

W&S Draft of 78/199/17**ESCROW AGREEMENT**

THIS ESCROW AGREEMENT, dated as of _____, 2017 (the "Escrow Agreement"), by and among CITY OF GAINESVILLE, FLORIDA, a municipal corporation d/b/a/ Gainesville Regional Utilities ("Buyer"), GAINESVILLE RENEWABLE ENERGY CENTER, LLC, a Delaware limited liability company ("Seller"), and WILMINGTON TRUST, NATIONAL ASSOCIATION ("Escrow Agent").

WHEREAS, Buyer and Seller have entered into an Asset Purchase Agreement, dated as of _____, 2017 (the "APA");

WHEREAS, pursuant to the APA, Eighteen Million, Seven Hundred Fifty Thousand and 00/00 (\$18,750,000.00) Dollars of the purchase price to be paid by Buyer to Seller is to be paid to the Escrow Agent pursuant to Section 3.2(d) of the APA (the "Escrow Amount") and is to be placed into escrow for the payment of any indemnified claims for which Seller may be liable pursuant to Article VII of the APA; and

WHEREAS, Buyer and Seller wish to engage Escrow Agent to act, and Escrow Agent is willing to act, as escrow agent hereunder in respect of the Escrow Amount and, in that capacity, to hold, administer and distribute the amounts to be deposited in escrow hereunder in accordance with, and subject to, the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises, and further consideration of the covenants set forth hereafter, it is hereby agreed mutually as follows:

1. DESIGNATION AS ESCROW AGENT.

Subject to the terms and conditions hereof, Buyer and Seller hereby appoint Wilmington Trust, National Association as Escrow Agent and Wilmington Trust, National Association hereby accepts such appointment.

2. DEPOSIT OF ESCROW FUNDS.

(a) Following execution of this Escrow Agreement, Buyer shall deposit the Escrow Amount into the following account (the "Escrow Account") established with Escrow Agent: A/C# _____. The deposit is referred to herein as the "Escrow Deposit", and the date of the Escrow Deposit is referred to herein as a "Deposit Date".

(b) Escrow Agent will hold the Escrow Deposit in the Escrow Account, together with all investments thereof and all interest accumulated thereon and proceeds therefrom, in escrow upon the terms and conditions set forth in this Escrow Agreement and shall not disburse funds from the Escrow Account except as provided herein.

(c) Escrow Agent shall invest the Escrow Account in Permitted Investments, including the Wilmington U.S. Government Money Market Fund, pursuant to written instructions delivered by Seller to the Escrow Agent. Seller and Buyer acknowledge that any such investment is not an obligation of Wilmington Trust, National Association or Wilmington Trust Corporation, is not a deposit and is not insured by the FDIC. To the extent Seller instructs

the Escrow Agent to invest in the Wilmington U.S. Government Money Market Fund, Escrow Agent or its affiliate may be compensated by the mutual fund for services rendered in its capacity as investment advisor, or other service provider, such as provider of shareholder servicing and distribution services, and such compensation is both described in detail in the prospectus for the fund, and is in addition to the compensation, if any, paid to Wilmington Trust, National Association in its capacity as Escrow Agent hereunder. For purposes of Section 2(c) of this Escrow Agreement, “Permitted Investments” shall mean (i) direct obligations of the United States, or of any agency of the United States, or obligations guaranteed as to principal and interest by the United States or any agency of the United States, (ii) demand deposits, certificates of deposit and bankers’ acceptances issued by any Acceptable Bank, (iii) commercial paper rated A-1 or P-1 by S&P or Moody’s, respectively, (iv) repurchase agreements fully secured by obligations described in clause (i) above with any Acceptable Bank and (v) shares in money-market mutual funds having assets of \$1,000,000,000 or more that invest solely in securities described in clauses (i) through (iv) above, and “Acceptable Bank” shall mean any bank or trust company which is organized under or is licensed as a branch or agency under the laws of the United States or any state thereof which has outstanding unguaranteed and unsecured long-term indebtedness which is rated “A” or better by S&P and “A2” or better by Moody’s (or an equivalent rating by another nationally recognized statistical rating organization of similar standing if neither such corporation is in the business of rating unsecured bank indebtedness).

3. DISBURSEMENT OF ESCROW ACCOUNT.

The procedure for payments from the Escrow Account shall be as follows:

(a) From time to time so long as any amounts shall remain on deposit in the Escrow Account, if Buyer determines in good faith that Buyer or any other of its Affiliates (as defined in the APA) is entitled to indemnification under Article VII of the APA, Buyer may request payment from the Escrow Account by giving written notice of the claim to Escrow Agent and to Seller, which notice shall state that the claim is being made pursuant to this Escrow Agreement, and shall describe in reasonable detail the nature of the claim, the amount thereof if then ascertainable and, if not then ascertainable, a good faith estimate of the estimated amount thereof (provided however, that the notice shall include a specific estimated dollar amount), the provision(s) in the APA on which the claim is based and the method by and date on which such notice was given to each recipient and certifying, in the case of the notice to Escrow Agent, that Buyer has used reasonable efforts to confirm the actual receipt by Seller of such notice. The Escrow ~~agent~~Agent shall forward such written notice to Seller within two (2) business days of receipt thereof in a manner specified in Section 5 hereof. The Escrow Agent shall be entitled to assume that Seller has received any such written notice of a claim from Escrow Agent on the same date such notice is forwarded to Seller by the Escrow Agent in accordance with this Section 3(a). Notwithstanding that the aggregate amount of the Escrow Deposit from time to time shall be available to satisfy claims under the APA, Buyer acknowledges and agrees that any claim made hereunder in respect of the APA shall be limited by the terms of the APA.

(b) If, within thirty (30) calendar days after the date on which Escrow Agent forwards to Seller the written notice of a claim received from Buyer in accordance with Section 3(a), Escrow Agent has not actually received written objection to such claim from Seller, the claim stated in such notice shall be conclusively deemed to be approved by Seller and Escrow Agent

shall promptly thereafter pay to Buyer from the Escrow Account an amount equal to the amount of such claim as stated in Buyer's notice to the extent of the funds in the Escrow Account. The Escrow Agent shall be entitled to conclusively rely upon the information contained in such written notice of a claim from Buyer.

(c) If, within thirty (30) calendar days after the date on which Escrow Agent forwards to Seller the written notice of a claim received from Buyer in accordance with Section 3(a), Escrow Agent shall have actually received from Seller a written objection to the claim by Buyer (a copy of which objection shall in each case be sent to Buyer by Seller in a manner specified in Section 5 hereof), then such claim as submitted by Buyer shall be deemed to be an "Open Claim" and Escrow Agent shall not disburse the amount of such claim, but shall reserve within the Escrow Account an amount equal to the amount of the Open Claim (which amount for each Open Claim is referred to herein as the "Claim Reserve").

(d) The amount constituting the Claim Reserve for each Open Claim shall be paid by Escrow Agent from the Escrow Account to Buyer ~~or Seller, as applicable~~, only in accordance with (i) a joint written instruction by Buyer and Seller or (ii) a final judgment or order of a court of competent jurisdiction delivered by Buyer or Seller, as applicable, following resolution of the Open Claim in accordance with Section 3(e) below. If such Open Claim is not resolved prior to the time that funds on deposit in the Escrow Account would otherwise be distributed to Seller as provided in Section 3(f) hereof, the remaining portion of such Claim Reserve shall not be distributed to Seller pursuant to Section 3(f) but rather shall continue to constitute a part of the Escrow Account. The Escrow Agent shall be entitled to conclusively and exclusively rely upon any such joint written instruction or final judgment or order without further investigation.

(e) If Seller shall deliver a written objection to a claim by Buyer within the 30-day period referred to in Section 3(d) above, Seller and Buyer shall negotiate in good faith for a period of thirty (30) calendar days following delivery of such written objection by Seller to determine the appropriate amount, if any, of such Open Claim. If Seller and Buyer shall so determine the appropriate amount of Buyer's claim, within two business days following such determination, Seller and Buyer shall give Escrow Agent a joint written instruction as contemplated by Section 3(d). If Seller and Buyer have not made such determination during such 30-day period, then, to the extent such Open Claim remains in dispute, such Open Claim shall be resolved by such legal proceedings as shall be available to the parties. Upon receipt of a copy of a final and binding order or judgment with respect to the determination of such Open Claim, Escrow Agent will deliver the portion of the Escrow Deposit specified in such award to Buyer ~~or Seller, as applicable~~, to the extent directed in such order or judgment as contemplated by Section 3(d).

(f) Unless either (i) Buyer has made a request for payment in accordance with Section 3(b) with respect to which a written objection has not been received from Seller or (ii) an Open Claim shall be pending and unresolved as provided above in this Section 3, Escrow Agent shall distribute to Seller the entire amount constituting the Escrow Deposit on the first anniversary of the date hereof (or if such day shall not be a business day, on the next succeeding business day); provided, however, that, to the extent the amount of the remaining portion of the Escrow Deposit exceeds the aggregate amount of Claim Reserves in respect of pending and unresolved Open Claims on the first anniversary of the date hereof (or if such day shall not be a business day, on

the next succeeding business day), Escrow Agent shall distribute to Seller such excess amount. From and after the first anniversary of the date hereof, upon receipt of a copy of a final and binding order or judgment with respect to the determination of any unresolved Open Claim, Escrow Agent will deliver the portion of the Escrow Deposit specified in such award to Buyer or Seller, as applicable, to the extent directed in such order or judgment or pursuant to a joint written instruction by Buyer and Seller.

Notwithstanding anything contained herein to the contrary, in the event funds transfer instructions are given, whether in writing, by facsimile or otherwise, Escrow Agent is authorized (but not required) to seek confirmation of such instructions by telephone call-back, and Escrow Agent may rely upon the confirmations of anyone purporting to be the person or persons designated in the instructions. The persons and telephone numbers for call-backs may be changed only in a writing actually received and acknowledged by Escrow Agent. The parties to this Escrow Agreement acknowledge that such security procedure is commercially reasonable. Escrow Agent shall disburse funds from the Escrow Account pursuant to this Section 3 by wire transfer of immediately available funds. It is understood, however, that Escrow Agent may disburse any funds in the Escrow Account without any separate instructions, if such disbursements are in accordance with the terms of this Escrow Agreement.

4. AUTHORITY OF ESCROW AGENT AND LIMITATION OF LIABILITY.

(a) In acting hereunder, Escrow Agent shall have only such duties as are specified herein and no implied duties shall be read into this Agreement, and Escrow Agent shall not be liable for any act done, or omitted to be done, by it in the absence of its gross negligence or willful misconduct. Buyer and Seller hereby acknowledge and agree that Escrow Agent is not a party to, nor has Escrow Agent been provided with copies of the APA or any other documents or agreements referred to herein or therein and Escrow Agent shall have no duty to obtain, review or refer to the APA or any other documents or agreements in connection with Escrow Agent's administration of the Escrow Account or this Escrow Agreement.

(b) Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized to do so.

(c) Escrow Agent shall be entitled to consult with legal counsel in the event that a question or dispute arises with regard to the construction of any of the provisions hereof, and shall incur no liability and shall be fully protected in acting in accordance with the advice or opinion of such counsel.

(d) Escrow Agent shall not be required to use its own funds in the performance of any of its obligations or duties or the exercise of any of its rights or powers, and shall not be required to take any action which, in Escrow Agent's sole and absolute judgment, could involve it in expense or liability unless furnished with security and indemnity which it deems, in its sole and absolute discretion, to be satisfactory.

(e) Buyer and Seller shall pay to Escrow Agent compensation for its services hereunder as set forth in the fee schedule attached hereto as Exhibit A. Escrow Agent shall have a first lien against the Escrow Account to secure the obligations of Buyer and Seller hereunder. The terms of this paragraph shall survive termination of this Agreement. Each of Buyer and Seller shall pay 50% of all compensation due and payable to the Escrow Agent pursuant to this Escrow Agreement.

(f) Buyer and Seller hereby agree, jointly and severally, to indemnify Escrow Agent, its directors, officers, employees and agents (collectively, the “Indemnified Parties”), and hold the Indemnified Parties harmless from any and against all liabilities, losses, actions, suits or proceedings at law or in equity, and any other expenses, fees or charges of any character or nature, including, without limitation, attorney’s fees and expenses, which an Indemnified Party may incur or with which it may be threatened by reason of acting as or on behalf of Escrow Agent under this Agreement or arising out of the existence of the Escrow Account, except to the extent the same shall be caused by Escrow Agent’s gross negligence or willful misconduct. Escrow Agent shall have a first lien against the Escrow Account to secure the obligations of the parties hereunder. The terms of this paragraph shall survive termination of this Agreement.

(g) In the event Escrow Agent receives conflicting instructions hereunder, Escrow Agent shall be fully protected in refraining from acting until such conflict is resolved to the satisfaction of Escrow Agent.

(h) Escrow Agent may resign as Escrow Agent, and, upon its resignation, shall thereupon be discharged from any and all further duties and obligations under this Agreement by giving notice in writing of such resignation to Buyer and Seller, which notice shall specify a date upon which such resignation shall take effect. Upon the resignation of Escrow Agent, Buyer and Seller shall, within sixty (60) calendar days after receiving the foregoing notice from Escrow Agent, designate a substitute escrow agent (the “Substitute Escrow Agent”), which Substitute Escrow Agent shall, upon its designation and notice of such designation to Escrow Agent, succeed to all of the rights, duties and obligations of Escrow Agent hereunder. In the event Buyer and Seller shall not have delivered to Escrow Agent a written designation of Substitute Escrow Agent within the aforementioned 60-day period, together with the consent to such designation by the Substitute Escrow Agent, the Escrow Agent may apply to a court of competent jurisdiction to appoint a Substitute Escrow Agent, and the costs of obtaining such appointment shall be reimbursable from Buyer and Seller and from the Escrow Funds.

5. NOTICES.

Except as otherwise provided herein, any notice, instruction or instrument to be delivered hereunder shall be in writing and shall be effective upon receipt at the addresses set forth on the signature page hereof or at such other address specified in writing by the addressee, or if to the Escrow Agent, upon receipt via facsimile transmission or electronic mail, at the number or address set forth on the signature page hereof, or at such other number or address specified by Escrow Agent.

6. AMENDMENT.

This Escrow Agreement may not be amended, modified, supplemented or otherwise altered except by an instrument in writing signed by the parties hereto.

7. TERMINATION.

This Agreement will terminate upon the disbursement of all funds in the Escrow Account, as provided above, by the Escrow Agent.

8. TAX REPORTING.

The parties hereto, other than the Escrow Agent, agree that, for tax reporting purposes, all interest and other income earned from the investment of amounts in the Escrow Account (“Taxable Income”) in any tax year shall be allocated to Seller (“Taxpayer”) and that Taxpayer shall be treated as the owner of the amounts in the Escrow Account for federal income tax purposes. Upon execution of this Escrow Agreement, Taxpayer shall provide Escrow Agent with its certified tax identification number (“TIN”) on an executed Internal Revenue Service Form (“IRS”) W-9 or other applicable IRS Form. Taxpayer agrees to report all Taxable Income allocable to it on its federal and other applicable tax returns. Taxpayer acknowledges and agrees that, in the event its TIN is not certified to the Escrow Agent, and/or it does not make all certifications set forth in IRS Form W-9 or other applicable IRS Form, applicable tax laws may require withholding of a portion of any income earned with respect to amounts in the Escrow Account that are allocable to it.

9. ANTI-TERRORISM/ANTI-MONEY LAUNDERING LAWS.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT - To help the United States government fight the funding of terrorism or money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens a new account. What this means for the parties to this Agreement is that the Escrow Agent will ask for such information as it may determine to be appropriate in accordance with its customary practices.

10. GOVERNING LAW; JURISDICTION.

(a) This is a Delaware contract and shall be governed by Delaware law in all respects.

(b) Each of the parties hereto (a) hereby irrevocably submits to the nonexclusive jurisdiction of any state or federal court of competent jurisdiction located in the State of Delaware and County of Newcastle for the purposes of any suit, action or other proceeding arising out of this Agreement or any of the transactions contemplated hereby brought by any of the parties hereto or their successors or assigns; (b) hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such Delaware State court, or in such federal court; and (c) to the extent permitted by applicable law, hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that such party is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that

the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

(c) TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO EACH HEREBY IRREVOCABLY WAIVE THE RIGHT TO DEMAND A TRIAL BY JURY, IN ANY SUCH SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS AGREEMENT, OR THE SUBJECT MATTER HEREOF OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BROUGHT BY ANY OF THE PARTIES HERETO OR THEIR SUCCESSORS OR ASSIGNS

11. COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute and be one and the same instrument. This Escrow Agreement (or signature page thereto) may be executed and delivered by facsimile, or by e-mail of a portable document format (.pdf) file and delivery by such method will be deemed to have the same effect as if the original signature had been delivered to the other parties.

12. SUCCESSOR ESCROW AGENT.

Any business entity into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of the Escrow Agent, shall be the successor of the Escrow Agent hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

[Signature Page Follows]

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

CITY OF GAINESVILLE, FLORIDA,
D/B/A/GAINESVILLE REGIONAL
UTILITIES ,
as Buyer

WILMINGTON TRUST, NATIONAL
ASSOCIATION,
Escrow Agent

By:
Name:
Title:

Address:

Fax No.:
Tel. No.:
Attention:
Email:

By: _____
Name: Steve Barone
Title: Assistant Vice President

Address:
1100 North Market Street
Wilmington, Delaware 19890
Attn: Steve Barone
Fax No.: (302) 636-4149
Tel. No.: (302) 636-6973
Email: SBarone@WilmingtonTrust.com

GAINESVILLE RENEWABLE ENERGY CENTER,
LLC,
as Seller

By: _____
Name:
Title:

Address:

Fax No.:
Tel. No.:
Attention:
Email:

For Buyer: Approved as to form and legality

By: _____
Name:
Title:

Exhibit A

Escrow Agent Fee Schedule

Document comparison by Workshare Compare on Wednesday, August 09, 2017
11:12:48 PM

Input:	
Document 1 ID	interwovenSite://AMERICASDMS/AmericasActive/9319555/2
Description	#9319555v2<AmericasActive> - GRU/GREC Escrow Agmt
Document 2 ID	interwovenSite://AMERICASDMS/AmericasActive/9319555/3
Description	#9319555v3<AmericasActive> - GRU/GREC Escrow Agmt
Rendering set	Standard

Legend:	
	<u>Insertion</u>
	Deletion
	Moved from
	<u>Moved to</u>
	Style change
	Format change
	Moved deletion
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	8
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	21