



Legislation Details (With Text)

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Attachments: 1. 170355A - Due Diligence Re Title to Real Property 20170905, 2. 170355B - Due Diligence Re Litigation etc 20170905, 3. 170355 Material Contracts Memo Ver 2 - 20170905, 4. 170355 Permits Memo 20170905, 5. 130355 Due Diligence Pres UAB 20170905, 6. GREC AIG Report Submitted by A.Orlando 9-5-17, 7. GREC Due Diligence Docs Submitted by A.Orlando 9-5-17, 8. Questions for City Atty Submitted by A.Orlando 9-5-17

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| 9/5/2017 | 1 | Utility Advisory Board | | |

Due Diligence for Purchase of Biomass Facility (B)

On April 19, 2017, the City Commission approved a Memorandum of Understanding with Gainesville Renewable Energy Center, LLC (GREC LLC) in which the parties agreed on a purchase price of \$750 million for the City to purchase the GREC biomass facility assets. In the MOU, the parties further 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. The MOU was executed by both parties and became effective on April 24, 2017.

Between April and August 2017, the GREC Manager and General Manager for Utilities negotiated the terms of a draft Asset Purchase Agreement. On August 22, the Utility Advisory Board (UAB) voted to recommend the City Commission approve the APA. On August 24, the City Commission approved the APA and authorized the Mayor to execute same only after staff reports the results of due diligence inquiries to the UAB and the City Commission and the City Commission votes to accept the due diligence results as satisfactory. The APA provides that the City has until Thursday, September 14 to sign the APA.

If the City Commission votes to accept the due diligence results as satisfactory and the Mayor signs the APA on or before September 14, the APA will become binding and effective. If the Commission finds the due diligence results are not satisfactory, the parties can either negotiate further or terminate discussions, the Mayor will not sign the APA and it will not become effective.

City Staff (with assistance of outside consultants and legal counsel, as needed) engaged in five categories of due diligence review, summarized as follows:

1. Permits/consents/approvals: Existing permits, consents and approvals for the biomass facility (as identified in Schedules 4.1(d)-1, 4.1(d)-2 and 4.2(f) of the APA) were reviewed. A memorandum in the back-up to this

item addresses transferability and when and who must file the application.

2. Material Contracts: Utilities staff determined which Material Contracts (as identified in Schedule 4.2(b) of the APA) the Utility would consider assuming and reviewed those contracts. A memorandum in the back-up to this item identifies which contracts are necessary for the operation/maintenance of the biomass facility and, of those, which will be assumed by the City and which require a new contract to be negotiated by the City. New or Assumed contracts will not be effective until closing. To enable a transition of ownership and provide operational continuity at closing, the recommendation below requests the Commission find that a non-competitive situation exists and provide advance approval for the General Manager for Utilities to negotiate and execute all such contracts at closing, provided such contracts do not exceed a term of one year from closing.

3. Litigation, UCC filings and Corporate Status: The City Attorney's Office conducted a search for pending litigation, Uniform Commercial Code filings and corporate status for GREC, LLC. A memorandum in the back-up to this item reports the results of those searches.

4. Title to Leased Property: GREC provided an Ownership and Encumbrance Report issued by First American Title Insurance Company covering the period from September 28, 2009 to July 12, 2017 at 8am. Utilities staff updated that Report by obtaining a Property Information Report issued by Fidelity National Title Insurance Company through August 21, 2017 at 5pm. A memorandum in the back-up to this item reports the results of those searches.

5. Survey of Leased Property: GREC provided a Survey prepared by Eng, Denman & Associates, Inc., dated December 26, 2013. Utilities staff ordered an updated survey from Eng, Denman & Associates, Inc., that is due to be completed on September 6, 2017.

6. Condition of Purchased Assets and Operational Issues: Utilities staff obtained an Independent Engineer's Report dated August 11, 2017 prepared by Burns & McDonnell Engineering Company, Inc., that evaluates the plant, operations and maintenance practices, key contracts and agreements and environmental matters, a copy of the Report is in the back-up to this item. A Phase II of the Independent Engineer's Report (reviewing staffing and operations including the costing of further operating scenarios) will be issued by Burns & McDonnell in late September.

As previously presented by Utilities staff, 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. Closing costs approximately one percent.

General Manager for Utilities to the Utility Advisory Board: Review the results of the due diligence activities and accept the results as satisfactory.

General Manager for Utilities to the City Commission:

1) Review the results of the due diligence activities and accept the results as satisfactory, thereby directing the Mayor to execute the Asset Purchase Agreement, as approved on August 24, on or before September 14, 2017;

2) authorize the General Manager for Utilities or his designee(s) to apply for and execute any documents necessary to obtain permits, consents and approvals for the operation and maintenance of the biomass facility; and

3) Find that a non-competitive situation exists and provide advance approval for the General Manager for Utilities to negotiate and execute assumptions of existing contracts or new contracts necessary to operate and maintain the biomass facility, provided such contracts do not exceed a term of 1 year from closing and further provided that such contracts are subject to approval as to form and legality by the City Attorney or her designee(s).