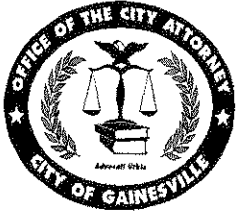


**LEGISTAR #**

**110548**

110548



# MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229

Box 46

**TO:** Mayor and City Commission

**DATE:** Dec. 15, 2011

**FROM:** City Attorney

CONSENT

**SUBJECT:** Khepera Solar, LLC a Florida Limited Liability Company vs. the City of Gainesville d/b/a Gainesville Regional Utilities, in the Alachua County Florida Eighth Judicial Circuit, Court Case No. 2011-CA-6056

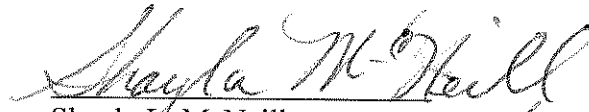
Recommendation: The City Commission authorize the City Attorney's Office and Special Counsel to represent the City in the case styled Khepera Solar, LLC, a Florida Limited Liability Company vs. the City of Gainesville d/b/a Gainesville Regional Utilities, in the Alachua County Florida Eighth Judicial Circuit, Court Case No. 2011-CA-6056.

On November 28, 2011, the City was served with a Summons and Complaint filed by Khepera Solar, LLC, in the Circuit Court of the Eighth Judicial Circuit in and for Alachua County, Florida, for declaratory and injunctive relief, and for writ of mandamus related to GRU's 2011 Solar Feed-in-Tariff (FIT) program. According to Florida Department of State Division of Corporations, Ms. Anne M. Orlando is listed as the registered agent. Ms. Orlando and Paul Wales are listed as managers of the company.


Fiscal Impact:

Funds are available in the GRU system-wide legal expense account.

Prepared by:

  
Shayla L. McNeill  
Utilities Attorney

Approved and Submitted by:

  
Marion J. Radson  
City Attorney

RECEIVED  
NOV 28 2011  
BY: \_\_\_\_\_

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

KHEPERA SOLAR, LLC  
a Florida Limited Liability company

CASE NO: 2011-CA-6056

Plaintiff,

DIVISION: W K

vs.

CITY OF GAINESVILLE  
d/b/a GAINESVILLE REGIONAL UTILITIES

A True Copy  
SADIE DARNELL, SHERIFF  
ALACHUA COUNTY, FLORIDA  
Served at 11:40 on the 28 Day  
of Nov. 20 11  
BY Sgt. Peter Buppitt 0411  
AS DEPUTY SHERIFF

Defendant. /

SUMMONS

THE STATE OF FLORIDA:

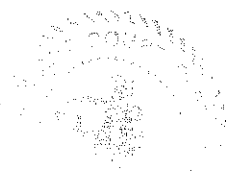
TO EACH SHERIFF OF THE STATE: You are hereby commanded to serve this Summons and a copy of the Complaint or Petition in this action on Defendant:  
*FOR DECLARATORY & INJUNCTIVE RELIEF*

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

Please serve: **Mayor Craig Lowe  
200 East University Avenue  
Gainesville, Florida 32601**

Each Defendant is required to serve written defenses to the Complaint, or Petition to *FOR DECLARATORY & INJUNCTIVE RELIEF* **PATRICE BOYES, ESQUIRE**, Plaintiff's attorney, whose address is **414 SW 140th Terrace, Suite 100, Newberry, Florida 32669, (352) 372-2684** within <sup>30</sup>~~twenty (20)~~ days after service of this Summons on the Defendant, exclusive of the day of service and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. If Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the Complaint or Petition.

WITNESS my hand the Seal of this Court this 22<sup>nd</sup> day of November, 2011.



J. K. "BUDDY" IRBY  
As Clerk of said Court

(SEAL)

By: D. Thomas  
As Deputy Clerk

"PERSONS WITH DISABILITIES REQUESTING REASONABLE ACCOMADATIONS TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT (352) 374-3639 (VOICE & TDD) OR VIA FLORIDA RELAY SERVICE AT (800) 955-8771".

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

KHEPERA SOLAR, LLC  
a Florida Limited Liability Company,

Case No.: 2011-CA-6056  
Division: W

Plaintiff,

vs.

CITY OF GAINESVILLE  
d/b/a GAINESVILLE REGIONAL UTILITIES

Defendant.

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, AND  
FOR WRIT OF MANDAMUS**

Plaintiff, KHEPERA SOLAR, LLC, a Florida Limited Liability Company, (hereinafter “Khepera”) by and through undersigned counsel, brings this action against Defendant, CITY OF GAINESVILLE d/b/a GAINESVILLE REGIONAL UTILITIES (hereinafter, “City” or “GRU”), for declaratory and injunctive relief, and for a writ of mandamus, and alleges the following:

1. This is action for declaratory and injunctive relief, pursuant to Chapter 86, Florida Statutes, and for a Writ of Mandamus pursuant to Rule 1.630, Fla.R.Civ.P.
2. This Court has jurisdiction over the parties and subject matter of the action; venue properly lies in Alachua County, Florida.
3. Plaintiff, Khepera Solar, LLC, is a Florida limited liability company in good standing, located in Gainesville, Florida, and has standing to commence and maintain this action. At all times material, Plaintiff unsuccessfully sought award by

Defendant of a public contract for purchase and sale of electricity generated from a 100 kilowatt, rooftop system located at 131 SE 10<sup>th</sup> Avenue, Gainesville, Florida.

4. Defendant, City of Gainesville d/b/a Gainesville Regional Utilities (“GRU”) is a municipal electric, natural gas, water, wastewater and telecommunications utility serving retail customers. The utility is owned and operated by the City of Gainesville in Alachua County, Florida.

5. Pursuant to a state-approved Feed-in-Tariff Program (“FIT Program” or “FIT Capacity Program”), Defendant adopted specific policies and procedures for contractually purchasing net energy generated by installed solar photovoltaic systems at a fixed rate per kilowatt hour for a period of 20 years. Those policies are found in:

- A-1 Ordinance 080566, amending Section 2, Appendix A, Section Utilities (1) Electricity (eff. October 1, 2010, amended September 15, 2011);
- A-2 City of Gainesville Code of Ordinances; GRU Administrative Guideline VO72109 (March 1, 2009); and
- A-3 GRU Administrative Guideline 8.29 (effective October 1, 2010, Revised September 15, 2011).

A copy of the above-cited policies is attached as **Composite Exhibit A** and incorporated herein. The GRU General Manager’s authority over the FIT Program derives from City of Gainesville, Code of Ordinances, Appendix A, Section 27 (1) Electricity i. Distributed Resources Rates. 1. General Provision (C) Solar Energy Purchase Agreement/Solar Feed-in-Tariff (SEPA)(v); (a copy is attached as **App. Exh. K** and incorporated).

6. Florida Statutes define “solar photovoltaic system” as a device that converts incident sunlight into electrical current. Sec. 377.803(7), Florida Statutes (2011).

7. The binding contract entered into between GRU (as Buyer) and the solar photovoltaic system owner (as Seller) is known as the Feed-in-Tariff Solar Energy

Purchase Agreement (SEPA). Contract prices are set by City Commission ordinance.

8. To be eligible to participate in the FIT Program and receive a capacity award leading to a SEPA contract, a project must lie within GRU's electric service territory, have capacity reserved for the project and be approved by the GRU Engineering staff.

9. At all times material, GRU's guidelines require submission of a complete project application, with all required forms and documents submitted and payment of all applicable fees and deposits. A copy of the *GRU Solar FIT Application Packet – Required Documents for the Solar FIT Program* and *GRU Vendor Application Form* is attached as **Composite Exhibit B** and incorporated herein.

10. The required forms include but are not limited to the U.S. Internal Revenue Service Form W-9 "*Request for Taxpayer Identification Number and Certification*," the "*GRU Solar Feed-In Tariff Vendor Form*," proof of liability insurance (minimum \$200,000), and proof of property ownership or leasehold where the system is to be installed.

11. Defendant governs all purchase of "supplies, materials, equipment and contractual services" through its Charter Officers, including the GRU General Manager, pursuant to *Purchasing Policy – Resolution 060732 (2006)*. A copy of the Purchasing Policy Resolution is attached as **Composite Exhibit C-1** and incorporated herein. Procedures approved by the City Manager and GRU General Manager implement those purchasing policies. Id. In turn, Purchasing Divisions of the City derive their authority to supervise purchase and sales through the Managers. Id. Competitive bidding is required for all procurement, with the bid value determining the bid process. Id., p. 3.

12. Purchases exceeding an anticipated \$50,000 require formal bids submitted through the Purchasing Division of GRU in this case. The value of Plaintiff's bid alone is an estimated \$800,000.

13. Defendant is required by Section 6.2 of the Purchasing Policy to employ "best evaluated" or "lowest responsive bid" standards as the basis for a bid award. *Id.* Section 10 sets forth the Defendant's policy for Remedies/Appeals. In the instant case, Defendant provided no notice to Plaintiff in its 2011 Solar FIT Program Solicitation materials or communications of appellate rights or process, and cited no administrative avenue for remedies/appeals.

14. The City has enacted and published a Financial Services Procedures Manual (**Composite Exhibit C-2**) that sets forth exhaustive procedures for bid protests. Absent notice of alternative process, Plaintiff submitted its bid protest to Defendant in reliance. Plaintiff notes that GRU is expressly excluded from the Manual unless otherwise specified; however, the Court in its discretion should deem the bid protest sufficient on the merits as providing notice of a claim to Defendant, and notice that the overarching Purchasing Policy had been violated.

15. Electricity purchased pursuant to the FIT Program is a commodity, service or other tangible personal property acquired by GRU for consumption or resale to its customers.

16. Defendant's Purchasing Policies apply to electricity purchased through the FIT Program.

17. Defendant issued two solicitations -- in January and September 2011, respectively -- pursuant to the 2011 Solar FIT Program (hereafter, "Solicitation I" and "Solicitation II" respectively).

18. Plaintiff timely submitted its substantially complete response to Solicitation I; a copy of Plaintiff's submission and Defendant's rejection letter is attached as **Composite Exhibit D** and incorporated herein.

19. GRU's vendor selection for Solicitation I was conducted by means of a computerized lottery or other random process. Plaintiff was not selected.

20. Subsequent to Solicitation I, Plaintiff sought administrative redress from the Defendant, Gainesville City Commission. Plaintiff appeared at a public meeting on or about May 5, 2011, and lodged its objection to the Solicitation I awards, based on improper and impermissible favoritism that Defendant had exhibited to one or more responders.

21. At that May 5, 2011 meeting, the Gainesville City Commission directed the City Auditor to review the 2011 FIT Program contractor selection process and prepare a report.

22. The City Auditor's report dated July 25, 2011 included a number of findings, i.e. of the 136 project applications submitted for the 2011 Solar FIT Program (both residential and commercial projects), 30 were awarded on a first-come, first-serve basis, and 25 projects were selected by lottery.<sup>1</sup> A copy of the City Auditor's report is

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<sup>1</sup> Of the available capacity for the 2011 FIT Program, a total of 200 kw was set aside for residential applicants, apportioned at a maximum 10 kw each. According to Plaintiff's information and belief, 30 residential projects qualified on a first-come, first-serve basis. Defendant by lottery then awarded the remaining capacity by lottery to 23 commercial



attached as **Exhibit E** and incorporated herein. One lottery applicant submitted 37 applications for 11 school board-owned locations (an average of 2 to 5 applications per school site/parcel). *Id.*, p. 9. This same applicant won 10 contracts in the lottery. *Id.*, p. 9. In addition, the auditor found that this responder filed multiple applications in the names of limited liability companies not yet registered under Florida law.

23. The City Auditor found that exceptions to the GRU FIT Program application requirements (i.e. certain document submissions) were made for one applicant, but those exceptions were not communicated to the other potential bidders. The auditor stated that notifying potential applicants of clarifications/exceptions provided is:

*“important for maintaining a level playing field for all potential applicants, similar to processes used by the City’s purchasing departments regarding additional information or addenda to competitive bidding processes.”* Exhibit E, p. 7.

24. GRU by contract impermissibly altered the submission requirements of Solicitation I for at least one responder.

25. The above-described variances to the Defendant’s Solicitation I requirements were material irregularities, arbitrary and capricious, and granted at least one responder a competitive advantage over Plaintiff. Defendant’s lottery selection process compounded the competitive advantage granted to this responder over Plaintiff.

26. GRU did not disqualify any of the responses to Solicitation I for which exceptions were given to the submission requirements.

27. In September 2011, Defendant Gainesville City Commission adopted procedural changes to the Solar FIT Program in light of the City Auditor’s report.

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projects and two (2) residential projects, the latter having been foreclosed from the first-come-first-serve selection.

Defendant manipulated and deleted the previous requirements to submit – as part of the solicitation response – the required Form W-9, proof of insurance and GRU Vendor Application.

28. On or about September 15, 2011, GRU issued Solicitation II, entitled *Supplemental 2011 Solar FIT Capacity Program Solicitation*. Solicitation II was limited to unsuccessful responders for Solicitation I. A copy of Solicitation II is attached as **Exhibit F** and incorporated herein.

29. In addition to manipulating the rules for qualifying responses, GRU additionally required that respondents to Solicitation II execute a *Dispute Resolution Agreement and Release of Claims* (“Release”) in an attempt to shield Defendant from future litigation over Solicitation I. <sup>2</sup> **Exhibit F**.

30. Plaintiff executed the Release “under protest” and on or about October 6, 2011, timely submitted its substantially complete response to Solicitation II; a copy is attached as **Exhibit G** and incorporated herein.

31. The GRU Release fails for lack of consideration and otherwise is unenforceable.

32. GRU again selected winning contractors by means of a computerized lottery or other random process. The lottery process did not remedy the harm and disadvantage suffered by Plaintiff as a result of Solicitation I.

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<sup>2</sup> About a dozen applicants reapplied with a total of 121 applications. One applicant split 11 applications into 62 separate submissions for the lottery; one applicant submitted 27 projects for still-unregistered limited liability companies.

33. Plaintiff received written notice on or about October 12, 2011 from the GRU Purchasing Department that it had not been selected; a copy of the Notice is attached as **Exhibit H** and incorporated herein.

34. GRU on October 17, 2011, notified Plaintiff that additional SEPA contracts had been awarded under Solicitation II to “the applications next in order as reflected through the initial lottery.” Again, Plaintiff’s project was not selected. The additional contract awards did not remedy the harm and disadvantage suffered by Plaintiff as a result of Solicitation I. A copy of the October 17, 2011 notice is attached as **Exhibit I** and incorporated by reference.

35. Plaintiff filed its Bid Protest, pursuant to Defendant’s Purchasing Policies, on or about October 17, 2011, challenging the Defendant’s use of a computerized lottery, Defendant’s failure to follow its own written procedures, and Defendant’s arbitrary and capricious denial of Plaintiff’s response.

36. In letters dated October 25, 2011 and November 2, 2011, GRU rejected Plaintiff’s Bid Protest on procedural grounds, stating that the 2011 FIT Program Solicitation was not subject to competitive bidding procedures or the City’s Purchasing Policies; a copy of the letters is attached as **Composite Exhibit J** and incorporated herein.

37. GRU neither identified nor afforded any other administrative remedy or process to Plaintiff, thereby denying all administrative relief to Plaintiff.

38. Defendant’s Purchasing Policies require use of “best evaluated” or “lowest responsive” bids as the basis for bid awards in a “Competitive Situation,” that is, where at least two responses are made in an effort to obtain an award, and competitor’s quotations

are not disclosed in advance. *See, Exhibit C.* Neither standard was employed in the instant case.

39. Florida law provides that absent a statutory or constitutional requirement, a public authority has no obligation to establish a bidding procedure, and may contract in any manner not arbitrary or capricious. However, where a procedure is established, the public authority must adhere, exercise its discretion based on clearly defined criteria, and may not abuse its discretion in award of public contracts.

40. Defendant did not adhere to its published criteria in the selection process for Solicitations I and II.

41. Defendant's conduct of Solicitations I and II exhibited improper and impermissible favoritism, improper manipulation of the FIT Program solicitation process, subverted the Defendant's purchasing policies, constituted an abuse of discretion, and otherwise violated Florida law.

42. But for Defendant's arbitrary and capricious conduct, Plaintiff is of information and belief that it could have been awarded capacity and a SEPA contract.

43. Given Defendant's rejection of Plaintiff's bid protest and failure to provide alternative process to contest the denial of Plaintiff's submissions, Plaintiff is in doubt about its rights and remedies under Defendant's policies and Florida law.

#### **COUNT I – DECLARATORY RELIEF**

44. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 43 inclusively, as if fully set forth herein.

45. All elements necessary to grant declaratory relief are present. There is a bona fide, actual, present need for a judicial declaration of whether Defendant's

Solicitations I and II, as described *supra*, were conducted in accordance with Florida law or city procedures – or both -- governing contractual purchasing. The declaration sought deals with a present controversy as to an ascertainable set of facts. Plaintiff's statutorily provided rights and privileges are dependent upon the law applicable to the facts. Plaintiff has an actual, present, adverse and antagonistic interest in the subject matter of this Complaint. The antagonistic and adverse interests are all before the court. And, the relief sought stems from an actual controversy.

46. As a result of the City's abuse of discretion, and its arbitrary and capricious rejection of Plaintiff's responses to Solicitations I and II, Plaintiff has been forced to retain the services of undersigned counsel to represent it in this lawsuit, and, accordingly, seeks an award of attorney's fees and costs incurred under Fla. Stat. 86.081.

**WHEREFORE**, Plaintiff, KHEPERA SOLAR, LLC, a Florida Limited Liability Company, respectfully requests that this court enter its Order:

1. Declaring that Defendant's conduct of Solicitations I and II and denial of Plaintiff's submissions violates Defendant's purchasing policies and application procedures for the 2011 FIT Capacity Program;
2. Declaring that Defendant's conduct of Solicitations I and II and denial of Plaintiff's submissions was arbitrary and capricious, and violates Florida law;
3. Declaring the capacity reservations or contracts (or both) awarded to applicants under Solicitations I and II null and void;
4. Awarding to Plaintiff a reasonable attorney's fee and costs of bringing this action, pursuant to Section 86.081, Florida Statutes; and

5. Providing such other relief as may be proper under the facts and circumstances.

**COUNT II – Injunctive Relief**

47. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 43 inclusively, as if fully set forth herein.

48. Plaintiff as the submitter of a complete response to Defendant's Solicitation I with all required documents has a clear legal right to the award of capacity and a SEPA contract under the 2011 Solar FIT Program. As a result of Defendant's arbitrary and capricious actions, impermissible and improper favoritism, and, the improper manipulation and subversion of its solicitation requirements, Plaintiff has suffered injuries that are different in type and extent than the community as a whole.

49. Defendant has denied Plaintiff any and all administrative process and relief, and Plaintiff has no adequate remedy at law. Under Florida law, lost profits are not available to an unsuccessful responder to a public contract solicitation.

50. Plaintiff will be irreparably harmed if Defendant's award of capacity and SEPA contracts under the 2011 Solar FIT remains undisturbed. Plaintiff will lose the economic benefit of a federal renewable energy grant (worth approximately 30% of its project value) if it does not receive an award of capacity and a SEPA contract prior to December 31, 2011. In addition, GRU on its website states that the next opportunity to vie for Solar FIT Program contracts is January 2013 – a year from now. It is not certain whether federal renewable energy grants will be available at that time.

51. Defendant employed random, computerized lotteries to award 2011 Solar FIT capacity and SEPA contracts in Solicitations I and II. Defendant required some

submitters to comply with pre-bid qualification requirements, but excused others in Solicitation I – and did not communicate that exception to all potential bidders.

Defendant curtailed participation in Solicitation II to those responders who did not win the lottery in Solicitation I and who submitted an executed, albeit unenforceable, release of claims against GRU.

52. Florida law provides that absent a statutory or constitutional requirement, a public authority has no obligation to establish a bidding procedure, and may contract in any manner not arbitrary or capricious. However, where a procedure is established, the public authority must adhere, must exercise its discretion based on clearly defined criteria, and may not abuse its discretion in award of public contracts.

53. Defendant's awards under the 2011 FIT program were not only arbitrary and capricious but also contrary to the Defendant's purchasing procedures, FIT Program application requirements, and Florida law, to the great detriment and prejudice of Plaintiff.

54. But for Defendant's above-described actions, Plaintiff is of information and belief that it could have been awarded capacity and one of the SEPA contracts under the 2011 FIT Program.

**WHEREFORE**, Plaintiff, KHEPERA SOLAR, LLC, a Florida Limited Liability Company, respectfully requests that this court enter its Order:

1. Permanently enjoining Defendant, City of Gainesville d/b/a Gainesville Regional Utilities, from proceeding to contract with persons or entities that did not submit all required documents to the utility pursuant to the 2011 Solar FIT Program Solicitation I;

2. Permanently enjoining Defendant, City of Gainesville d/b/a Gainesville Regional Utilities, to award 100 kw of capacity and a SEPA contract to Plaintiff, Khepera Solar LLC, as Plaintiff requested under the 2011 Solar FIT Capacity Program;
3. Permanently enjoining Defendant, City of Gainesville d/b/a Gainesville Regional Utilities, from using a computerized lottery or other such random selection process for capacity and SEPA contract awards under the Defendant's FIT Program;
4. Awarding to Plaintiff the costs of preparing its 2011 FIT submittal, its Bid Protest and in bringing this action; and
5. Providing such other relief as may be just and proper under the circumstances.

### **Count III – Writ of Mandamus**

55. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 43 inclusively, as if fully set forth herein. An Appendix containing the record in support of this Complaint for issuance of a Writ of Mandamus is attached and is comprised of the Exhibits cited in paragraphs 1 through 43, 55 through 64, inclusive.

56. Plaintiff seeks issuance of a writ of mandamus pursuant to Rule 1.630(d)(3), Fla.R.Civ.P. (see, also Rule 9.100(f), Fla.R.App.P). The Circuit Court has jurisdiction under Rule 9.030(c)(3), Fla.R.App.P. to issue Writs of Mandamus. Venue is proper in Alachua County.



57. Should the Court determine that Plaintiff has pled a prima facie case, the Court's order to show cause would issue. Rule 1.630(d) Fla.R.Civ.P.

58. Defendant, City of Gainesville d/b/a Gainesville Regional Utilities, is a governmental entity. Defendant is required to abide by its purchasing policy and procedures in awarding public contracts.<sup>3</sup> **App., Exh.'s A, B, C and E.**

59. The general manager of GRU (or designee) is authorized to establish the administrative guidelines and procedures governing the application process ... the form of the contract, and any policies related to the status of applications in excess of 4 MW (DC) capacity in a given calendar year, **subject to City Commission policy review.**<sup>4</sup> Participants shall adhere to all applicable local codes.<sup>5</sup> **App., Exh.'s A, B, C and E.**

60. Based on the City Auditor's findings, GRU deviated from its procedures for awarding capacity and SEPA contracts in the 2011 FIT Capacity Program, to the detriment of Plaintiff. GRU did not seek policy review and approval from the Defendant City Commission prior to granting exceptions to its Solicitation I requirements, all of which were material under Florida law.

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<sup>3</sup> Defendant's procedures applicable to the Solar FIT Program include: (A-1) Ordinance 080566, amending Section 2. Appendix A. Section Utilities (1) Electricity (eff. October 1, 2010, amended September 15, 2011); (A-2) City of Gainesville Code of Ordinances; GRU Administrative Guideline VO72109 (March 1, 2009); (A-3) GRU Administrative Guideline 8.29 (effective October 1, 2010, Revised September 15, 2011) contained in **App., Exh. A**; (C-1) *City Purchasing Policy-Resolution #060732*; and (C-2) *City of Gainesville Financial Services Procedures Manual*, dated January 1, 2007 (revised July 20, 2011) contained in **App., Exh. C.**

<sup>4</sup> The General Manager's authority derives from City of Gainesville, Code of Ordinances, Appendix A, Section 27 (1) Electricity i. Distributed Resources Rates. 1. General Provision (C) Solar Energy Purchase Agreement/Solar Feed-in-Tariff (SEPA)(v). **App., Exh K.**

<sup>5</sup> *Id.*, at (C)(iii). **App., Exh. K.**

61. GRU also deviated from City purchasing policies in awarding capacity and SEPA contracts in the 2011 FIT Capacity Program, to the detriment of Plaintiff. **App., Exh. C.** GRU had not received prior City Commission approval to deviate from the Defendant's typical purchasing policies in a competitive situation. All such deviations were material as a matter of law.

62. Plaintiff as the submitter of a complete response to Defendant's Solicitation I with all required documents has a clear legal right to an award of capacity and a SEPA contract under Defendant's 2011 Solar FIT Capacity Program. As a result of Defendant's arbitrary and capricious actions in denying Plaintiff's response, Defendant's impermissible and improper favoritism, and, the improper manipulation and subversion of its solicitation requirements, Plaintiff has suffered injuries that are different in type and extent than the community as a whole. A copy of Defendant's denial letter dated February 1, 2011 and Plaintiff's response to Solicitation I is attached as Composite **App., Exh. D.** and incorporated herein.

63. Defendant conducted another lottery for unsuccessful Solicitation II responders, and Plaintiff was not selected. **App., Exh. H.**

64. Plaintiff has no plain, complete and adequate method of redress other than mandamus to compel Defendant to discharge its ministerial duty to award to Plaintiff 100 kw of capacity and a SEPA contract under the 2011 Solar FIT Capacity Program.

**WHEREFORE**, Plaintiff, KHEPERA SOLAR, LLC, a Florida Limited Liability Company, respectfully requests that this court enter its Order:

1. Issuing a Writ of Mandamus compelling Defendant, City of Gainesville d/b/a Gainesville Regional Utilities, its Mayor and Commissioners to act in

accordance with the requirements of its City Code, purchasing policies, Florida law and the Solar FIT Capacity Program, and to award 100 kw capacity and a SEPA contract to Plaintiff, Khepera Solar LLC;

2. Awarding Plaintiff the costs of bringing this action; and
3. Granting any other relief that is just and proper under the circumstances.

Dated this **22nd** day of November, 2011.

**PATRICE BOYES, P.A**



Patrice Boyes, Esq.  
Florida Bar No. 892520  
414 SW 140<sup>th</sup> Terrace  
Newberry, Florida 32669  
(352) 372-2684 (ph)  
(352) 379-0385 (fax)  
[pboyes@boyeslaw.com](mailto:pboyes@boyeslaw.com)

ATTORNEY FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. Mail and facsimile to:

A. Graham Allen, Esq.  
Rogers Towers  
1301 Riverplace Boulevard  
Suite 1500  
Jacksonville, Florida 32207

Shayla McNeill, General Counsel  
Gainesville Regional Utilities  
P.O. Box 147117, Sta. A138  
Gainesville, Florida 32614-7117

this 22 day of November, 2011.

  
Attorney