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Title: Asset Purchase Agreement between Gainesville Renewable Energy Center, LLC and the City of Gainesville d/b/a Gainesville Regional Utilities (B)

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Attachments: 1. 170306 Timeline for Proposed Purchase 20170816, 2. 170306_1 Memorandum of Understanding_20170816.pdf, 3. 170306_2 Prior Drafts of Asset Purchase Agreement_20170816.pdf, 4. 170306_3 Prior Drafts of Exhibits_20170816.pdf, 5. 170306_4 Prior Drafts of Schedules to Asset Purchase Agreement_20170816.pdf, 6. 170306 GREC APA-Signed by GREC-GRU 20170816, 7. 170306 APA Presentation Gen Mgr 20170816, 8. 170306_EMail - Grant Recapture_20170824.pdf, 9. 170316 Statement of Darin Cook 20170824, 10. 170306 GREC Buyout Financing Scenarios Update 20170824

Date	Ver.	Action By	Action	Result
8/24/2017	3	City Commission	Approved as Recommended	Pass
8/16/2017	1	City Commission	Approved as Recommended	Pass

Asset Purchase Agreement between Gainesville Renewable Energy Center, LLC and the City of Gainesville d/b/a Gainesville Regional Utilities (B)

Initial review and discussions: In June 2015, under the direction of a new General Manager for Utilities, Utilities staff undertook an exhaustive review of the Power Purchase Agreement (PPA) between Gainesville Renewable Energy Center, LLC (GREC) and the City. In the course of this review, staff analyzed the financial and operational impact of the PPA. The core of the PPA's financial impact is the City's obligation to pay GREC \$212,000 a day for what is termed "Available Energy." This cost represents GREC's cost of ownership and fixed cost of operations. Put simply, the cost of ownership is GREC's debt payment and the return to its investors. The fixed costs of GREC's operations are effectively GREC's costs of being available to generate (staff, rolling stock and other monthly bills, excluding fuel and consumables). Utilities staff determined that a buyout of the PPA could generate savings in the hundreds of millions of dollars if the City could negotiate a reasonable buyout price.

In late October 2016, the General Manager desired to begin discussions with GREC's Manager regarding a potential purchase of the biomass facility. GREC Management required a Non-Disclosure Agreement ("NDA") in order for those discussions to begin. At varying points in November and December 2016, Utilities Management and a Utilities consultant signed the NDA. In short, the NDA required each party to "keep confidential all aspects of its oral communications with the other Party."

In January 2017, Utilities Management requested the City Attorney's Office assist with an offer to purchase document. In order to enable Utilities Management to freely discuss the matter and receive legal counsel without causing Utilities Management to violate the terms of the NDA, two attorneys with the City Attorney's

Office signed the NDA. As the discussions proceeded, Utilities Management continued to consult with the City Attorney's Office; however, the City Attorney's Office did not participate in the discussions between GREC's Manager and the General Manager.

By early March, neither party had provided verbal Information during the discussions that would warrant confidentiality. That led the General Manager and the City Attorney to question the purpose or necessity of remaining a party to the NDA and both agreed that the NDA created unnecessary obligations of confidentiality and had not, at that point, served to produce a mutually agreeable purchase document. As such, the City provided GREC with a Notice of Termination (of the NDA) on March 9, 2017.

The Memorandum of Understanding: Based on the key terms discussed by the General Manager and the GREC Manager, legal counsel for the City drafted a non-binding Memorandum of Understanding (MOU) that would serve as a basic framework for an asset purchase agreement to be negotiated thereafter. Utilities staff gave presentations regarding the draft MOU to the Utility Advisory Board (UAB) on March 1, the City Commission on March 2, and the Chamber of Commerce on March 13, further updates to the UAB on March 15, and the City Commission on March 16.

After several written drafts of the MOU were exchanged between the parties, by March 22 the GREC Manager and General Manager reached agreement on the key terms and executed the MOU. The GREC Manager represented that he was authorized by the GREC Board to execute the MOU on behalf of GREC. However, the MOU clearly stated that the General Manager for Utilities must present the MOU to the City Commission for approval before it would become effective.

Utilities staff made further presentations concerning the MOU at a joint meeting of the UAB and City Commission on March 23, held a public question and answer forum on April 3, and presented the MOU to the UAB for its recommendation on April 5. On April 5, the UAB voted to recommend that the City Commission approve the MOU with the following changes: reduce the purchase price to \$675 million; have the City create the initial draft of the contract; include that any contract negotiated would be subject to a recommendation from the UAB and require that any reduction in future costs be used by the City chiefly for rate relief. On April 6, Utilities staff presented the MOU to the City Commission and the Commission approved the recommendation of the UAB and directed the General Manager to submit the new offer to GREC. The General Manager did so and on April 7, the GREC Manager replied that the GREC Board rejected the City's offer and would transact only on the original terms.

On April 19, 2017, the UAB and City Commission held a joint meeting to discuss the issue. At the end of the discussion, the UAB voted to again recommend that the City Commission direct staff to offer GREC: a \$675 million purchase price, City create the first draft of the contract, and any savings realized from purchase of the plant be used solely for rate relief. The City Commission then voted to: approve the original MOU with a purchase price of \$750 million; have the City provide first draft of the contract; and express its intent to put savings towards lowering utility rates.

Thereafter the MOU was executed by the Mayor and became effective on April 24, 2017. In the MOU, the parties agreed to use commercially reasonable efforts to complete negotiations on a purchase and sale agreement by August 24, 2017, close on the purchase/sale by November 24, 2017 and to stay the pending arbitration between the parties until such time as the parties execute a Purchase and Sale Agreement. If the parties terminate negotiations, the arbitration will resume.

The Asset Purchase Agreement: The General Manager for Utilities, within his authority as such, continued to negotiate with the GREC Manager consistent with the terms of the MOU. The General Manager sought input

in his negotiations, as he deemed necessary, from financial, technical and legal advisors (both in-house and external.) On May 10, 2017, outside counsel with the law firm of Winston & Strawn, LLP (whose retention to represent the City in this matter was approved by the City Commission on April 9, 2017) transmitted the first draft of an Asset Purchase Agreement (APA) to GREC. The General Manager for Utilities and GREC Manager continued to negotiate further and the parties exchanged APA drafts dated June 14, 2017; July 11, 2017; and July 19, 2017. A copy of each draft is included in the back-up to this agenda item. In addition, the parties prepared, reviewed and exchanged drafts of the Exhibits and Schedules that are attachments to the Asset Purchase Agreement. These drafts are also included in the back-up to this agenda item.

The APA, Exhibits and Schedules are now in a final draft form that the General Manager recommends for approval to the UAB and City Commission. A copy of the complete final draft is included in the back-up to this agenda item. In addition, a transaction timeline is included in the back-up to this agenda item. This timeline is a working tool that provides a chronology of key action items that have occurred or must occur to close this transaction. The timeline will be continuously updated if this transaction moves forward.

The City Commission and Utility Advisory Board held a joint meeting on August 16, 2017, at which both boards heard presentations regarding the business case for the purchase of the biomass facility and the terms of the APA, received citizen input, asked many questions and decided to hold subsequent separate meetings for each board to deliberate further regarding the potential purchase. The UAB held its subsequent meeting on August 22 and voted to recommend the City Commission move forward with the APA as currently written.

As the staff recommendation below reflects, in the event the City Commission approves the APA and authorizes the Mayor to execute same, the Mayor is not authorized to do so until after staff returns to the UAB and City Commission with a report on the due diligence inquiries. If the City Commission votes to accept the due diligence results as satisfactory, the Mayor will sign the APA and it will become binding and effective on the City. If the Commission finds the due diligence results are not satisfactory, the parties can either negotiate further or terminate efforts and the APA will not become effective.

Due Diligence: Utilities staff engaged the firm of Burns and McDonnell to provide an Independent Engineer's Report that identifies, evaluates and quantifies risk areas associated with the acquisition of the biomass facility. Staff will review Phase I of the Independent Engineer's Report and will engage in additional due diligence activities, including reviewing permits, contracts the City may wish to assume, survey and title encumbrances and litigation matters. As described previously, the results of these due diligence activities will be presented to the UAB and City Commission for their review and a decision on whether to proceed with this transaction.

Phase II of the Independent Engineer's Report which will evaluate staffing, operations and alternative operating scenarios for the facility is not currently scheduled as part of the due diligence review timeframe, meaning it will take occur after the effective date of the APA.

Financing: The purchase price (\$750 million) and associated transaction costs (currently estimated at \$6.6 million) will be paid from the proceeds of Utilities System Revenue Bonds (fixed and variable rate) and potentially other financing tools being analyzed for further savings. Utilities staff and outside counsel and financial consultants have been actively engaged in the financing process (e.g., engagement of a financial advisor, presentations to rating agencies, preparation of a Preliminary Official Statement and drafting of bond resolutions). Staff anticipates providing an update on the financing efforts and presenting various resolutions and financing documents to the UAB and City Commission in September, as reflected on the timeline. Closing under the APA is contingent on the closing and funding of the City's financing.

Fiscal Note: As previously presented by staff in connection with the original MOU, at a purchase price of seven

hundred fifty million dollars (\$750,000,000) the estimated reduction in future costs (over the life of the financings) of continuing under the current PPA range from \$524 - \$808 million, as follows: Keep in Standby, \$524 million, Buy and Dismantle, \$698 million
Convert and Run, \$808 million

Utility Advisory Board to the City Commission: Move forward with the Asset Purchase Agreement as currently written.

General Manager to the City Commission: Approve the Asset Purchase Agreement and authorize the Mayor to execute same only after staff reports the results of the due diligence inquiries to the UAB and the City Commission and the City Commission votes to accept the due diligence results as satisfactory.