

**170306**

**1. MEMORANDUM OF UNDERSTANDING**

**Executed 4/24/17**

**MEMORANDUM OF UNDERSTANDING  
REGARDING GAINESVILLE RENEWABLE ENERGY CENTER FACILITY**

This **MEMORANDUM OF UNDERSTANDING REGARDING GAINESVILLE RENEWABLE ENERGY CENTER FACILITY** ("Memorandum") dated April 24, 2017 ("Execution Date") between the City of Gainesville, Florida, a municipal corporation, d/b/a Gainesville Regional Utilities ("GRU") and Gainesville Renewable Energy Center, LLC, a Delaware limited liability company ("GREC" and collectively with GRU, the "Parties" and each, a "Party") sets forth the principal elements of an offer from GRU for the proposed purchase by GRU and sale by GREC of that certain biomass electricity generating facility that is owned by GREC, located in the City of Gainesville, Florida, and known as the Gainesville Renewable Energy Center (the "Facility"). If executed by both parties, this Memorandum evidences the Parties' intent to cooperate in good faith to negotiate a definitive agreement (the "Purchase and Sale Agreement") providing for the purchase by GRU and sale by GREC of the Facility and all related assets, as identified in such agreement (the "Transaction"). If executed by both parties, this Memorandum constitutes a statement of mutual interest and does not result in any legally binding obligations, except for Sections 5, 6, 8 and 9 below, which shall be binding on the Parties. Subject to the foregoing, GRU offers to negotiate a mutually acceptable definitive agreement for the Transaction that includes the following terms:

1. Purchase and Sale. The Transaction will provide for the sale and conveyance to GRU (free and clear of all liens and encumbrances of any nature whatsoever) of the Facility and all assets, contracts, property, and rights that are part of the Facility or necessary for the ownership, operation or maintenance of the Facility (collectively, "Assets"), to be identified and agreed to by the Parties in the Purchase and Sale Agreement, subject to obtaining any required third party approvals and consents. That certain Power Purchase Agreement for the Supply of Dependable Capacity, Energy and Environmental Attributes from a Biomass-Fired Power Production Facility between GRU and GREC dated April 29, 2009, together with its related amendments (the "PFA"), shall be terminated at Closing of the Transaction ("Closing").

2. Price. The purchase price and terms of payment will be seven hundred fifty million dollars (\$750,000,000), assuming financing by GRU through thirty (30)-year utility system revenue bonds issued by the City of Gainesville, Florida ("Purchase Price"), which will be paid in cash at Closing. Should the 30-year U.S. Treasury increase by more than 50 basis points (measured as the difference between the rate on the Execution Date and the rate on the day that is five days before Closing), GRU may terminate the Transaction and cease negotiations thereof.

3. Negotiation. The Transaction will be subject to the negotiation and execution of a Purchase and Sale Agreement and associated legal documents. Negotiations will begin with a proposed asset purchase agreement supplied by GRU within 21 days following approval of this Memorandum by the Gainesville City Commission. The Parties will use commercially reasonable efforts to complete negotiations and agree upon a Purchase and Sale Agreement for execution not later than four (4) months after the Execution Date, and to achieve Closing not later than seven (7) months after the Execution Date.

4. **Diligence.** The Transaction will be subject to the satisfactory completion by GRU of customary due diligence. Effective as of the Execution Date and subject to the provisions of Section 6 below, the Parties will reasonably cooperate with each other in respect of the diligence process to facilitate timely access for GRU and its representatives to the Facility and other Assets, and to the books and records regarding the Facility and other Assets of GREC and the third party operator of the Facility. Without limiting the foregoing, GRU acknowledges and agrees that GREC has the right to attend any meetings that representatives of GRU may have with the Facility operator or other third parties.

5. **Exclusivity.** Until four (4) months after the Execution Date, or such later date as may be specified in a Purchase and Sale Agreement executed by the Parties (the "Expiration Date"). GREC will negotiate exclusively with GRU in connection with the sale of the Facility and the Assets, and neither GREC, its members, nor anyone authorized to act on its behalf will, directly or indirectly, (a) sell all, or any portion of, or interest in, GREC, the Facility or any Assets to any other party or parties, or (b) engage in discussions (whether solicited or unsolicited) or negotiate with, or solicit any expression of interest, inquiry, proposal or offer from, any person or entity (other than GRU) relating to the possible acquisition of or investment in any or all of GREC, the Facility or any Assets. Notwithstanding the foregoing, this Memorandum shall not create any additional restriction on upstream transfers that are not already covered by the PPA. Further, prior to the Expiration Date, GREC will promptly notify GRU of the receipt by GREC, its members or anyone authorized to act on its or their behalf of any expression of interest or offer to acquire or invest in all or any portion of GREC, the Facility or any Assets (or enter into any other transaction that is substantially similar to, or that would preclude, the Transaction), and the terms and conditions of any such offer or expression of interest.

6. **Public Records and Confidentiality.** This Memorandum is a public record that will be disclosed to the public and discussed during public meetings of the Gainesville City Commission ("Commission"). This Memorandum does not disclose any confidential verbal discussions under the Confidentiality and Nondisclosure Agreement executed by GRU as of November 16, 2016 and executed by GREC as of November 21, 2016 (the "NDA") and terminated by GRU effective March 14, 2017. The Parties also confirm that the Purchase and Sale Agreement for the Transaction will be subject to Commission approval, and will be a public record that will be disclosed to the public and discussed during public Commission meetings. Should either Party reasonably believe that specific written information provided in connection with this Memorandum or through due diligence, or included in the Purchase and Sale Agreement or otherwise provided in connection with the Transaction falls within a specific exemption under Florida's Public Record laws, the Party transmitting or providing such information shall submit such information to the receiving Party in a separate envelope that includes a general description of the information together with a reference to the specific Florida Statute or other law that deems such materials exempt from public disclosure. The receiving Party will not warrant or guarantee that information designated by the transmitting Party as exempt is in fact exempt under Florida's Public Records Laws, and the receiving Party will offer no opinion as to the accuracy of the legal reference provided by the transmitting Party. If the receiving Party receives a public records request for any information that the transmitting Party has designated as exempt, the receiving Party will notify the transmitting Party through email notice. The transmitting Party shall have no longer than five (5) business days after receipt of



such notice to file any necessary court documents to prevent the disclosure of the information, at the sole expense of the transmitting Party. If the transmitting Party timely files the necessary court documents, the receiving Party will not disclose the information until the conclusion of any proceedings. If the transmitting Party fails to comply with any of the requirements in this section or fails to file any necessary court documents to prevent the receiving Party from disclosing materials as described herein, such failure shall be deemed as a waiver by the transmitting Party to the claim that any materials submitted by the transmitting Party constitute exempt information. The transmitting Party agrees that its designation of information as exempt may be challenged in court by any person or entity. The transmitting Party agrees to indemnify and defend the receiving Party, its employees, agents and officials ("Indemnified Parties") against all claims and actions, whether or not a lawsuit is commenced, related to the transmitting Party's designation of materials as exempt and to hold harmless the Indemnified Parties for any award to a plaintiff for damages, costs and attorneys' fees by reason of any claim or action arising out of or related to the transmitting Party's designation of materials as exempt. The Parties agree that any information provided, including any materials designated as exempt, will be distributed to members of staff, management and the relevant board and Commission members for evaluation and consideration of the Transaction.

**7. Dispute.**

(a) The Parties are engaged in an arbitral proceeding conducted under American Arbitration Association ("AAA") procedures that is pending in AAA Case No. 01-16-0000-8157 (the "Dispute"). The Dispute involves claims and counterclaims asserted by the Parties in connection with the PPA. The Parties retain all rights arising under the PPA. This Memorandum operates to stay the Dispute until a Purchase and Sale Agreement is executed by the parties pursuant to Section 3 above and during the stay GRU shall not withhold additional invoiced amounts other than those described in section (b) below. The Parties shall file with the arbitrator any necessary documentation to effectuate this stay.

(b) After the Execution Date and during the stay of the Dispute, GRU shall not withhold amounts from GREC's monthly invoices other than amounts that may be withheld with respect to an invoice when payment is due for such invoice in accordance with the PPA where such withholding is based on either (i) one or more of GRU's claims or counterclaims that are the subject of the Dispute (consistent with GRU's prior practice), or (ii) any calculation error that may appear in such invoices. GRU shall not retroactively withhold any amounts that have previously been paid under any GREC invoice.

(c) The Parties agree that the Purchase and Sale Agreement shall include the following provisions: (i) a further stay of the Dispute until Closing or termination of efforts to reach a Transaction; (ii) at Closing, GRU shall receive a credit from GREC in the amount of \$7,428,899.98 (the "Retention Cap") in the form of GRU's retention of such amount of previously withheld funds under the PPA; (iii) GRU will not withhold additional amounts after the Execution Date other than amounts as set forth in section 7(b) above; (iv) GRU shall refund to GREC at Closing any amounts withheld after March 19, 2017 with interest as set forth in Section 8.6 of the PPA; (v) occurrence of the Closing and performance of all obligations and payment of the amounts to be paid and retained in accordance with the Purchase and Sale Agreement shall operate as a full settlement and mutual release of all claims and counterclaims

between the Parties in the Dispute; and (vi) at Closing, the Parties shall execute the appropriate documents to effectuate the agreed upon settlement and release.

(d) If the Parties are unable to execute a mutually agreeable Purchase and Sale Agreement to effectuate a Closing, or if the parties terminate efforts to reach a Transaction, the Parties shall retain all rights and claims under the PPA and file with the arbitrator any necessary documentation to lift the stay and proceed with the Dispute. GREC's agreement to provide a credit of the Retention Cap in the form of GRU's retention of such amount of previously withheld funds upon a successful Closing as noted above is without any concession or admission whatsoever of liability as to those amounts, which GREC maintains were improperly withheld under the PPA. GREC has agreed to GRU's retention of that amount solely in order to facilitate the Transaction contemplated by this Memorandum.

8. Reservation of Rights. The Parties' execution of this Memorandum and their negotiation of the Transaction and associated discussions and communications shall not affect, impair, or compromise the Parties' respective claims, counterclaims, rights and defenses in the Dispute, or their respective rights and obligations under the PPA. Each Party enters into this Memorandum and engages in negotiations and activities in connection with the Transaction independent of the Dispute and with all rights expressly reserved.

9. Miscellaneous. This Memorandum shall be governed by, and construed in accordance with, the law of the State of Florida. This Memorandum shall be executed first by an authorized management representative of GRU and by an authorized representative of GREC and, if so executed, the management representative of GRU shall present this Memorandum to the Commission for approval. The Sections of this Memorandum that are binding (as specified in the first paragraph of this Memorandum) shall be binding upon and shall inure to the benefit of and be enforceable by the Parties and their successors and assigns if and only if signed and delivered by all parties, including GRU, GREC, the City Commission and the City of Gainesville by April 25, 2017. This Memorandum may be executed by facsimile or by documents sent in PDF via email and in any number of counterparts, all of which together shall constitute a single instrument and shall be considered an original for all purposes. It shall not be necessary that any counterpart be signed by each Party so long as each Party shall sign at least one counterpart.

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

THE CITY OF GAINESVILLE, FLORIDA,  
D/B/A/ GAINESVILLE REGIONAL  
UTILITIES

Recommended for approval by GRU  
Management

By: [Signature]  
Name: Edwin B. Brinkman  
Title: GM of Utilities

GAINESVILLE RENEWABLE ENERGY  
CENTER, LLC

By: [Signature]  
Name: James S. Gordon  
Title: CEO

Approved by the City Commission

By: 

Name: Lauren Poe

Title: Mayor

For GRU: Approved as to form and legality:

By: 

Name: Nicole Shalley

Title: City Attorney