



John Manning  
*District One*

Cecil L. Pendergrass  
*District Two*

Larry Kiker  
*District Three*

Brian Hamman  
*District Four*

Frank Mann  
*District Five*

Roger Desjarlais  
*County Manager*

Richard Wm. Wesch  
*County Attorney*

Donna Marie Collins  
*Hearing Examiner*

November 22, 2016

Mr. Joe Wolfe, Executive Vice President Operations  
Rainbow Energy Marketing Corp.  
919 S. 7<sup>th</sup> Street  
Suite 405  
Bismarck, ND 58504

Re: Lee County Contract

Dear Mr. Wolfe:

Enclosed, please find a fully executed copy of the Non-Firm Power Purchase, Sale and Marketing Agreement between Lee County and Rainbow Energy.

If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Turner", with a long horizontal flourish extending to the right.

Nicole Turner  
Procurement Management  
941-533-8850  
nturner@leegov.com

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

This Power Purchase, Sale, and Marketing Agreement ("Agreement") is entered into effective the 1st day of November 2016, ("Effective Date") by and between LEE COUNTY, FLORIDA ("LEE COUNTY") and RAINBOW ENERGY MARKETING CORPORATION ("REMC"). LEE COUNTY and REMC may hereinafter be referred to individually as a Party, or together as the Parties.

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

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

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

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

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

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

1. **DEFINITIONS:**

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

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

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

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

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

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

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

**“Credit Exposure”** means monetary sums owed to LEE COUNTY based upon gross electricity sales only.

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

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

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

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

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

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

**“Guarantor”** means the entity(ies) acceptable to LEE COUNTY that underwrite the Guaranty Amount(s) by Corporate Guaranty, letter of credit, or other acceptable instrument(s). **“Guaranty Amount(s)”** means the amount(s), instrument(s)Guarantor(s) and terms and conditions pursuant to the provisions of Section 6 and Appendix B hereto.

**“Long-Term Transaction(s)”** means a Transaction(s) with duration of more than 31 days, and less than 365 days, or which begins more than 31 days after the execution date of a Transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2. ENERGY MARKETING SERVICES AND OPPORTUNITIES**

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

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

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

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

(v) Whenever REMC successfully enters into a Resale Transaction, REMC shall then purchase such Available Energy from LEE COUNTY (not to exceed the Maximum Quantity specified by LEE COUNTY) at the Delivery Point at the REMC Purchase Price; provided, however, in the event that LEE COUNTY cannot deliver the planned Energy Volume during a Transaction, the Purchase Price shall be prorated for the actual Energy Volume delivered during such period.

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

(i) REMC will regularly survey the market for longer-term sale opportunities from the Facility. These may include, monthly, seasonal and annual capacity and energy sales with a duration of more than 31 days and less than 365 days. When a sale opportunity is identified, REMC will prepare a preliminary transaction summary containing basic parameters for the transaction ("Transaction Summary"). The Transaction Summary shall include the following:

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

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

(iii) When requested by LEE COUNTY, REMC will assist LEE COUNTY in the preparation of responses to Requests for Proposals (RFPs) issued by utilities in Florida and the Southeast. REMC will also assist, when requested, in the analysis of and the preparation of proposals for longer-term sale opportunities from the Facility that become known to the County and not previously being considered by REMC on LEE COUNTY's behalf.

**(C) Scheduling Services:**

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

**3. FEES FOR MARKETING SERVICES**

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

(i) For short-term marketing services of less than 31 days duration, REMC shall be entitled to a variable marketing fee for its services hereunder as set forth as follows:

- 20% of the first \$600,000 of cumulative Net Value that results from the sale of Available Energy during each contract year, plus
- 15% of the next \$600,000 of cumulative Net Value that results from the sale of Available Energy during each contract year, plus
- 10% of the cumulative Net Value in excess of \$1,200,000 that results from the sale of Available Energy during each contract year.

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

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



Where:

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

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

Benchmark Price = The actual hourly As-Available Energy Price reported by FPL or other Florida utilities. LEE COUNTY will advise REMC via email which systems' As-Available Energy Price to use for future transactions.

(ii) If in any month that the Net Value is less than zero, REMC will carryover a share of this amount (based on the percentages detailed above) into the next month and net this amount against REMC's fees calculated of that subsequent month. (For example, if the Net Value in March 2017 is -\$10,000, -\$2,000 (20%) will be applied to REMC's billing in April 2017.) If the Net Value is less than zero in three consecutive months, and unless mutually agreed to by the Parties, REMC will cease carryover and will pay to LEE COUNTY an amount based on the percentages detailed above.

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

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

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

(i) Unless mutually agreed to by the Parties, REMC shall receive a variable marketing fee as set forth below for each Long-Term Transaction:

- 2.0% of the first \$4,800,000 of cumulative Revenue that results from long-term capacity and energy sales during the term of the Long-Term Transaction, plus
- 1.0% of the next \$4,800,000 of cumulative Revenue that results from long-term capacity and energy sales during the term of the Long-Term Transaction, plus
- 0.75% of the cumulative Revenue that results from long-term capacity and energy sales in excess of \$9,600,000 during the term of the Long-Term Transaction

(ii) For use in these calculations, Revenue will equal total monthly revenues LEE COUNTY receives from Long-Term Transaction(s), net of reasonable transmission costs, direct credit support costs (e.g., Letters of Credit), and losses, if any.

**(C) Scheduling Services**

For scheduling services of any duration requested and/or approved in writing by LEE COUNTY, REMC will be entitled to a fixed per unit fee of \$0.50/MWh of delivered energy for its

services hereunder, which scheduling services shall not apply to energy sales to Florida Power and Light (FPL).

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

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

**4. RELATIONSHIP OF THE PARTIES**

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

**5. REPORTS, BILLING AND PAYMENTS**

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

(B) On the first Business Day of each month and on the first Business Day after the fifteenth (15<sup>th</sup>) day of each month during the term of the Agreement, REMC shall send LEE COUNTY an Available Energy Sales Report that shows, for the time period since the previous Available Energy Sales Report, the quantities of Available Energy sold and purchased hereunder, the applicable prices and the quantities to which each such price applies, any transmission costs

(including, but not limited to, any transmission line losses) incurred by REMC and/or LEE COUNTY, and the quantities to which such costs apply, and any other information relevant to the calculation of the variable component of the Marketing Service Fee, other reasonably relevant information including that reasonably requested by LEE COUNTY relevant to this Agreement.

(C) Within two business days of receipt by REMC of applicable As Available prices for the Prior Month, REMC shall prepare and send a proposed monthly Settlement Statement to LEE COUNTY related to Prior Month activities, indicating the amount of money due to LEE COUNTY from REMC for Available Energy sold and purchased in the Prior Month and the variable fee (if any) for such Prior Month. REMC shall transfer to LEE COUNTY the monies due and owing for such Prior Month's activities no later than ten (10) days following the Settlement Statement.

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

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

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

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

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

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

(i) If LEE COUNTY reasonably determines that a Guarantor's credit worthiness is significantly impaired, LEE COUNTY may request, and REMC shall immediately substitute a replacement surety acceptable to LEE COUNTY from an institution that has a rating of A or higher from Moody's Investors Service, Fitch Ratings, or Standard & Poor's, or is otherwise acceptable to LEE COUNTY in its sole discretion.

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

(B) In the event LEE COUNTY's Credit Exposure to REMC during any month exceeds seven hundred fifty thousand dollars (\$750,000), REMC will immediately, make a partial month payment of such amount through an immediate cash wire transfer to LEE COUNTY.

## **7. CONDITIONS PRECEDENT**

The effectiveness of the Agreement shall be conditioned upon: (i) REMC shall provide and maintain for the duration of this Agreement FERC approval of its Market Based Rate Authority, documentation for which shall be provided to LEE COUNTY (ii) REMC providing the security as required by and defined in Section 6; (iii) LEE COUNTY receiving all required approvals to proceed; and (iv) REMC maintaining its wholesale Power Tariff as filed with the FERC under Docket Number ER10-02778-001 dated 12/06/2010.

## **8. TERM**

(i) The initial Term of this Agreement shall begin on the Effective Date and continue for a period of one year. Following this initial year, and unless terminated by either party as described below, this Agreement will automatically be extended for an additional one-year term.

(ii) At any time during the initial Term of this Agreement, or during any subsequent term as described above, this Agreement may be terminated by either Party on the Termination Date designated by such Party in writing delivered to the other Party not less than upon 90 days prior to the Termination Date.

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

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

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

(B) The information to be provided by REMC to LEE COUNTY in such form shall include but not be limited to the following:

- Clear statement that the sale is Non-Firm
- The beginning date and time of the sale
- The ending date and time of the sale
- The maximum number of megawatts to be delivered per hour

- The minimum number of megawatt to be delivered per hour
- The Benchmark Price as specified by LEE COUNTY
- Other information reasonably requested by LEE COUNTY

#### **10. TITLE TO CAPACITY & ENERGY**

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

#### **11. WAIVER**

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

#### **12. NO THIRD-PARTY RIGHTS**

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

#### **13. CHOICE OF LAW**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Florida, exclusive of any conflict of laws provision thereof that would apply the laws of another jurisdiction. The Parties hereby submit to the jurisdiction of, and agree that venue for actions hereunder shall be, the U.S. District Court for the Middle District of Florida, if the U.S. District Court has jurisdiction, or, if the U.S. District Court does not have jurisdiction, the Circuit Court of the State of Florida sitting in Lee County, Florida.

#### **14. ARBITRATION**

(A) If a dispute between the Parties should arise under this Agreement, (i) in the first instance, the Parties shall attempt to resolve the dispute by negotiation between the members of senior management (or equivalent) of each Party, who shall meet on at least three (3) separate occasions; and (ii) if the dispute has not been resolved within forty-five (45) days of the initiation of dispute procedures under (i) above, and is not the subject of an outstanding lawsuit between the Parties, then either Party may call for submission of the dispute to non-binding arbitration, which call. The Parties are not required to resolve disputes via arbitration.

(B) The arbitration shall be governed by the rules and practices of the American Arbitration Association (or the rules and practice of a similar organization if the American Arbitration Association should not then exist), with the proviso that the arbitration panel shall, in all events, consist of three (3) arbitrators, one chosen by each of the Parties and the third chosen by those two arbitrators. If such rules or practices conflict with the then existing provisions of Florida law applicable to arbitration proceedings, Florida law shall govern. The fees and expenses of the arbitrators shall be shared equally by the Parties, and each Party shall bear its own costs.

(C) Whether or not a dispute is submitted to binding arbitration by mutual agreement of the Parties, each Party shall retain all of its rights to seek and obtain injunctive relief and other remedies to enforce their respective rights.

#### **15. AUDIT**

(A) REMC shall maintain accurate records and books of account in accordance with generally accepted accounting principles and consistent with this Agreement. Said books and records shall include, and present fairly, all metering data utilized, either directly or indirectly, in computing any charges or payments to the other Party under this Agreement, and any other relevant information required to perform the audit.

(B) Upon thirty (30) days' written notice, REMC shall afford LEE COUNTY or its independent auditors' reasonable access to the relevant records and books of account during the Term of this Agreement and for a period of two (2) years thereafter.

(C) LEE COUNTY shall have the right, after reasonable notice, at its sole expense and at a time during normal business hours as mutually agreed upon by the Parties, to examine the



records of the REMC to the extent reasonably necessary to verify the accuracy of any invoice, bill, statement, charges or computation made pursuant to this Agreement. If requested, REMC shall provide to LEE COUNTY statements evidencing the quantity of Available Energy delivered at a Point of Interconnection. If any such examination reveals any inaccuracy in any invoice, bill or statement, the necessary adjustments in such invoice, bill or statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid.

**16. INSURANCE**

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

**17. HEADINGS AND REFERENCES**

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

**18. NO PARTNERSHIP**

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

**19. COSTS AND EXPENSES**

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

**20. AMENDMENT**

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

**21. CONFIDENTIALITY**

The Parties agree that the pricing and certain other terms and conditions contained in this Agreement are proprietary trade secrets as defined under Florida law. Each Party agrees to notify the other Party as soon as possible of any request for proprietary information, and not to distribute any proprietary information without first notifying the other Party; provided, however, nothing herein limits an obligation of a Party to disclose such information as may be required under applicable law.

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

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

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

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

of this Agreement, unless specifically authorized in writing by LEE COUNTY for each approved sale of such environmental or non-energy assets by REMC.

(D) Any sale or transfer of such environmental or non-energy attributes by REMC may require that REMC and/or LEE COUNTY provide relevant documentation to a third party purchaser. The parties shall cooperate to provide such documentation as may be reasonably required and available as a condition of the transaction.

## **23. REPRESENTATIONS AND WARRANTIES**

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

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

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

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

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

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

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

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

(B) EXCEPT AS MAY BE PROVIDED IN THIS AGREEMENT, THE PARTIES MAKE NO OTHER REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THEIR PERFORMANCE OR OBLIGATIONS UNDER THIS AGREEMENT, AND EACH PARTY DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **24. OPERATING REPRESENTATIVES & BUSINESS REPRESENTATIVES**

### **(A) Operating Representatives**

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

#### **LEE COUNTY Operating Representatives:**

Keith Howard  
Director, Solid Waste Division  
10500 Buckingham Road, Fort Myers, FL 33905  
Tel:239 533 8917  
Fax:  
Cell: To Be Advised  
Email:khoward@leegov.com

#### **And:**

Erich Tscherteu  
Superintendent, Public Utilities, WTE  
10500 Buckingham Road, Fort Myers, FL 33905  
Tel:239 533 8931  
Fax:  
Cell: To Be Advised  
Email:eticherteu@leegov.com

**REMC Operating Representative:**

**Dusty Mitchum**, Senior Director, Southeast Trading  
101 East Town Place, Suite 200  
St Augustine, FL 32092  
Tel: 904-296-0234  
Cell: 904-652-4244  
FAX: 904-212-2696  
Email: [d.mitchum@rainbowenergy.com](mailto:d.mitchum@rainbowenergy.com)

(i) The establishment of any administrative or operating procedure or practice or any other action or determination by the Operating Representative shall be in writing and be effective when signed by the Operating Representative of each of the Parties, so long as those administrative or operating procedures do not conflict with the terms of this Agreement. The Operating Representatives of the Parties shall have no authority to modify any provision of this Agreement.

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

**(B) Business Representatives**

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

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

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

**LEE COUNTY Business Representatives:**

Keith Howard  
Director, Solid Waste Division  
10500 Buckingham Road, Fort Myers, FL 33905  
Tel: 239 533 8917  
Fax:  
Cell: To Be Advised  
Email: [khoward@leegov.com](mailto:khoward@leegov.com)

**And:**

Tracey Lodato  
Fiscal Manager, Solid Waste Division  
[Address] 10500 Buckingham Road, Fort Myers, FL 33905  
Tel: 239 533 8918  
Fax:  
Cell: To Be Advised      Email: [TLodato@leegov.com](mailto:TLodato@leegov.com)

**REMC Business Representative:**

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

**25. LIABILITY & INDEMNIFICATION**

(A) Neither REMC nor LEE COUNTY shall be responsible to the other in tort (including negligence and strict liability), contract or otherwise for any loss, costs or damage of any kind which may result from or be caused by interruptions in delivery of electricity or deficiencies such deliveries under this Agreement except as specifically provided as a result of an Event of Default. This Section shall survive termination or expiration of this Agreement.

**26. DEFAULT**

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

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

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

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

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

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

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

(B) Cure Period for Certain Events of Default. When an Event of Default occurs under 28(A)(i) or 28(A)(ii), the non-defaulting Party will give the defaulting Party written notice of the Event of Default and an opportunity to remedy the Event of Default. If the Event of Default shall not have been fully cured within thirty (30) days from the date of the notice or other mutually agreed upon time, the non-defaulting Party shall have all the rights it may have at law or in equity, including the right to terminate this Agreement. Anything to the contrary herein notwithstanding, the cure period of this Sub-Section 26(B) shall not apply to any of the Events of Default described in 28(A) iii, iv, v, vi and vii.

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

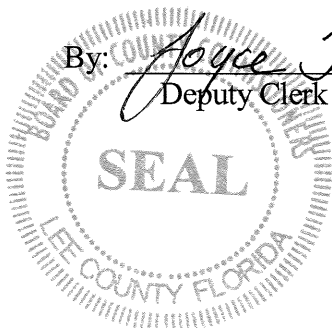
IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the Effective Date.

**LEE COUNTY**

ATTEST: LINDA DOGETT  
CLERK OF THE COURTS

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: Aoyce Townsend  
Deputy Clerk

The seal is circular with a double-lined border. The outer border contains the text "BOARD OF COUNTY COMMISSIONERS" at the top and "LEE COUNTY FLORIDA" at the bottom. In the center, the word "SEAL" is prominently displayed.

By: [Signature]  
Chair

APPROVED AS TO FORM FOR RELIANCE BY  
THE COUNTY ONLY:

By: [Signature]  
Office of the County Attorney

**RAINBOW ENERGY MARKETING CORPORATION**

By: [Signature]

Name: Joe Wolfe

Title: Executive VP Operations



**APPENDIX A**

**TRANSACTION PROPOSAL & CONFIRMATION**

This document, when executed by both Parties, shall confirm the Transaction agreed to on \_\_\_\_\_, \_\_\_\_ between LEE COUNTY and REMC regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: LEE COUNTY

Buyer: REMC

Product: Available Energy

☐ Unit Contingent  
(Specify Unit(s): The Facility”

☐ Other

☐ Transmission Contingency (If not marked, no transmission contingency)

☐ FT-Contract Path Contingency      ☐ LEE COUNTY      ☐ REMC

☐ FT-Delivery Point Contingency      ☐ LEE COUNTY      ☐ REMC

☐ Transmission Contingent      ☐ LEE COUNTY      ☐ REMC

☐ Other transmission contingency  
(Specify: \_\_\_\_\_)

Contract Quantity: \_\_\_\_\_

Delivery Point: Buckingham Substation at Facility Point of Interconnection with FPL

Benchmark Price: \_\_\_\_\_

Other Charges: \_\_\_\_\_

Delivery Period: \_\_\_\_\_

Special Conditions: \_\_\_\_\_

Scheduling: \_\_\_\_\_

Option REMC: \_\_\_\_\_

Option LEE COUNTY: \_\_\_\_\_

Type of Option: \_\_\_\_\_

Strike Price: \_\_\_\_\_

Premium: \_\_\_\_\_

Exercise Period: \_\_\_\_\_

This Transaction Proposal and Confirmation is provided pursuant to, in accordance with and as Appendix A to this Agreement between REMC and LEE COUNTY, and constitutes part of and is subject to the terms and provisions of such Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

**LEE COUNTY**

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

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

Phone No: \_\_\_\_\_

Cell No: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Rainbow Energy Marketing Corporation**

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

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

Phone No: \_\_\_\_\_

Cell No: \_\_\_\_\_

Fax: \_\_\_\_\_

email: \_\_\_\_\_

## APPENDIX B

### GUARANTY

THIS GUARANTY is made and entered into, effective this \_ day of \_\_\_\_\_, 2016, by United Energy Corporation (the "Guarantor"), in favor of LEE COUNTY, Florida (the "Guaranteed Party").

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

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

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

#### 1. GUARANTY OF PAYMENT

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

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

#### 2. DEMAND FOR PAYMENT

(a) In order to make any demand hereunder for payment by Guarantor of any Obligations that Rainbow Energy has failed to pay when due, Guaranteed Party shall give written notice to Guarantor of the failure by Rainbow Energy to pay such Obligations and demanding that Guarantor pay such Obligations (such notice shall set forth the exact amount of such Obligations to the extent quantifiable at the time of the demand). Subject to the foregoing provisions and to the limitation on Guarantor's maximum aggregate liability hereunder as set forth in Section 1(a),

above, repeated and successive demands may be made, and recoveries may be had, by Guaranteed Party hereunder as and when, from time to time, Rainbow Energy shall fail to pay when due any Obligations to be paid by it.

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

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

To Guaranteed Party: Lee County

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

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

### 3. TERMINATION/REINSTATEMENT

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

a) at any time any payment made with respect to any Obligation is rescinded or must otherwise be returned by the Guaranteed Party upon the insolvency, bankruptcy, reorganization or other similar condition of Rainbow Energy, all as though such payment had not been made; or

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

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

4. UNENFORCEABILITY OF OBLIGATIONS AGAINST RAINBOW ENERGY

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

- (i) lack of validity or enforceability of the Agreement against Rainbow Energy arising from the defective incorporation of Rainbow Energy,
- (ii) Rainbow Energy's lack of qualification to do business in any applicable jurisdiction,
- (iii) Rainbow Energy's defective corporate authority to enter into, deliver or perform the Agreement, or
- (iv) the insolvency, bankruptcy or reorganization of Rainbow Energy.

5. REPRESENTATIONS AND WARRANTIES OF GUARANTOR

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

6. GOVERNING LAW

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

7. SUBROGATION

Guarantor hereby agrees not to assert or enforce any right or contribution, reimbursement, indemnity, subrogation or any other right to payment from Rainbow Energy as a result of the Guarantor's performance of its obligations pursuant to this Guaranty until all Obligations are paid in full.

8. WAIVERS

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

Except as to applicable statutes of limitation, no delay of Guaranteed Party in the exercise

of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder, nor shall any single or partial exercise by Guaranteed Party of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to Guaranteed Party or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Guaranteed Party from time to time.

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

9. MISCELLANEOUS

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

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

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

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

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**UNITED ENERGY CORPORATION**

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

Name: Loren R. Kopseng

Title: President

# GUARANTY

THIS GUARANTY is made and entered into, effective this 1st day of December, 2016, by United Energy Corporation (the "Guarantor"), in favor of Lee County, Florida (the "Guaranteed Party").

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

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

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

## 1. GUARANTY OF PAYMENT

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

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

## 2. DEMAND FOR PAYMENT

(a) In order to make any demand hereunder for payment by Guarantor of any Obligations that Debtor has failed to pay when due, Guaranteed Party shall give written notice to Guarantor of the failure by Debtor to pay such Obligations and demanding that Guarantor pay such Obligations (such notice shall set forth the exact amount of such Obligations to the extent quantifiable at the time of the demand). Subject to the foregoing provisions and to the limitation on Guarantor's maximum aggregate liability hereunder as set forth in Section 1(a), above, repeated and successive demands may be made, and recoveries may be had, by Guaranteed Party hereunder as and when, from time to time, Debtor shall fail to pay when due any Obligations to be paid by it.

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

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

To Guaranteed Party:        Lee County, Florida  
                                     2115 Second St.  
                                     Fort Myers, FL 33901  
                                     Attn: Roger Desjarlais  
   Mary Tucker  
                                     Fax No: (239) 485-8383

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

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

### 3. TERMINATION/REINSTATEMENT

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

a) at any time any payment made with respect to any Obligation is rescinded or must otherwise be returned by the Guaranteed Party upon the insolvency, bankruptcy, reorganization or other similar condition of Debtor, all as though such payment had not been made; or

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

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



4. UNENFORCEABILITY OF OBLIGATIONS AGAINST DEBTOR

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

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

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

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

(iv) the insolvency, bankruptcy or reorganization of Debtor.

5. REPRESENTATIONS AND WARRANTIES OF GUARANTOR

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

6. GOVERNING LAW

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

7. SUBROGATION

Guarantor hereby agrees not to assert or enforce any right or contribution, reimbursement, indemnity, subrogation or any other right to payment from Debtor as a result of the Guarantor's performance of its obligations pursuant to this Guaranty until all Obligations are paid in full.

8. WAIVERS

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

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

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

9. MISCELLANEOUS

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

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

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

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

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty on this 3rd day of November, 2016.

**UNITED ENERGY CORPORATION**

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

Name: Loren R. Kopseng

Title: CEO





# CERTIFICATE OF LIABILITY INSURANCE

UNITENE-01

DGUSTIN

DATE (MM/DD/YYYY)

9/16/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Billings Office PayneWest Insurance, Inc. P.O. Box 30638 Billings, MT 59107-0638	<b>CONTACT NAME:</b>	
	<b>PHONE (A/C, No, Ext):</b> (406) 238-1900	<b>FAX (A/C, No):</b> (406) 245-9887
<b>INSURED</b>  United Energy Corporation, Rainbow Energy Marketing Corporation 919 South 7th St, Ste 405 Bismarck, ND 58504	<b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> Colony Insurance Company	
	<b>INSURER B:</b> Mid-Continent Casualty Company	
	<b>INSURER C:</b> First Mercury Insurance Co.	
	<b>INSURER D:</b> Travelers Property Casualty Co of America	
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR VWD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	X		103GL000796503	01/05/2016	01/05/2017	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input checked="" type="checkbox"/> BI/PD Ded: \$2,500						MED EXP (Any one person) \$ 5,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$ 1,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$ 2,000,000
	OTHER:						PRODUCTS - COMP/OP AGG \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY			04CA002812245	01/05/2016	01/05/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB			TXEX000003821803	01/05/2016	01/05/2017	EACH OCCURRENCE \$ 10,000,000
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$ 10,000,000
	DED <input type="checkbox"/> RETENTION \$						\$
D	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y / N	N / A	IJUB7D63039915	11/01/2015	11/01/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT \$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 500,000
							E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Additional Insured-Completed Operations per CG2037

**CERTIFICATE HOLDER****CANCELLATION**

Lee County Board of County Commissioners  
PO Box 398  
Fort Myers, FL 33902

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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**COMMERCIAL GENERAL LIABILITY  
CG 20 37 07 04**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

<b>Name Of Additional Insured Person(s) Or Organization(s):</b>	<b>Location And Description Of Completed Operations</b>
All persons or organizations as required by written contract with the Named Insured	As designated in written contract with the Named Insured
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/16/2016

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<b>PRODUCER</b> Wings Insurance 14871 Pioneer Trail Eden Prairie, MN 55347	<b>CONTACT NAME:</b>	
	<b>PHONE (A/C, No, Ext):</b> (952) 942-8800	<b>FAX (A/C, No):</b> (952) 942-8700
<b>INSURED</b> Rainbow Energy Marketing Corporation 919 S. 7th Street, Suite 405 Bismarck, ND 58504	<b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A :</b> QBE the Americas	
	<b>INSURER B :</b>	
	<b>INSURER C :</b>	
	<b>INSURER D :</b>	
	<b>INSURER E :</b>	
<b>INSURER F :</b>		
<b>NAIC #</b>		

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

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INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A	AWC9300009	02/03/2016	02/03/2017	PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER**Lee County Board of County Commissioners  
P.O. Box 398  
Fort Myers, FL 33902**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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## A.M. Best Rating Services

### Colony Insurance Company (2)

A.M. Best #: 003283    NAIC #: 39993    FEIN #: 541423096

**Mailing Address**

P.O. Box 469012

San Antonio, TX 78246

United States

[View Additional Address Information](#)

Web: [www.colonyspecialty.com](http://www.colonyspecialty.com)

Phone: 804-560-2000

Fax: 804-560-4820

**Financial Strength Rating**



Assigned to insurance companies that have, in our opinion, an excellent ability to meet their ongoing insurance obligations.

Based on A.M. Best's analysis, 058448 - Argo Group International Holdings, Ltd is the **AMB Ultimate Parent** and identifies the topmost entity of the corporate structure. View a list of operating insurance entities in this structure.

#### Best's Credit Ratings

##### Financial Strength Rating [View Definition](#)

Rating:	A (Excellent)
Affiliation Code:	g (Group)
Financial Size Category:	XII (\$1 Billion to \$1.25 Billion)
Outlook:	Stable
Action:	Affirmed
Effective Date:	October 22, 2015
Initial Rating Date:	June 28, 1993

##### Long-Term Issuer Credit Rating [View Definition](#)

Long-Term:	a
Outlook:	Stable
Action:	Affirmed
Effective Date:	October 22, 2015
Initial Rating Date:	June 29, 2005

u Denotes [Under Review Best's Rating](#)

##### Best's Credit Rating Analyst

Rating Issued by: A.M. Best Rating Services, Inc.  
Senior Financial Analyst: Susan Molineux  
Director: Jennifer Marshall, CPCU, ARM

##### Disclosure Information



View A.M. Best's [Rating Disclosure Form](#)



A.M. Best Affirms Ratings of Argo Group International Holdings, Ltd. and Subsidiaries; Assigns Ratings to ARIS Title Ins. Corp.  
October 22, 2015

#### Rating History

A.M. Best has provided ratings & analysis on this company since 1993.

##### Financial Strength

<b>Blue Sheet No. 20160598</b>	<b>Lee County Board Of County Commissioners Agenda Item Report Meeting Date: 11/1/2016</b>	<b>Item No. 23</b>
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**TITLE:**

Award Contract for Energy Asset Manager for sale of electrical output from the Resource Recovery Facility

**ACTION REQUESTED:**

A) Approve the recommendation of award by the Evaluation Committee for Invitation to Negotiate No. ITN160425/RDF, Energy Asset Manager, to Rainbow Energy Marketing Corporation.

B) Approve award of ITN160425/RDF, Energy Asset Manager, to Rainbow Energy Marketing Corporation to provide asset management services on behalf of Solid Waste for the County-owned Resource Recovery Facility to sell its electrical output to third parties at rates that are greater than "as-available" rates, for an initial term of one year.

C) Authorize the Chair to execute the contract documents on behalf of the Board of County Commissioners.

D) Grant the Director of Procurement Management the authority to renegotiate and execute renewals of this contract, with County Administration approval, for up to three additional one-year periods, under the same terms and conditions, if doing so is in the best interest of Lee County.

**FUNDING:**

N/A – compensation is derived from net revenues in excess of base case revenues.

N/A as services are only compensated when additional revenues are realized.

**WHAT ACTION ACCOMPLISHES:**

Approves the evaluation committee recommendation of award and authorizes the execution of a contract with Rainbow Energy Marketing Corporation for Invitation to Negotiate No. ITN160425/RDF Energy Asset Manager. Provides Solid Waste with a qualified firm to provide asset management services for the sale of its electrical output from the County-owned Resource Recovery Facility to third parties for an initial term of one year.

**MANAGEMENT RECOMMENDATION:**

Approve

<b>Requirement/Purpose: (specify)</b>		<b>Request Initiated</b>	
<input type="checkbox"/> Statute <input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Admin Code      AC-4-1 <input type="checkbox"/> Other		<b>Commissioner:</b> <b>Department:</b> SOLID WASTE <b>Division:</b> No Divisions <b>By:</b> Keith Howard	
<b>Background:</b>			

Required Review:					
Keith Howard	Lori Borman	Nicole Turner	Mike Figueroa	Peter Winton	Andrea R. Fraser
SOLID WASTE	Budget Analyst	Purchasing	Risk	Budget Services	County Attorney
Doug Meurer					
County Manager					

**CONTRACT REVIEW CHECKLIST****CONTRACT TYPE:** Other: please specify Non-Firm Power Purchase Agreement**SUBJECT:** Project known as: Energy Asset Manager

Between Lee County and Rainbow Energy Marketing Corporation

**Reference:** Department Director approval: N/A

County Administrator approval: N/A

**Reference:** Board action approving contract/agreement

Board Date: 11/1/2016 Agenda Item No.: 23

The subject contract is forwarded herewith for review and/or endorsements:

(1) **By the Director of:** Routed by Procurement

Project Sponsoring Department

Recommendation to execute

Not recommending execution for the following reason(s):

Date received:

Date returned/forwarded:

Signed:

(2) **By Procurement Management:**☒ Recommending execution

Not recommending execution for the following reason(s):

Date received:

Date returned/forwarded:

Signed:

(3) **By the Risk Management**☒ Recommending execution

Not recommending execution for the following reason(s):

Date received:

Date returned/forwarded:

Signed:

(4) **By the County Attorney:**☒ Recommending execution

Not recommending execution for the following reason(s):

Date received:

Date returned/forwarded:

Signed:

(5) **Board**(6) **Clerk's Office, Minutes Department**(7) **Procurement Management**