

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

GAINESVILLE CITIZENS CARE, INC.,

Plaintiff,

v.

CASE NO.: 2012-CA-1346
DIVISION: J

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

Defendant,

and

GAINESVILLE RENEWABLE ENERGY
CENTER, LLC,

Intervenor.

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J.K. "BUDDY" RAY
CLERK OF COURTS
ALACHUA COUNTY FL

**CITY OF GAINESVILLE'S AND
GAINESVILLE RENEWABLE ENERGY CENTER, LLC'S
JOINT AMENDED MOTION FOR FINAL SUMMARY JUDGMENT**

Defendant, City of Gainesville ("City"), and Intervenor, Gainesville Renewable Energy Center, LLC ("GREC LLC") (collectively, "Joint Movants"), hereby file this Joint Amended Motion for Final Summary Judgment ("Amended Motion") and respectfully request the Court to issue a final summary judgment against the Plaintiff, Gainesville Citizens CARE, Inc. ("GCC"). The summary judgment evidence shows that there is no genuine issue as to any material fact and that the City and GREC LLC are entitled to summary judgment as a matter of law on the two fundamental issues in this case:



(1) there was no violation of the Sunshine Law¹ in connection with the negotiations for, or execution of, the power purchase agreement ("PPA") between the City and GREC LLC; and

(2) even if it is assumed hypothetically that a Sunshine Law violation may have occurred, the City subsequently "cured" the violation at a public meeting of the Gainesville City Commission ("City Commission") on May 7, 2009, when the City Commission held an open and public discussion concerning the PPA and then voted unanimously to approve the PPA.

In support of this Joint Amended Motion, the City and GREC LLC state as follows:²

I. PROCEDURAL BACKGROUND

On April 4, 2012, GCC initiated this case by filing a one-count Complaint for Declaratory Judgment and Injunctive Relief.³ On April 18, 2012, GCC filed a one-count First Amended Complaint

¹ Article I, § 24b of the Florida Constitution and Section 286.011, Florida Statutes ("F.S."), are collectively referred to as the "Sunshine Law" in this Amended Motion.

² The summary judgment evidence being provided by the movants in support of this Amended Motion includes the pleadings of the parties in the Court file, various affidavits filed herewith, the exhibits referenced in the affidavits, deposition testimony, and the transcript of the City Commission's "cure" hearing on May 7, 2009.

³ See Court file.

for Declaratory Judgment and Injunctive Relief ("Amended Complaint").⁴

On July 23, 2012, the Court issued an Order Scheduling Pretrial Conference and Jury Trial⁵ ("Scheduling Order") setting the trial in this case for January 7-11, 2013. The Scheduling Order also: set the pretrial conference for December 18, 2012; provided that all discovery must be completed no later than 30 days prior to the pretrial conference (i.e., by November 16, 2012); and provided that all motions must be filed and heard by December 18, 2012.⁶

On October 30, 2012, the City filed its Motion for Summary Judgment. On November 1, 2012, GREC LLC joined in the City's Motion for Summary Judgment. On November 2, 2012, the City served a notice on the parties setting the Motion for Summary Judgment for hearing on December 11, 2012.⁷

On November 13, 2012, the Court issued an Order on Joint Motion of All Parties for Slight Modification of Scheduling Order ("Modified Scheduling Order"). The Modified Scheduling Order extended the time for discovery to November 20, 2012, and

⁴ See Court file.

⁵ The Scheduling Order mistakenly refers to a jury trial. No party requested a jury trial in this case.

⁶ See Court file.

⁷ See Court file.

it extended the deadline for filing summary judgment motions, and supporting summary judgment evidence, to November 30, 2012.⁸

II. ISSUES ON SUMMARY JUDGMENT

The City and GREC LLC raise two distinct issues in this Joint Amended Motion. The first issue is whether there was an "advisory committee" that was subject to the requirements of the Sunshine Law and violated the Sunshine Law. The second issue is whether the City "cured" any alleged violation of the Sunshine Law. If the City and GREC LLC prevail on either issue in this motion, this Court must grant summary judgment against GCC.

These two issues may be stated more precisely, as follows:

1. The Advisory Committee Issue.

- a. Whether Gainesville Regional Utilities' ("GRU") General Manager for Utilities, Robert Hunzinger ("Hunzinger"), delegated decision-making authority to an "advisory committee", headed by Ed Regan ("Regan") and

⁸ In their joint motion, the Parties agreed that motions for summary judgment would be heard on December 11, 2012. The Parties expressly waived compliance with the normal 20-day advance service/filing deadline in Fla.R.Civ.P. 1.510, provided that any motion for summary judgment, amended motion for summary judgment, and summary judgment evidence be hand delivered to the opposing parties no later than 5 p.m. on November 30, 2012. See Court file. This Joint Amended Motion, and its supporting summary judgment evidence, is filed and served in compliance with this Order.

John Stanton ("Stanton"), to negotiate the terms of a PPA with GREC LLC's predecessor;

- b. whether the "advisory committee" actually exercised decision-making authority by determining the City's position with regard to specific terms of the PPA;
- c. whether, as a result of such actions, the "advisory committee" was subject to the Sunshine Law; and
- d. whether the Sunshine Law was violated.

Parenthetically, the Plaintiff must prevail on all 4 of these sub-issues to establish a prima facie case.

- 2. The Cure Issue. If the "advisory committee" was subject to and violated the Sunshine Law, whether any violation of the Sunshine Law was "cured" by the City Commission's consideration and ratification of the PPA at a properly noticed, public meeting of the City Commission held on May 7, 2009.

Based on the affidavits and other summary judgment evidence being submitted with this Amended Motion, no material issues of fact are in dispute, and the City and GREC LLC are entitled to judgment as a matter of law on both the Advisory Committee Issue and the Cure Issue.

III. LEGAL STANDARD FOR SUMMARY JUDGMENT

Rule 1.510(c), Fla.R.Civ.P., provides in pertinent part:

The [summary] judgment sought shall be rendered forthwith if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

A party moving for summary judgment has the initial burden of demonstrating the absence of a genuine issue as to any material fact. Palm Beach County v. Trinity Indus., Inc., 661 So. 2d 942 (Fla. 4th DCA 1995) (upholding grant of summary judgment where no genuine issue of fact existed and law favored appellee's position). Once a party seeking summary judgment tenders competent evidence to support its motion, the opposing party "must come forward with counterevidence sufficient to reveal a genuine issue." Landers v. Milton, 370 So. 2d 368, 370 (Fla. 1979). "It is not enough for the opposing party merely to assert that an issue does exist." Id. If "the material facts are not in dispute and the moving party is entitled to a judgment as a matter of law, it is the court's duty to enter summary judgment." Castellano v. Raynor, 725 So. 2d 1197, 1199 (Fla. 2d DCA 1999); see also Acosta, Inc. v. Nat'l Union Fire Ins. Co., 39 So. 3d 565 (Fla. 1st DCA 2010) (affirming entry of summary judgment); Shands Teaching Hosp. and Clinic, Inc. v.

Juliana, 863 So. 2d 343 (Fla. 1st DCA 2003); Ribak v. Centex Real Estate Corp., 702 So. 2d 1316 (Fla. 4th DCA 1997).

IV. SUMMARY JUDGMENT SHOULD BE GRANTED ON THE ADVISORY COMMITTEE ISSUE

A. Statement of Undisputed Facts Concerning the Advisory Committee Issue

1. On May 12, 2008, at a properly noticed meeting, the City Commission expressly authorized Hunzinger to negotiate and execute a power purchase agreement with Nacogdoches Power, LLC.⁹ Under the proposed PPA¹⁰, a new biomass-fired electrical power plant would be built on the City's property and the electricity from the new power plant would be sold to the City.¹¹

2. Hunzinger selected and assembled a negotiating team to assist him in the PPA negotiations. The negotiating team consisted of approximately twenty-three (23) members of GRU's

⁹ Ex. 4, p. 8. (For the convenience of the Court, and to avoid the needless duplication of exhibit filings, the Joint Movants have contemporaneously filed a "Notice of Composite Exhibit Filing" which has attached to it, in one location, every Exhibit that is referenced in this Motion, or in the various Affidavits that are also being contemporaneously filed. The Court can find and view any "Ex." cited in this Amended Motion, or in any Affidavit, by going to the "Notice of Composite Exhibit Filing").

¹⁰ During the course of the negotiations, Nacogdoches Power, LLC, transferred its interests to an affiliated entity, GREC LLC. GREC LLC subsequently executed the PPA with the City. (Gordon Aff. ¶8; Hunzinger Aff. ¶5; Hunzinger Aff. ¶6) For simplicity, the following statements about the negotiations will refer to GREC LLC.

¹¹ Ex. 15

staff, including Regan, Stanton, and GRU's Utility Counsel (Raymond O. "Skip" Manasco, Jr.). The negotiating team also included GRU's outside counsel, Jonathan Cole ("Cole").¹² Several professional consulting firms (e.g., Black & Veatch; R.W. Beck, Inc.; Haddad Resource Management, LLC) also were used to assist Hunzinger and the negotiating team.¹³

3. Hunzinger, with input from Regan, selected the members of the negotiating team based on their diverse subject-matter knowledge of the different subjects that were likely to arise during the negotiation of the PPA. The members of the team were selected because of their knowledge about such diverse issues as "permitting" requirements, "plant design", and "fuel sourcing" for the new electrical power plant.¹⁴

4. The role of each negotiating team member, regardless of who they were, was to provide Hunzinger with information and advice concerning topics involving their respective area of expertise. For example, Stanton assisted Hunzinger with issues involving power plant operations, maintenance, construction, and startup; Manasco, the City's "Utilities Attorney," assisted Hunzinger with legal issues involved in utility plant matters, such as GRU's operations; and Regan assisted Hunzinger with

¹² Hunzinger Aff. ¶6; Regan Aff. ¶7

¹³ Hunzinger Aff. ¶6; Regan Aff. ¶7

¹⁴ See the roster for the "Biomass Plant Negotiating Team" dated May 30, 2008, referenced as Ex. 6 to the Hunzinger Affidavit. Hunzinger Aff. ¶6; Regan Aff. ¶7

issues involving wholesale power contracts and power system planning.¹⁵

5. Hunzinger both valued and needed the subject-matter information and advice provided to him by the various members of the negotiating team during the complicated PPA negotiations, but Hunzinger did not delegate any decision-making authority to the negotiating team or to any individual member of the negotiating team. Hunzinger, and Hunzinger alone, always maintained all decision-making authority regarding the terms of the PPA.¹⁶

6. Regan, GRU's Assistant General Manager for Strategic Planning, was the negotiating team's primary point of contact with GREC LLC during the PPA negotiations. As the primary contact for GRU, Regan served as a conduit for most of the communications between GRU and GREC LLC.¹⁷ Stanton, Richard Bachmeier ("Bachmeier"), GRU's Electric System Planning Director, and Manasco also periodically served as conduits for some of the communications with GREC LLC relating to their subject-matter areas of expertise.¹⁸

¹⁵ Hunzinger Aff. ¶8; Regan Aff. ¶8; Stanton Aff. ¶8; Manasco Aff. ¶6

¹⁶ Hunzinger Aff. ¶¶9,14,21; Regan Aff. ¶¶11,15,21,24; Stanton Aff. ¶¶14,22,24; Gordon Aff. ¶¶10-12; Levine Aff. ¶¶9-10,12-14; Manasco Aff. ¶¶8,10,18-20; Cole Aff. ¶¶7,11

¹⁷ Hunzinger Aff. ¶10; Regan Aff. ¶12; Levine Aff. ¶11

¹⁸ Hunzinger Aff. ¶10; Regan Aff. ¶12; Stanton Aff. ¶15; Levine Aff. ¶11; Manasco Aff. ¶11

7. As GRU's Assistant General Manager, Regan had standing authority, independent of the PPA negotiations, to hire consultants and otherwise allocate GRU's resources at any time, within his \$25,000 per contract purchasing policy guidelines, to assist GRU's activities. During the PPA negotiations, Regan exercised this authority by hiring and directing the consultants that assisted Hunzinger and the negotiating team.¹⁹ An example would be the advice that Regan obtained from a consultant named Fred Haddad. After getting Haddad's advice, Regan provided it to Hunzinger for his information and decision-making process.²⁰ Regan's use of outside consultants also is reflected in Ex. 16, an e-mail dated September 10, 2008, from Regan to Hunzinger and some of the members of the negotiating team. The e-mail was attached to a list of "critical issues for follow up" after one of the City's face-to-face meetings with GREC LLC. Item number 1 on the list provides:

1. What's the best way to index plant costs and what's a fair starting value?
-Black and Veatch or Burns and McDonnell

Item number 7 on the list provides:

7. How much room might be in NP pricing?
-Black and Veatch, Westphal, see item 2 above.

¹⁹ Hunzinger Aff. ¶11; Regan Aff. ¶13

²⁰ see Regan depo. at pp.74. (All deposition testimony referenced in this Joint Amended Motion can be found in that witness' deposition transcript that is being contemporaneously filed with this Motion).

In these two items, Regan was contemplating the use of an outside consulting firm (i.e., Black and Veatch, or Burns and McDonnell) in order to obtain assistance and thus provide advice to Hunzinger and the team about the relevant issues.²¹

8. Hunzinger's office at GRU's administration building was in close proximity to Regan's office. During the lengthy PPA negotiations, it was not unusual for Hunzinger to regularly pick up the phone and call Regan to get an update on information or advice bearing upon the PPA negotiations, or for Regan to likewise call Hunzinger to update Hunzinger or obtain input or a decision from Hunzinger on a given issue. Nor was it unusual for Hunzinger to walk down to Regan's office during the day and confer regarding PPA negotiation information, or for Regan to do the same by coming down to Hunzinger's office. There was an ongoing process of Regan giving Hunzinger information and advice for Hunzinger's decision-making process on the PPAs content.²²

9. Since Stanton and Manasco also had offices at GRU that were likewise located in the same building, on the same floor, and in close proximity to Hunzinger's office, Hunzinger enjoyed the same informal and on-going discussions with them, and they with him, on a regular basis throughout the PPA negotiations. These discussions enabled Stanton and Manasco to provide

²¹ Hunzinger Aff. ¶11; Regan Aff. ¶13

²² Hunzinger Aff. ¶12; Regan Aff. ¶14.

Hunzinger with information and advice about the PPA and thus assist Hunzinger with his decision-making process.²³

10. As noted above, the negotiating team's primary function was to gather information for and provide advice to Hunzinger. Individual members of the negotiating team assisted Hunzinger with technical aspects of the negotiations that were within their area of expertise. They also prepared specific sections or provisions of the evolving drafts of the PPA for Hunzinger's consideration.²⁴

11. Typically, draft sections of the PPA were provided to Cole, GRU's outside counsel. Cole served as the City's scrivener, as well as one of the City's legal advisors. Cole had prior experience with the negotiation of PPAs that Hunzinger felt would be a benefit to Hunzinger in the PPA negotiations with GREC LLC.²⁵ One of Cole's primary roles was to collect recommended or discussed sections or provisions of the PPA and then Cole would include those components of the PPA in the drafts he prepared of the overall PPA.²⁶ The composite drafts were produced during the negotiation process and distributed for review and discussion. Each draft of the evolving PPA was

²³ Hunzinger Aff.¶13; Regan Aff.¶14; Stanton Aff.¶16; Manasco Aff ¶12.

²⁴ Hunzinger Aff.¶¶14-16; Regan Aff.¶¶8,15,17; Stanton Aff.¶¶8,12,18; Cole Aff.¶10

²⁵ Hunzinger Aff.¶15

²⁶ Hunzinger Aff.¶15; Regan Aff.¶16; Stanton Aff.¶18; Manasco Aff.¶14 Cole Aff.¶8

provided to Hunzinger for his review, consideration, and approval or rejection.²⁷

12. Members of the City's negotiating team variously used three methods to provide factual information to Hunzinger and make recommendations to him regarding the potential terms of the PPA. These methods of communication can be placed in the following general categories:²⁸

Category (a): one or more team members would provide information to Hunzinger during internal team meetings and then Hunzinger would announce his decision about the relevant issue and direct the course of action and direct that it be included in the next draft of the PPA;

Category (b): an individual team member would consult one-on-one with Hunzinger and then Hunzinger would announce his decision and direct that it be included in the next draft of the PPA; or

Category (c): team members, including Regan, Stanton, Manasco or Bachmeier would provide

²⁷ Hunzinger Aff. ¶15; Regan Aff. ¶16; Stanton Aff. ¶18; Cole Aff. ¶10

²⁸ Hunzinger Aff. ¶16; Regan Aff. ¶17; Stanton Aff. ¶19; Manasco Aff. ¶15; Cole Aff. ¶10

information or a proposed PPA term to Cole, who would include the proposed component term in the then-current, overall draft of the PPA, which was always subject to review and approval by Hunzinger.

13. Hunzinger also may have provided information concerning a component term in the PPA directly to Cole, who would include the proposed component term in the then-current draft of the larger PPA, which was always subject to review and approval by Hunzinger.²⁹

14. An example of the 'category (a)' methodology described above involved the pricing term in the PPA that the City would pay over the long term of the contract. His Team members who were advising him on the pricing issue recommended to Hunzinger that it would be best if the PPA employed an escalating rate over the term of the contract. However, after hearing and considering their advice and recommendation, Hunzinger disagreed and decided that a fixed rate over the term of the contract would best serve the City's long term financial interests. Consequently, Hunzinger advised his team that he had made the decision, and that the pricing term in the PPA would be at a fixed rate, not an escalating rate structure.³⁰

²⁹ Hunzinger Aff. ¶16

³⁰ Hunzinger Aff. ¶17; Regan Aff. ¶18; Stanton Aff. ¶20

15. An example of the 'category (b)' methodology described above is reflected in Ex. 19 to the Composite Exhibit Filing. During negotiations, GREC LLC demanded that the City agree to remove, as terms of the PPA, the word "grossly" from section 4.1 and the word "gross" from section 17.1 of the Draft PPA. These terms bore on a negligence and responsibility issue that had been discussed at a face-to-face meeting between the parties that Hunzinger attended in Gainesville on December 8 and 9, 2008, over which the parties had expressed disagreement. After considering GREC LLC's renewed request that the PPA exclude these terms it found objectionable, Hunzinger discussed the issue with his GRU legal advisor, Manasco. Manasco gave Hunzinger his advice and his recommendation, which was that the City was adequately protected without the inclusion of the foregoing language. Hunzinger listened to him, considered Manasco's advice, and made the decision to remove the two foregoing words, of "grossly" and "gross" from the PPA, which was included in the draft. Manasco's Ex. 19 email to GREC LLC's project manager, Levine, carried out Hunzinger's decision and instruction.³¹

16. An example of the 'Category (c)' methodology is reflected in Exhibit 20, i.e., Bachmeier's e-mail dated January 20, 2009, which was sent to fellow negotiating team members

³¹ Hunzinger Aff. ¶18; Manasco Aff. ¶16; Regan Aff. ¶19;

Manasco, Regan, Stanton and Cole, with a "cc" copy being sent to Hunzinger. The e-mail indicates that it was attached to the "latest drafts of the AR/GRU PPA Supplemental Power Agreement." In the e-mail, Bachmeier solicits from Hunzinger's negotiating team "any further suggested changes . . . before I send it [the draft PPA] back to AR [American Renewables/Nacogdoches]." All of Bachmeier's suggested changes to the PPA, as well as those solicited from the other team members, were reviewed by Hunzinger and were subject to Hunzinger's approval or rejection.³²

17. Cole, who was responsible for inputting proposed terms into the evolving, successive drafts of the PPA during the entire period of the PPA negotiations, provided each successive draft of the evolving PPA document to Hunzinger for his review, consideration and approval or rejection.³³

18. The members of Hunzinger's negotiating team, except Cole, were GRU employees who normally serve as Hunzinger's staff. During the PPA negotiations, the negotiating team continued to serve as Hunzinger's staff. The team helped ensure that Hunzinger had access to sufficient technical/subject matter information and technical/subject matter expertise to allow

³² Hunzinger Aff. ¶19; Regan Aff. ¶20

³³ Cole Aff. ¶¶8,10; Regan Aff. ¶20; Hunzinger Aff. ¶20

Hunzinger to make informed decisions concerning the terms of the PPA.³⁴

19. The negotiating team, as a whole, did not exercise decision-making authority concerning the terms of the PPA. Individual members of the negotiating team did not exercise decision-making authority concerning the terms of the PPA. Neither the negotiating team, nor any of its members, eliminated any terms of the PPA from consideration by Hunzinger. All of the terms of the PPA were subject to Hunzinger's review and approval or rejection.³⁵

20. The PPA negotiations lasted approximately 12 months. The negotiations involved the exchange of multiple e-mails between the negotiating team and GREC LLC, six face-to-face negotiating sessions with the GRU team and GREC LLC, and the production and discussion of multiple drafts of the PPA.³⁶

21. Key members of the negotiating team and GREC LLC had a total of six face-to-face negotiating sessions, which occurred on the following dates: (a) June 27, 2008; (b) July 29, 2008; (c) September 8, 2008; (d) December 8 and 9, 2008; (e) March 2 and 3, 2009; and (f) April 17, 2009. Hunzinger attended all six face-to-face negotiating sessions when the GRU negotiating team

³⁴ Hunzinger Aff. ¶20

³⁵ Hunzinger Aff. ¶21; Regan Aff. ¶21; Stanton Aff. ¶22; Cole Aff. ¶11

³⁶ Hunzinger Aff. ¶22.; Regan Aff. ¶22;

met with GREC LLC to discuss the key issues regarding the PPA. During these meetings, Hunzinger made all of the decisions for GRU concerning the provisions of the PPA. No term or provision was included in the final draft of the PPA without being approved by Hunzinger.³⁷

22. Jim Gordon ("Gordon") was the President and Chief Executive Officer of Nacogdoches Power, LLC, and he holds the same positions in GREC LLC.³⁸ Gordon was the decision-maker for GREC with regard to all of the terms in the PPA. In this regard, Gordon was Hunzinger's counterpart during the PPA negotiations.³⁹

23. Gordon is a very experienced and successful individual who has been involved in the utilities industry for approximately 37 years. Among other prior successful business experience, he has built one of his companies into one of the most successful privately held independent power companies in America.⁴⁰

24. A fundamental principle that Gordon follows in any negotiation is "to know who on the other side of the negotiating table holds the decision-making authority because the persons

³⁷ Hunzinger Aff. ¶23; Regan Aff. ¶23; Stanton Aff. ¶23; Manasco Aff. ¶10

³⁸ Gordon Aff. ¶1

³⁹ Hunzinger Aff. ¶25

⁴⁰ Gordon Aff. ¶2

with decision-making authority are the ones that I need to satisfy when negotiating the terms of a proposed deal."⁴¹

25. Gordon, like Hunzinger, attended all six of the face-to-face negotiating sessions where GREC LLC met with the GRU negotiating team to discuss the key issues concerning the PPA.⁴² Generally, if Gordon was on a telephonic conference call with representatives of GRU during the PPA negotiations, Hunzinger was also on that call.⁴³

26. Based on Gordon's direct observations during the PPA negotiations, he observed that "Hunzinger clearly held and exercised all decision-making authority on his side of the table concerning the final terms of the PPA."⁴⁴

27. Josh Levine ("Levine") was the project manager for GREC LLC during the PPA negotiations that occurred on and after August 2008.⁴⁵ Levine served as GREC LLC's primary point of contact with GRU during those PPA negotiations. Levine, holder of an MBA from Yale University, as well as a Masters from Yale University in Environmental Management, attended four of the six face-to-face negotiating sessions that took place between the GRU negotiating team and GREC LLC over the period of September

⁴¹ Gordon Aff. ¶10; Hunzinger Aff. ¶25

⁴² Gordon Aff. ¶9; Hunzinger Aff. ¶¶23, 25

⁴³ Gordon Aff. ¶9; Levine Aff. ¶7; Stanton Aff. ¶25; Manasco Aff. ¶25; Regan Aff. ¶25

⁴⁴ Gordon Aff. ¶11

⁴⁵ Levine Aff. ¶5

8, 2008 through April 17, 2009.⁴⁶ Hunzinger was at those same four face-to-face meetings with members of his negotiating team as well.⁴⁷

28. Levine also participated in a number of telephonic discussions with the City's negotiating team during the course of the PPA negotiations. Periodically, Hunzinger was on those calls, as was Gordon on those occasions.⁴⁸

29. During the course of those face-to-face negotiation meetings that he attended, and during the telephonic conferences with the City's representatives that he also attended, Levine was able to, and did, observe, "first-hand," who had the decision-making authority on behalf of the City concerning the terms of the PPA.⁴⁹

30. Levine observed "that Hunzinger alone was in charge i.e., Hunzinger held and exercised all decision-making authority on his side of the table when negotiating the final terms of the PPA." He further observed that "all of the proposals made by the City Staff, whether made during a telephone conference, a face-to-face meeting, or via email, were . . . subject to Hunzinger's approval or rejection."⁵⁰

⁴⁶ Levine Aff. ¶¶2,6,11; Regan Aff. ¶¶10

⁴⁷ Hunzinger Aff. ¶25 ¶

⁴⁸ Levine Aff. ¶7.

⁴⁹ Levine Aff. ¶¶2,6,

⁵⁰ Levine Aff. ¶¶9-12

31. The Plaintiff in this case has two directors, Mr. Lee Price and Ms. Jo Lee R. Beatty. Both of the Plaintiff's directors were not present during the negotiations between the City and GREC LLC. Consequently, they have no personal knowledge about those negotiations.⁵¹

B. Legal Analysis Concerning the Advisory Committee Issue

Article I, Section 24(b) of the Florida Constitution provides:

All meetings of . . . any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(c), except with respect to meetings exempted pursuant to this section or specifically closed by the Constitution.

Section 286.011(1), F.S., provides in pertinent part:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission

⁵¹ Beatty depo. at pp.40, ln 1-4;43, ln 4-9;50, ln 19-24;89, ln 13-25; and 90, ln 2-6; Price depo. at pp. 56, ln 18-21; 57, ln 4-9; and 38, ln 20-24.

must provide reasonable notice of all such meetings.

Unless specifically exempted, all governmental authorities in Florida are subject to the Sunshine Law. The Sunshine Law may also apply to "committees subordinate to or selected by traditional government authorities." Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So. 3d 755, 762 (Fla. 2010) (emphasis added). "[T]he dispositive question is whether 'decision-making authority' has been delegated to the committee." Id. (quoting Wood v. Marston, 442 So. 2d 934, 939 (Fla. 1983) (emphasis added)). If a committee has been delegated decision-making authority, its meetings are subject to the Sunshine Law and must be properly noticed and open to the public. In contrast, a committee is not subject to the Sunshine Law "if the committee has only been delegated information-gathering or fact finding authority" or is "simply providing advice and information," or "provid[ing] only a mere recommendation." City of Sarasota, 48 So. 3d at 762-63 (citing Wood, 442 So. 2d at 940-41) (emphasis added); Lyon v. Lake County, 765 So. 2d 785, 789 (Fla. 5th DCA 2000); McDougall v. Culver, 3 So. 3d 391, 393 (Fla. 2nd DCA 2004); Jordan v. Jenne, 938 So. 2d 526, 530 (Fla. 4th DCA 2006).

In City of Sarasota, the Florida Supreme Court held that meetings of a local government's contract negotiating team were

not subject to the Sunshine Law. In City of Sarasota, Sarasota County assigned the County Administrator the task of negotiating a contract with representatives of the Baltimore Orioles concerning the relocation of the Orioles' spring training facilities. The County Administrator delegated this duty and authority to Mr. David Bullock, a deputy county administrator. Mr. Bullock assembled a contract negotiating team that consisted of several county employees, the county attorney, the county's chief financial officer, and two outside consultants. The contract negotiations occurred over an 8-month period. The court determined that the county's negotiating team did not constitute an advisory committee subject to the Sunshine Law because the deputy county administrator retained and exercised the ultimate authority to negotiate the terms of the contract and the negotiating team simply provided advice and information to the deputy county administrator.

City of Sarasota is the Florida Supreme Court's most recent statement concerning the applicability (or non-applicability) of the Sunshine Law to contract negotiations conducted by a local government. The facts in the case at bar are very similar to the facts in City of Sarasota. Therefore, the City and GREC believe the rationale and holding of City of Sarasota should control in the instant case.

The undisputed facts, as reflected by the Affidavits filed by the Joint Movants in this action establish that:

(a) Hunzinger did not delegate his decision-making authority to his negotiating team, as a whole, or to any individual member of the negotiating team;

(b) Neither the negotiating team nor any of the negotiating team's members exercised decision-making authority concerning the terms of the PPA;

(c) The negotiating team's role in the PPA negotiations was to gather factual information for and provide advice to Hunzinger;

(d) Neither the negotiating team nor any of its members eliminated any terms of the PPA from Hunzinger's consideration; and

(e) Hunzinger retained and exercised the ultimate authority to negotiate and approve all of the terms of the PPA.

Accordingly, the undisputed facts show that the GRU negotiating team did not constitute an "advisory committee" that is subject to the Sunshine Law. See City of Sarasota, 48 So. 3d at 762.

Numerous other Florida appellate opinions also provide support for the proposition that GRU's negotiating team was not subject to the Sunshine Law. See, e.g., Lyon, 765 So. 2d at 785 (county committee that conducts only information gathering not

subject to Sunshine Law); Knox v. Dist. School Bd. of Brevard, 821 So. 2d 311 (Fla. 5th DCA 2002) (meetings of school board's interview team not subject to Sunshine Law because the team served only an advisory function); Homestead-Miami Speedway LLC v. City of Miami, 828 So. 2d 411 (Fla. 3d DCA 2002) (Sunshine Law does not require all contract negotiations to be open to the public); Godheim v. City of Tampa, 426 So. 2d 1084 (Fla. 2d DCA 1983) (Sunshine Law does not apply to negotiation meetings conducted by city staff with competing vendors for award of a contract to construct and operate a solid waste facility).

Based on the summary judgment evidence submitted with this Joint Amended Motion, no material issues of fact are in dispute and the Court should grant final summary judgment to the City and GREC LLC on the Advisory Committee Issue.

V. SUMMARY JUDGMENT SHOULD ALSO BE GRANTED ON THE CURE ISSUE

A. Statement of Undisputed Facts Concerning the Cure Issue

1. On April 17, 2009, Hunzinger and Gordon reached agreement on the terms of the PPA, subject to the subsequent review and approval of the City Commission.⁵²

2. Section 2.1 of the PPA⁵³ provides:

⁵² Hunzinger Aff. ¶28; Gordon Aff. ¶13; Regan Aff. ¶29; Stanton Aff. ¶29

⁵³ The PPA document is found at Ex. 10.

2.1 Effective Date. This Agreement shall be effective as of the date specified in the introductory paragraph hereof, **provided** it has been approved by the City Commission of the City of Gainesville prior to June 5, 2009.

(Ex. 10) (emphasis added)

3. The PPA would not have become effective if the PPA had not been approved by the City Commission before June 5, 2009.⁵⁴

4. The reason this Section 2.1 condition, of express Commission approval of the PPA, was in the PPA was because Hunzinger demanded that it be in the PPA. In fact, Hunzinger made it known to GREC LLC's President that he "would not budge on this issue." It had to be in the contract.⁵⁵ Hunzinger "insisted on It."⁵⁶ Hunzinger "made it clear to GREC LLC on numerous occasions that the PPA's legal effectiveness was subject to it being approved by the City Commission," and GREC LLC "agreed to the inclusion of that condition as a term in the agreed-upon PPA."⁵⁷ "Although GREC LLC did not want to make the PPA subject to a condition precedent, Hunzinger would not agree to drop this requirement," and GREC LLC "ultimately agreed to the inclusion of the condition precedent as a term in the PPA."⁵⁸

⁵⁴ Hunzinger Aff.; Gordon Aff. ¶¶14, 16

⁵⁵ Gordon Aff. ¶14

⁵⁶ Regan Aff. ¶32

⁵⁷ Cole Aff. ¶13

⁵⁸ Levine Aff. ¶15.

5. It was the intent of the two parties, as expressed by their discussions at the time, that if the City Commission did not approve the PPA, "it would not have become effective."⁵⁹

6. On May 7, 2009, the City Commission held a properly noticed meeting concerning the PPA that had been negotiated with GREC LLC.⁶⁰

7. The Commission's Rules are publicly available for inspection that notify the public of the regular meeting dates each month upon which the Commission meets.⁶¹

8. The agenda for the City Commission's meeting of May 7, 2009 specifically identified the negotiated PPA as an agenda item.⁶² That agenda was in existence as early as "4/29/09" as evidenced by its "print date" appearing on the lower right-hand corner of that agenda.⁶³

9. The Commission's Clerk facilitates "Public Agenda Reviews" for upcoming Commission public meeting agendas, **for which Agenda Reviews the public is invited to attend and comment** and for which agenda reviews the public receives advance public notice on the City's Notices of Meetings located on the City's

⁵⁹ Cole Aff. ¶15

⁶⁰ Lannon Aff. ¶13; Ex.14

⁶¹ Lannon Aff. ¶4

⁶² Lannon Aff. ¶13; see also the Agenda itself, Ex. 8, at pp. 24-25.

⁶³ Ex. 8

official website.⁶⁴ There is no record evidence in this case that any representatives of the Plaintiff took advantage of any "Public Agenda Reviews" that took place before the May 7, 2009 City Commission meeting in order to formally request that the Commission's agenda for such upcoming Commission meeting include **any** specific issues, topics or concerns about the PPA that the Plaintiff, or its principals, Mr. Price or Ms. Beaty, felt should be addressed at the May 7, 2009 public Commission meeting before the Commission took any vote to either approve or not approve the PPA.

10. The agendas for upcoming City Commission meetings are available from the Clerk's office, and on the City's website. Also, the Clerk's Office, as a practice, posts "Notice of Meetings" on a Bulletin Board immediately outside of the Clerk's Office, maintained by the Clerk's Office, and agendas are posted on that Board. Photos of that Bulletin Board are found in Ex. 7.⁶⁵ There is no record evidence in this case that the Plaintiff, or Mr. Price or Ms. Beaty individually, ever requested a copy of the agenda for that May 7, 2009 Commission meeting in advance of that meeting. Nor is there any record evidence in this case that the Plaintiff, or Mr. Price or Ms.

⁶⁴ Lannon Aff. ¶4

⁶⁵ Lannon Aff. ¶4; the photos of the Bulletin Board are found in Ex. 7.

Beaty individually, were denied a copy of the agenda for that upcoming meeting.

11. Neither Mr. Price nor Ms. Beaty chose to attend the May 7, 2009 Commission meeting.⁶⁶

12. It is undisputed that Mr. Price was actually aware of the May 7, 2009 City Commission meeting at the time, since he admits that he actually watched that Commission meeting on live TV that night, as the public meeting was being conducted:

UNDER QUESTIONING BY ATTORNEY WARATUKE:

20 Question: Okay. Did you attend the May 7th, 2009 City
21 Commission meeting when Mr. Hunzinger presented to the
22 City Commission the results of the negotiations and what
23 they were able to negotiate?

24 Answer: No. I think I watched it on TV that night.⁶⁷

13. The Plaintiff, as an entity, and/or its principals, Mr. Price or Ms. Beaty, individually, as members of the public, had the opportunity available to them, had they taken advantage of such opportunity, to attend the May 7, 2009 public Commission meeting and to have spoken to the issue.

14. At or near the time that agreement was reached on the PPA in April of 2009, Hunzinger met with all the Commissioners in regard to the PPA and provided them with a briefing to

⁶⁶ Price Depo at p. 38; Beaty Depo at p. 50.

⁶⁷ Price Depo at p. 38.

concerning the negotiated PPA. These briefings were in addition to individual discussions that Hunzinger periodically had regarding the evolving terms of the PPA, in his capacity as General Manager for Utilities, with some, and likely all, of the members of the City Commission, in the normal course, during the approximately 12 months that he had been negotiating the PPA.⁶⁸

15. He met with Commissioner Lowe on April 20, 2009; with Mayor Hanrahan and Commissioner Donovan on April 21, 2009; with Commissioner Henry on April 27, 2009; with Commissioner Hawkins on April 28, 2009; with Commissioner Poe on April 28, 2009; again with Mayor Hanrahan on May 4, 21009; again with Commissioner Donovan on May 5, 2009 (which meeting resulted in the follow-up email, Ex. 11, from Donovan to Hunzinger dated May 7, 2009, and sent by Donovan at 7:20 am, a few hours before the May 7, 2009 public meeting commenced, discussed below); with Commissioner Mastrodicasa on May 6, 2009; and with Commissioner Lowe again on May 6, 2009

16. In the briefings to individual Commissioners regarding the terms of the PPA that Hunzinger conducted between April 17, 2009 and the May 7, 2009 City Commission public meeting, Hunzinger had with him, or available, for the Commissioners' review or discussion, should they so desire, a copy of the unredacted PPA that Hunzinger had agreed to, subject to their

⁶⁸ Hunzinger Aff. ¶34

approval, and which the City Commission would be asked to consider and approve at the upcoming May 7th Commission meeting. Regan accompanied Hunzinger on most of those briefings. In those discussions with the Commissioners, Hunzinger and Regan answered the questions the Commissioners posed and did not refuse to answer any questions they posed.⁶⁹

17. In an email sent to Hunzinger at 7:20 am, on the morning of May 7, 2009---just hours before the City Commission's public meeting on its review of and vote on the PPA---one of the City Commissioners, John Donovan, expressly thanked Hunzinger for "the presentation" that Hunzinger had made to Commissioner Donovan two days before regarding the biomass plant. He also thanked Hunzinger for the materials that Hunzinger had provided to Commissioner Donovan as well on the biomass plant.⁷⁰

18. In his email, Commissioner Donovan stated that "I reviewed the materials." His email---whose email "Subject" line was titled "Some questions for the biomass plan presentation"---**posed eight questions** to Hunzinger and asked "[i]f these [questions] could be addressed during the presentation [i.e., during the May 7, 2009 City Commission meeting] today . . . "⁷¹

⁶⁹ Hunzinger Aff. ¶36; Regan Aff. ¶36

⁷⁰ Ex. 11

⁷¹ Ex. 11

19. As is evident from the Ex. 11 email, the eight questions posed were focused, well thought out, thorough and very inquisitive in degree.⁷²

20. The eight questions posed, and the underlying analysis they exhibited, evidence that Commissioner Donovan was **not** treating the Commission's review of the PPA at its upcoming consideration of, or its approval vote on, the PPA later that day, at the May 7, 2009 public City Commission meeting, as any type of 'perfunctory ratification,' or 'ceremonial acceptance' by the Commission of the PPA.⁷³

21. Those eight questions posed evidenced that Commissioner Donovan **was** engaged in '**independent** action' and **independent** analysis/scrutiny in his review of the merits of the PPA, when it came time for the City Commission consideration of, and vote on, the PPA later that day, at the City Commission's public meeting.⁷⁴

22. A verbatim transcript of the City Commission's discussion of the PPA at the May 7, 2009 meeting has been prepared and submitted to this Court as part of the Composite Exhibit Filing.⁷⁵

⁷² Ex. 11

⁷³ Ex. 11

⁷⁴ Ex. 11

⁷⁵ The transcript is Ex.12; see Danielle Freeze Aff.

23. At the City Commission meeting on May 7, 2009, Hunzinger introduced the PPA agenda item to the City Commission. Regan then gave an extensive power point presentation to the City Commission concerning the negotiated PPA. During that Commission meeting, Regan also answered multiple questions from the City Commissioners.⁷⁶

24. Six of the seven City Commissioners either asked questions and/or commented on the issue during the public meeting and, as is evident from both the transcript and the footage of the meeting itself, all otherwise actively and fully participated during the May 7, 2009 meeting.⁷⁷

25. GREC LLC's President, Jim Gordon, also provided comments to the City Commission at that meeting.⁷⁸

26. After Regan and Hunzinger finished their presentations at the May 7th meeting concerning the PPA, members of the public were offered the opportunity to present comments on the negotiated PPA. Two members of the public spoke, but no representative of Gainesville Citizens Care, at least who

⁷⁶ Hunzinger Aff. ¶38; Regan Aff. ¶38; The power point slides shown to the Commission that day are available at Ex. 15 and are also visible on the CD/DVD video download, Ex. 13; see also the verbatim transcript of the discussion at Ex. 12.

⁷⁷ Hunzinger Aff. ¶¶39,40; see the transcript of that meeting, Ex.12, with Commissioners asking questions or commenting on the issues throughout, including at pp. 43-44,48-51,58,63,77,77-80,81-84 and 90-93; see the video of the meeting at Ex. 13

⁷⁸ Hunzinger Aff.; see the transcript of that meeting, Ex.12 at pp.66-74; and the video, at Ex. 13)

identified themselves as such, offered any comments. One of the two citizens spoke to the Commission in active support of the biomass plant that was the subject of the PPA, and the other appeared to be in favor due to the potential for local jobs that would be created by the plant that was the subject of the PPA contract.⁷⁹

27. Following the presentation by Hunzinger and Regan, and following the public comments, Commissioner Donovan (who was the Commissioner who had sent the email earlier that morning to Hunzinger, posing the eight questions), stated on the record that his questions had been answered:

COMMISSIONER DONOVAN: Thank you, Madame Mayor.

I--- the--thank you for your presentation. That was wonderful to hear and a particular thanks to the [GRU] staff. That was a really great presentation.

I--- I had given the staff a bunch of questions I had, and they answered all of them except maybe one or two, the--the question on construction costs. I think you answered it, and I think I didn't follow it.⁸⁰

28. Even the "maybe one or two" questions that Commissioner Donovan was unclear had been answered were immediately addressed and answered by Regan to Donovan's satisfaction. Donovan expressed his satisfaction with the

⁷⁹ Hunzinger Aff. ¶42; Regan Aff. ¶40; see the transcript of that meeting, Ex. 12, at pp. 87-93); and the video of the meeting at Ex. 13).

⁸⁰ Ex. 12 at pp. 77-78 (emphasis added)

answers to all of his questions, telling Regan, in response to the information that Regan provided in answering one of the two remaining questions Donovan had: "Okay, great, thank you," and telling Regan, in response to the information that Regan provided in answering Donovan's second question: "Okay. Sure." Commissioner Donovan also summed up his overall satisfaction that all of his questions were answered by Regan when he told Regan: "So thank you very much."⁸¹

29. Following the presentation by Hunzinger and Regan, and following the public comments, another Commissioner, Lauren Poe, made comments on the record regarding the merits of the long-term PPA to the City of Gainesville, including these comments:

COMMISSIONER POE: Thank you, Madame Mayor.

And I know thanks are going around and I don't want to belabor that, but I think there's two people that I'd really like to make sure that I thank. And then the first is Commissioner Lowe, who has been chair of the regional utilities committee.

* * *

And I think it's Commissioner Lowe's dogged sort of pursuit of **making sure we came out with a product that our community and our commission and the GRU could be happy with that we have this.**

* * *

* * *

But this is important. There are very few issues that are more important than this issue for a

⁸¹ Ex. 12, at pp.77-80

variety of reasons. And maybe that's our long-term well-being as a species; maybe that's our economic competitiveness and viability internationally in an increasingly volatile market. **But this is important for a very long time.**⁸²

30. Commissioner Poe publicly commended Mr. Hunzinger for the hard and valuable work he had done in negotiating the PPA and in providing the City with the immense benefits that the PPA provided to the community of Gainesville:

And I think, Mr. Hunzinger, you've just performed that task to a - **to a remarkable degree**, and - and **we owe a debt of gratitude and so does our whole community.**⁸³

⁸² Ex. 12 at pp. 81-83 (emphasis added). Commissioner Poe's reference to the important benefits flowing from an approval of the PPA was grounded in record evidence before the Commission. A review of the Ex. 15 PowerPoint presentation, (as well as the Ex. 12 verbatim transcript in which the information in the PowerPoint presentation images was discussed orally by Regan) reflects **these important multi-faceted benefits**, among others, flowing from approval of the PPA:

- a. the **environmental benefits** that flowed to Gainesville, including "100% Recycling of Wood Ash" (at p. 20); its "Zero Surface Water Discharge" (at p. 20); the fact that the PPA "Promotes Ecosystem Restoration, Fire Fuel Hazard Reduction, And Supports Silviculture" (at p. 20);
- b. the **economic benefits** to Gainesville and its citizens, including "Creates Over 500 New Jobs In The Region" (at p. 19), and "Adds Over \$5,500,000/year to Local Tax Base in Tangible Property Taxes,"; and
- c. the potential **energy independence benefits**:-because the biomass plant to be constructed and operated under the PPA would be using "clean wood" from timber for its fuel, and not oil (see Ex. 15 at p. 4), it created a greater independence from fossil fuel issues it permitted, including the fact that the plant "Replaces Capacity Lost From Retirement Of Older Fossil Fuel Units" (Ex. 15 at p. 20).

⁸³ Ex. 12 at pp. 81-83 (emphasis added)

31. Following the presentation by Hunzinger and Regan, and following the public comments, the City Commission voted unanimously (7-0) to approve the negotiated PPA.⁸⁴

32. The City Commission's consideration of the approval or disapproval of the negotiated PPA lasted approximately 1 hour and 40 minutes.⁸⁵

33. This lawsuit was filed on April 4, 2012,⁸⁶ almost three years after the Commission took the foregoing action.

B. Legal Analysis Concerning the Cure Issue

The undisputed evidence demonstrates that no Sunshine Law violation arose out of Hunzinger's negotiation or execution of the PPA. The undisputed evidence also demonstrates that even assuming, *arguendo*, that there may have been a violation, it was legally "cured" by the City Commission's subsequent, independent action on May 7, 2009, which resulted in the City Commission's unanimous approval of the PPA.

It is well-settled in Florida that a Sunshine Law violation "can be cured by independent final action in the sunshine." City of Sarasota, 48 So. 3d at 765 (quoting Tolar v. School Bd. of Liberty County, 398 So. 2d 427, 429 (Fla. 1981)); see also

⁸⁴ See the transcript of that meeting, Ex. 12, at pp. 93, 1n 23; Lannon Aff.

⁸⁵ Lannon Aff.; Ex. 14 at p. 13; Ex. 13 video; Hunzinger Aff. ¶39

⁸⁶ see Court file.

Monroe County v. Pigeon Key Historical Park, Inc., 647 So. 2d 857, 861 (Fla. 3d DCA 1994) (Sunshine Law violation cured "where sufficient corrective action has been taken"); Bruckner v. City of Dania Beach, 823 So. 2d 167, 171 (Fla. 4th DCA 2002) (City's re-adoption of a resolution at a subsequent properly noticed public hearing cured any Sunshine Law violation); Yarbrough v. Young, 462 So. 2d 515, 517-18 (Fla. 1st DCA 1985) (potential Sunshine Law violation cured by action at subsequent duly noticed public meeting). It is also well-settled that "mere ceremonial acceptance or perfunctory ratification of secret actions and decisions" will not cure a Sunshine Law violation. City of Sarasota, 48 So. 3d at 765.

In the case at bar, the City Commission considered the negotiated PPA at a properly noticed public meeting held on May 7, 2009. Each member of the City Commission was briefed about the PPA prior to the meeting on May 7, 2009. Indeed, as we have seen, one Commissioner vigorously and thoroughly questioned Hunzinger even before the public meeting about concerns and issues he wanted answered regarding the PPA and its underlying biomass plant. Six of the seven Commissioners either asked questions and/or commented on the issue during the public meeting and otherwise actively and fully participated during the May 7, 2009 meeting. Members of the public were offered the opportunity to provide comments concerning the negotiated PPA,

before the City Commission voted unanimously to approve the PPA. The City Commission's consideration of the negotiated PPA lasted approximately 1 hour and 40 minutes. Given these undisputed facts, it is clear the City Commission's consideration of the PPA was not 'ceremonial' or 'perfunctory'.

The City Commission's approval of the PPA at the public meeting on May 7, 2009 constituted independent, final action in the sunshine, which cured any alleged Sunshine Law violation that previously may have occurred. See Tolar, 398 So. 2d at 429.

VI. CONCLUSION

The City and GREC respectfully jointly request this Court to grant final summary judgment in favor of the City and GREC, and against the Plaintiff, and order this action dismissed in all respects, with prejudice. The Court's order should:

A. grant final summary judgment against GCC on the Advisory Committee Issue because the actions of Hunzinger's negotiating team did not violate the Sunshine Law;

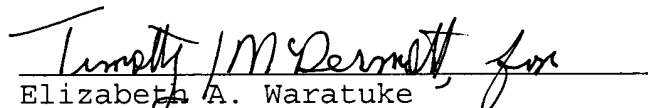
B. grant final summary judgment against GCC on the Cure Issue because any Sunshine Law violation was legally cured by the City Commission's independent, final action taken in the sunshine during the City Commission meeting on May 7, 2009; and

C. reserve jurisdiction to rule upon the City's and
GREC LLC's request for reasonable attorneys' fees and costs
under Section 286.011(4), Florida Statutes.

Respectfully submitted this 30th day of November, 2012.

Counsel for GREC LLC has authorized counsel for the City to
sign this Joint Amended Motion for Final Summary Judgment on
behalf of GREC LLC.

FOR THE CITY OF GAINESVILLE


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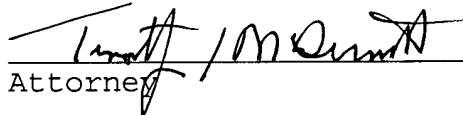
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing, by agreement of the parties, and the Court's Order, has been furnished by hand delivery to Marcy I. Lahart, on this 30th day of November, 2012.



Attorney