

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

This **MEMORANDUM OF UNDERSTANDING REGARDING GAINESVILLE RENEWABLE ENERGY CENTER FACILITY** ("Memorandum") dated as of March [___], 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 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 definitive 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, 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 with an interest rate not to exceed three and three-quarter percent (3.75%) ("Purchase Price"), which will be paid in cash at Closing. Should the interest rate assumed in the Purchase Price exceed the rate specified above, the Parties agree that the Purchase Price will be reduced proportionately.

3. Negotiation. The Transaction will be subject to the negotiation and execution of a definitive agreement and associated legal documents. Negotiations will begin with a proposed asset purchase agreement supplied by GRU. The Parties will use best efforts to complete negotiations and agree upon a definitive 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 of GREC and the third party operator of the Facility. Without limiting the foregoing, GRU acknowledges and agrees that GREC may require that representatives of GREC be present in any meetings that representatives of GRU may have with the Facility operator or other third parties.

5. Exclusivity. Until ten (10) months after the Execution Date, or such later date as may be specified in a definitive 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. 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”). The Parties each acknowledge and confirm their obligations under the NDA, and further expressly confirm that the Parties’ verbal negotiations and verbal discussions regarding the Transaction are subject to the NDA. The Parties also confirm that the definitive 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 definitive 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 two (2) 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, and for costs and attorneys' fees incurred by the receiving Party, 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. 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 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 (the "PPA"). If the Closing shall occur, the Parties intend that the Closing would settle and resolve all claims and counterclaims in the Dispute that are then pending and have not been finally adjudicated by the arbitrator without any payments owed from either Party to the other, except such payments as shall be made in respect of the Transaction at the Closing, and the Parties would execute the appropriate documents to effectuate the agreed upon settlement and release. This Memorandum does not operate to stay the Dispute and to that end shall have no effect on any claims and counterclaims that are finally adjudicated by the arbitrator between the Execution Date and Closing.

8. Reservation of Rights. The Parties' execution of this Memorandum and their negotiation of the Transaction and associated discussions and communications constitute negotiations and conduct concerning a compromise pursuant to Florida Statutes Section 90.408, and 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 with all rights expressly reserved. This paragraph shall not impair the effectiveness of a potential settlement as a result of the Closing as contemplated by Section 7 above.

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. This Memorandum shall not be effective until approved and

executed by the Commission. 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. 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

GAINESVILLE RENEWABLE ENERGY
CENTER, LLC

Recommended for approval by GRU
Management

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Approved by the City Commission

By: _____

Name: Lauren Poe

Title: Mayor

For GRU: Approved as to form and legality:

By: _____
Name: _____
Title: _____