

**AMENDED AND RESTATED AGREEMENT BETWEEN THE
CITY OF GAINESVILLE, d/b/a GAINESVILLE
REGIONAL UTILITIES, AND THE
CITY OF ALACHUA FOR THE PURCHASE AND
SALE OF WHOLESALE ELECTRIC SERVICE**

THIS AMENDED AND RESTATED AGREEMENT (this “Agreement”), made and entered into to be effective this 1st day of April, 2016, (hereinafter the “Effective Date”) 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 “**Seller**”), and the **CITY OF ALACHUA, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter referred to as “**Alachua**” or “**Purchaser**”). Throughout this Agreement, GRU and Alachua may be referred to as “Party” or the “Parties”.

WHEREAS, on October 2, 1992, GRU and Alachua hereto entered into a contract for wholesale electric service, which was amended on three occasions with the most recent third amendment, dated November 22, 2010 (collectively the “Prior Contract”); and

WHEREAS, pursuant to the Prior Contract, the Parties entered into the Operation and Maintenance Agreement, dated October 5, 2015, which the Parties desire such Operation and Maintenance Agreement, as may be amended from time to time, to remain in effect consistent with the term of this Agreement; and

WHEREAS, the Parties hereto desire to amend and restate the Prior Contract for wholesale electric service with this Agreement; and

WHEREAS, Alachua desires to acquire such wholesale electric service from GRU so that Alachua can serve its load obligations; and

WHEREAS, GRU desires to supply wholesale electric service to enable Alachua to meet its load obligations.

NOW, THEREFORE, in consideration of the foregoing, the covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GRU and Alachua hereby agree as follows:

1. **Recitals.** The Parties agree that the above recitals are true and correct and are hereby incorporated into and made a part of this Agreement.
2. **Term of Agreement.** This Agreement shall commence on the Effective Date as identified above and shall continue in effect until March 31, 2022 (hereinafter the

“Term”), unless terminated earlier pursuant to the terms of this Agreement. Termination or expiration of this Agreement shall not affect or excuse the performance of either Party under any provision of this Agreement that by its nature or term survives any such termination or expiration.

3. **Wholesale Electric Service.** GRU shall sell and deliver and Alachua shall purchase and receive Alachua’s entire electrical capacity and energy requirements (hereinafter “Wholesale Electric Service”), now or hereafter required, at the Alachua No.1 Substation (hereinafter “Delivery Point”) and at such additional Delivery Points as may hereafter be established by mutual agreement between the Parties for Alachua’s use and for resale. The Delivery Point at the Alachua Substation No. 1 shall be the high voltage bushing of the substation transformers in the Alachua Substation No.1. Wholesale Electric Service shall be subject to the following exclusions:

- a) Such contractual capacity and energy entitlements Alachua has in St Lucie plants as of the Effective Date of this Agreement; and,
- b) Any energy produced by Distributed Generation Resources, which shall mean generation by facilities owned by Alachua or facilities in which the electrical output is contracted for delivery to Alachua and which the capacity and energy from such Distributed Generation Resources is delivered directly into Alachua’s distribution system. Output from Distributed Generation Resources shall not exceed 16,500,000 kW-hrs during any contract year without the approval of GRU.

4. **Price, Billing and Payment Requirements.**

4.1 **Price:** The price Alachua shall pay to GRU for Wholesale Electric Service during the Term of this Agreement shall be \$58.00 per MW-hr for each MW-hr that GRU delivers to the Delivery Point.

4.2 **Billing:** On or before the tenth (10th) calendar day following the end of each month in which GRU provides Alachua with Wholesale Electric Service, GRU shall calculate the amount due and payable by Alachua pursuant to Section 4.1 and GRU shall provide to Alachua an invoice detailing amounts owed by Alachua pursuant to the terms of this Agreement.

4.3 **Payment:** Payment for all Wholesale Electric Service rendered hereunder shall be made to GRU within twenty-five (25) calendar days from the date the invoice is postmarked. Invoices not paid by the due date shall be deemed delinquent and shall then accrue one percent (1%) per month on the unpaid balance pursuant to the Local Government Prompt Payment Act, Section 218.74(4), Florida Statutes.

- a) Invoices not paid within twenty-five (25) calendar days after the due date shall be deemed delinquent and shall then accrue one percent (1%) per month on the unpaid balance pursuant to the Local Government Prompt Payment Act, Section 218.74(4), Florida Statutes, as amended from time to time.
- b) In the event any portion of any invoice is disputed, the invoiced amount shall be payable in full when due. Alachua's payment of the invoiced amount shall be accompanied by a written description of the dispute and the associated disputed amount. The Parties shall then cooperate to resolve the dispute. Upon resolution of the disputed amount, a true-up calculation shall be applied to the next invoice as full resolution of the prior disputed amount between the Parties.

4.4 **Audit Rights.** Each Party has the right, upon thirty (30) calendar days notice, at its sole expense and during normal business hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any invoice, bill, statement, charges or computation made pursuant to this Agreement. If requested, each Party shall provide to the other Party statements evidencing the quantity of Wholesale Electric Service delivered at the Delivery Point. If any such examination reveals any inaccuracy in any invoice, bill or statement, the necessary adjustments in such invoice, bill or statement and the payments thereof will be made promptly and shall bear interest calculated at the above-described interest rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any invoice, bill, statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

5. **Tax Adjustments.** The rates provided herein shall be adjusted to include the applicable proportionate part of any taxes or assessments imposed by any governmental authority in excess of those in effect on the effective date of this Agreement, whether levied on the basis of fuels, meters or customers or the price of or revenue or income from electric energy or service sold or the volume of energy generated or purchased for sale or sold, or otherwise.

6. **Measurement of Wholesale Electric Service.** All Wholesale Electric Service furnished hereunder by GRU shall be measured at the Delivery Point. In the event any meter fails to register or registers incorrectly, the Parties shall agree upon the length of time such meter failed to register or registered incorrectly and the quantity of Wholesale Electric Service so delivered during such time. An appropriate adjustment based thereon shall be made to Alachua's invoice for such agreed upon time. An adjustment shall be made for any one (1) month period only if the meter has been tested by GRU of its own volition or at the written request of Alachua within 60 days from the date upon which the bill for such month had been rendered to Alachua. Any meter which complies with ANSI C-12 standards for revenue meters shall be deemed correct. No device or connection shall be installed or maintained Alachua at the service location that will prevent any meter from registering correctly. GRU, at its expense, shall periodically inspect and

test the meter(s) installed at least once per calendar year during the term of this Agreement. Pursuant to the written request of Alachua, GRU shall make additional tests of such meter(s) in the presence of representatives of Alachua. The cost of such additional tests shall be borne by Alachua if the percentage of deviation is found to be in compliance with ANSI C-12 standards for revenue meters. GRU shall provide reasonable advance notice to Alachua of the date of the scheduled annual test of the revenues meters and Alachua shall be permitted to witness the test.

7. **Change in Law Costs.** In the event that there is any change to any Applicable Laws that is promulgated past the effective date of this Agreement and that results in any additional or new costs, expenses, charges, fees and/or assessments (other than Tax Adjustments) that are attributable or related (in whole or in part) to the production and/or provision of electric energy, including environmental-related costs, renewable portfolio standards (only if applicable to wholesale contracts), charges, fees, or expenses incurred by GRU to supply the electric energy and such costs, whether incurred as part of a voluntary or compulsory measure, are to be recovered from GRU's retail customers as approved by the Florida Public Service Commission, Alachua shall reimburse GRU for Alachua's pro-rata share of such costs, expenses, charges, fees and/or assessments, which amounts shall be calculated and recovered as determined by GRU in a commercially reasonable manner. Change in Law Costs resulting from capital expenditures shall be allocated over the economic life of asset. GRU's determination of additional costs shall be net of any reductions in costs associated with the change in Applicable Laws. GRU shall promptly notify Alachua upon the determination of any additional or new costs, expenses, charges, fees and/or assessments and the calculation of the pro rata portion of such costs proposed to be recovered from Alachua.

8. **Continuity of Service.** GRU shall operate and maintain its generating resources, transmission and distribution system assets, and equipment pursuant to prudent utility practice. GRU shall exercise due care and diligence to supply Wholesale Electric Service hereunder free from interruption; provided, however, that GRU shall not be responsible for any failure to supply Wholesale Electric Service, nor for interruption, reversal or abnormal voltage of the supply, if such failure, interruption, reversal or abnormal voltage is not a result of GRU's negligence. Whenever the integrity of GRU's system or the supply of Wholesale Electric Service is threatened by conditions on its system or on the systems with which it is directly or indirectly interconnected, or whenever it is necessary or desirable to aid in the restoration of service, GRU may, in conformance with prudent utility practices and with the application of standards no more interruptive than applied in service to its retail customers in like circumstances, curtail or interrupt electric service or reduce voltage to some or all of its customers and such curtailment, interruption or reduction shall not constitute willful default by GRU. In case of impaired or defective service, Alachua shall immediately provide notice to GRU's Scheduling Agent (GRU Generation Dispatcher) by telephone, confirming such notice in writing as soon thereafter as practicable. Written notice may be provided via facsimile or via email, as long as confirmation of facsimile or email is received by the other Party.

9. **Access of GRU.** GRU shall have the right to enter upon Alachua's premises where the billing meters are located at all reasonable times for the purpose of reading meters, inspecting or repairing apparatus used in connection with the service, removing its property and/or any other purpose to carry out the work of GRU in connection with the delivery of Wholesale Electric Service. GRU shall provide advance notice, which is reasonable under the circumstances, to Alachua of its intent to enter upon the premises of Alachua. GRU shall describe in such notice the activities or work to be performed, the schedule for the performance of the activities or work and the personnel and contractors who will be performing such activities or work. GRU shall comply with Alachua's rules and policies with respect to safety, security, and any work or activities shall be performed in a manner consistent with the requirements, conditions or limitation set forth in any interconnection agreement between Alachua and GRU.

10. **Delivery and Losses.** Quantities of Monthly Wholesale Electric Service necessary to meet Alachua's load obligations shall be delivered by GRU to Alachua at the Delivery Point. Title to and risk of loss related to the Wholesale Electric Service shall transfer from GRU to Alachua at the Delivery Point free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point. GRU shall not incur any expense or risk beyond the Delivery Point and Alachua shall not incur any expenses or risk up to the Delivery Point.

11. **Obligation to Supply and Obligation to Receive.** Subject to the terms of this Agreement, GRU shall sell and deliver to Alachua, and Alachua shall purchase and receive from GRU, Wholesale Electric Service for Alachua's use and resale. GRU has informed Alachua that its generating assets have been financed with proceeds of tax-exempt bonds. Accordingly, Alachua represents to GRU that it will use all Wholesale Electric Service purchased pursuant to this Agreement for its native load exclusively pursuant to retail requirements contracts which do not give rise to 'private business use' pursuant to Section 141 of the Internal Revenue Code.

12. **Notices.** Except as otherwise provided in this Agreement, any notice, default, or termination from either Party must be sent in writing by certified mail with a return receipt requested, by personal delivery with receipt, by facsimile, or electronically with a confirmed electronic read receipt. For purposes of all notices, the Parties' representatives are identified below:

For Alachua or Purchaser:

City of Alachua
Traci L. Gresham or her Successor
15100 NW 142 Terrace
P.O. Box 9
Alachua, Florida 32615
Telephone: (386) 418-6100
Facsimile: (386) 418-6175

For GRU or Seller:

Gainesville Regional Utilities
Thomas R. Brown, or his Successor
Acting Chief Operating Officer
P.O. Box 147117
Gainesville, Florida 32614
Telephone: (352) 393-1700
Facsimile: (352) 334-2277

Email: tgresham@cityofalachua.com

Email: BrownTR@gru.com

13. **Non-Waiver.** Any failure or refusal of either Party to enforce any term or condition hereto shall not be considered a waiver thereof, or any waiver of any right to enforce any term or condition in the future.

14. **Indemnification.** Without waiving its sovereign immunity and subject to the limitations set forth in Section 768.28, Florida Statutes, both Parties hereby agree to indemnify the other Party for claims brought against the other Party only to the extent that they are found to result from the sole negligence of such Party, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts, or omissions of third parties, independent contractors, or third party agents of either Party. This indemnification shall be interpreted as limited to only such traditional liabilities for which the Parties could be liable under the common law interpreting the limited waiver of sovereign immunity.

15. **Sovereign Immunity.** Nothing in this Agreement shall be construed or applied as a waiver of either Party's sovereign immunity against third party tort claims, including those rights and limitations of liability under Section 768.28, Florida Statutes, as it may be amended. If a Party to this Agreement pursues indemnity or a hold harmless defense from the other in connection with a third-party tort claim, then the Party from whom indemnity is sought shall have the right to assert against any such third party claimant, the defense of sovereign immunity on behalf of both the indemnitor and the indemnitee.

16. **Force Majeure.**

16.1 A Party shall be excused from performing its obligations under this Agreement and shall not be liable in damages or otherwise, if and only to the extent that it is unable to so perform or is prevented from performing by an event of Force Majeure. An event of "Force Majeure" means an event or circumstance that prevents or unduly frustrates the performance by a Party of its obligations under this Agreement (other than the duty to make payments when due, which shall not be excused by Force Majeure) which is not within the reasonable control of, or the result of the negligence of, such Party and which by the exercise of due diligence such Party is unable to overcome or avoid. Force Majeure includes, without limitation, hurricanes, named storms, tornadoes, flood, lightning, drought, earthquake, fire, explosion, terrorist attack, civil disturbance, strikes, acts of God, acts of the public enemy, orders, directives (including the state security coordinator), restraints and requirements of the government and governmental agencies, either federal, state or local, civil or military, or any other cause beyond a Party's control. Force Majeure shall not include (i) events affecting the cost of operating any generating facility, (ii) changes in market conditions which cause the price of Wholesale Electric Service to fluctuate including, without limitation, weather, fuel prices and supply and demand, or

(iii) the inability of a Party to make a profit or avoid a loss in performing its obligations pursuant to this Agreement.

16.2 If either Party shall rely on the occurrence of Force Majeure as a basis for being excused from the performance of its obligations under this Agreement, then that Party shall (i) provide written notice to the other Party promptly but in no event later than five (5) calendar days after the occurrence of the event or condition giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder; (ii) exercise all reasonable efforts to continue to perform its obligations hereunder; (iii) expeditiously take reasonable action to correct or cure the event or condition excusing performance, provided that settlement of strikes or other labor disputes shall be completely within the sole discretion of the Party declaring Force Majeure; and (iv) exercise all reasonable efforts to mitigate or limit damages to the other Party to the extent such action shall not adversely affect its own interests.

17. **Severability.** If any word, phrase, sentence, part, subsection, section, or other portion of this Agreement, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not having been declared void, unconstitutional, or invalid shall remain in full force and effect. In the event any provision of this Agreement is found unlawful or otherwise unenforceable, all other provisions shall remain in full force and effect unless the Parties agree to the contrary in writing.

18. **Events of Default.** Each of the following shall be considered an “Event of Default”:

- a. A default shall occur in the performance of any material covenant or condition to be performed by either Party hereunder including failure to pay any amounts to be paid when due or the failure to provide electric service as set forth in this Agreement.
- b. A custodian, receiver, liquidator or trustee of either Party, is appointed or takes possession of all or substantially all of the property of either and such appointment or possession remains uncontested or in effect for more than sixty (60) days; or either Party makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they mature; or either Party is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code against either Party; or all or substantially all of the material property of either is sequestered by court order and the order remains in effect for more than sixty (60) days; or a petition is filed against either Party under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any

jurisdiction, whether now or subsequently in effect, and is not stayed or dismissed within sixty (60) days after filing.

- c. Either Party files a petition in voluntary bankruptcy or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect.

19. **Remedies.**

19.1 The Parties shall have the following remedies available to them with respect to the occurrence of an Event of Default with respect to the other Party hereunder. For purposes of this Section: (i) upon the occurrence of an Event of Default by either Party hereunder, the non-defaulting Party shall have the right to (ii) collect all amounts due from the defaulting Party hereunder; and, (iii) terminate this Agreement at any time during the continuation of such Event of Default upon written notice to the defaulting Party.

19.2 Notwithstanding any other provision of this Agreement, after the occurrence of an Event of Default and for so long as the Event of Default is continuing and has not been cured, the non-defaulting Party shall have the right, upon written notice to the defaulting Party, to suspend all performance under this Agreement until such Event of Default has been cured. In addition, if GRU is the defaulting Party, then Alachua shall have the right, but not the obligation, during the continuation of such default and prior to any termination of this Agreement, to purchase energy and capacity, in a commercially reasonable manner considering the circumstances of such default, from third parties at the Delivery Point in quantities sufficient to cover any shortfall in Wholesale Electric Service resulting from such default, and GRU shall reimburse Alachua for all costs, including both out-of-pocket and internal costs, incurred by Alachua related to such third-party purchases in excess of the cost that Alachua would otherwise have incurred for Wholesale Electric Service hereunder. If Alachua is the defaulting Party and, by reason of Alachua's default, GRU is not receiving all or a portion of electric energy payments in accordance with the terms hereof, then GRU shall have the right, but not the obligation, during the continuation of such default and prior to any termination of this Agreement to discontinue Wholesale Electric Service to Alachua.

19.3 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NO PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER INDEMNITY PROVISIONS OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, COST OF CAPITAL; LOSS OF USE, LOSS OF GOODWILL, AND/OR CLAIMS OF CUSTOMERS.

19.4 The remedies provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

20. **Assignment.** Neither Party may assign, transfer, and/or sell any of the rights pursuant to this Agreement, or associated with this Agreement, without the express prior written approval of the other Party, which consent shall not be unreasonably withheld.

21. **Limitation of Liability.** Unless expressly herein provided, neither Party, or their respective elected officials, officers or employees shall be liable for any consequential, incidental, punitive, exemplary or indirect damages, including without limitation, lost profits, lost revenues, attorneys' fees, cost of capital, loss of use, loss of goodwill, replacement power, claims of customers, or any other business interruption, by statute, in tort or contract, under indemnity provisions or otherwise.

22. **Entire Agreement.** This Agreement captures and contains the full and complete intention of the Parties hereto and no modifications or amendments to this Agreement shall be of any force or effect unless they are agreed to in writing and approved by the governing boards of both Parties.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or agents, and a duplicate original delivered to each party, as of the above stated Effective Date. The execution of this Agreement shall be subject to the approval of the governing boards of the City of Gainesville and the City of Alachua. The Effective Date of this Agreement shall be the date first written above, which shall be after this Agreement has been executed by the Parties and approved by both governing boards.

THE CITY OF ALACHUA

**THE CITY OF GAINESVILLE, d/b/a
GAINESVILLE REGIONAL
UTILITIES (GRU)**

Traci L. Gresham (date)
City Manager

Edward J. Bielarski, Jr. (date)
General Manager of Utilities

Approved as to form:

Approved as to form and legality:

By:_____
Marian B. Rush (date)
City Attorney

By:_____
Shayla L. McNeill (date)
Utilities Attorney