the following Tuesday. Reports due on a Holiday will be delayed one day.
 - b. IDEM Required Emission Reports – The USB or its designee to be supplied a copy of all reports supplied to the Indiana Department of Environmental Management (“IDEM”) at the same time as such reports are supplied to the IDEM.
- b. Contents
 - a. Monitoring of CO Emissions – The Report of CO Emissions shall include:
 - i. the values for the 6 minute CO measurements,
 - ii. an explanation of why any of the 6 minute CO measurements might be invalid
 - iii. a running 12 hour average of all valid 6 minute CO measurements and an adjustment (substitution) for invalid measurements which shall be determined as the average of the 6 minute CO measurement immediately preceding the invalid measurement and the 6 minute CO measurement following the invalid measurement
 - iv. In the event the running 12 hour 6 minute CO emissions average exceeds 490 ppm (“Threshold”) an explanation of why the average exceeded the Threshold and what steps are to be taken to lower the average emissions to below the Threshold.
 - v. Any additional rents that might be required as a result of Lessee exceeding the Threshold.

D. Phase IV Period (Retirement Report)

- a. Frequency shall be monthly and due upon the 5th business day following the period reported upon
- b. Contents
 - i. Brief description of the option for retirement chosen by the Lessor as described in Section 6.01.
 - ii. Description of the progress made by Lessee and Lessor towards achieving the selected option for retirement.
 - iii. Description of any material events that occurred during the reporting period.
 - iv. Description of any material events expected to occur during the next reporting period.

E. Retirement of Equipment.

- a. Not less frequent than quarterly, Jasper Clean Energy shall report any equipment or other property subject to this Lease which was part of the Existing Plant and was leased to Lessee and which is being retired, out of service or replaced.

EXHIBIT 17

EMISSIONS

Plant Emissions Permitting and Operating Emissions Levels

- 1) Regulatory Requirements - The Lessee shall file with the IDEM as an "Area Source" for Hazardous Air Pollutants (HAP's) pursuant to the new Boiler MACT Standards, which standards became effective March 21, 2011; and as a "Minor Source" for New Source Review, pursuant to the standards in effect on the Effective Date.
- 2) City of Jasper Voluntary Compliance Level - Lessee hereby agrees that the Modified Boiler will be required to achieve a "Voluntary Compliance Level" using "closed-loop biomass" as fuel, and that such Voluntary Compliance Level will be essentially the same as the new Boiler MACT Emissions Standard for Major Sources "Existing-Biomass Stoker/other". This Voluntary Compliance Level would be as follows: PM 0.03#/MMBtu of Fuel Input; HCL 0.035 #/MMBtu; HG 0.0000046 #/MMBtu; CO 490 ppm; and TEQ (Dioxins/Furan) 0.005ng/dscm.
- 3) Initial Operation - During commissioning of the Modified Boiler, it will be tested pursuant to EPA/IDEM approved methods and would be required to satisfy the Voluntary Compliance Level.
- 4) Monitoring - Lessee shall provide continuous emission monitoring for CO and opacity. Lessee shall provide under normal operations results of the CO monitoring within 48 hours of the end of each operation day. In the event of a violation of the Voluntary Compliance Level or any permit issued by the IDEM, Lessee shall report immediately to Lessor any emissions exceeding such Voluntary Compliance Level. Lessee agrees that the emission monitoring devices shall be calibrated pursuant to industry standards. Lessee shall notify Lessor of each calibration event, and Lessor shall have the right to audit each calibration event and shall receive a copy of all calibration audits promptly after received by Lessee. Lessee will promptly provide copies of all opacity reports to Lessor, including those submitted to the IDEM.
- 5) Continued Operations -
 - 1) CO Emissions - After commissioning and during normal operations of the Modified Boiler (excluding any events occurring during startup, shutdown, temporary upsets, equipment or instrumentation failures and any temporary periods that may be pre-approved by the Coordination Committee) if the CO emissions level of the Modified Boiler exceeds the simple average of 490 ppm, for the six (6) minute measurement increments occurring during any rolling twelve (12) hour period, then Lessee shall take such corrective action as soon as is commercially practical to reduce the CO emissions of the Modified Boiler to below an average 490 ppm during a rolling twelve (12) hour period. Further Lessee may be subject to additional rent and operating actions should the average CO level of the Modified Boiler measured over a specified period of time exceed a specified amount as more fully set forth in the table shown below in this Exhibit 14.

In every case Lessee shall be obligated to take such corrective action as soon as is commercially practical to reduce the CO emissions of the Modified Boiler to below an average 490 ppm during a rolling twelve (12) hour period as set forth in the table shown below.

Min. Average CO Level (PPM)	Max Average CO Level (PPM)	Rolling Average Period (Hours)	# of Occurrences in a Rolling 7 Day Period (Note 1.)	Additional Rents (Rents not Cumulative – Largest Amount Governs)	Action
490.1	539	12	Per Occurrence Greater than 3	\$2,500.00	Action 1.
540	612	12	Per Occurrence Greater than 1	\$5,000.00	Action 2.
613	735	12	Per Occurrence	\$7,500.00	Action 3.
736	No Maximum	12	Per Occurrence	\$10,000.00	Action 4.
Action 1.	Perform, at Lessee Cost, test of Voluntary Compliance Level for CO of the Modified Boiler at next IDEM Emissions Test				
Action 2.	Perform, at Lessee Cost, test of Voluntary Compliance Level for the Modified Boiler at next IDEM Emissions Test				
Action 3.	Reduce operating level of the Modified Boiler within 48 hours to no more than 50% of the Phase II Demonstrated Capacity until such time as Lessee, at its cost, can demonstrate via a stack test of emissions from the Modified Boiler that Lessee can operate the Modified Boiler in compliance with the Voluntary Compliance Level.				
Action 4.	Cease operations of the Modified Boiler within 48 hours, with such cessation continuing until such time as Lessee, at its cost, can demonstrate via a stack test of emissions from the Modified Boiler that Lessee can operate the Modified Boiler in compliance with the Voluntary Compliance Level.				
Note 1.	The timing of any Occurrence shall be for a discrete 12 hour period and the period for determining next Occurrence shall be the period which shall commence after the end of the previous Occurrence and shall continue on a rolling 12 hour basis.				
Note 2.	All testing will be done in accordance with approved EPA/IDEM Test Guidance of the particular emission to be tested.				

At any time after the commercial operation date of the Modified Boiler, Lessor will have the option to request, in writing, that Lessee demonstrate that the Modified Boiler is in compliance with the Voluntary Compliance Level emissions by means of Lessee performing a stack emissions test, as soon as commercially practical. Should Lessee fail the test in any category, Lessee would be required to cease operation of the Modified Boiler until such time as Lessee can demonstrate at its cost that Lessee can operate the Modified Boiler in compliance with the Voluntary Compliance Level. If the Modified Boiler fails any test for any emissions category when requested by Lessor, then the cost of performing such test(s), and any retest of the Modified Boiler, shall be the obligation of Lessee. If the Modified Boiler passes such test for all emissions categories in the Voluntary Compliance Level, or passes any test for a specific emissions category in the Voluntary Compliance Level as requested by Lessor, then Lessee and Lessor shall each pay for 50% of the costs of any such test(s); provided however, if Lessee passes any test or tests requested by Lessor twice in any one calendar year then Lessor shall be responsible for 100% of the costs of any subsequent tests requested by Lessor that Lessee passes during such calendar year.

6. Particulate Emissions - After commissioning and commencement of commercial operation of the Modified Boiler and during operations of the Modified Boiler thereafter, if the baghouse has a full or partial equipment failure resulting in a bypass of exhaust

gases in such a quantity as to result in the particulate emissions of the Modified Boiler exceeding the Voluntary Compliance Level, then Lessee shall shut down the Modified Boiler as soon as commercially practical and repair the baghouse before resuming operations of the Modified Boiler. The level of partial equipment failure of the baghouse to cause the particulate emissions of the Modified Boiler to exceed the applicable Voluntary Compliance Level will be determined by an independent engineer prior to the commencement of Phase III.

7. Sound Emissions – During normal operations, sound levels shall be maintained as follows:

At Site Boundaries:

- Stationary equipment - 70 dBA
- Mobile equipment - 80 dBA

[These noise emission levels do not apply during construction periods.]

[For purposes of this Sound Emissions provision, Site boundaries shall be the extension of the south line of 15th Street east to the western railroad right-of-way and south along the west railroad right-of-way so as not to include the Riverwalk parking lot.]

At Commercial Zone Property:

- Stationary equipment - 65 dBA
- Mobile equipment - 65 dBA

At Nearest Residential Zoned Property:

- Stationary equipment - 60 dBA
- Mobile equipment - 60 dBA

8. Odor Emissions – The Facility shall not allow the release of obnoxious or nuisance odors from the boundaries of the Site.

EXHIBIT 18

SUSTAINABILITY; FIRE PROTECTION AND TRAINING

Lessee Sustainability Guidelines

The Lessee (JCEC) will employ industry leading sustainability guidelines and processes in the design and operation of the Facility to the extent commercially feasible.

1. The Facility design and selection of new equipment will incorporate energy efficiency as one of the guiding principles in conjunction with emissions control.
2. The design and retrofit of the existing facilities to be incorporated into the JCEC will be analyzed in terms of energy efficiency and updated where feasible.
3. Existing equipment when replaced will employ more energy efficient equipment.
4. Building Systems (*i.e.*, lighting, HVAC equipment, etc.) will be designed and operated in accordance with Leadership in Energy & Environmental Design (LEED) principles.
5. JCEC intends to incorporate a solar heating system in the new Closed Loop biomass processing Facility.
6. JCEC intends to use evaporative cooling systems (cooling tower) similar to the existing system employed. New and/or upgraded evaporative cooling systems will be designed to minimize water use where practical and all continuous blow-down systems will be monitored.
7. JCEC will employ steam traps and condensate return systems where feasible in its design.
8. JCEC mobile equipment including equipment transporting the Closed Loop Biomass fuel supply from the farm gate to the biomass processing and storage Facility will to the extent commercially feasible utilize low emissions fuels and utilize clean burning fuels such as natural gas and ethanol.
9. JCEC will require its Closed Loop Biomass fuel suppliers to adhere to sustainability guidelines and protocols in the establishment, growing, harvesting and storage of Closed Loop Biomass fuel. JCEC will require its suppliers to maintain records and JCEC will conduct audits of its suppliers to insure adherence to these guidelines.
10. JCEC's visual appearance and its melding with the surroundings will be considered in Facility design and paint colors.

Fire Protection and Training

The Facility and Related Facilities will be designed and constructed using Good Electrical Practices. Part of such Good Electrical Practices involves the design and construction of both passive and active fire protection systems. The Facility and Related Facilities will be designed to prevent hazardous conditions which might lead to the occurrence of fire or other dangerous conditions (“**Passive Systems**”). The Facility and Related Facilities will include in its design fire suppression systems, as reasonably practical, including but not limited to upgraded fire suppression systems in the existing boiler plant building, fire suppression systems in the proposed biomass receiving, processing and storage building, fire suppression systems in the proposed combustion turbine and generator and a diesel fueled emergency firewater pumping system as backup to the City supplied water system (“**Active Systems**”).

In the unlikely event that a fire were to occur at the Facility, Lessee may require the assistance of the City of Jasper Fire Department. In order to insure the City of Jasper Fire Department is prepared to assist the Facility in fighting a fire, Lessee will provide an initial 2-day training seminar for the members of the City of Jasper Fire Department. The design of the seminar will be developed jointly by the Lessee and the City of Jasper Fire Department. In order to assist with the costs of the seminar and to offset other general operating costs of the City of Jasper Fire Department, Lessee will donate Fifty Thousand Dollars (\$50,000.00) during the first (1st) year of the Lease after the Commercial Operation Date. In addition, Lessee will hold annual one (1) day refresher seminars. The design of the annual refresher seminar will be developed jointly by Lessee and the City of Jasper Fire Department. In order to assist with the cost of the seminar and to offset other general operating costs of the City of Jasper Fire Department, Lessee will donate Twenty-Five Thousand Dollars (\$25,000.00) as adjusted by the Implicit Price Deflator over time.

It should not be construed that the City of Jasper Volunteer Fire Department will act as the Fire Brigade for Jasper Clean Energy, LLC as it pertains to the definition under OSHA Standards for General Industry (29 CFR PART 1910), Subpart L – Fire Protection, 1910.156. To further clarify, the Jasper Volunteer Fire Department will respond to all fire calls dispatched by the Jasper Police Department to the Jasper Clean Energy, LLC location.

EXHIBIT 19

QUALIFICATIONS OF FACILITY MANAGER

Facility Management Company to Operate and Maintain the Facility and the Modified Boiler – Qualifications and Experience.

Any Facility Management Company selected by Lessee to operate and maintain the Facility and the Modified Boiler will have demonstrated capabilities and experience satisfactory to operate the Facility and the Modified Boiler using Prudent Electrical Practices.

Such capabilities and experience will be demonstrated by:

1. Experience in managing the operations and maintenance of natural gas combustion turbine combined cycle power plants and related emissions control equipment;
2. Experience in managing the operations and maintenance of solid fueled boilers and emissions equipment;
3. Referrals demonstrating the proposed operator has operated power plants using “Prudent Electrical Practices”;
4. Sufficient financial resources necessary to reasonably fulfill the requirements of the Operating Agreement;
5. Represent and warrant that it has not been cited for material environmental operating permit violation or convicted of a criminal wrongdoing in the past 5 years;

A proposed company submitted to fill the role to manage the day-to-day operations of the Facility and Modified Boiler subject to this Lease will be required to provide references and certifications demonstrating they reasonably satisfy the above requirements.

EXHIBIT 20

EMPLOYMENT OFFERS TO EXISTING EMPLOYEES OF LESSOR (COAL PLANT)

Employment Offers to Existing Employees of Lessor assigned to the Coal Plant

It is the intention of Lessee to offer those employees of Jasper Municipal Electric Utility, which are assigned to operate the Existing Plant as of the Effective Date and are still employed by Jasper Municipal Electric Utility on the Commencement Date (the maximum number of which is ten(10), as of the Effective Date, each an "Employee" or collectively the "Employees") an opportunity for full time employment with the proposed Jasper Clean Energy Center beginning no later than five (5) days after the Commencement Date. Prior to the Commencement Date, Lessee will have no obligation to offer employment to such Employees. After the Commencement Date, Lessee will have elected to proceed with the Jasper Clean Energy Center and the Employees, if they accept such employment, will become employees of a special purpose company during the Phase II Period under the Lease. Such Employees will, among other duties, provide assistance to Lessee and Lessee's Contractors for the design and construction of the Jasper Clean Energy Center during Phase II. Upon Lessee retaining a Facility Management Company for the operation and maintenance of the Jasper Clean Energy Center during Phase III, the Employees will be offered employment by such Facility Management Company, as such Facility Management Company may change from time to time.

Upon the termination of the Lease for any reason, Lessee's obligation to offer employment to, or to continue to employ, the Employees shall end. In addition, at any time during the Lease, an Employee may be discharged by Lessee or the Facility Management Company, as applicable, for failure of such Employee to perform his/her responsibilities in accordance with Prudent Electrical Practice or for other negligent, incompetent or unlawful acts or omissions using the same standards as applied by Lessee or the Facility Management Company, as applicable, to its other employees.

The offer of employment and the continued employment of an Employee shall be subject to the following:

Lessee Obligation

Effective on the Commencement Date, Lessee will offer to provide compensation and benefits at a level equal to or better than the average of the compensation for similar positions in union and non-union operated power generation stations in the area (within the region defined by the box) as shown on the attached map ("Compensation"). It is not the intention of Lessee or the Facility Management Company to offer a defined benefit (*i.e.*, retirement) plan, pension, or profit-sharing plan for its employees.

Lessor Obligation

Lessor shall be responsible for all wages and benefits owed to each Employee until the earlier of (i) five (5) days after the Commencement Date (beginning of Phase I) or (ii) any earlier date that Lessee requests such Employee to begin employment with Lessee. Lessor's responsibilities for each such Employee shall include, but shall not be limited to, any severance payments,

EXHIBIT 21

FORM OF LETTER OF CREDIT
IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT FORMAT

DATE OF ISSUANCE: _____

[The City of Jasper, Indiana
Address]

Re: Credit No. _____

At the request of and for the account of Jasper Clean Energy LLC, an Indiana limited liability company ("Applicant"), we hereby establish in your favor, for the benefit of The City of Jasper, Indiana ("Beneficiary"), with respect to the Agreement for the Lease, Improvement and Operation of the Jasper Clean Energy Facility dated as of _____, 2011 by and between you and Applicant, our Irrevocable Letter of Credit No. _____ (this "Letter of Credit") whereby, subject to the terms and conditions contained herein, you are hereby irrevocably authorized to draw on us, by your draft or drafts at sight, an aggregate amount not to exceed [\$1,500,000.00 or \$3,500,000.00] (such amount, as it may be reduced or reinstated in accordance with the terms hereof, the "Stated Amount" hereof).

This Letter of Credit shall be effective immediately and shall expire on the Expiration Date (as hereinafter defined). Partial and multiple drawings on this Letter of Credit are permitted.

You may draw upon this Letter of Credit at any time on or prior to the Expiration Date by presenting (a) a sight draft in the form of Exhibit A (a "Sight Draft") attached hereto, completed in accordance with the instructions contained in such Exhibit A and executed by your officer, (b) a certificate in the form of Exhibit B attached hereto, completed in accordance with the instructions contained in such Exhibit B and executed by your officer and (c) the original Letter of Credit, including all amendments.

Provided that a drawing and the documents presented in connection therewith conform to the terms and conditions hereof, payment shall be made to you of the amount specified in the applicable Sight Draft, not to exceed the Stated Amount, in immediately available funds, on or before the third business day after presentation of the Sight Draft, certificate and original Letter of Credit. As used herein, "business day" shall mean any day other than a Saturday, Sunday or day on which banking institutions or broker dealers in New York, New York are authorized or required by law to close. If any drawings or the documentation presented in connection therewith does not conform to the terms and conditions hereof, we will further advise you of the same by telephone or any other electronic medium within three (3) business days and give the reasons for such non-conformance. This Letter of Credit shall expire on [TBD] (or if such date is not a business day, on the business day immediately following such date; such date, the "Expiration Date").

This Letter of Credit shall automatically extend without amendment for additional one year periods from such expiration date and from subsequent expiration dates, if you, as Beneficiary, and the Applicant have not received due notice of our intention not to renew at least ninety (90) days prior to any such expiration date.

This Letter of Credit is subject to, and is governed by, the laws of the State of New York and the 2007 revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication No. 600) and, in the event of any conflict, the laws of the State of New York will control.

This Letter of Credit is not assignable or transferable. Any purported transfer or any purported assignment shall be void and of no force or effect.

This Letter of Credit may not be amended, changed or modified without the express written consent of the Beneficiary, the Issuing Bank and the Applicant.

Only you may draw upon this Letter of Credit. Upon the payment to you or your account of the full aggregate Stated Amount specified herein or upon the occurrence of the Expiration Date or earlier termination hereof, we shall be fully discharged of our obligations under this Letter of Credit.

This Letter of Credit sets forth in full the terms of our undertaking. Reference in this Letter of Credit to other documents or instruments is for identification purposes only and such reference shall not modify, amend, amplify, limit or affect the terms hereof or cause such documents or instruments to be deemed incorporated herein.

[BANK SIGNATURE]

SIGHT DRAFT

Date

[_____] (Issuing Bank)

[Address _____
_____]

Re: Irrevocable Letter of Credit No. _____

On Sight

Pay to The City of Jasper, Indiana in immediately available funds _____
Dollars (\$ _____) on the third business day following the date hereof, pursuant to
Irrevocable Letter of Credit No. _____ of _____ (Issuing Bank).

The City of Jasper, Indiana

By: _____

Name:

Title:

[Letterhead of The City of Jasper, Indiana]
[Date]

[_____] (Issuing Bank)
[Address _____]
_____]

Re: Irrevocable Letter of Credit No. _____

Ladies/Gentlemen:

This is a certificate presented in accordance with your Irrevocable Letter of Credit No. _____ held by us (the "Letter of Credit").

We hereby certify that:

"The amount of the [Construction Liquidated Damages or Remaining Equipment Liquidated Damages] is payable to us pursuant to the requirements of the Agreement for the Lease, Improvement and Operation of the Jasper Clean Energy Facility dated as of _____, 2011, between The City of Jasper, Indiana and Jasper Clean Energy LLC, as the same may have been amended (the "Lease Agreement"). Accordingly, the City of Jasper, Indiana is making a drawing of [\$1,500,000.00 or \$3,500,000.00] under the Letter of Credit."; or

"The amount of the draft is payable to us pursuant to the requirements of the Agreement for the Lease, Improvement and Operation of the Jasper Clean Energy Facility dated as of _____, 2011, between The City of Jasper, Indiana and Jasper Clean Energy LLC, as the same may have been amended (the "Lease Agreement"). Accordingly, the City of Jasper, Indiana is making a drawing of [\$ _____] under the Letter of Credit."; or

"You have notified us that the Letter of Credit will not be extended beyond the expiration date, the Letter of Credit will expire within thirty (30) days of the date of this certificate and Jasper Clean Energy LLC has failed to deliver a replacement or renewal Letter of Credit acceptable to The City of Jasper, Indiana. The City of Jasper, Indiana is making a drawing of the full stated amount of the Letter of Credit and will hold such amounts as cash collateral for the obligations owed by Jasper Clean Energy LLC to The City of Jasper, Indiana under the Agreement for the Lease, Improvement and Operation of the Jasper Clean Energy Facility dated as of _____, 2011, between The City of Jasper, Indiana and Jasper Clean Energy LLC."

This certificate has been executed and delivered by the Mayor of The City of Jasper, Indiana, or other duly authorized officer of the undersigned on the date first above written.

The City of Jasper, Indiana

By: _____

Name:

Title: