

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality and Nondisclosure Agreement (“Agreement”) is made and entered into January _____, 2016, by and between the **City of Gainesville, Florida**, a municipal corporation organized and existing under the laws of the State of Florida, **d/b/a Gainesville Regional Utilities**, (hereinafter referred to as “**GRU**” or “**Disclosing Party**”), and the **City of Alachua**, a public body corporate of the State of Florida, (hereinafter referred to as “**ALACHUA**” or “**Receiving Party**”), and may each be referred to as “**Party**” or the “**Parties**”.

WHEREAS, GRU owns and operates electric utility and related generation, transmission and distribution assets and properties;

WHEREAS, ALACHUA is seeking wholesale electric service to serve its electric load obligations;

WHEREAS, GRU wishes to supply ALACHUA with its wholesale electric service to enable ALACHUA to meet its electric load obligations;

WHEREAS, pursuant to Section 812.081(1) (c), Florida Statutes, a “trade secret” is defined as the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it;

WHEREAS, GRU’s Confidential trade secret Information (as defined more specifically below) possesses independent economic value; the value of the information is derived from the fact that the information is not generally known by GRU’s competitors who might profit or gain competitive advantage from its use or disclosure; the information is not readily accessible to GRU’s competitors who could profit by its disclosure; and GRU has made considerable efforts to maintain the secrecy of the Confidential Information; and

WHEREAS, GRU holds exclusive ownership over the Confidential Information and believes its proposal to ALACHUA for wholesale electric service constitutes Confidential proprietary trade secret information which satisfies the statutory definition of a trade secret.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Definitions

The following terms of this Agreement shall have the below-identified meanings:

- (a) Confidential trade secret information (hereinafter “Confidential Information”) consists of GRU’s proprietary trade secret information constituting current, future or proposed wholesale electric service products, that are valuable and not generally known by GRU’s competitors, whether written, oral or in any electronic, visual or other medium, clearly

designated as "Trade Secret/Confidential Information" upon transmittal. Confidential Information includes but is not limited to the following:

- (i) information including, but not limited to, cost and pricing information, formulas, designs, devices, drawings, specifications, notebook entries, technical notes and graphs, computer printouts, technical memoranda and correspondence, product development agreements and related agreements, operating plans, financial data, business plans, strategic information, financial models, business development plans, including without limitation, all complete and partial originals, reproductions, copies (handwritten or otherwise); and
- (ii) information of the type described above which Disclosing Party obtained from another party and which Disclosing Party treats as confidential, whether or not owned or developed by Disclosing Party.

(b) Receiving Party means the Party to this Agreement that receives the Confidential Information.

(c) Disclosing Party means the Party to this Agreement that discloses the Confidential Information.

2. Obligations and acknowledgements of Receiving Party

Receiving Party acknowledges the business value to Disclosing Party of all Confidential Information. Therefore, Receiving Party shall: restrict access to the Confidential Information; use the Confidential Information solely for the purposes of evaluating and considering the possible transaction; restrict disclosure of the Confidential Information so as to not disclose it to any other person or entity without the prior written consent of Disclosing Party; and treat Confidential Information with the same degree of care and safeguards that it takes or would take with its own Confidential Information. Receiving Party shall advise each officer, employee or consultant to whom it provides access to any Confidential Information that he/she is prohibited from using it or disclosing it to others without Disclosing Party's prior written consent.

3. Exclusions

This Agreement does not apply to any information that: was in Receiving Party's possession or was known to Receiving Party, without an obligation to keep it confidential, before such information was disclosed to Receiving Party by Disclosing Party; is public knowledge or becomes public knowledge through a source other than Receiving Party and through no fault of Receiving Party; is or becomes lawfully available to Receiving Party from a source other than Disclosing Party; is disclosed by Receiving Party with Disclosing Party's prior written approval; is independently developed by the Receiving Party without the use of Confidential Information of Disclosing Party; is approved for release by written authorization of Disclosing Party; or is required by law or regulation to be disclosed, but only to the extent and for the purposes of such required disclosure; is disclosed in response to a valid order of a court or other governmental body, but only to the extent of and for the purposes of such order; provided, however, that

Receiving Party shall first notify Disclosing Party of the order and permit Disclosing Party to seek a protective order or other appropriate relief.

4. Term

This Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until Confidential Information is no longer a trade secret; it is incorporated into an agreement with the Receiving Party, or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.

5. Remedies

Receiving Party acknowledges that compliance with this Agreement is necessary to protect GRU's business, good will, and Confidential Information, and that a breach or threatened breach of this Agreement may cause irreparable harm and continual damage for which money damages may not be an adequate or sufficient remedy. If Receiving Party breaches or threatens to breach this Agreement, Disclosing Party may be entitled to temporary, preliminary, or permanent injunctive relief, or other equitable relief, in order to prevent such damage.

6. General Provisions

(a) Severability: If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted to best reflect the intent of the Parties.

(b) Governing law: This Agreement shall be governed in accordance with the laws of the State of Florida.

(c) Jurisdiction: The Parties consent to the exclusive jurisdiction and venue of the federal and state courts located Gainesville, Alachua County, Florida, in any action arising out of or relating to this Agreement. The Parties waive any other venue to which either party might be entitled by domicile or otherwise.

(Signature page follows)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first above written.

ALACHUA
Receiving Party

Traci L. Gresham
City Manager

Date

GRU
Disclosing Party

Edward J. Bielarski, Jr.
General Manager

Date

Approved as to form and legality:

Shayla L. McNeill
Utilities Attorney

Date