

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA**

GAINESVILLE CITIZENS CARE, INC.,

Plaintiff,

CASE NO.: 2012-CA-1346

vs.

DIVISION: J

CITY OF GAINESVILLE, d/b/a
GAINESVILLE REGIONAL UTILITIES,

Defendant,

and

GAINESVILLE RENEWABLE ENERGY
CENTER, LLC,

Intervenor.

MEDIATED SETTLEMENT AGREEMENT OF THE PARTIES

address is P.O. Box 357431,

This Mediated Settlement Agreement ("Agreement"), dated December 6, 2012, is entered into by, between and among GAINESVILLE CITIZENS CARE, INC., a Florida not-for-profit corporation, whose principal place of business is ~~806 NW 16th Avenue~~, Gainesville, FL. ("Plaintiff"), the CITY OF GAINESVILLE, d/b/a GAINESVILLE REGIONAL UTILITIES, a municipal corporation, organized and existing under the laws of the State of Florida ("City"), and GAINESVILLE RENEWABLE ENERGY CENTER, LLC, a limited liability company registered to do business in the state of Florida ("GREC LLC"), (collectively, all being the "Parties" hereafter), who are litigant parties in the above-captioned action.

WHEREAS, Plaintiff filed the above-captioned action against the City ("the Action") in April, 2012, seeking a declaratory judgment and related relief against the City for alleged "Sunshine Law" violations arising out of, or in connection with, the process and negotiations that resulted in a certain "Power Purchase Agreement For The Supply Of Dependable Capacity, Energy And Environmental Attributes From A Biomass-Fired Power Production Facility" ("PPA"), approved and ratified by the City Commission of the City of Gainesville, on May 7, 2009;

WHEREAS, GREC LLC, in turn, intervened in the Action, alleging that it had certain rights and interests that will be affected by the outcome of the Action;

WHEREAS, the City and GREC LLC dispute the allegations made in the Action, and the relief sought therein;

WHEREAS, Plaintiff, the City and GREC LLC all wish to avoid the expense, delay and uncertainty of litigation and wish to attempt to resolve the claims asserted in the Action, and all agree that it is in their respective, mutual best interests to do so; and

WHEREAS, the Plaintiff, the City and GREC LLC attended Court-ordered mediation on November 15 and December 6, 2012, and agreed to enter into this Agreement at said mediation;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein and below, and in mutual consideration of the benefits to accrue to all of the Parties, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Presentation of Agreement to City Commission. Promptly upon execution by the Parties of this Agreement, and as soon as practicable, the mediation representatives of the City shall present the terms of this Agreement to the City Commission of the City of Gainesville ("Commission") at the evening session of a publicly-noticed Commission meeting, for the Commission's vote for its approval or rejection of the terms of this Agreement. It is understood and agreed that at said Commission meeting, the mediation representatives of the City will affirmatively recommend to the Commission that it vote to adopt and approve said Agreement, with no changes, so as to cause the City to be bound by its terms. Likewise, it is understood and agreed that, while under no obligation to speak to the matter at such Commission meeting, if the Plaintiff or any of its representatives speaks on the matter at such meeting, Plaintiff will affirmatively support the Commission's approval of the terms of this Agreement. Counsel for the City will be obligated to inform counsel for the Plaintiff of the outcome of said Commission vote by the end of the next business day following said vote.

2. Commission Vote. If the Commission, at such meeting, votes to approve this Agreement, in its totality, with no changes from the terms herein, this Agreement shall be deemed automatically and immediately operative and legally effective as to all Parties. Conversely, if the Commission at that public meeting votes not to approve said Agreement, or votes to approve said Agreement but only with changes to the terms set forth herein, this Agreement shall be deemed automatically and immediately null and void, *ab initio*, and no party will make any further reference to this Agreement, or the terms hereof, for any purpose, including in this Action or any other litigation or proceeding between or among the Parties hereto.

3. Notice of Dismissal of This Action. In the event the Commission, at such meeting, votes to approve this Agreement, with no changes to the terms hereof, the Plaintiff shall be obligated to execute and file a Notice of Dismissal of the Action, with prejudice as to all parties, with all parties to absorb their own costs and attorney's fees. The Notice of Dismissal shall be filed within two business days after the Commission approves this Agreement.

4. City Commission Public Meeting. If the Commission approves this Agreement and the Plaintiff files a Notice of Dismissal of this Action in compliance with Section 3, above, the Commission shall schedule and hold a televised public workshop, held at City Hall Chambers, for the purpose of allowing public comment and discussion regarding the Gainesville Renewable Energy Center ("biomass plant") and the PPA. Advance public notice of such public workshop will be provided to the public and the press, via a mutually-agreed announcement, at

least two weeks prior to the workshop. At said workshop, all overheads, documents or information shall be available to the broadcast public to view as well. The Commission shall accept public comments at the workshop, but the Commission is not obligated to vote on or take any other formal action at the workshop concerning the biomass plant or the PPA. At said meeting, the Plaintiff shall have a minimum of four hours to make whatever presentation it desires during said four minimum hours. If all interested persons present at said workshop have not been heard by the conclusion of that workshop, the Commission will continue the workshop to another day to allow those individuals to be heard. The City agrees to have a GRU representative available at said meeting to answer questions related to the biomass plant and the PPA. GREC LLC also agrees to have a GREC LLC representative available at said meeting to answer questions related to the biomass plant and the PPA. ~~The rules of the commission shall otherwise remain in effect for that public meeting. The City agrees to use its best efforts to schedule the foregoing public meeting at a time when all commissioners can be present,~~

simultaneously broadcast to be in which to conduct the meeting and

5. Release and Indemnification. Upon approval of this Agreement by the Commission, Plaintiff hereby generally releases the City, including its current and former elected officials, individually, as well as the City's other current and former representatives, officers, employees and other agents, including its GRU employees (all of the foregoing, collectively, "Releasees"), of and from any and all claims, disputes, allegations, and/or causes of action whatsoever, whether known or unknown, and whether legal, equitable, statutory, or otherwise, that the Plaintiff had, or may have, from the beginning of time to the present day, against the Releasees, arising from, or relating to, the Action, and the subject matter and underlying transactions and operative facts thereof. Upon approval of this Agreement by the Commission, Plaintiff hereby indemnifies and holds the City harmless of and from any damages or injury to the City arising out of the breach by the Plaintiff of any of the terms of this Agreement.

6. Construction of Agreement. Each party acknowledges that it has cooperated and assisted in the overall drafting and preparation of this Agreement. Therefore, the parties agree that the rule of *contra proferentem* or interpretation against the party who caused any uncertainty to exist shall not apply to this Agreement.

7. Advice of Counsel. For the purposes of this Agreement, all Parties represent and warrant that they have been represented by counsel and had ample time to consult with their respective counsel concerning the terms of this Agreement and, in fact, did so consult with their counsel.

8. Representation of authority. All Parties to this Agreement represent and warrant to each other that they are authorized to execute this Agreement. Plaintiff and GREC LLC represent and warrant that they are also authorized to carry out the terms of this Agreement.

9. Litigation Relating To This Agreement. In the event any litigation arises concerning the interpretation or enforcement of this Agreement, venue will be exclusively in the state courts in and for Alachua County, Florida. The prevailing party or parties in such litigation shall be entitled to a recovery of their attorneys' fees and costs.

10. No Admission of Liability or Wrongdoing. By entering into this Agreement, no Party admits to any wrongdoing or liability, and any such allegations are specifically denied. All Parties acknowledge and agree that this is a compromise of disputed claims and defenses. It is

further understood and agreed that the holding of a public meeting by the Commission to discuss this Agreement and the subsequent holding of a public workshop by the Commission to permit the presentation by the Plaintiff, as discussed above, shall likewise not be deemed any admission of liability, or used against the City or GREC LLC, in any respect at any time. Rather, it is recognized that holding both of these Commission meetings is merely part of the compromise and settlement of the disputed claims. This Agreement shall not be offered or received in evidence for any other purpose against the City or GREC LLC, other than to enforce compliance with the terms of this Agreement.

11. Upon the execution of this Agreement, the Parties shall promptly execute and jointly file a "Joint Notice Of Potential Settlement And Joint Motion For Abeyance, Continuance And Other Relief" ("Notice") in this Action, to be prepared by counsel for the City. In said Notice, the Parties shall advise the Court that the Parties have executed a settlement agreement, subject to certain conditions, which include approval by the City Commission, and the Parties request the Court to hold this Action in abeyance until the Parties have an opportunity to determine whether the conditions will be satisfied. The Notice also shall request the Court to: (a) cancel the motion hearing scheduled for December 11, 2012; (b) cancel the pretrial conference scheduled for December 18, 2012; (c) cancel the trial scheduled for January 7 – 11, 2013; (d) retain jurisdiction of this case, until the Parties notify the Court that the City Commission has approved this Agreement at the Commission Meeting described in Paragraph 1 above, at which time this Agreement shall be fully effective, and the Plaintiff shall be required to file the Notice of Dismissal described in Paragraph 3 above, or, they notify the Court that said Commission approval was not obtained at the Commission Meeting described in Paragraph 1 above, which non-approval thus terminates this Agreement, and obligates the Parties to request the Court to set new dates for the motion hearing, pretrial conference, and trial; and (e) set new dates for the foregoing motion hearing, pretrial conference and bench trial as promptly as the Court's calendar will permit, in the event the terms of this Agreement are not approved, without change, by the City Commission. In their Notice the Parties will expressly inform the Court that discovery and all other pretrial activities and proceedings in this action have been completed, except (i) for the foregoing motion hearing and the final pretrial conference, with the understanding that the Parties still need to complete their duties under Paragraphs 13, 14 and 15 of the Court's "Order Scheduling Pretrial Conference And Jury Trial," dated July 23, 2012, and (ii) for the agreement of the Parties that the Plaintiff shall have the unqualified right to serve and file Plaintiff's response (including evidence, brief, etc.) to the pending Joint Amended Summary Judgment Motion within ten (10) days of the date of said non-approval of this Agreement by the City Commission under Paragraph 1 above. Given the conditional nature of this Agreement, the Notice shall not include a copy of this Agreement.

Executed on the above date in Gainesville, Florida.

GAINESVILLE CITIZENS CARE, INC.

By: [Redacted]
Print Name: JO LEE R. BEATY
Its Mediation Representative

MARCY I. LAHART P.A. 111A

By: [Redacted]
Marcy I. Lahart, Esq.
Florida Bar No. 967009
marcy@floridaanimallawyer.com
marcy!@justice.com
4804 SW 45th Street
Gainesville, FL 32608
Telephone: 352-224-5699
Facsimile: 888-400-1464
Attorneys for Plaintiff

CITY OF GAINESVILLE [Redacted]

By: [Redacted]
Robert Hunzinger
Its Mediation Representative

[Redacted]

By: [Redacted]
Elizabeth A. Waratuke, Esq.
Florida Bar No. 458007
waratukeea@cityofgainesville.org
whitecg@cityofgainesville.org
City of Gainesville
Office of the City Attorney
P.O. Box 490, Station 46
Gainesville, FL 32627
Telephone: 352-334-5011
Facsimile: 352-334-2229

And

Timothy J. McDermott
Florida Bar No. 0747531
timothy.mcdermott@akerman.com
roseanne.norwood@akerman.com
lynda.sluder@akerman.com
Akerman Senterfitt
50 North Laura Street, Suite 3100
Jacksonville, FL 32202
Telephone: 904-798-3700
Facsimile: 904-798-3730
Special Counsel for the City

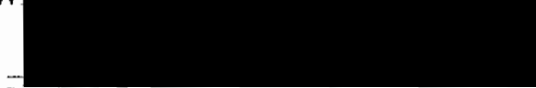
GAINESVILLE RENEWABLE ENERGY
CENTER, LLC

GARDNER, BIST, WIENER, WADSWORTH,
BOWDEN, RUSH, DEE, LAVIA & WRIGHT P.A.



Albert Morales
Mediation Representative

By: _____



David S. Dee
Florida Bar No. 281999
ddee@gbwlegal.com
John T. LaVia, III
Florida Bar No. 853666
jlavia@gbwlegal.com
1300 Thomaswood Drive
Tallahassee, FL 32308
Telephone: 850-385-0070
Facsimile: 850-385-5416
Attorneys for Intervenor, GREC LLC