**SETTLEMENT AGREEMENT**

**THIS AGREEMENT** is made on the Sixth day of August, 2013, between **THE CITY OF LEESBURG, FLORIDA** (hereafter referred to as the "City"), and **CUTRALE CITRUS JUICES USA, INC.** (hereafter referred to as "Cutrale").

**WITNESSETH:**

**THAT** the City and Cutrale are parties to a Gas Transportation Agreement dated November 14, 2005, under which the City provides natural gas transportation services to Cutrale. It has come to the attention of the parties that Cutrale has been overcharged for those services for some period of time due to a calculation error previously not known either to Cutrale or the City. As a result of that error, Cutrale is owed a sum of money and the parties have negotiated the amount which the City will pay, and Cutrale will accept, as compensation for any overcharges to Cutrale under the Gas Transportation Agreement.

**NOW THEREFORE,** for and in consideration of the Gas Transportation Agreement, the continuing obligations of the parties to one another under the Gas Transportation Agreement, the mutual covenants and promises contained in this Settlement Agreement, the amount to be paid to Cutrale by the City, and other good and valuable considerations, the sufficiency of which is acknowledged by both parties, it is agreed as set forth below:

**1.** Cutrale and the City mutually agree that the amount to be paid to Cutrale by the City under this Settlement Agreement is $1,056,029.00 in overcharges, and $123,979.00 in interest, for a total of $1,180,008.00 (hereafter referred to as the "Settlement Sum").

**2.** Cutrale agrees to accept the Settlement Sum as full payment for all amounts due or claimed by Cutrale under the Gas Transportation Agreement between January 1, 2008, and December 31, 2012. Cutrale further agrees that it shall not assert any other claim or cause of action against the City for a refund of any sums paid to the City by Cutrale under the Gas Transportation Agreement between those dates, whether such claim or cause of action is known or unknown, and regardless of when any such claim or cause of action legally accrued. The Settlement Sum is agreed by the parties to be a full and complete reconciliation of all claims of Cutrale under the Gas Transportation Agreement arising between the dates stated, whether known or unknown, vested or contingent, all of which are deemed resolved upon payment of the Settlement Sum to Cutrale.

**3.** The City shall pay the Settlement Sum to Cutrale in full, in United States funds by federal wire transfer, on or before September 10, 2013. In the event the Settlement Sum is not paid in full to Cutrale on or before September 10, 2013, then Cutrale shall have the option to terminate this Agreement by giving written notice of termination to the City, and upon the giving of such written notice to the City this Agreement shall be null and void and of no further effect. Such notice may be given by hand delivery, overnight delivery service, or by electronic means, including electronic mail or facsimile, and shall be deemed given when sent. Notices to the City shall be sent to City of Leesburg, P.O. Box 490630, Leesburg, Florida 34749 - 0630, Attn: City Manager, or if hand delivered or sent by overnight delivery service, to 501 West Meadow Street,

Leesburg, Florida 34748, or if by electronic mail, to Betty.richardson@Leesburgflorida.gov, and Andipurvis@Leesburgflorida.gov .

**4.** Notwithstanding this Settlement Agreement, the Gas Transportation Agreement shall continue in full force, as written originally, for the full term stated in it, and any allowable extensions. This Settlement Agreement is not to be construed to terminate, amend or otherwise affect the Gas Transportation Agreement, and is intended only to correct a calculation error by the City and to compensate Cutrale for damages suffered as a result of that error.

**5.** This Settlement Agreement sets forth the entire understanding of the parties with regard to its subject matter, specifically the resolution of any claims of Cutrale under the Gas Transportation Agreement arising between January 1, 2008 and December 31, 2012. It supersedes and takes precedence over any and all prior negotiations, representations and agreements, oral or written, regarding any claims of Cutrale under the Gas Transportation Agreement, all of which are deemed to have merged into this Settlement Agreement and to have been extinguished except to the extent specifically set forth herein. This Settlement Agreement may not be amended orally, by implication, by course of conduct, or in any other manner whatsoever than by way of a written instrument signed by both parties hereto or their lawful successors. This Settlement Agreement shall be construed in accordance with the laws of Florida and venue for any action or proceeding arising under it shall be in Lake County, Florida. This Settlement Agreement shall be binding on the parties hereto, as well as on their lawful successors and assigns. Each party represents for the benefit of the other that it has not entered into this Settlement Agreement in reliance on, or on the basis of, any promise, negotiation, representation, undertaking or agreement of the other party, oral or written, which is not specifically set forth within this Settlement Agreement.

**6.** In any litigation arising under this Settlement Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs, in addition to any other relief obtained, whether at trial, on appeal, in any proceedings in bankruptcy or insolvency, and in any proceedings to collect or enforce a judgment obtained.

**7.** This Settlement Agreement may be enforced only by the parties to it. By entering into this Settlement Agreement, the City and Cutrale do not intend to create any rights in any third party beneficiaries.

**IN WITNESS WHEREOF,** the parties have caused their duly authorized representatives to sign this Settlement Agreement.

CUTRALE CITRUS JUICES USA, INC.

BY: Daniel Marques

V.P. of Operations

Type or print name and corporate title

DATE: August 6th, 2013

THE CITY OF LEESBURG, FLORIDA

BY: _____
DAVID KNOWLES, Mayor

ATTEST: _____
BETTY RICHARDSON,
City Clerk

DATE: _____ , 2013

APPROVED AS TO FORM AND CONTENT:

_____
CITY ATTORNEY