

TOWN OF GYPSUM, COLORADO

RESOLUTION NO. 2019- B

**A RESOLUTION AUTHORIZING ACTIONS ASSOCIATED WITH
THE PROPOSED EAGLE VALLEY CLEAN ENERGY LLC
BIOMASS POWER PROJECT SALE**

WHEREAS, for purposes of facilitating a biomass electric generation power plant project (the "***Biomass Power Project***") the Town of Gypsum, by Ordinance No. 2012-01, annexed and subsequently approved subdivision, zoning, a special use permit, a conditional use permit, and related agreements for certain land (the "***Gypsum Sustainable Industrial Park***"), which is subject to the Annexation Agreement and Vested Rights Development Agreement between the Town and Eagle Valley Clean Energy, LLC ("***EVCE***") dated March 13, 2012 ("***Annexation Agreement***"); and

WHEREAS, since construction, EVCE has remained the owner of the electric generation plant associated with the Biomass Power Project; and

WHEREAS, shortly following annexation, Clearwater Ventures, LLC, ("***Clearwater***") became owner of the land associated with the Gypsum Sustainable Industrial Park, and later transferred the land to Eagle Valley Property, LLC ("***EV Property***"); and

WHEREAS, through the annexation process the Town understood EVCE's annexation petition as representing that EVCE would convey approximately 60 acres of the Gypsum Sustainable Industrial Park for riverfront recreation, open space and park purposes as an inducement to the Town to annex the Biomass Power Project, and EVCE subsequently disputed that interpretation; and

WHEREAS, the Town has been involved in several matters of litigation associated with EVCE, Clearwater, and other entities related to EVCE and Clearwater (collectively, the "***EVCE Entities***"); and

WHEREAS, the Biomass Power Project is proposed to be sold (the "***Proposed Sale***") to EVCE Holdco LLC, ("***EVCE Holdco***"), a subsidiary of Greenbacker Renewable Energy Corporation ("***GREC***"); and

WHEREAS, to affect the Proposed Sale, EV Property would transfer the land associated with the Gypsum Sustainable Industrial Park to EVCE; and

WHEREAS, also to affect the Proposed Sale, Meridian Valley LLC ("***Meridian***") and Western EVCE LLC ("***Western EVCE***") would sell all outstanding membership interests in EVCE to EVCE Holdco, resulting EVCE Holdco, and thus GREC, indirectly

becoming the sole owners of all of the land, improvements and power plant associated with the Biomass Power Project and the Gypsum Sustainable Industrial Park; and

WHEREAS, as obligated under the Annexation Agreement, as part of the Proposed Sale the Town has placed in escrow an estoppel and related documents (as further defined below, the “*Sale and Settlement Documents*”) regarding outstanding obligations associated under the Annexation Agreement; and

WHEREAS, also to affect the Proposed Sale the Town has, contingent upon closing, agreed to terms of settlement, dismissal, and release of all claims and matters of litigation associated with the EVCE Entities; and

WHEREAS, associated with the Proposed Sale, EVCE Holdco has, contingent upon closing, committed to conveying by donation a portion of the Gypsum Sustainable Industrial Park to the Town and negotiating the donation of additional portions of the land, to meet the Town’s original expectations regarding conveyance of a significant portion of the land for riverfront recreation, open space and park purposes; and

WHEREAS, the closing of the Proposed Sale is pending in escrow and awaiting final authorization of other entities; and

WHEREAS, upon the closing of the Proposed Sale, additional actions may be required to carry out and implement the intent of the Sales and Settlement Documents related to the Proposed Sale of the Biomass Power Project, and the settlement, dismissal, and release of all claims and matters of litigation associated with the EVCE Entities;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Gypsum, Colorado, as follows:

1. Ratification. All actions of Town officers and staff, including the Town Manager, Assistant Manager, Community Development Director, Attorney and Assistant Attorney associated with the Proposed Sale of the Biomass Power Project are hereby approved and ratified, including but not limited to execution of the following (collectively, the “*Sale and Settlement Documents*”):

- (a) Lien Payoff Statement
- (b) Release of Lien Statements
- (c) Estoppel Escrow Agreement
- (d) Estoppel Certificate

(e) Termination Agreement

(f) Assignment of Annexation Agreement and Vested Rights
Development Agreement

(g) Acknowledgement and Release


2. Authority to Implement. The Town officers and staff, including the Mayor, Mayor Pro-Tem, Town Manager, Assistant Manager, Community Development Director, Attorney and Assistant Attorney are authorized and directed to execute any and all documents and take all actions necessary to carry out the intent of the Proposed Sale and Settlement Documents, including, upon closing of the Proposed Sale, negotiating with EVCE Holdco for conveyance by donation of additional land within Lot 2 of the Gypsum Sustainable Industrial Park, to effect the Town's original intent associated with its annexation.

3. Effective Date. This Resolution shall take effect and be enforced immediately upon its approval by the Town Council.

ADOPTED this 23rd day of April, 2019.

TOWN OF GYPSUM

By


Stephen M. Carver, Mayor

Attest:


Danette Schlegel, Town Clerk

