

# EXECUTIVE SUMMARY

## ISSUE:

There is currently pending a lawsuit between Pinellas County (the "County") and GCS Energy Recovery of Pinellas, Inc. ("GCS"). The issues in the lawsuit relate to the operation of the County's Waste to Energy Facility under Amendment No. 6 to the Service Agreement (the "Service Agreement") and the subsequent competitive procurement for those services. In the lawsuit, GCS has stated damages in the amount of \$200,000,000. A proposed settlement has been reached through the confidential mediation process which generally consists of the following terms:

- County shall pay to GCS the total amount of \$2,650,000 for all claims and liabilities, which they might have and consists of the following components:
  - \$2,297,006.70 which is in full satisfaction of all claims brought by GCS in the Litigation and all other claims that they may have; and
  - \$352, 993.30 which represents the final payments to GCS of all amounts owed to them from the close out of the Service Agreement.
- Each party shall pay its own attorney's fees and costs;
- No party shall make any statement in any press release or industry conference disparaging the other.
- Each party will release the other of all claims, except that GCS agrees that it will continue to indemnify the County for third party claims originating during GCS's tenure at the Facility.
- All payments shall be made within 30 days of approval of Settlement by the Board;
- Upon payment, the lawsuit shall be dismissed with prejudice.

## RECOMMENDATION:

It is the recommendation of Staff and Outside Counsel to the County in the litigation that the Board approves the Contingent Settlement Agreement and Release and to authorize the Chairman to execute all documents necessary to finalize the settlement.

**CONFIDENTIAL MEMORANDUM RE: SETTLEMENT**  
***GCS ENERGY RECOVERY OF PINELLAS, INC. v. PINELLAS COUNTY,***  
***Case No. 2014-005220-CI-13***

***ATTORNEY CLIENT PRIVILEGED COMMUNICATION***  
***AND WORK PRODUCT MATERIAL***

There is currently pending a lawsuit between Pinellas County (the "County") and GCS Energy Recovery of Pinellas, Inc. ("GCS"). The issues in the lawsuit relate to the operation of the County's Waste to Energy Facility under Amendment No. 6 to the Service Agreement (the "Service Agreement") and the subsequent competitive procurement for those services. A proposed settlement has been reached through the confidential mediation process. The purpose of this memorandum is to summarize the litigation and to provide an outline of the terms of the settlement.

**BACKGROUND**

The County owns its Waste to Energy Facility (the "Facility") which is managed by its Department of Solid Waste. Beginning in 1983, the Facility was operated by Wheelabrator Pinellas, Inc. pursuant to a contract. That contract expired in May 2007 and, following a competitive procurement process, Veolia ES Pinellas, Inc. ("Veolia") was awarded the Service Agreement and commenced operations and maintenance of the Facility. Veolia operated and maintained the Facility and during that time there were significant problems with the Facility. In December 2012, GCS took over responsibilities at the Facility pursuant to an agreement by which the stock of Veolia was transferred to the parent company of GCS. In this stock transfer GCS assumed all assets and liabilities from Veolia including the Pinellas County Waste to Energy contract obligations.

Upon taking over operations of the Facility, GCS retained most of the same management personnel that had provided services on behalf of Veolia and the results achieved by GCS were about the same as had occurred with Veolia. County staff held discussions with GCS in the fall of 2013 to have GCS separate from the contract and allow the County to approach other operators to take over the Service Agreement. Though GCS agreed to this approach conceptually, the other providers did not want to take on the responsibilities of the restoration of the Facility without a long operating agreement. Therefore, the terms were not finalized for this approach and, as an alternative to that approach, in December 2013, GCS and the County negotiated Amendment No. 6 to the Service Agreement. Amendment No. 6, among other things, restructured the requirements for the funding of capital improvements, operations and maintenance under the Service Agreement and provided for the termination of the existing Service Agreement and a procurement process to select an entity to operate and maintain the Facility under a new Service Agreement.

In early 2014, the County began its procurement process to select a new operator. Under this approach, the County contemplated a two-phase Request for Proposals ("RFP") approach whereby proposers would initially submit their responses to a Phase One Request for Qualifications ("RFQ"). Following an evaluation of those proposals, those entities that were deemed to be qualified respondents in the sole judgment of the County would be invited to respond with a proposal including a price bid as Phase Two of the RFP.

On March 14, 2014, the County issued its Phase One RFQ. Four entities responded – GCS, Deltaway CNIM Operation Services Pinellas, LLC ("Deltaway"), Covanta Projects, Inc. ("Covanta"), and Wheelabrator Technologies, Inc. ("Wheelabrator"). Pursuant to County policies, an evaluation committee was appointed to review and evaluate the various proposals.

The Phase One RFQ contained ranking criteria consisting of six separate categories, which were evaluated by five separate evaluation committee members. Based upon that evaluation, the order of ranking of the firms was as follows:

1 <sup>st</sup>	Covanta	899.0 Points
2 <sup>nd</sup>	Wheelabrator	826.50 Points
3 <sup>rd</sup>	Deltaway	544.50 Points
4 <sup>th</sup>	GCS	308.00 Points

The Evaluation Committee recommended that Covanta and Wheelabrator, the two top-ranked respondents, proceed to Phase Two and the Board of County Commissioners accepted its recommendation. On May 20, 2014, the Board of County Commissioners considered the recommendation of the Evaluation Committee. At that time, representatives of GCS suggested that they should be allowed to proceed to Phase Two. During the course of the presentation on the issue, several statements were made by County staff that the RFP only provided that the top two evaluated firms may proceed to Phase Two. Contrary to these statements, the RFP did not include any limitation on the number of firms that could proceed to Phase Two, provided they met the minimum qualifications and which were not clearly defined. The Board approved the recommendation of the Evaluation Committee and only Covanta and Wheelabrator were selected to proceed to Phase Two. Following the Phase Two process, Covanta was selected to be the Facility operator. Thereafter, GCS filed suit asserting various grounds related to Amendment No. 6 and the Phase One RFQ process.

## **LITIGATION**

GCS' First Amended Complaint addresses two separate aspects. First, the allegations contest the RFQ process utilized by the County for the operation and maintenance agreement of the Facility. Second, the First Amended Complaint asserts a breach of Amendment No. 6 to the

Service Agreement. The First Amended Complaint consists of five counts, which may be summarized as follows:

1. First Claim for Relief - Action for declaratory judgment seeking a determination that the RFQ process of the County was arbitrary and capricious and failed to comply with the requirements of the RFQ.
2. Second Claim for Relief - Action for injunctive relief relating to the RFQ process.
3. Third Claim for Relief - Action for breach of contract alleging a breach of Amendment No. 6.
4. Fourth Claim for Relief - Action for breach of the duty of good faith and fair dealing relating to Amendment No. 6.
5. Fifth Claim for Relief - Action for fraudulent inducement relating to GCS's entering into Amendment No. 6.

Under the First and Second Claim for Relief, GCS seeks a determination that the procurement process conducted by the County was arbitrary and that it should be set aside. Under the Third, Fourth and Fifth Claim for Reliefs, GCS seeks damages in the amount of \$200,000,000. In response, the County filed a Counterclaim alleging that GCS has caused damages to the Facility by failing to timely make repairs and capital improvements. As a result of this failure, the Facility sustained greater damages than would have existed had they been made timely. The estimated damages alleged by the County for the failure to make these repairs and improvements was in excess of \$250,000,000. However, under Amendment No. 6, the County agreed, in consideration of GCS entering into the Agreement, to release them from any damages to the Facility that the County had knowledge of at the time they entered into the Amendment. Many of these needed repairs and capital improvements were known to the County as the failure of GCS to timely make these repairs and improvements was part of the impetus for seeking to end the Service Agreement with GCS. As a result, it is likely that a significant portion of the amount sought by the County would not be recoverable.

## ANALYSIS OF CLAIMS

GCS alleges that the Procurement Process was arbitrary and capricious for the following reasons.

- Under their proposal, they were submitting a joint proposal with a Spanish Company known as Abeinsa Operation and Maintenance, S.A. ('Abeinsa'). This entity is a subsidiary of a large Spanish company which has been actively involved in solid waste facilities in Europe. However, the Evaluation Committee did not consider the financial strength of Abeinsa because the joint venture had not been formed yet at the time GCS submitted its response to the RFP.
- Under the RFP, all proposers who met the minimum qualifications were to proceed to Phase Two. However, the RFP did not define or set out criteria as to what would constitute a minimum qualified proposer. Though the RFP did provide general language that only those proposers who are deemed in the sole judgment of the County to be qualified would proceed to Phase Two and that the County reserved the right to negotiate with some but not all of the proposers, GCS argued that they had been running the Facility for over a year and would have met the minimum qualifications.
- The Board of County Commissioners were misinformed at its meeting that only the top two proposers would proceed to Phase Two when no such limitation was included within the RFP.
- Staff engaged in misconduct when they characterized Amendment No. 6 as a separation agreement thereby tainting the Board's consideration of them as an applicant under the RFP.
- The Evaluation Committee assembled was not consistent with the County's purchasing policy as more than a majority of the members were from the Department of Environment and Infrastructure.

As to the three breach of contract claims, the thrust of their claims are that County staff breached Amendment No. 6 in the following manner:

- That by characterizing Amendment No. 6 as a "separation agreement" that it was contrary to the Non-Disparagement Clause in that this provision required that it be characterized solely as a "voluntary agreement".
- That they had bargained for a fair procurement process and that the County failed to provide that fair process. Further that staff was biased against GCS and created a situation whereby they could not obtain fair consideration.

- The County fraudulently induced GCS to enter into Amendment No.6 by promising a fair procurement.

## **PROPOSED SETTLEMENT**

On February 16, 2017 and March 23, 2017, the County attended Confidential Mediation to attempt to arrive at a proposed settlement. Ultimately, a Contingent Settlement Agreement and Release (the "Settlement Agreement") was arrived at between representatives of GCS and the County. A copy of the Contingent Settlement Agreement and Release is attached as Attachment "A". The Settlement Agreement has the following terms:

- County shall pay to GCS the total amount of \$2,650,000 for all claims and liabilities, which they might have and consists of the following components:
  - \$2,297,006.70 which is in full satisfaction of all claims brought by GCS in the Litigation and all other claims that they may have; and
  - \$352, 993.30 which represents the final payments to GCS of all amounts owed to them from the close out of the Service Agreement.
- Each party shall pay its own attorney's fees and costs;
- No party shall make any statement in any press release or industry conference disparaging the other;
- Each party will release the other of all claims, except that GCS agrees that it will continue to indemnify the County for third party claims originating during GCS's tenure at the Facility;
- All payments shall be made within 30 days of approval of Settlement by the Board;
- Upon payment, the lawsuit shall be dismissed with prejudice.

## **ANALYSIS OF LIABILITY AND SETTLEMENT**

In reviewing the potential liability, there are several factors that need to be considered. First, though there are several grounds asserted, the primary concern involves the inconsistency of the procurement process within the terms of the RFP. The RFP clearly provides that all firms

that meet the minimum qualifications will be allowed to proceed to Phase Two of the process but does not define what would constitute the "minimum qualifications". As GCS was the current operator of the Facility, it is somewhat difficult to suggest that they would not meet those minimum qualifications. In reviewing the preparation of the RFP process, it appears that this language relating to the minimum qualifications was to be eliminated but was inadvertently left within the RFP itself. Early drafts of the RFP set forth certain specific minimum criteria, including that a proposer would have had to operate at a minimum four mass burn waste to energy plants. This language was intended to define the minimum criteria and was added to assure that any proposer who proceeded to Phase Two had to meet the criteria. GCS would not have met the minimum criteria and would have not been allowed to proceed to Phase Two. However, the RFP was modified to eliminate the specific requirement that a proposer had to have operated a minimum four mass burn waste to energy plants and only required that they set forth their qualifications. Unfortunately, the language concerning all proposers meeting the minimum qualifications proceeding to Phase Two was inadvertently left in the RFP, thereby creating an inconsistency within the document.

Further, this problem was compounded at the hearing before the Board where they were advised that the RFP only allowed two proposers to proceed to Phase Two. Again, the RFP did not limit how many proposers could proceed to Phase Two. Therefore, GCS argues that it met the minimum criteria and according to the RFP itself should have been allowed to participate in Phase Two. GCS also suggests that staff, being biased against them, improperly scored their proposal and misinformed the Board as to what the RFP required. Though the County strongly disagrees with this characterization of the facts, it is a circumstance that if believed by a jury could lead them to the view that GCS did not get fair consideration in the procurement process.



If a jury was to believe that GCS did not get a fair procurement process, there are several significant adverse impacts. If the procurement was set aside and the County ordered to conduct a new procurement, it could adversely impact on the viability of the existing operations contract of the mass burn waste to energy facility with Covanta. This could potentially cause a disruption of operations at the facility.

As to the actual damages claimed, if a jury did award damages, then the amount of damages could be high. In this case, we are talking extremely large damage numbers. GCS is claiming damages of \$200,000,000. The County is claiming damages to its facility in the amount of \$250,000,000. Therefore, with such large numbers, a jury award of \$5,000,000 might actually appear as a nominal amount to them.

Under the GCS damage claims, it is seeking (i) lost profits over the term of the contract (approximately \$22,000,000), (ii) the 10% charge that they would have been entitled to if they were able to make the various capital improvements under the contract (approximately \$12,500,000) and (iii) a variety of other costs and expenses that they incurred including approximately \$512,179 of closeout expenses that they believe should have been reimbursed in the transition to Covanta and had not yet been paid (the total of these amounts equals approximately \$1,600,000). Some of these do constitute legitimate claims that GCS may be entitled too. For example, they had done the preparation work for the fall outages in 2014 and would have received 10% of the total capital cost incurred during that outage. However, the County elected to terminate their contract early. They also had to pay bonuses to employees during the procurement process to keep them from seeking other employment when a new operator was being selected. This benefited the County during this period by allowing stability

in the workforce. Finally, of the \$512,179 of close out expenses, the County had determined that they were owed \$352,993.30.

### **CONSIDERATIONS IN THE ANALYSIS OF THE SETTLEMENT**

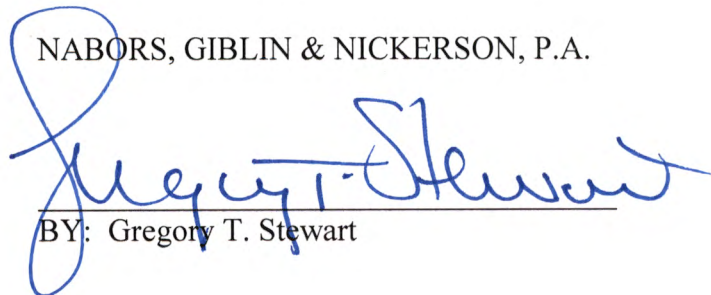
In arriving at a proposed resolution of the case, staff looked at the following factors:

- If this case proceeded to trial, we anticipate that the additional cost of defense and necessary experts to take the matter through trial could be in the \$650,000 to \$900,000 range. Though several depositions have been taken, there are approximately 10-12 additional depositions that will need to be scheduled and other discovery primarily related to the financial records of GCS. We would also need to retain various experts to analyze the financial records and damage claims of GCS.
- Though the total amount of the settlement is \$2,650,000, of this amount, \$352,993.30 represents bills that GCS submitted during the transition and that the County has already determined that they are entitled to payment. The remaining amount being presented for the total release of all claims and dismissal of the litigation is \$2,297,006.70. This amount is approximately what GCS has claimed they earned in profit for one year of operations of the Facility.
- Based upon the cost that will be incurred in the continuation of the case, the risk of some liability of the County, the potential range of damages that a jury could possibly award and the proposed disruption of service if the procurement is set aside, it is the position of staff that the County should approve the settlement agreement.

### **RECOMMENDATION:**

It is the recommendation of the below signed counsel that the Board approved the Contingent Settlement Agreement and Release.

NABORS, GIBLIN & NICKERSON, P.A.



BY: Gregory T. Stewart

## CONTINGENT SETTLEMENT AGREEMENT AND RELEASE

*THIS SETTLEMENT AGREEMENT AND RELEASE* is entered into this 23rd day of March, 2017 (the "Effective Date"), between GCS Energy Recovery of Pinellas, Inc. (formerly known as Veolia ES Pinellas, Inc.; "GCS") and Pinellas County (the "County"). Each of the parties are individually referred to herein as a "Party," and are all collectively referred to herein as the "Parties."

**WHEREAS**, the County and Veolia ES Pinellas, Inc. entered into that certain Service Agreement, dated January 23, 2007, which agreement was subsequently amended by Amendment Nos. 1, 2, 3, 4, 5, and 6 (as amended, modified, supplemented, or otherwise modified prior to the date hereof, the "Service Agreement");

**WHEREAS**, on or about December 12, 2012, the parent company of Veolia ES Pinellas, Inc. transferred all of the stock of Veolia ES Pinellas, Inc. to Green Conversion Systems LLC, a Delaware limited liability company and the parent company of GCS, and thereafter GCS changed the name of Veolia ES Pinellas, Inc. to GCS Energy Recovery of Pinellas, Inc.;

**WHEREAS**, on or about December 10, 2013, GCS and the County executed Amendment No. 6 to the Service Agreement ("Amendment No. 6"), which voluntary amendment allowed the County to conduct a procurement for a new agreement for long-term operation of the Pinellas County Waste-to-Energy Facility (the "Facility");

**WHEREAS**, pursuant to Amendment No. 6, the County conducted a two-phase procurement for long-term operation of the Facility, denominated RFP NO. 134-0171-P(LN) (the "Procurement");

**WHEREAS**, pursuant to Amendment No. 6, the County terminated the Service Agreement effective December 7, 2014;

**WHEREAS**, GCS alleges that the County failed to reimburse GCS for certain expenditures by GCS as required pursuant to Amendment No. 6 (the "Residual Payments");

**WHEREAS**, GCS commenced litigation against the County on July 10, 2014, in the lawsuit denominated GCS Energy Recovery of Pinellas, Inc. v. Pinellas County, Case No. 14-005220-CI, in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida (the "Litigation"). GCS alleged, *inter alia*, that the County improperly excluded GCS from the Procurement and that the County breached its obligations under Amendment No. 6;

**WHEREAS**, the County filed a counterclaim in the Litigation alleging, *inter alia*, that GCS breached the Service Agreement;

**WHEREAS**, GCS and the County each deny the allegations of the other in the Litigation; and

**WHEREAS**, in order to avoid the expense, uncertainty, and inconvenience of litigation, the Parties desire to finally resolve all the claims that were brought or could have been brought in the Litigation, as well as all claims relating to the Residual Payments.

**NOW, THEREFORE**, in consideration of the foregoing, and the mutual promises, undertakings, and agreements set forth herein, and for other good and valuable consideration, the Parties hereto agree as follows:

**SECTION 1. Contingent Settlement.** Upon approval of this Settlement Agreement and Release by the Pinellas County Board of County Commissioners ("BCC"), the Parties agree and acknowledge that, by virtue of their execution of this Settlement Agreement and Release, they have finally settled all claims arising out of or relating to the Litigation and the Residual Payments. With the exception of the payment of the Residual Payments specified in Section 3(i) below, in the event that the BCC fails to approve this Settlement Agreement and Release by May 15, 2017, none of the rights or obligations reflected herein shall have any force or effect thereafter. Notwithstanding the preceding sentence, the Parties may extend the time for approval by the BCC by mutual written consent.

Within five (5) business days after payment by the County to GCS of the Settlement Amount specified in Section 3 below, the Parties shall file a joint stipulation of dismissal of all claims in the Litigation. The Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida shall retain jurisdiction over the Litigation solely for purposes of hearing any disputes that may arise from this Settlement Agreement and Release.

**SECTION 2. Mutual Releases.** Upon payment by the County to GCS of the amounts described in Section 3 below, each Party does hereby REMISE, RELEASE, ACQUIT, SATISFY AND FOREVER DISCHARGE the other (including, in the case of the County, the BCC), as well as all attorneys, officers, directors, managers, members, partners, employees, agents, affiliates, shareholders and assigns thereof, of and from any and all manner of action and actions, cause and causes of action, suits, liens, securities, debts, accounts, contracts, controversies, agreements, promises, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the Party now has or ever had up to the date of this Settlement Agreement and Release arising out of or related in any way to the operation of the Facility, the Litigation, or the Residual Payments. Notwithstanding the foregoing, GCS shall continue to indemnify the County for other third-party claims originating during GCS' tenure at the Facility (and subject to the indemnity provisions of the Service Agreement), including but not limited to the litigation denominated, Gazica v. Green Conversion Systems, Inc., Case No. 16-7751-CI, currently pending before the Circuit Court of the 6th Judicial Circuit in and for Pinellas County, Florida. Nothing within this Settlement Agreement and Release releases any Party of future claims that arise after the Effective Date, including without limitation on any breach of this Settlement Agreement and Release.

**SECTION 3. Payment.** The County shall pay GCS by wire transfer to an account specified by GCS or check the sums of (i) \$352,993.30 (three hundred fifty-two thousand nine hundred ninety-three dollars and thirty cents) within 30 days of March 23, 2017 (this amount representing payment of the Residual Payments, which are not subject to and shall be paid

regardless of BCC approval); and (ii) \$2,297,006.70 (two million two hundred ninety-seven thousand six dollars and seventy cents) (the "Settlement Amount") within 30 days of approval by the BCC.

**SECTION 4. Non-Disparagement and Reference.** No Party shall make any statement in any press release or industry conference that in any way disparages, denigrates, or negatively affects the public reputation of any other Party after the date of execution of this Settlement Agreement and Release. The County shall provide a neutral reference regarding the performance of GCS with the regard to the Facility in the event of inquiry by any third party.

**SECTION 5. Notices.** All notices, requests, demands and other communications to be provided by any Party under this Settlement Agreement and Release shall be in writing and delivered, at the sending Party's cost and expense, by (i) personal delivery, (ii) certified U.S. mail, with postage prepaid and return receipt requested, (iii) overnight courier service, or (iv) e-mail transmission, with a verification copy sent on the same day by any of the methods set forth in clauses (i), (ii) or (iii), to the recipient Party at the following address or email (or to such updated address or email as may be provided by a Party pursuant to this Section 6):

If to GCS:

Dan Elias  
Elias Group LLP  
411 Theodore Fremd Ave., Suite 102  
Rye, NY 10580  
Email: delias@eliasgroup.com

With a copy to

Patrick J. O'Connor  
Harper Meyer Perez Hagen O'Connor Albert & Dribin LLP  
201 S. Biscayne Blvd., Suite 800  
Miami, FL 33131  
Email: pjoconnor@harpermeyer.com

If to the County:

County Attorney of Pinellas County  
315 Court Street  
Clearwater, FL 33756

With a copy to

Gregory T. Stewart  
Nabors Giblin Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, FL 32302

Email: gstewart@ngn-tally.com

**SECTION 6. Construction/Negotiation.** The Parties state that this Settlement Agreement and Release is the product of negotiation, and that it has been drafted together with and by all of the Parties. Consequently, this Settlement Agreement and Release shall be interpreted without regard to any presumption or rule requiring construction against the Party causing this Settlement Agreement and Release to be drafted. Finally, the Parties represent that they have executed this document freely, voluntarily, and without any coercion or intimidation whatsoever.

**SECTION 7. Amendment.** No amendment, modification, rescission, waiver or release of any provision of this Settlement Agreement and Release shall be effective unless the same shall be in writing and signed by the Parties hereto.

**SECTION 8. Time is of the Essence.** The Parties agree that time is of the essence with regard to this Settlement Agreement and Release; the times and dates specified herein are vital and mandatory.

**SECTION 9. Entire Agreement.** This Settlement Agreement and Release constitutes the entire and final agreement between the Parties with respect to the subject matter hereof, and there are no agreements, understandings, warranties or representations among the Parties except as set forth herein. This Settlement Agreement and Release supersedes, in all respects, all other prior agreements, written or oral, between the Parties relating to the subject matter of this Settlement Agreement and Release and there are no agreements, understandings, warranties, or representations between the Parties with respect to the subject matter hereof, except as set forth in this Settlement Agreement and Release.

**SECTION 10. Assignment.** No Party shall be permitted to assign its rights or obligations under this Settlement Agreement and Release without the prior written consent of the other Parties.

**SECTION 11. Severability.** If any clause or provision of this Settlement Agreement and Release is determined to be illegal, invalid, or unenforceable under any present or future law by the final judgment of a court of competent jurisdiction, the remainder of this Settlement Agreement and Release will not be affected thereby. It is the intention of the Parties that if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible and be legal, valid and enforceable.

**SECTION 12. Further Actions.** The Parties shall promptly take such further actions and do such further things as may be necessary or appropriate to implement and carry out the provisions of this Settlement Agreement and Release.

**SECTION 13. Governing Law; Jurisdiction.** This Settlement Agreement and Release will be interpreted and construed in accordance with the laws of the State of Florida, regardless of the domicile of any Party or principles of conflicts of laws, and will be deemed for such purposes to have been made, executed and performed in Pinellas County, Florida.

**SECTION 14. Counterparts.** This Settlement Agreement and Release may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Settlement Agreement and Release. Notwithstanding Section 6 above, delivery of an executed counterpart of a signature page to this Settlement Agreement and Release by facsimile or electronic mail shall be effective as delivery of a manually executed counterpart of this Settlement Agreement and Release.

**SECTION 15. Attorneys' Fees and Costs.** In the event of any litigation resulting from a breach of this Settlement Agreement and Release, the prevailing Party shall be entitled to an award of attorneys' fees and costs in connection therewith.

**SECTION 16. Incorporation of Recitals, Exhibits.** The recitals to this Settlement Agreement and Release and all exhibits referred to in this Settlement Agreement and Release are incorporated herein by such reference and made a part of this Settlement Agreement and Release.

**SECTION 17. Headings.** The section headings contained in this Settlement Agreement and Release are for reference purposes only and shall not affect the meaning or interpretation of this Settlement Agreement and Release.

**SECTION 18. Binding Agreement.** This Settlement Agreement and Release shall be binding upon, and shall inure to the benefit of the Parties, their heirs, successors and assigns.

**EXECUTED** and effective as of the date first above written.

The individuals signing below represent and warrant that they have the authority to recommend the approval of this Settlement Agreement and Release to the BCC.

GCS ENERGY RECOVERY OF  
PINELLAS, INC.

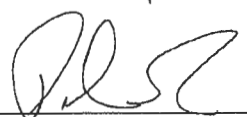
By:  \_\_\_\_\_

Name: ~~Mark~~ McMenamain

~~MARC~~  
Its: President

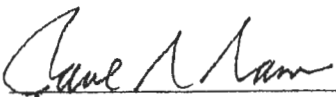
Date: March 23, 2017

Attorneys:

By:  \_\_\_\_\_

Patrick J. O'Connor  
Attorney for GCS

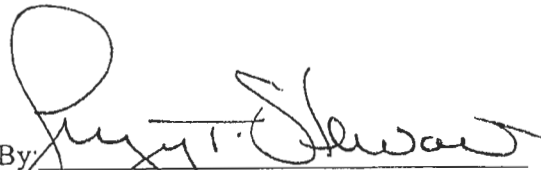
PINELLAS COUNTY

By:  \_\_\_\_\_

Name: PAUL S. SACCO

Its: ASSISTANT COUNTY ADMINISTRATOR

Date: March 23, 2017

By:  \_\_\_\_\_

Gregory T. Stewart  
Attorney for Pinellas County



Settlement Agreement and Release  
GCS v. Pinellas County, Case No. 14-005220-CI

Approved this \_\_\_ day of \_\_\_\_\_, 2017.

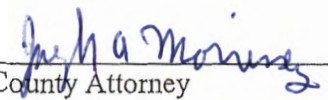
BOARD OF COUNTY COMMISSIONERS  
OF PINELLAS COUNTY, FLORIDA

\_\_\_\_\_  
Janet C. Long, Chair

Attest:

\_\_\_\_\_  
Clerk of Court

Approved as to form:

  
\_\_\_\_\_  
County Attorney