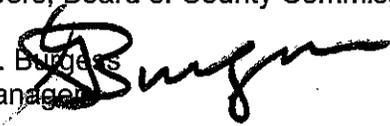


Date: November 4, 2010

To: Honorable Chairman Dennis C. Moss  
and Members, Board of County Commissioners

From: George M. Burgess  
County Manager 

Amended  
Agenda Item No. 8(F)(1)(B)

Resolution No. R-1079-10

Subject: Resolution for Award of Energy Performance Contract to BGA, Inc. for the purpose of interconnecting and expanding the chilled water production of two County-owned chiller plants in Downtown Miami

**This item was amended at the November 4, 2010 Board of County Commissioners meeting to correct two scrivener's errors in the contract and add a section to the resolution, as stated below:**

1. **Scrivener's Error No. 1** - In Attachment 1 to the Contract, located on page 43 of the Contract, handwritten page 53 of the agenda package – entitled "Summary of Stipulated/Calculated Savings" – the Operating Savings and Capital Cost Avoidance Savings were reversed.
2. **Scrivener's Error No. 2** - Schedule J to the Contract, beginning on page 52 of the Contract, handwritten page 62 of the agenda package – entitled "Financing Agreement" – should be titled "Sample Financing Agreement" and should delete references to a specific financing firm in three locations in Schedule J.
3. **Addition to Resolution** - The effectiveness of this contract will be expressly conditioned upon execution of a lease/purchase finance agreement that is satisfactory to the parties in their sole discretion.

### **RECOMMENDATION**

It is recommended that the Board approve the attached Energy Performance Contract with BGA, Inc. in an amount not to exceed \$20,310,700 for the purpose of expanding the production capacity of two existing County-owned chilled water plants in Downtown Miami and interconnecting the two plants' underground chilled water distribution loops; and approve a two year service agreement, with one additional one-year option period, with BGA, in an amount not to exceed \$1,585,000.

As explained below, the County will be opening three new facilities in Downtown Miami by 2014. The chilled water required to cool these facilities will exceed the production capacity of the existing Central Support Facility Chiller Plant by 50%. In order to meet the demand, the existing plant and underground distribution system would have to be upgraded at an estimated \$10.6 million. The contract recommended herein offers a significantly more cost-effective and energy efficient approach that would cover the added up-front costs through reductions in future electricity and maintenance expense.

As a result of this more robust project, the County would benefit substantially from operating a more flexible, two-plant, unified chilled water distribution system that offers better reliability, and increased capacity for future load growth from both County buildings and/or our revenue-generating commercial customers. In addition, the energy efficiencies of the proposed project are such that, if approved, the County will add the cooling loads of the three additional buildings (nearly 700,000 square feet of air-conditioned space) without any increase in electrical consumption. In fact, the project will reduce electrical consumption from current levels by 585,000 kilowatt hours, which equates to a reduction in CO<sub>2</sub> emissions of approximately 327 metric tons.

BGA has operated the North District Ice Plant since its 2006 acquisition by the County, and this agreement would require the firm to continue to do so throughout the duration of the project. The Service Agreement requires that BGA manage, operate and maintain the existing chilled water system in coordination with staff from the General Services Administration (GSA), and to coordinate those operations with the improvements performed under the performance contracting project. BGA is expected to maintain this responsibility until such time as system performance has been fully commissioned and meets all design and operational requirements of the County, and County staff are fully trained by BGA and experienced in the operation and maintenance of the system.

The \$20,310,700 cost of the proposed project will be funded from four sources: (1) the pending receipt of an estimated \$930,000 in FPL utility rebates from the recently completed initial phase of production expansion at the North District Ice Plant; (2) additional FPL utility rebates estimated at \$1,742,400 for this project; (3) \$1,600,000 from a 2007 Capital Asset Acquisition Bond Issuance previously approved and allocated for the purchase and expansion of the same plant; and (4) as with all energy performance contracts, a lease-purchase agreement for the remaining balance (\$16,038,300 over fifteen years). The cost of the Service Agreement will be funded from the operating revenues of the North District Ice Plant.

### **SCOPE**

The project impacts Commission Districts 3 and 5.

Figure 1, attached to this item, provides an aerial view of the two chiller plants, the existing underground piping and proposed interconnection site for the two district cooling loops, and the various buildings served by the plants. The North District Ice Plant is located at 1110 NW 1 Avenue, and Central Support Facility Chiller Plant is located at 200 NW 1 Street.

### **JUSTIFICATION**

County buildings in the Downtown Government Center are currently cooled (air-conditioned) by the distribution of chilled water through underground piping from a single, centralized chilled water plant located in the Central Support Facility (CSF) at 200 NW 1 Street. As currently configured, that plant has reached its maximum capacity for the production of chilled water. The Board has previously approved and funded the development of three new buildings within the County's Downtown Government Center, all of which will be coming fully on line between 2011 and 2014: the South Tower at Overtown Transit Village, the West Lot Garage & Office Building, and the Children's Courthouse. The addition of these buildings will increase the demand for cooling at the CSF Chilled Water Plant by 50%, which will far exceed its current capability to produce chilled water. In order to meet the projected demand, the CSF Chiller Plant – built in 1984 – would need to be completely updated with new, larger chillers and a new underground distribution system, at an estimated capital cost of \$10,616,000.

An analysis of other options to meet this impending demand ultimately led to the 2006 purchase of the North District Ice Plant from TECO Thermal Systems, Inc., with the specific intent of utilizing that plant – located at 1110 NW 1 Avenue – to produce chilled water to cool the County's Downtown Government Center complex, including the planned future buildings. The funding for the purchase came from a 2007 Capital Asset Acquisition Bond issuance, and included \$9.7 million toward the expansion of the plant's production capacity and eventual connection to the existing CSF chilled water loop. A partial expansion of the North Plant was approved by the Board in 2008 (Resolution R-1167-08, attached) and completed in 2009, at a cost to the County of approximately \$8.1 million. The project recommended herein would complete the original 2005 development plan by finishing the expansion of production capacity in the two

plants and tying the two distribution loops together. Approximately \$1.6 million remains from the original bond financing for use on this expansion/interconnection project.

The County's Energy Performance Contracting Program provides an effective, cost-efficient and reliable method of implementing this expansion plan. Accordingly, staff used the competitive selection process required by State Statute in order to select BGA, Inc., one of the energy services companies in the Board-approved vendor pool for the program. BGA conducted a thorough energy audit of the existing and planned future loads, as well as the economics of all possible alternatives for meeting the projected growth. That analysis (Investment Grade Audit) supports the original strategy of joining the two chilled water loops into a larger, more flexible, two-plant system capable of meeting all of the County's long-term chilled water needs for the foreseeable future.

The recommended turnkey project includes adding chillers, pumps and other equipment at the North District Ice Plant, replacing two older 1,500-ton chillers at the CSF Plant, connecting the two underground primary chilled water loops, making secondary loop modifications at individual buildings, standardizing system controls for the two plants, and the installing a temporary chiller at the CSF Plant to mitigate any interim unmet cooling demands. The project also requires BGA to manage, operate and maintain the system throughout the installation process, and for a period of at least one year following project completion while BGA fully commissions the system (i.e. performs extensive testing under all climate conditions, makes needed corrective adjustments, and provides comprehensive training to County staff). As with all energy performance contracts, the project will require savings guarantees from the contractor (BGA), and a comprehensive measurement and verification process to validate system performance and savings throughout the term of the lease purchase agreement.

### **ENERGY PERFORMANCE CONTRACTING**

On July 1, 2008, via Resolution R-740-08 (attached), the Board of County Commissioners authorized the creation of an Energy Performance Contracting (EPC) Program for Miami-Dade County. The EPC Program established a pre-qualified pool of private energy services companies, or ESCOs, from which the County is able to select firms to identify and implement recommendations for reducing the energy consumption of County facilities and equipment. This is the County's second energy performance contracting program, the Board having previously approved a similar program that operated for a ten-year period between 1998 and 2008. That highly successful program allowed County agencies to implement over \$50 million in facility improvements, resulting in a recurring annual reduction in the consumption of nearly 76.7 million kilowatt hours of electricity and over 95.6 million gallons of water. The dollar value of the savings created by those improvements more than covered the contract costs.

Energy performance contracting is widely utilized across the United States, providing an invaluable tool for local, state, and federal government agencies to identify, finance and perform energy conservation improvements. In the State of Florida, energy performance contracting is regulated by Chapter 489.145 of the Florida Statutes, and provides several critical advantages over other development options for these types of facility improvements, as summarized below.

- Faster implementation, due to the use of preset vendor pools and a design/build project structure.
- Capital debt avoidance, through the use of lease-purchase agreements, which are contingent only upon annual budget appropriations.
- Reduced financing costs, since projects qualify for tax-exempt municipal lease rates.
- Consistency of performance, which comes from the installation of high quality parts and equipment under the direction of highly qualified firms with specialized expertise.

- ESCOs are required contractually and by statute to guarantee that the equipment procured and installed will achieve the promised energy savings.
- Projected savings from projects are guaranteed to cover the cost of customer's lease payments (or debt service), with the ESCO paying the difference if savings fall short.

**FISCAL IMPACT/ FUNDING SOURCE:**

	<b><u>Amount</u></b>
Total Cost of Project	<b><u>\$20,310,700</u></b>
• FPL Thermal Energy Storage Rebate Program, prior project	(930,000)
• FPL Thermal Energy Storage Rebate Program	(1,742,400)
Net Project Cost to Miami-Dade County	<b><u>\$17,638,300</u></b>
• Capital Asset Acquisition Bond 2007 Proceeds	1,600,000
• Tax-exempt Lease-Purchase Agreement	16,068,300

**TRACK RECORD/MONITOR**

**FUNDING SOURCE:**

The 2007 Acquisition Bond Proceeds are currently budgeted in Index Code CPE615GS471C, sub-object code 92099. Payments for lease-purchase agreement will not be required until FY2011-12, at which time the payments will be budgeted in Index Code GS06327057, sub-object codes 25509 and 71060. The Service Agreement is budgeted in FY2010-11 in Index Code GS06327057, sub-object code 21030.

**TRACK RECORD:**

BGA, Inc. has managed the North District Ice Plant for the County since the County closed on the purchase of the property from TECO Thermal Systems, Inc. on May 9, 2006. On November 20, 2008, via Resolution No. R-1167-08, the Board approved Amendment No. 1 to the Service Agreement with BGA, which authorized BGA to purchase and install equipment in the Ice Plant in order to expand the plant's chilled water production capacity to accommodate chilled water load growth by Terremark, its principal client.

There have been no performance issues with BGA.

**MONITOR:**

Reinaldo Abrahante, Performance Contracting Program Manager  
GSA/Facilities & Utilities Management Division

**BACKGROUND:**

**CONTRACT AUTHORITY:**

- Chapter 489.145 Florida Statutes
- State of Florida Contract 973-320-08-01
- Resolution R-740-08, Energy Performance Contracting Program

**DELEGATION OF  
AUTHORITY:**

In addition to the authority to execute and implement this contract, which is consistent with those authorities granted under the Code of Miami-Dade County, the County Mayor or County Mayor's designee is also authorized to approve project financing terms; enter into leases or other financial arrangements with Third Parties; authorize escrow

payments for completed project milestones; authorize payments for additional services, unscheduled maintenance and reimbursables as defined in the Service Agreement; exercise termination provisions; and determine substantial completion of projects.

The County Mayor or designee is also authorized to approve modifications to the scope of work, so long as said changes will not cause forfeiture of this contract's compliance with § 489.145, Florida Statutes, or violate the terms of the Third Party Financing Agreement, Energy Savings Warranty, or any other applicable clause or schedule of this contract. This latter authority is required in order to provide staff with the flexibility to address material issues that may not become evident until after construction drawings are complete, or during the contracting process for third-party financing.

**OPERATIONS COST  
IMPACT/FUNDING:**

The implementation of this contract is guaranteed by BGA to reduce electricity and other operating costs by a minimum of \$570,000 per year. These savings will be re-allocated to the principal/interest payments for the Master Equipment Lease-Purchase Agreement.

**GOB FUNDING:**

No

**AGREEMENT PERIOD:**

18 months for construction, followed by a 15-year "Energy Warranty Period" (during which time savings are guaranteed).

**PRIME CONTRACTOR:**

BGA, Inc.

**COMPANY PRINCIPAL:**

Michael W. Gibson, President

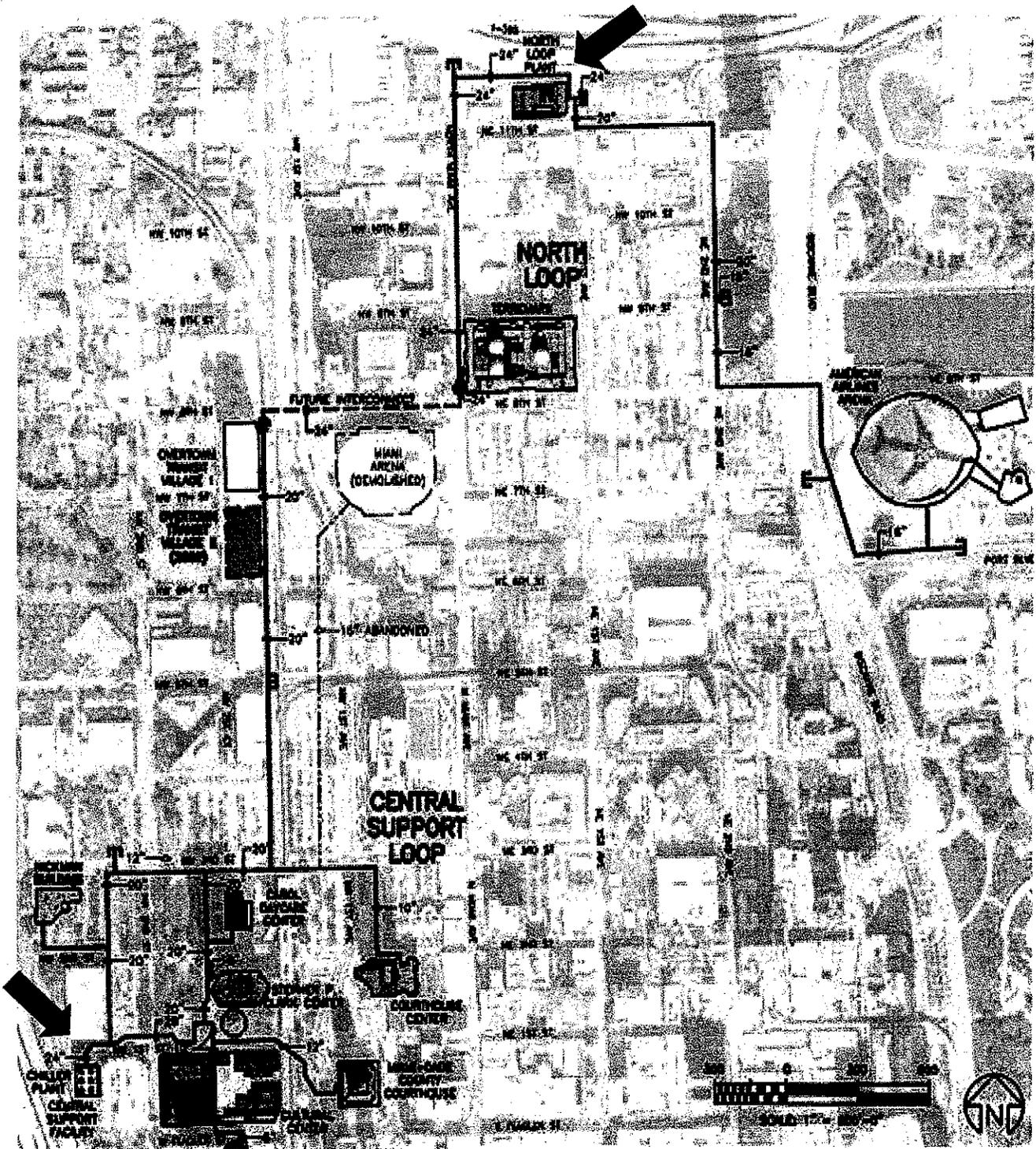
**COMPANY ADDRESS:**

3101 W. Dr. Martin Luther King Jr. Blvd, Suite 110  
Tampa, Florida 33607



Wendi J. Norris, Director  
General Services Administration

**Figure 1**  
Miami-Dade County Chilled Water Systems Interconnection



- NOTES:**
1. CHILLED WATER PIPE ROUTING FOR CENTRAL SUPPORT LOOP PROVIDED BY LSC PERSONNEL.
  2. CHILLED WATER PIPE ROUTING FOR NORTH LOOP BASED UPON DESIGN DOCUMENTS (SHOWN GRAPHICALLY).

**LEGEND**

	EXISTING BUILDING CONNECTED TO CHILLED WATER SYSTEMS
	EXISTING CHILLED WATER PIPING (SUPPLY/RETURN)
	BUILDING THAT HAS BEEN DEMOLISHED
	ABANDONED CHILLED WATER PIPING (SUPPLY/RETURN)
	FUTURE BUILDING TO BE CONNECTED TO CHW SYSTEMS
	FUTURE CHILLED WATER PIPING (SUPPLY/RETURN)



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairman Dennis C. Moss  
and Members, Board of County Commissioners

**DATE:** November 4, 2010

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Amended  
Agenda Item No. 8(F)(1)(B)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor

Veto \_\_\_\_\_

Override \_\_\_\_\_

Amended  
Agenda Item No. 8(F)(1)(B)  
11-4-10

RESOLUTION NO. R-1079-10

RESOLUTION AUTHORIZING AWARD AND EXECUTION OF AN ENERGY PERFORMANCE CONTRACT, AS PROVIDED FOR IN CHAPTER 489.145, FLORIDA STATUTES, WITH BGA, INC. IN AN AMOUNT NOT TO EXCEED \$20,310,700, FOR WORK TO BE PERFORMED TO EXPAND PRODUCTION CAPACITY OF CHILLED WATER AT TWO COUNTY-OWNED CHILLER PLANTS IN DOWNTOWN MIAMI AND INTERCONNECT THE UNDERGROUND DISTRIBUTION SYSTEMS FOR THE TWO PLANTS; AND AUTHORIZING EXECUTION OF A SERVICE AGREEMENT WITH BGA, INC. TO MANAGE, OPERATE AND MAINTAIN THE CHILLED WATER SYSTEMS THROUGHOUT THE PROJECT TERM IN AN AMOUNT NOT TO EXCEED \$1,585,000; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

**WHEREAS**, on July 1, 2008, via Resolution R-740-08, the Board of County Commissioners approved the establishment of an Energy Performance Contracting Program for Miami-Dade County; and

**WHEREAS**, the work to be performed by BGA, Inc. meets all requirements of the County's Energy Performance Contracting Program, and BGA, Inc. is an approved vendor for that program; and

**WHEREAS**, the selection of BGA, Inc. as a guaranteed energy, water, and wastewater performance savings contractor was made in compliance with Chapter 287.055 Florida Statutes, as required by Chapter 489.145, Subsection (4)(d) F.S.; and

>>WHEREAS, the effectiveness of this contract will be expressly conditioned upon execution of a lease/purchase finance agreement that is satisfactory to the parties in their sole discretion; and<<<sup>1</sup>.

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, that this Board hereby approves the award of an Energy Performance Contract to BGA, Inc., in an amount not to exceed \$20,310,700, for work to be performed in Downtown Miami to expand the production capacity of chilled water in County-owned chiller plants, interconnect the underground distribution systems of the two plants, and perform related improvements within the buildings served by the two chiller plants; authorizing execution of a service agreement with BGA, Inc. to manage, operate and maintain the chilled water systems throughout the project term in an amount not to exceed \$1,585,000, in substantially the form attached hereto; and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County; and authorizes the County Mayor or County Mayor's designee to exercise any and all other rights conferred therein.

The foregoing resolution was offered by Commissioner **Audrey M. Edmonson**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

---

<sup>1</sup> Board amendments are indicated as follows: words double stricken through and/or [[double bracketed]] shall be deleted, words double underlined and/or >>double mowed<< constitute the amendment proposed.

	Dennis C. Moss, Chairman	aye	
	Jose "Pepe" Diaz, Vice-Chairman	aye	
Bruno A. Barreiro	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Barbara J. Jordan	aye	Joe A. Martinez	aye
Dorrin D. Rolle	absent	Natacha Seijas	aye
Katy Sorenson	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 4<sup>th</sup> day of November, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.



MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **DIANE COLLINS**  
Deputy Clerk

Approved by the County Attorney as  
to form and legal sufficiency.

Hugo Benitez

A handwritten signature in black ink, appearing to read "Hugo Benitez", is written over a horizontal line.

GUARANTEED ENERGY AND WATER PERFORMANCE SAVINGS CONTRACT

By and Between

MIAMI-DADE COUNTY

and

BGA, INC.

---

*Miami Chilled Water Plant Interconnection Project*

Table of Contents.

CONTENTS .....	1
RECITALS .....	4
SECTION 1. DEFINITIONS.....	5
SECTION 2. INCORPORATION OF OTHER DOCUMENTS .....	6
SECTION 3. TERM OF CONTRACT.....	7
SECTION 4. SCOPE OF WORK.....	7
SECTION 5. PAYMENTS TO COMPANY.....	10
SECTION 6. FISCAL FUNDING.....	12
SECTION 7. TERMINATION.....	13
SECTION 8. WARRANTIES .....	13
SECTION 9. INDEMNIFICATION AND LIMITATION OF LIABILITY .....	14
SECTION 10. OWNERSHIP .....	14
SECTION 11. FACILITIES MAINTENANCE AND EQUIPMENT SERVICES .....	15

SECTION 12. PROPERTY/CASUALTY/INSURANCE.....	16
SECTION 13. BOND .....	16
SECTION 14. EVENTS OF DEFAULT.....	17
SECTION 15. REMEDIES UPON DEFAULT .....	17
SECTION 16. ASSIGNMENT.....	18
SECTION 17. ARBITRATION .....	19
SECTION 18. REPRESENTATIONS AND WARRANTIES.....	19
SECTION 19. MISCELLANEOUS .....	20
SCHEDULES	
Schedule A Description of Facilities.....	24
Schedule B Conservation Measures to be Installed by Company.....	32
Schedule C Savings Guarantee .....	38
Schedule D Compensation to Company and Deliverables.....	46
Schedule E Savings Calculation Formula.....	47
Schedule F Construction and Installation Schedule .....	48
Schedule G Baseline.....	49
Schedule H Standards of Comfort.....	50
Schedule I Company's Maintenance and Training Responsibilities.....	51
Schedule J Financing Agreement.....	52
Schedule K County Measurement & Verification Plan to Monitor Cost Savings .....	74
Schedule L Company Test and Balance and Commissioning Responsibilities.....	76

APPENDICES

Appendix A State Term Contract No.: 973-32008-1 .....77  
Appendix B Investment Grade Energy Audit ..... 114

EXHIBITS

Exhibit I Equipment Warranties 176  
Exhibit II Corporate Guarantee 177  
Exhibit III Certificate of Acceptance 182  
Exhibit IV Service Agreement 183

## GUARANTEED ENERGY AND WATER PERFORMANCE SAVINGS CONTRACT

This Guaranteed Energy and Water Performance Savings Contract (this "Contract") is made and entered into as of the day last signed below, at \_\_\_\_\_, in the County of \_\_\_\_\_, State of Florida, by and between BGA, Inc. ("Company"), having its principal offices at 3101 W. Dr. Martin Luther King Jr. Blvd, Suite 110, Tampa, Florida 33607, and Miami-Dade County ("County") with its principal offices at \_\_\_\_\_, for the purpose of installing certain equipment, and providing other services designed to reduce energy or water consumption or energy-related operating costs for County.

### RECITALS

WHEREAS, on January 1, 2008, the Company and the Florida Department of Management Services entered into State Term Contract No. 973-320-08-1 ("State Term Contract"), authorizing Company to perform work for County and other eligible users under the "Guaranteed Energy, Water, and Wastewater Performance Savings Contract Act" as set forth in § 489.145, Florida Statutes (the "Act"); and

WHEREAS, pursuant to the State Term Contract, County obtained from Company an Audit that (i) recommends certain Conservation Measures at the Facilities, (ii) summarizes the costs of those Conservation Measures, and (iii) provides an estimate of the amount of cost savings resulting from those Conservation Measures; and

WHEREAS, the Miami-Dade Board of County Commissioners approved Resolution \_\_\_\_\_, authorizing contracting with the various firms in the vendor pool listed in the above mentioned State Term Contract; and

WHEREAS, County finds that the amount it would spend on the Conservation Measures will not likely exceed the amount of the cost savings for up to twenty (20) years after the date of installation, based on the calculations required under the Act; and

WHEREAS, Company gives a written guarantee that the cost savings will meet or exceed the costs of the system and the actual cost savings will meet or exceed the estimated cost savings provided in the executed contract; and

WHEREAS, all selection criteria, notice requirements, certifications and approvals set forth in the Act have been satisfied or obtained; and

WHEREAS, Company has made an assessment of the energy and water performance characteristics of the facilities and existing Equipment described in Schedule A, which County has approved; and

WHEREAS, the Parties desire that Company install the Conservation Measures at the Facilities in accordance with and subject to the terms set forth in this Contract.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained

herein, and intending to be legally bound hereby, County and Company agree as follows:

## SECTION 1. DEFINITIONS.

Section 1.1 Definitions. The following terms have the meanings specified below unless the context clearly requires otherwise:

**“Annual Excess Savings”** means the amount of any actual annual Cost Savings that exceeds the total annual contract payments made by County under this Contract for such calendar year pursuant to § 489.145(3)(d)(2), Florida Statutes.

**“Annual Reconciliation”** means a determination pursuant to § 489.145(5)(e), Florida Statutes, and Section 5.3 of this Contract, as to whether a shortfall in annual Cost Savings or an excess in annual Cost Savings exists based on the provisions of Company’s written savings guarantee reflected in Schedule C (Savings Guarantee) with savings calculated according to Schedule E (Savings Calculation Formula).

**“Baseline”** means County’s energy or water consumption for the CM. The initial Baseline shall be for each month of the calendar year preceding the year this Contract is entered and is set forth in Schedule G (Baseline). To the extent the Baseline may be adjusted, it shall be adjusted in accordance with Schedule G.

**“Commencement Date”** means, with respect to the CM, the first day of the calendar month after which all of the following events have occurred: (i) all schedules are in final form and accepted by County; (ii) Company has delivered a notice to County that it has completed the CM in accordance with the provisions of Schedule F (Construction and Installation Schedule); and (iii) County has inspected and accepted said installation and operation as evidenced by an executed Certificate of Acceptance as set forth in Exhibit III.

**“Company”** means BGA, Inc., the contractor identified in the first paragraph of this Contract.

**“Conservation Measure”** or **“CM”** means each of the facility alterations or equipment purchases set forth in Schedule B, together with any training programs incidental to this Contract, which reduces energy or water consumption, wastewater production, or energy-related operating costs at the Facilities. CM may only include, and this Contract is void as to any other measures than, items listed in § 489.145(3)(b), Florida Statutes.

**“Cost Savings”** means the measured reduction in the cost of energy, water consumption, and stipulated operation and maintenance, if applicable, created from the implementation of one or more Conservation Measures when compared with the established Baseline. The Cost Savings shall be determined in accordance with the formulas and methodologies set forth in Schedule E, which will include a minimum real return on investment calculation and a specification of a benchmark cost of capital.

**“County”** means Miami-Dade County, Florida, the governmental entity which has entered into this Contract, or any governmental entity succeeding to the powers and duties of the

County pursuant to law or governmental organization.

**“Equipment”** means all items of property described in the Schedule B (Conservation Measures to Be Installed by Company) and any other items of property pursuant to § 489.145(3)(b) Florida Statutes.

**“Facilities”** means the County-owned facilities as described in the first paragraph of this Contract and reflected on Schedule A (Description of Facilities). A Facility must be a distinct auditable unit.

**“Fiscal Year”** means the annual period from October 1<sup>st</sup> to September 30<sup>th</sup>.

**“Guarantee”** means Company’s guarantee reflected on Schedule C (Energy Savings Guarantee), whereby Company guarantees that the savings will meet or exceed the costs of the CM and the estimated cost savings established under this Contract.

**“Interim Period”** means the period from the date the Contract is signed until the Commencement Date.

**“Investment Grade Energy Audit”** or **“Audit”** means the detailed energy audit performed by Company prior to entry of this Contract, along with an accompanying analysis of the Conservation Measures, and their costs, savings, and benefits. The Audit includes a narrative describing and justifying the need for the CM. The Audit is attached as Appendix B and has been accepted by County.

**“Legally Available Funds”** means funds duly appropriated or otherwise legally available for the purpose of making payments under this Contract.

**“Non-Appropriation”** means the failure of an appropriation or availability of the Governing body of County or the Legislature to appropriate money for any Fiscal Year sufficient for the continued performance by County of all of County’s obligations under this Contract as evidenced by the passage of a final budget which does not include funding sufficient to pay all payments due.

**“Parties”** means both the County and the Company collectively.

**“Savings Calculation Formula”** means the Company’s Savings Calculation Formula reflected on Schedule E.

**“Term”** means the term of this Contract as set forth in Section 3 of this Contract.

## SECTION 2. INCORPORATION OF OTHER DOCUMENTS

Section 2.1. This Contract incorporates and makes a part hereof the following documents, listed in their order of precedence in the event of a conflict between any of their terms and conditions:

- 1- This Contract
- 2- All Schedules, Exhibits and Appendixes listed in the Table of Contents
- 3- The Investment Grade Energy Audit (Appendix B)
- 4- The Service Agreement (Exhibit IV)
- 5- The State Term Contract (Appendix A)
- 6- The Financing Agreement (Schedule J)

Section 2.2. Investment Grade Energy Audit. Company has, under separate agreement, submitted the complete Investment Grade Energy Audit and analysis of the Facilities, which is attached as Appendix B and dated May 5, 2010, and which have been approved and accepted by County. The Investment Grade Energy Audit includes all Conservation Measures agreed upon by the parties.

The effectiveness of this contract will be expressly conditioned upon execution of a lease/purchase finance agreement that is satisfactory to the parties in their sole discretion.

### SECTION 3. TERM OF CONTRACT

Section 3.1 Initial Term; Interim Period. The Term shall begin on the date this Contract becomes fully executed and, subject to the renewal provision in Section 3.2 and the termination provisions in Section 7, shall expire at the end of Fiscal Year in which the Commencement Date occurred. The Contract shall be effective and binding upon the parties immediately upon the date it is last signed, and the period from such contract execution until the Commencement Date shall be known as the Interim Period.

Section 3.2 Renewals. The Term shall automatically renew for each successive Fiscal Year subject to the County making sufficient annual appropriations based upon continued realized savings; provided, however, the Term shall not extend beyond the earlier of: (i) the effective date of termination under Section 7 of this Contract; or (ii) fifteen (15) years after the Commencement Date.

### SECTION 4. SCOPE OF WORK

#### Section 4.1 Installation of CM

(a) Company shall install the CM in the Facilities pursuant to specifications in Schedule B and Appendix B. Construction and installation shall proceed in accordance with the Construction Schedule approved by County and attached hereto as Schedule F (Construction and Installation Schedule).

(b) Company shall perform all tasks/phases under this Contract in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to common engineering practice further set out in ANSI, ASTM, ASHRAE and ASME, and the Construction Schedule specified in Schedule F (Construction and Installation Schedule). Company shall repair and restore to its original condition any area of damage caused by Company's performance under this Contract. County reserves the right to direct Company to take certain corrective action if the structural integrity of the Facilities or its operating system is harmed. All costs associated with such corrective action to damage caused by Company's performance of the work shall be borne by Company.

(c) Company shall remain responsible for the professional and technical accuracy of all services performed, whether by Company or its subcontractors or others on its behalf, throughout the Term of this Contract.

(d) Company must submit to the County all 50%, 90% and 100% final engineering and design drawings for written approval prior to commencement of any construction under this Contract. County shall respond in writing with approval or disapproval within ten (10) calendar days from the day such engineering drawings are submitted by Company. If Company does not receive any written approval or disapproval of such engineering and design drawings within the ten-day period, such engineering/design submittal shall be deemed acceptable and approved by the County.

#### Section 4.2 Acceptance of CM.

(a) When Company considers the CM to have been substantially completed in accordance with all requirements of the Contract, Company shall provide County with a written request for substantial completion inspection. Within ten (10) business days from receipt of Company's written request, County will make an inspection to determine whether the CM installation is complete. If County determines the CM installation is not complete, County will provide Company with a specific material performance deficiency list of all items that must be corrected or completed before County would consider the CM complete. If County does not provide Company with a specific material performance deficiency list within fifteen (15) business days from receipt of Company's written request, the CM shall be substantially completed. Once Company has completed all items on the deficiency list, Company can request a second inspection by County to verify the CM is complete. Again the re-inspection shall occur within ten (10) business days and a written response within fifteen (15) business days, or the CM shall be deemed substantially completed. The CM shall be deemed to be installed and completed once such final inspection has occurred and no additional non-warranty items have been addressed, all applicable permits have been closed, a conditional release of lien has been provided by Company, and all operation and maintenance, equipment warranties, test and balance reports, commissioning reports have been received by County. At such time, County will provide the Company a signed Certificate of Acceptance in the format set forth in Exhibit III, which shall establish the Commencement Date.

(b) The Parties intend that County's acceptance of Substantial Completion will be executed for the CM installation as soon as the installation is complete and beneficial use is provided. However, it is anticipated and agreed that County may require use of the installed and completed CM prior to the execution of the Certificate of Acceptance. In such situations, any maintenance and repairs (other than warranty items) caused by such use prior to the issuance of a Certificate of Acceptance will be made at the expense of County.

Section 4.3 Maintenance. Company shall provide service, repairs, and adjustments to the CM pursuant to Schedule I (Company's Maintenance Responsibilities and Training). County shall incur no cost obligations to Company for service, repairs, and adjustments, except as set forth in the Service Agreement, attached hereto as Exhibit IV, provided, however, that when the need for Company maintenance or repairs principally arises due to the negligence or willful

willful misconduct of County or any employee or other agent of County, and Company can so demonstrate such causal connection, Company may charge County for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds.

#### Section 4.4 Records and Data

(a) County has furnished or shall furnish (or cause its suppliers to furnish) to Company, upon its request, all of its records and complete data concerning energy or water usage and energy/water-related maintenance for the Facilities described in Schedule A. During the Term, County will provide Company copies of all bills relevant to CM on a regular basis so that Company may provide the Cost Savings report identified in subsections 4.3(b) and 5.3 below.

(b) The reports to be issued by Company to County are more particularly delineated in Schedule D (Compensation to Company and Deliverables). At a minimum, Company shall provide an annual Cost Savings and reconciliation report under Schedule C (Savings Guarantee) calculated in accordance with Schedule E (Savings Calculation Formula).

(c) Company shall also furnish County with a full set of diagrams, instructions, manuals, reports and other documentation needed to maintain and operate the CM.

(d) If this Contract is terminated for any reason, all finished or unfinished documents, data, studies, correspondence, reports and any other products prepared for the purpose of performing this Contract and for which payment has been received by Company, shall be made available to, or delivered to, County for its use before any additional payments are made for any reason.

(e) Company shall be subject to audit by the State or its designee. County shall have the right upon reasonable notice to have its employees or agents inspect all of the books and records of Company relating to this Contract at Company's principal place of business during County's normal business hours.

(f) If County receives a public records request related to the Contract, Company shall be solely responsible for taking whatever action it deems appropriate to legally protect its claim of exemption from the public records law.

**Section 4.5 Maintenance and Training.** Company shall conduct the maintenance training program described in Schedule I (Company's Maintenance and Training Responsibilities) hereto. The training specified in Schedule I must be completed prior to acceptance of the CM. Company shall provide ongoing operation and maintenance of the Facilities during construction and for a period of sixty (60) days after acceptance of the CM by the County. Company shall also provide training in accordance with Schedule I and whenever needed with respect to updated or altered equipment, including upgraded software as defined by the software manufacturer. Such training shall be provided at no additional cost to County.

**Section 4.6 Permits and Approvals.** Company shall be responsible for obtaining all governmental permits and approvals as may be required for installation of the CM and for the performance of its obligations hereunder, except for those governmental permits and approvals

which only the County, as facility owner, can apply for. County shall cooperate with Company in obtaining all such permits and approvals. In no event shall County, however, be responsible for payment of any permit fees. The equipment furnished by Company shall at all times conform to all federal, state and local code requirements. Company shall furnish copies of each permit or license which is required to perform the work to County before Company commences the portion of the work requiring such permit or license. Any additional work that is required by any permitting authority to be performed prior to closing permits, as a direct result of Company's installation of the CM shall be considered within the scope of work under this Contract.

## SECTION 5. PAYMENTS TO COMPANY

Section 5.1 Energy Performance Savings Guarantee. Company has formulated and provided a written Guarantee that the Cost Savings, calculated in accordance with Schedule E, will meet or exceed the costs of the Conservation Measure and the estimated cost savings set forth in the Audit pursuant to § 489.145(4)(c), Florida Statutes, and that the amount of any actual annual savings meet or exceed total annual contract payments made by the County for the contract pursuant to § 489.145 (3)(d)(2), Florida Statutes. This Guarantee is being given by Company based on the Project Economic Analysis contained on the last page of the Investment Grade Energy Audit. The Guarantee is attached as Schedule C, providing the annual level of Cost Savings to be achieved as a result of the Conservation Measure provided for in this Contract and in accordance with the Savings Calculation Formula as set forth in Schedule E, which is calculated in compliance with Florida law. The Guarantee is set forth in annual increments for the term of the Contract as specified in Schedule C and has been structured so as to be sufficient to cover any and all annual payments required to be made by the County.

Section 5.2 Measuring Cost Savings. The Parties will measure the Cost Savings using the cost savings formula set forth in Schedule E and the monitoring and verification plan set forth in Schedule K. Company will ensure that the reported Cost Savings have in fact been recognized or the provisions of Section 5.3 will apply. The Cost Savings shall be based on the Federal Energy Management Program's (FEMP) *M&V Guidelines: Measurement and Verification for Federal Energy Management Projects version 3.0*.

### Section 5.3 Annual Reconciliation.

(a) Reconciliation Reports. Pursuant to § 489.145(5)(e), Florida Statutes, Company is required to provide to County an annual reconciliation of the Cost Savings. Within sixty (60) days after the end of each year beginning on the Commencement Date, Company will deliver to County's Contract Manager, identified in Section 19.9 below, an Annual Reconciliation report for such calendar year, reflecting the amount guaranteed and the amount of actual Cost Savings achieved. Upon delivery of the report and all supporting documentation, County will have thirty (30) days to accept or reject the report. County shall provide written notice of such rejection, within the stated acceptance period, specifying the basis of the deficiency. Company shall have thirty (30) business days to cure such deficiency and deliver to County a corrected reconciliation report. If the County fails to reject any report (including corrected reconciliations) within thirty (30) business days of receipt of all required documentation, County shall be deemed to have accepted the Annual Reconciliation contained in the report as of the final day of the 30th

business day period, unless a longer acceptance period is mutually agreed upon in writing. The Annual Reconciliation report verification requirements of the Measurement and Verification Plan (M&V Plan) is in the form attached, in Schedule K (County Measurement and Verification Plan to Monitor Cost Savings).

(b) Annual Review and Reimbursement/Reconciliation. If the Annual reconciliation report shows that the Company has failed to achieve the annual Savings Guarantee specified in Schedule C and, upon written request by the County, the Company will pay the County the difference between the annual amount guaranteed and the amount of actual Cost Savings achieved at the Facilities in accordance with the provisions of Schedule C. The Company shall remit such payment to the County within thirty (30) days of written notice by the County of such monies due. When the total Cost Savings in any one year during the Savings Guarantee period exceed the Guaranteed Savings as set forth in Schedule C, such excess savings shall first be applied to reimburse the Company for any payment made to the County to meet the Cost Savings for previous years in which the energy savings fell short of the Company's guaranteed Cost Savings under the terms as set forth in Schedule C.

(c) Annual Excess Savings. Any excess savings will accrue to the County, except as provided in Section 5.3(b) above.

Section 5.4 County Payments. County shall either: (i) pay Company as set forth in Schedule D (Compensation to Company and Deliverables), to the extent of actual annual savings in accordance with the Act, or (ii) pay the Lender pursuant to Schedule J (Financing Agreement), if applicable. All other payment and contract provisions of § 287.058(1), Florida Statutes, are incorporated herein by reference. In the event County fails to make payment within forty (40) days of the due date, County shall pay, as late charges, any interest assessed for untimely payment. The interest rate will be the rate set pursuant to Section 55.03, Florida Statutes. County shall not be required to begin any payments to Company under this Contract unless and until a Certificate of Acceptance of CM as set forth in Exhibit III has been issued. County shall pay Company pursuant to § 215.422, Florida Statutes. The Parties agree that (i) at least one twentieth of the price must be paid within two years from the Commencement Date by County, using straight-line amortization for the term of the loan, (ii) the remaining costs are to be paid at least quarterly, not to exceed a 20 year term, based on life cycle cost calculations, and (iii) the Cost Savings are guaranteed to the extent necessary to make payments.

Section 5.5 Financing. In the event the Parties have agreed to a separate Financing Agreement with a third party, such Financing Agreement shall be incorporated herein as Schedule J (Financing Agreement). In such event, the Financing Agreement constitutes County's source of funding for its obligations under this Contract. Company may not assess any late fees for a County failure to deliver the completed documents to the Lender unless Company has provided all invoices and other documentation required under Schedule J (Financing Agreement) on a timely basis to County.

Section 5.6 Current Expense. County's obligations hereunder constitute a current expense that is payable exclusively from Legally Available Funds and shall not be construed to be debt, liability or obligation within the meaning of any applicable constitutional or statutory limitation or requirement. Neither County nor the State nor any political subdivision or County

thereof has pledged any of its full faith and credit or its taxing power to make any payments under this Contract.

Section 5.7 Baseline Costs. Actual savings are measured against baseline costs, the expenses that the County would have incurred had the delivery order not been implemented. The Parties agree that baseline costs shall be calculated using the Baseline set forth in Schedule G, which has been based on the Federal Energy Management Program's (FEMP) *M&V Guidelines: Measurement and Verification for Federal Energy Management Projects version 3.0*. Details of the Monitoring and Verification methodology shall be in accordance with Schedule K.

## SECTION 6. FISCAL FUNDING

Section 6.1 Annual Appropriations. County's performance and obligation to pay under this Contract is contingent upon an annual appropriation of funds by its governing body in an amount sufficient to allow continuation of its performance in accordance with the terms and conditions of this Contract for each and every Fiscal Year following the initial Fiscal Year in which the Contract is in effect.

Section 6.2 County's Intent to Request Appropriations and Make Payments. County intends for this Contract to continue until all payments contemplated under Section 5 have been satisfied. The Parties acknowledge that appropriation for such payments is a governmental function that County cannot contractually commit the governing body of County to perform and this Contract does not constitute such a commitment. However, County reasonably believes that money in an amount sufficient to make all Payments can and will lawfully be appropriated and made available to permit continued utilization of the CM in the performance of its essential function during the Term.

Section 6.3 Notice of Non-Appropriation. County shall, upon learning that sufficient funds will not be available to continue its full and faithful performance under this Contract, provide prompt written notice to Lender and any other affected parties of such event.

Section 6.4 Return of Equipment. Upon termination for Non-Appropriation under Section 7.1 or 7.2, County shall no longer be responsible for the payment of any additional payments coming due in succeeding Fiscal Years. If requested by Lender, and within thirty (30) days of such written notice, County shall cause all equipment related to the CM that County is no longer responsible for the payment of (together with all documents necessary to transfer legal and beneficial title thereto to Company) to be returned to the Lender. Any other terms and conditions regarding Return of Equipment will be agreed upon between the County and the Lender under a separate Financial Agreement.

## Section 7. TERMINATION

Section 7.1 Termination for Non-Appropriation. This Contract shall immediately terminate with respect to the CM for which a Non-Appropriation has occurred. The termination shall be effective as of the last day for which funds were appropriated and Company or Lender, if allowed under the Financing Agreement, may then pursue its rights under Section 6 above. In the event that the appropriations has not been adopted by the governing body of County prior to

the expiration of a Fiscal Year, and the Notice of Non-Appropriation is not yet due under Section 6.3, the Term will be deemed extended and renewed pending the enactment of such appropriations act. If any payments are due under this Contract during such period, such Term will be extended and renewed only if: (a) an interim or emergency budget implemented by the governing body of County pending enactment of a final budget makes available to County money that may legally be used to make payments during such period; or (b) sums are otherwise available to make such payments.

Section 7.2 Company Option to Terminate the CM. In the event of a termination under Section 7.1 above, Company may elect to terminate this Contract. This election shall be made by written notice to County within thirty (30) days after the Non-Appropriation has occurred and shall be effective upon the last day of the Fiscal Year for which funds were not appropriated. Upon the effective date of the termination, County shall pay to Company any payments and other amounts that are due and have not been paid at or before the end of its then current Fiscal Year with respect to this Contract. In the event of termination of this Contract as provided in this Section, County shall comply with Sections 6.4 regarding the return of equipment.

Section 7.3 Termination Upon Default. This Contract is also subject to termination upon the occurrence of an event of default, as provided in Section 14 below.

Section 7.4 Effect of Termination. No CM Schedule shall be executed after any termination due to Non-Appropriation or Event of Default.

## SECTION 8. WARRANTIES

Section 8.1 Equipment Warranties. Company covenants and agrees that all materials and equipment to be installed as part of this Contract shall be new, in good and proper working condition and protected by original equipment manufacturer (OEM) written warranties covering all parts and equipment performance for a period of one year from the date of Substantial Completion, except in the event that Company further agrees to warranty certain specified Equipment for longer terms, as mutually agreed and stated in Exhibit I (Equipment Warranties). Company further agrees to deliver to County for inspection and approval, all such written warranties.

All warranties shall be transferable and extend to County. The warranties shall specify that only new, and not reconditioned parts, may be used and installed when repair is necessary.

Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve Company from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

Section 8.2 Labor Warranties. Company warrants that all work performed under this Contract complies with customary, reasonable and prudent standards of care in accordance with standards in the industry and are performed in a professional manner and consistent with County supplied specifications and standards.

## SECTION 9. INDEMNIFICATION AND LIMITATION OF LIABILITY

Section 9.1 Indemnification by Company. Company shall hold and save County, the State of Florida, its officers, agents, and employees harmless against claims by third parties resulting from Company's breach of this Contract or Company's negligence.

Section 9.2 Indemnification by County. Both Parties recognize that County, as County of the State of Florida, is prohibited from entering into indemnification agreements. Subject to that prohibition, the Parties agree that Company shall not be responsible for damages to the extent resulting from County's negligence.

Section 9.3 Limitation of Liability. Neither Party shall be liable to another for special, indirect, consequential or punitive damages, even if the Party has been advised that such damages are possible. No Party shall be liable for lost profits, lost revenue, or lost operating savings.

## SECTION 10. OWNERSHIP

Section 10.1 Ownership of Certain Proprietary Property Rights. County shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the CM. Company shall grant to County for the duration of this Contract any and all software or other intellectual property rights reasonably necessary for County to continue to operate, maintain, and repair the CM in a manner consistent with Contract requirements.

Section 10.2 Ownership of Existing Equipment. Ownership of the equipment and materials presently existing at the Facilities at the time of execution of this Contract shall remain the property of County even if it is replaced or its operation made unnecessary by work performed by Company pursuant to this Contract. Company shall be responsible for the disposal of all equipment and materials designated by County as disposable off-site in accordance with all applicable laws and regulations regarding such disposal, provided, however, that Company shall not be responsible for the disposal of any hazardous materials.

Section 10.3 Ownership of Installed Equipment; Risk of Loss. Upon the issuance of a Certificate of Acceptance for CM, County shall have all legal title to and ownership of all underlying equipment and Company shall take all actions necessary to vest such title and ownership in County. Prior to this date, the risk of loss or damage to all items shall be the responsibility of Company, unless loss or damage results from negligence by County, and Company shall be responsible for filing, processing and collecting all damage claims.

Section 10.4 Patent and Copyright. Company, without exception, shall indemnify and save harmless County and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process or article supplied by Company. Company has no liability when such claim is solely and exclusively due to the combination, operation or use of any article supplied hereunder with

equipment or data not supplied by Company or is based solely and exclusively upon County's alteration of the article. County will provide prompt written notification of a claim of copyright or patent infringement and will afford Company full opportunity to defend the action and control the defense. Further, if such a claim is made or is pending Company may, at its options and expenses procure for County the right to continue use of, replace or modify the article to render it noninfringing. (If none of the alternatives are reasonably available, County agrees to return the article on request to Company and receive reimbursement, if any, as may be determined by a court of competent jurisdiction.) If Company uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the negotiated prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

## SECTION 11. FACILITIES MAINTENANCE AND EQUIPMENT SERVICES

Section 11.1 Maintenance Procedures. County agrees that it shall adhere to, follow and implement the maintenance procedures and methods of operation recommended in the Equipment manufacturers' maintenance manuals, common and recommended industry practices, and other mutually agreed maintenance procedures, once Company's Maintenance obligations under the Service Agreement set forth in Exhibit IV have expired.

Section 11.2 Changes to CM and Facilities by County. County shall not move, remove, modify, alter, or change in any way the CM or any part thereof without the prior written approval of Company, which consent shall not be unreasonably withheld or delayed. County agrees to maintain the Facilities in good repair and to protect and preserve all portions thereof that may in any way affect the operation or maintenance of the CM. If Company contends that County is not performing maintenance responsibilities, or that County has made any other material changes, including a change in manner of use, hours of operation for the equipment, permanent changes in the comfort and service parameters, occupancy or structure of the Facilities, types and quantities of equipment at the Facilities, then Company shall submit a report to County and upon which the County and Company shall mutually agree on what, if any, adjustments to Baseline will be made. If applicable, the Baseline may also be adjusted to reflect: changes in occupied square footage; changes in energy-consuming equipment; changes in use of the Facilities; and changes in occupancy census.

Section 11.3 Changes to CM by Company. Notwithstanding anything to the contrary in this Contract or elsewhere, Company shall at all times have the right, subject to County's prior written approval, which approval shall not be unreasonably withheld, to change the CM, revise any procedures for the operation of the equipment or implement other saving actions in the Facilities, provided that (i) such modifications or additions to, or replacement of the CM, and any operational changes, or new procedures are necessary to enable Company to achieve the savings at the Facilities; (ii) the County operations are not unfavorably affected; and (ii) any cost incurred relative to such modifications, additions or replacement of the CM, or operational changes or new procedures shall be the responsibility of Company. All modifications, additions or replacements of the CM or revisions to operating or other procedures shall be made by written amendment to this Contract pursuant to § 255.258 Florida Statutes.

## SECTION 12. PROPERTY/CASUALTY/INSURANCE

Section 12.1 Insurance. Company shall maintain in full force and effect all insurance coverages customary for companies in its industry of comparable size, including: (1) Workmen's Compensation Insurance sufficient to cover all of the employees of Company working to fulfill this Contract, and (2) Casualty and Liability Insurance for its employees and the possession, operation, and service of the underlying equipment, until such time as title and risk of loss is transferred to the County for such CM. Contractor The limits of such insurance shall be not less than \$1,000,000 for injury to or death of one person in a single occurrence and \$1,000,000 for injury to or death of more than one person in a single occurrence and \$1,000,000 for a single occurrence of property damage. Such Casualty and Liability Insurance policies shall name County as an additional insured.

Prior to commencement of work under this Contract, Company will be required to provide County with current certificates of insurance specified above. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed until at least thirty (30) days' prior written notice has been given to County.

The policies for Bodily Injury and Property Damage Liability Insurance shall be written to include Contractual Liability Insurance to protect Company against claims from the operations of subcontractors. Certificates of Company's insurance containing evidence of the Hold Harmless Clause protecting the State shall be filed with the State and shall be subject to its approval for adequacy of protection.

Section 12.2 Damage. Company shall be responsible for (i) any damage to the equipment to be installed or to any other property on the Facilities and (ii) any personal injury where such damage or injury occurs as a result of Company's performance under this Contract, but only to the extent caused by the acts or omissions of Company.

## SECTION 13. BOND

Section 13.1 County shall be provided with the following bonds, within 30 days of the date of this Contract:

(a) Construction Bond: Company shall furnish County a Public Construction Bond, for the full cost of the project. The Construction Bond shall remain in effect until the CM is accepted by County.

Section 13.2 Bond Provisions. The following provisions shall apply to the bonds in this Section:

(a) County shall be named as the beneficiary of the bonds. Company's bonds shall provide that the insurer or bonding company shall pay losses suffered by County directly to County. Company or its insurer shall provide County thirty (30) days prior written notice of any attempt to cancel or to make any other material changes in the status, coverage or scope of the required bond or of Company's failure to pay bond premiums. The cost of bonds shall be

reflected as a project cost and included in the Conservation Measures to be installed.

(b) Company shall follow § 255.05 "Bond of contractor constructing public buildings; form; action by materialmen" of the Florida Statutes.

(c) No payments shall be made to Company until the bond is in place as per § 255.05 Florida Statutes.

(d) To be acceptable to County as surety for performance bonds, the surety company shall:

(i) Have a currently valid Certificate of Authority, issued by the State of Florida, Department of Financial Services, authorizing it to write surety bonds in the State of Florida

(ii) Have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.

(iii) Be in full compliance with the provisions of the Florida Insurance Code

(iv) Have a minimum A. M. Best's (or equivalent rating agency) Policyholder Rating of A- or Performance Index Rating of VI from A.M. Best's Key Rating Guide.

#### SECTION 14. EVENTS OF DEFAULT

Section 14.1 The following are events of default under this Contract:

(a) Any failure by either Party to pay any payment required to be paid when due. County's failure to pay for reason of Non-Appropriation shall not constitute an event of default, and shall be governed by Section 6 of this Contract.

(b) Any failure by either Party to observe and perform any material covenant, condition or agreement on its part to be observed or performed hereunder or under this Contract, other than as referred to in Clause (a) of this Section.

(c) Company initiates a proceeding in any court, seeking liquidation, reorganization, debt arrangement, dissolution, winding up, appointment of trustee, receiver, custodian, or the like for substantially all of its assets, and such proceeding continues undismissed, unstayed and in effect for a period of 90 consecutive days; or an order for relief is entered in an involuntary case under the federal bankruptcy laws or other similar laws now or hereafter in effect.

#### SECTION 15. REMEDIES UPON DEFAULT

Section 15.1 Opportunity to Cure Defaults. Each Party shall have a period of forty (40) days after being notified of an event of default to cure said default, provided that the Party has not already failed to cure a default under the terms of this Contract.

Section 15.2 Remedies upon Default by County. If a default by County is not cured in accordance with Section 15.1, Company may, without a waiver of other remedies which exist in law or equity, exercise all remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by County, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy.

Section 15.2 Remedies Upon Default by Company. If a default by Company is not cured in accordance with Section 15.1, County shall have the following remedies in law or equity:

(a) County may exercise any and all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred in exercise of its remedy,

(b) County may take any and all steps necessary to cure Company's default including the hiring or contracting of third parties to fulfill Company's obligations. In the event County takes any action to effect such cure, Company shall be obligated to reimburse County for its costs and expenses pursuant to any applicable County organizational procedures.

## SECTION 16. ASSIGNMENT

Section 16.1 Assignment by Company. Company acknowledges that County is induced to enter into this Contract by, among other things, the professional qualifications of Company. Company agrees that neither this Contract nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of County, which shall not be unreasonably withheld; provided Company can without prior approval from County assign this Contract to its parent or affiliate companies.

Company may, with prior written approval of County, which consent shall not be unreasonably withheld, delegate its duties and performance under this Contract, and/or utilize subcontractors, provided that any assignee(s), delegee(s), or subcontractor(s) shall fully comply with the terms of this Contract. Notwithstanding the provisions of this paragraph, Company shall remain jointly and severally liable with its assignees(s), or transferee(s) to County for all of its obligations under this Contract.

Section 16.2 Assignment by County. County may transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the Facilities or an interest therein subject to the prior written approval of Company. If Company rejects new assignee County will continue to make the payments associated with the facility or County can pay the remaining principal on the loan for the equipment installed in that facility. Notwithstanding the foregoing, County's rights and responsibilities may be transferred in the event that the County/department that originally executed this Contract is transferred, moved or absorbed by another governmental entity to such succeeding entity.

## SECTION 17. ARBITRATION

Any dispute, controversy, or claim arising out of or in connection with, or relating to this Contract, or any breach or alleged breach hereof, may, upon the agreement of both Parties, be submitted to and settled by arbitration in the State of Florida, in conformance with the rules of the American Arbitration Association then in effect for commercial disputes (or at any other place or under any other form of arbitration mutually acceptable to the Parties).

The expenses of the arbitration shall be borne equally by the Parties to the arbitration, provided that each Party shall pay for and bear the cost of its own experts, evidence, and counsel.

## SECTION 18. REPRESENTATIONS AND WARRANTIES

Section 18.1 Mutual Representations. Each Party warrants and represents to the other that:

(a) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;

(b) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

(c) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or

(d) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

Section 18.2 County Representations. County hereby warrants and represents that:

(a) it has provided or shall provide timely to Company, all records relating to energy and/or water usage and energy/water-related maintenance of Facilities requested by Company and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects; and

(b) it has not entered into any leases, contracts or agreements with other persons or entities regarding the leasing of efficiency equipment or the provision of energy/water management services for the Facilities or with regard to servicing any of the related equipment located in the Facilities except as disclosed to Company.

Section 18.3 Company Representations. Company hereby warrants and represents that:

(a) before commencing performance of this Contract it shall have (i) become licensed or otherwise permitted to do business in the State of Florida, and (ii) provided proof and documentation of required insurance pursuant to Section 12, and (iii) made available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;

(b) it shall use qualified subcontractors and delegees, licensed and bonded in this state to perform the work so subcontracted or delegated pursuant to the terms hereof;

(c) it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to perform its obligations under this Contract.

## SECTION 19. MISCELLANEOUS

Section 19.1 Waiver of Liens. Company will obtain and furnish to County a Waiver of Liens from each vendor, material manufacturer and laborer in the supply, installation and servicing of each CM. Should liens or claims be filed against the Facilities by reason of Company's acts or omissions, Company shall cause same to be discharged by bond or otherwise within ten (10) days after filing.

Section 19.2 Compliance with Law and Standard Practices. Company shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices, and in compliance with any County safety rules and practices. Upon discovery of the suspected or real presence of asbestos or other hazardous materials, and upon determining the need by the Company to disturb such asbestos or other hazardous materials as part of the Work, the Company shall immediately notify the County of such discovery. The County will quickly endeavor to identify and, if necessary, remove asbestos, following the County's established procedure, to the extent necessary for the Company to safely perform its Work or to a further extent if the County deems necessary or preferable. In no event shall Company take title to such removal of asbestos or other hazardous materials found while performing Work.

Company shall not use, store, dispose of or otherwise handle any Hazardous Substance (as defined in 42 U.S.C. Sections 9601, 9603, 6921, 7412, 49 U.S.C. Sections 1802 and 33 U.S.C. Sections 1321 and 1317 as now or hereinafter amended) or Hazardous Material in or on the Facilities except in a lawful manner and so as not to cause County any cost, loss, obligation or liability or expose County to any claim or suit with respect to same. "Hazardous Materials" shall mean petroleum, or any fraction thereof, asbestos, polychlorinated biphenyls, or any other substance identified either as a "hazardous substance", "hazardous waste", "pollutant", "contaminant" or other similar term in any applicable federal, state or local law or regulation, as such law or regulations may be now or hereafter amended.

Section 19.3 Independent Capacity of Company. The Parties agree that Company, and any agents and employees of Company, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of County.

Section 19.4 No Waiver. The failure of Company or County to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of Company or County.

Section 19.5 Severability. In the event that any clause or provision of this Contract or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Contract unless the result would be manifestly inequitable or unconscionable.

Section 19.6 Complete Contract. This Contract, including all Schedules, Exhibits and Appendices attached hereto, when executed, shall constitute the entire Contract between both Parties and this Contract may not be amended, modified, or terminated except by a written Contract signed by the Parties.

Section 19.7 Further Documents. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

Section 19.8 Applicable Law. This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of Florida.

Section 19.9 Notice. Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, or delivered to a nationally recognized express mail service, postage prepaid to the address shown below or to such other persons or addresses as are specified by similar notice. County's Contract Manager for this project will serve as liaison for the ongoing administration of this Contract and the resolution of any problems related thereto.

TO COMPANY: Michael W. Gibson  
President  
BGA, Inc.  
3101 W. Dr. Martin Luther King Jr. Blvd., Suite 110  
Tampa, FL 33607

TO COUNTY: Reinaldo Abrahante  
Engineer 3  
General Services Administration  
Facilities and Utilities Management Division  
200 NW 1<sup>st</sup> Street  
Miami, FL 33128

Section 19.10 Statutory Notices and Requirements. County shall consider the employment by Company of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this Contract. An entity or affiliate who has been placed on the public entity crimes list or the

discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a company, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity pursuant to limitations under Chapter 287 Florida Statutes.

Wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto will be adjusted to exclude any significant sums by which County determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within 1 year following the end of this Contract.

Company warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Company to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Company any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, County shall have the right to terminate this Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

Section 19.11 Public Records. County shall have the right of unilateral cancellation for refusal by Company to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes and made or received by Company in conjunction with this Contract.

Section 19.12 Force Majeure. Neither Party will be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in the United States; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party ("Force Majeure Events"); provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. Performance times shall be considered extended for a period of time equivalent to the time lost because of any such delay, provided that in the event Company is delayed in its performance by reason of such cause, no such extension shall be made unless notice thereof is presented by Company to County in writing within ten (10) business days after the start of the occurrence of such delay, no payment shall be made by County for any fees or expenses incurred by Company by reason of such delay, and Company shall use best efforts to perform its obligations during such period of delay, and notify County of its abatement or cessation.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers on the date last executed below

COMPANY:

COUNTY:

By: \_\_\_\_\_  
[Signature]

By: \_\_\_\_\_  
[Signature]

Title: \_\_\_\_\_  
(Corporate Seal)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Schedule A  
Description of Facilities

The North Plant contains 28,644 square feet of improvements, specifically designed and constructed to operate as a commercial district chiller plant. Initial construction was completed in 1999. The North Plant was then expanded in 2009. The North Plant includes the following equipment and/or systems:

**PUMPS**

TAG	CHP-1	CHP-2	CHP-3	CHP-4	CHP-5
SERVICE	Primary Chilled Water				
LOCATION	1st Floor				
MANUFACTURER	Armstrong	Armstrong	Armstrong	Armstrong	Armstrong
MODEL/SERIES	4300	4300	4300	4300	4300
SIZE	8x8x10	8x8x10	8x8x10	10x10x13	12x12x13
TYPE	Vert. Inline				
FLOW (GPM)	1,400	1,400	1,400	2,400	3,000
HEAD (FT.)	75.0	75.0	75.0	75.0	75.0
IMPELLOR SIZE (IN.)	9.68	9.68	9.68	10.33	10.06
MOTOR SIZE (HP)	40	40	40	60	100
SPEED (RPM)	1780	1780	1780	1775	1800
FRAME SIZE	324TC	324TC	324TC	364VPZ	
ENCLOSURE	DP	DP	DP	DP	ODP
SERVICE FACTOR	1.15	1.15	1.15	1.15	1.15
VOLTS/PH/HZ	460/3/60	460/3/60	460/3/60	460/3/60	460/3/60
INSULATION CLASS	B	B	B	B	B
NEMA EFFICIENCY	94.1%	94.1%	94.1%	Energy Eff.	Premium

## Pumps (continued)

TAG	CWP-1	CWP-2	CWP-3	CWP-4	CWP-5	CWP-6
SERVICE	Condenser Water					
LOCATION	Mezzanine	Mezzanine	Mezzanine	Mezzanine	Mezzanine	Mezzanine
MANUFACTURER	Armstrong	Armstrong	Armstrong	Armstrong	Armstrong	Armstrong
MODEL/SERIES	4300	4300	4300	4300	4300	4300
SIZE	12x12x13	12x12x13	12x12x13	14x14x15	16x16x19	16x16x19
TYPE	Vert. Inline					
FLOW (GPM)	3,510	3,510	3,510	4,800	6,600	6,600
HEAD (FT.)	95.0	95.0	95.0	95.0	100.0	100.0
IMPELLOR SIZE (IN.)	11.21	11.21	11.21	15.90	17.22	17.22
MOTOR SIZE (HP)	125	125	125	150	250	250
SPEED (RPM)	1780	1780	1780	1190	1200	1200
FRAME SIZE	405VPZ	405VPZ	405VPZ	445TCZ		
ENCLOSURE	DP	DP	DP	DP	DP	DP
SERVICE FACTOR	1.15	1.15	1.15	1.15	1.15	1.15
VOLTS/PH/HZ	460/3/60	460/3/60	460/3/60	460/3/60	460/3/60	460/3/60
INSULATION CLASS	F	F	F	F	B	B
NEMA EFFICIENCY	95.0%	95.0%	95.0%	95.0%	Premium	Premium

TAG	GLYP-1	GLYP-2	GLYP-3
SERVICE	Glycol Water	Glycol Water	Glycol Water
LOCATION	Mezzanine	Mezzanine	Mezzanine
MANUFACTURER	Armstrong	Armstrong	Armstrong
MODEL/SERIES	4300	4300	4300
SIZE	12x12x13	14x14x14	14x14x14
TYPE	Vert. Inline	Vert. Inline	Vert. Inline
FLOW (GPM)	4,800	6,100	6,100
HEAD (FT.)	120.0	130.0	130.0
IMPELLOR SIZE (IN.)	12.69	13.39	13.39
MOTOR SIZE (HP)	200	250	250
SPEED (RPM)	1780	1800	1800
FRAME SIZE	445VP		
ENCLOSURE	DP	DP	DP
SERVICE FACTOR	1.15	1.15	1.15
VOLTS/PH/HZ	460/3/60	460/3/60	460/3/60
INSULATION CLASS	F	F	B
NEMA EFFICIENCY	95.4%	Premium	Premium

35

### Pumps (Continued)

TAG	ICEP-1	ICEP-2	ICEP-3
SERVICE	Ice Water	Ice Water	Ice Water
LOCATION	Mezzanine	Mezzanine	Mezzanine
MANUFACTURER	Armstrong	Armstrong	Armstrong
MODEL/SERIES	4300	4300	4300
SIZE	12x12x13	12x12x13	12x12x13
TYPE	Vert. Inline	Vert. Inline	Vert. Inline
FLOW (GPM)	3,200	3,200	3,200
HEAD (FT.)	85.0	85.0	85.0
IMPELLOR SIZE (IN.)	10.68	10.68	10.55
MOTOR SIZE (HP)	100	100	100
SPEED (RPM)	1785	1785	1800
FRAME SIZE	404VPZ	404VPZ	
ENCLOSURE	DP	DP	DP
SERVICE FACTOR	1.15	1.15	1.15
VOLTS/PH/HZ	460/3/60	460/3/60	460/3/60
INSULATION CLASS	F	F	B
NEMA EFFICIENCY	95.4%	95.4%	Premium

TAG	DCHW-1	DCHW-2	DCHW-3
SERVICE	Distribution Chilled Water	Distribution Chilled Water	Distribution Chilled Water
LOCATION	1st Floor	1st Floor	1st Floor
MANUFACTURER	Armstrong	Armstrong	Armstrong
MODEL/SERIES	4300	4300	4300
SIZE	12x12x17	12x12x17	12x12x17
TYPE	Vert. Inline	Vert. Inline	Vert. Inline
FLOW (GPM)	3,200	3,200	3,200
HEAD (FT.)	250.0	250.0	250.0
IMPELLOR SIZE (IN.)	16.06	16.06	16.06
MOTOR SIZE (HP)	350	350	350
SPEED (RPM)	1775	1775	1775
FRAME SIZE	449TCZ	449TCZ	449TCZ
ENCLOSURE	DP	DP	DP
SERVICE FACTOR	1.15	1.15	1.15
VOLTS/PH/HZ	460/3/60	460/3/60	460/3/60
INSULATION CLASS	Invertor Duty	Invertor Duty	Invertor Duty
NEMA EFFICIENCY	95.0%	95.0%	95.0%

## Pumps (continued)

TAG	AB-1	AB-2	AB-3	AB-4
SERVICE	Ice Tank 1 Air Blower	Ice Tank 1 Air Blower	Ice Tank 2 Air Blower	Ice Tank 2 Air Blower
LOCATION	1st Floor	1st Floor	1st Floor	1st Floor
MANUFACTURER			Tuthill	Tuthill
MODEL/SERIES			Competitor +	Competitor +
SIZE			4002-22L2	4002-22L2
TYPE				
FLOW (GPM)				
HEAD (FT.)				
IMPELLOR SIZE (IN.)				
MOTOR SIZE (HP)	15	15	15	15
SPEED (RPM)	1760	1760		
FRAME SIZE	254T	254T		
ENCLOSURE	TE	TE		
SERVICE FACTOR	1.15	1.15		
VOLTS/PH/Hz	460/3/60	460/3/60	460/3/60	460/3/60
INSULATION CLASS	F	F		
NEMA EFFICIENCY				

# COOLING TOWER SCHEDULE

TAG	CT-1	CT-2	CT-3	CT-4
SERVICE	Condenser Water	Condenser Water	Condenser Water	Condenser Water
LOCATION	Roof	Roof	Roof	Roof
MANUFACTURER	Ceramic	Ceramic	CCS Solutions	CCS Solutions
MODEL/SERIES	UL-2630-125-12P3FM	UL-2630-125-12P3FM	2FT-2830-125-P5IL FM	2FT-2830-125-P5IL FM
SIZE	26, X 30'	26, X 30'	28' X 30'	28' X 30'
FLOW (GPM)	6,000	6,000	6,000	6,000
PUMP HEAD (FT)	16.0	16.0	18.0	18.0
HWT (F)	95.0	95.0	95.0	95.0
CWT (F)	85.0	85.0	85.0	85.0
WBT (F)	79.0	79.0	79.0	79.0
FAN MODEL NO.	18-7-33F33M80	18-7-33F33M80	APT-22H-9	APT-22H-9
NO. OF FAN BLADES	7	7	9	9
FAN DIAMETER (FT)	18.0	18.0	22.0	22.0
FAN SPEED (RPM)	225	225	167	167
FAN TIP SPEED (RPM)	12,370	12,370	11,521	11,521
FAN PITCH	7 Deg.	7 Deg.	11.2 Deg.	11.2 Deg.
GEAR BOX MODEL	Amarillo 1110	Amarillo 1110	Amarillo 1110	Amarillo 1110
GEAR RATIO	8 : 1	8 : 1	10.5 : 1	10.5 : 1
MOTOR SIZE (HP)	125	125	125	125
SPEED (RPM)	1800/900	1800/900	1750	1750
FRAME SIZE	445T	445T	444T	444T
ENCLOSURE	TEFC	TEFC	TEFC	TEFC
SERVICE FACTOR				
VOLTS/PH/HZ	460/3/60	460/3/60	460/3/60	460/3/60
INSULATION CLASS	F	F	F	F
NEMA EFFICIENCY	Premium	Premium	Premium	Premium



## Chillers

TAG	ECH-1	ECH-2	ECH-3	ECH-4
SERVICE	Chilled Water	Chilled Water	Chilled Water	Chilled Water
LOCATION	1st Floor	1st Floor	1st Floor	1st Floor
MANUFACTURER	York	York	York	York
MODEL/SERIES	YKHHGDJ2-DBDS	YKHHGDJ2-DBDS	YKHHGDJ2-DBDS	YKWPW4K7-DKGS
SIZE (TONS)	1,166	1,166	1,166	2,500
EVAPORATOR FLOW (GPM)	1,400	1,400	1,400	3,000
EVAPORATOR HEAD (FT)	20.3	20.3	20.3	27.9
EVAPORATOR EWT (F)	56.0	56.0	56.0	56.0
EVAPORATOR LWT (F)	36.0	36.0	36.0	36.0
CONDENSER FLOW (GPM)	3,500	3,500	3,500	7,050
CONDENSER HEAD (FT)	22.2	22.2	22.2	21.4
CONDENSER EWT (F)	85.0	85.0	85.0	85.0
CONDENSER LWT (F)	94.5	94.5	94.5	95.0
REFRIGERANT	R-134A	R-134A	R-134A	R-134A
REFRIGERANT WEIGHT (LBS.)	2,455	2,455	2,455	7,871
KW	831	831	831	1,599
KW/Ton	0.713	0.713	0.713	0.640
FLA	133	133	133	250
LRA	960	960	960	1,608
SHAFT (HP)	1,064	1,064	1,064	2,063
SPEED (RPM)				
FRAME SIZE				
ENCLOSURE				
SERVICE FACTOR				
VOLTS/PH/HZ	4160/3/60	4160/3/60	4160/3/60	4160/3/60
INSULATION CLASS				
NEMA EFFICIENCY				

## Chillers (continued)

TAG	GCH-1	GCH-2	GCH-3
SERVICE	Glycol - Ice Tank	Glycol - Ice Tank	Glycol - Ice Tank
LOCATION	1st Floor	1st Floor	1st Floor
MANUFACTURER	York	York	York
MODEL/SERIES	YSNNNS7-TBA	YSFBFAS5-CSDS	YKSVSSK4-DHGS
SIZE (TONS)	850	430	1,580
EVAPORATOR FLOW (GPM)	3,200	1,600	6,000
EVAPORATOR HEAD (FT)	38.7	20.1	31.4
EVAPORATOR EWT (F)	31.5	31.6	31.6
EVAPORATOR LWT (F)	25.0	25.0	25.0
CONDENSER FLOW (GPM)	2,950	1,450	5,400
CONDENSER HEAD (FT)	10.6	9.6	22.4
CONDENSER EWT (F)	80.0	80.0	83.0
CONDENSER LWT (F)	88.4	88.7	91.5
REFRIGERANT	R-22	R-22	R-134A
REFRIGERANT WEIGHT (LBS.)	?	2,000	4,410
KW	696	360	1,252
KW/Ton	0.819	0.837	0.792
FLA	108	55	195
LRA	755	399	1,441
SHAFT (HP)	891	459	1,614
SPEED (RPM)			
FRAME SIZE			
ENCLOSURE			
SERVICE FACTOR			
VOLTS/PH/HZ	4160/3/60	4160/3/60	4160/3/60
INSULATION CLASS			
NEMA EFFICIENCY			

The Central Support Facility Plant (CSF) chilled water system serves the following nine buildings:

Courthouse Center	Miami-Dade County Courthouse
Cultural Center	140 W. Flagler
Hickman Building	Stephen P. Clark Center (111 Building)
Central Support Facility	Carol Daycare Center
Overtown Transit Village I	

The chilled water equipment within the CSF plant includes four electric centrifugal chillers that support the normal operation of the CSF plant and one (smaller capacity) emergency unit that does not operate during normal conditions.

Schedule B  
Conservation Measures to Be Installed by Company

Facility Names:	Miami District Cooling Plant (North Plant) and the Central Support Facility Plant (CSF)
Address:	1110 NE 1 <sup>st</sup> Avenue Miami, FL 33142
Owned by the State or Leased?	Owned

Company will provide:

- Expansion of the existing Miami District Cooling Plant (North Plant) to its full planned capacity, including installation of various equipment detailed later in this Schedule B.
- Interconnection of the two existing loops so that the entire system can be operated in the most reliable and efficient manner possible.
- Operation and maintenance of the North Plant during the period that this project is constructed, and for a period of sixty (60) days from Acceptance of the CM by the County. Company shall train County's personnel during this sixty-day period to ensure proper transition of the operation of the North Plant and CSF Plant to County personnel.
- Full commissioning of the operation of the CM, as well as testing and balancing of the primary flows for the entire expanded loop for a full year, and for each operating season (peak, low and shoulder), in accordance with Schedule L.
- Provision of a 900 ton water cooled centrifugal chiller, located in the future expansion bay (chiller 6) of the existing CSF Plant. The chiller will be provided by Company with rented matching condenser and chilled water return and supply water headers and will utilize the existing ceramic cooling tower. The 460 volt/3 phase power for the chiller and pumps will be provided from an existing switchgear room. Such temporary chiller will be in place for as long as necessary, with all such related costs already included in the Contract Cost.

**CM – 1.** Interconnection of the North Plant and the CSF Plant with a 24-inch main from the corner of OTV-I Building, on NW 8<sup>th</sup> Street side, and N. Miami Avenue and NW 8<sup>th</sup> Street (adjacent to the Terremark Building). This will allow the two plants to operate together to optimize system operation based upon unit efficiency, thermal storage benefits, and utility rates.

42

The general pipe routing is presented in Figure No. 1.

The location of the heat exchanger will be within the Terremark mechanical room. The size of the heat exchanger is limited by maximum chilled water flow of 10,000 gpm (at 10 fps) in the existing 20-inch piping supply to the Overtown Transit Villages.

CM-1 includes two new 1,500 ton chillers to replace two existing 1,500 ton chillers in the CSF Plant and a temporary 900 ton rental chiller in the short term to address the deficient redundancy of installed capacity with the addition of the OTV-2 cooling load. This capacity will allow the interconnected system to operate without the use of the existing R-11 units.

In general this CM-1 reduces on-peak energy costs by serving a significant portion of the CSF load from the North Plant thermal storage system. The off-peak energy costs are reduced by utilizing the more efficient North Plant standard duty chillers at an electric rate lower than the CSF Plant.

FIGURE NO. 1

## LISTING OF EQUIPMENT TO BE INSTALLED

PROJECT NAME			DATE:	
BGA INC.			26-Apr-2010	
DISTRICT CHILLER PLANT FULL SCALE EXPANSION			ESTIMATE PREPARED BY	
ADDRESS			PA, BG	
MIAMI, FL			ENGINEER	
			BGA, Inc.	
CUSTOMER CONTACT NAME/PHONE NUMBER			BID DOCUMENTS	
Michael Gibson/(813) 375-3382			N/A	
DESCRIPTION	UNIT	QTY	UNIT	QTY
<b>North Plant</b>				
ECH Chiller (2500 Tons 56/36)	EA	1	EA	1
GCH Chiller (1580 Tons 32/25)	EA	1	EA	1
Tower Cells-2K Tons/Cell	EA	2	Ton	4000
CHWP Pump 100 HP	EA	1	HP	100
CWP Pump 250 HP	EA	4	HP	1000
DCHWP Pump 350 HP	EA	1	HP	350
ISTP Pump 200 HP	EA	2	HP	400
BAC Ice Banks	Vault	1	Vault	1
Plate & Frame HX - 2575 GPM	EA	2	GPM	7812
Plant Piping	LOT	1	LOT	1
Domestic Booster Pump	EA	1	EA	1
16" Concrete Equipment Pad	SF	430	SF	430
Tower Structural Steel (See Sch.)	EA	2	EA	2
Roofing			LOT	1
Initial Glycol Charge (Propolyte)	GAL	13,760	GAL	13760
Siemens Controls Expansion	LS	40000	LOT	1
Taxi Stand - Road Work	LS	50000	LS	1
crane	LS	2	EA	2
T&B	EA	1	EA	1
New switchgear G	EA	1	EA	1
4160 Volt Cable in Tray	LF	400	LF	400
CHP Pump RVSS	EA	2	EA	2
CWP Pump Motor & VFD	EA	4	EA	4
CT Fan VFD/Disconnect	EA	2	EA	2
Glycol Pump RVSS	EA	1	EA	1
CT-1/2 motor and VFD	EA	2	EA	2
DCHW Pump VFD	EA	1	EA	1
Pump Power Wire in conduit	LF	4000	LF	4000
CHP Pump Power wire in conduit	LF	280	LF	280
Tower Fan Wire/Conduit	LF	250	LF	250
Aeration Blowers Starter/Wire/Conduit	EA	2	EA	2
Exist Swbd breakers	EA	8	EA	8
Chiller Oil Pump Breakers	EA	2	EA	2
Chiller Oil Pump Wire/Conduit	LF	120	EA	120
Lightning Protection - 16 Air Stations	LOT	1	LOT	1
Upgrade 4160V Swgr with CL fuses	EA	3	EA	3
Upgrade Swbd to 100 KAIC	EA	1	EA	1

DESCRIPTION	UNIT	QTY	UNIT	QTY
<b>CSF Plant</b>				
Chiller Demolition	LS	1	EA	2
1500 Ton Centrifugal Chiller	EA	2	EA	2
Misc. pipe, fittings, etc.	LS	2	LS	2
Bypass pipe fittings, etc.	LS	1	LS	1
crane	LS	2	EA	2
Refrigerant monitor & alarms	EA	1	EA	1
Exhaust system allowance	LS	1	LS	1
75 HP tower fan motors	EA	2	EA	2
75 HP tower fan VFDs	EA	2	EA	2
Controls	EA	1	EA	1
Electrical	EA	1	EA	1
T&B	EA	1	EA	1
<b>Connection / Miscellaneous</b>				
24"CHW Distribution Pipe	LF	1000	LOT	1000
Controls - plant interfacing	EA	1	EA	1
Building Delta Tcontrols	EA	1	EA	1
Plant Modernization	EA	1	EA	1
CSF Rental Chiller			EA	1

AHUs AND THEIR ASSOCIATED DISTRIBUTION PUMPS  
FOR CHILLED WATER TEMPERATURE CONTROL

**Building**

**Daycare**

- AHU-1
- AHU-2
- AHU-3
- AHU-4

**Hickman**

- AHU-1
- AHU-2
- AHU-3
- AHU-4
- AHU-5

**Flagler**

- AHU1-1 (#25)
- AHU1-2 (#26)
- AHU1-3 (A&B)
- AHU-8
- AHU-9
- AHU-10
- AHU-11
- AHU-12
- AHU-13
- AHU-14
- AHU-15
- AHU-16

**SPClark**

- AHU-1
- AHU-2
- AHU-3
- AHU-4
- AHU-5
- AHU-6
- AHU-7
- AHU-8
- AHU-9
- AHU-10/11
- AHU-12/14
- AHU-13

- AHU-15
- AHU-16
- AHU-17
- AHU-18

#### Cultural Center

- AHU-1 (lib pent)
- AHU-2 (lib pent)
- AHU-3 (lib theater)
- AHU-4 (lib base)
- AHU-5 (art theater)
- AHU-6 (art pent)
- AHU-7 (history)

#### Court Center

- AHU-1 (arrive)
- AHU-2 (mezz)
- AHU-3
- AHU-4
- AHU-5
- AHU-6
- AHU-7
- AHU-8
- AHU-9
- AHU-10
- AHU-11
- AHU-12
- AHU-13
- AHU-14
- AHU-15
- AHU-16
- AHU-17
- AHU-18
- AHU-19 (pent)
- AHU-20 (pent)
- AHU-21 (pent)
- AHU-22 (maint)

#### OVI I

- To be added

#### OVI II

- To be added

Schedule C  
Savings Guarantee

Company guarantees that, during each Guarantee Year during the Guarantee Period, the CM shall be capable of producing Guaranteed Savings in an amount equal to or greater than Annual Guaranteed Savings for such Guarantee Period, subject to County's proper operation and maintenance of the Facilities, adjustments which the Company is entitled to make per the terms of the Agreement, and all other terms of this Savings Guarantee.

Exhibits or other attachments referenced in this Schedule C are hereby incorporated by reference into this Savings Guarantee. The following initial capitalized terms in this Savings Guarantee have the meaning set forth below.

**1. DEFINITIONS**

When used in this Agreement, the following capitalized words shall have the meanings ascribed to them below:

**"Energy Costs"** may include the cost of electricity and fuels to operate HVAC equipment, facility mechanical and lighting systems, and energy management systems, and the cost of water and sewer usage, as applicable.

**"Facilities"** shall mean those buildings where the energy and operational cost savings will be realized.

**"Guarantee Period"** is defined as the period beginning on the first (1st) day of the First Guarantee Year and ending on the last day of the final Guarantee Year.

**"Guarantee Year"** is defined as the First Guarantee Year and each of the successive twelve (12) month periods commencing on the anniversary of the Commencement Date.

**"Guaranteed Savings"** is defined as the amount of avoided Energy and Operational Costs necessary to pay for the cost of the CM incurred by County in each Guarantee Year as identified in Section 3.1 hereof.

**"Measurement and Verification Plan"** (M&V Plan) is defined as the plan providing details on how the Guarantee Savings will be verified.

**"Operational Costs"** shall include the cost of operating and maintaining the Facilities, such as, but not limited to, the cost of inside and outside labor to repair and maintain the CM, the cost of custodial supplies, the cost of replacement parts, the cost of deferred maintenance, and the cost of new capital equipment.

**"Option A"** is a verification approach that is designed for projects in which the potential to perform needs to be verified, but the actual performance can be stipulated based on the results of the "potential to perform and generate savings" verification and engineering calculations. Option A involves procedures for verifying that:

- Baseline conditions have been properly defined; and
- The equipment and/or systems that were contracted to be installed have been installed; and

- The installed equipment components or systems meet the specifications of the contract in terms of quantity, quality, and rating; and
- The installed equipment is operating and performing in accordance with the specifications in the contract and meeting all functional tests; and
- The installed equipment components or systems continue, during the term of the contract, to meet the specifications of the contract in terms of quantity, quality and rating, and operation and functional performance.

“Term” shall have the meaning as defined in Section 2 hereof.

“Total Guarantee Year Savings” is defined as the summation of avoided Energy and Operational Costs realized by Facilities in each Guarantee Year as a result of the Work provided by Company.

## 2. TERM AND TERMINATION

### 2.1 Guarantee Term.

The Term of this Guarantee Period shall commence on the first (1st) day of the month following the Commencement Date pursuant to this Agreement and shall terminate at the end of the Term unless terminated earlier as provided for herein.

### 2.2 Guarantee Termination.

Should this Agreement be terminated in whole or in part for any reason prior to the end of the Term, the Guaranteed Savings for the Guarantee Year in which such termination becomes effective shall be prorated as of the effective date of such termination, with a reasonable adjustment for seasonal fluctuations in Energy and Operational Costs, and the Guaranteed Savings for all subsequent Guarantee Years shall be null and void.

## 3. SAVINGS GUARANTEE

### 3.1 Guarantee Savings.

Company guarantees to County that the identified Facilities will realize the total energy and operational cost avoidance through the combined value of all CM over the Term of the Agreement. In no event shall the Savings Guarantee provided herein exceed the total installation, maintenance, and financing costs for the CM under this Agreement.

### **3.1.1 Additional Savings.**

Additional energy and/or operational cost avoidance that can be demonstrated as a result of Company's efforts that result in no additional costs to County beyond the costs identified in this Agreement will be included in the guarantee savings reconciliation report for the applicable Guarantee Year(s).

### **3.2 Savings Reconciliation Documentation.**

Company will provide County with a guarantee savings reconciliation report after each Guarantee Year in accordance with Section 5.3. County will assist Company in generating the savings reconciliation report by providing Company with copies of all bills pertaining to Energy Cost together with access to relevant records relating to such energy costs. County will also assist Company by permitting access to the Facilities, any maintenance records, drawings, compliance records or other data deemed necessary by Company to generate the said report. Data and calculations utilized by Company in the preparation of its guarantee cost savings reconciliation report will be made available to County, along with such explanations and clarifications as County may reasonably request.

#### **3.2.1 Guarantee Savings Reconciliation.**

Guarantee Savings will be determined in accordance with the methodology(s), operating parameters, formulas, and stipulated/constants as described below and/or defined in Schedule E and/or additional methodologies defined by Company that may be negotiated with County at any time.

For each CM, Company will employ an M&V Plan, which may be comprised of any or all of the following elements:

1. Pre-retrofit model of energy consumption or demand
2. Post retrofit measured energy consumption
3. Post-retrofit measured demand and time-of-use
4. Post-retrofit energy and demand charges
5. Sampling plan
6. Stipulated Values

The value of the energy savings will be derived from the measured data and engineering formulae included in Schedule E, and the applicable energy charges during each Guarantee Year. In some cases, energy usage and/or demand will be calculated from measured variables that

directly relate to energy consumption, demand or cost, such as, but not limited to, measured flow, temperature, current, voltage, enthalpy or pressure.

#### **4. OWNER CONTROLLED VARIABLES**

4.1 For the purposes of this Savings Guarantee, the County represents, warrants, and agrees to adhere to, follow and implement the maintenance procedures and methods of operation recommended in the Equipment manufacturers' Maintenance Manuals, common and recommended industry practices, and other mutually agreed maintenance procedures. The County further represents, warrants and agrees to protect against and replace in the event of any casualty, and not to undertake any changes which would adversely affect or reduce the Guaranteed Savings ("Changes").

4.2 In the event of any failure of the County to abide by Section 4.1 of this Savings Guarantee or in the event of any Changes, the County agrees to notify the Company in writing within five (5) business days of any actual, anticipated or intended variation that would reduce the Guaranteed Savings, whether before substantial completion or during the Guarantee Period. Upon receipt of such notice, or in the event that Company independently learns of any such variations, Company shall be entitled to adjust the Guaranteed Savings appropriately.

4.3 This Savings Guarantee is based on M&V Option A as detailed in this Guarantee.

#### **5. UTILITY BILLS**

5.1 This Savings Guarantee and the Guaranteed Savings in any M&V Plan report is not a representation, guarantee or warranty that the actual dollar amount of utility bills of the County will be reduced or lower than before, as so many other factors affect utility bills. This is only a guarantee that the Total Guaranteed Savings will meet or exceed the Guaranteed Savings during each respective annual measurement period during the Guaranteed Savings Period if the CM is operated and maintained by the County as required by this Contract. As the County has sole custody and control over the CM, the Company is permitted to adjust the Total Guaranteed Savings, as allowed under this Contract.

#### **6. EXCLUSIVE REMEDIES OF COUNTY**

6.1 Prior to the delivery of any Annual Reconciliation report, in the event that such Annual Reconciliation report would indicate that the CM will otherwise fail to produce Guaranteed Savings in an amount at least equal to the Total Guarantee Year Savings for such annual period (and such situation is not caused by the County's failure to operate the CM per this Contract), the Company may, on one or more occasions, take action to cause the Guaranteed Savings to equal or exceed the Total Guarantee Year Savings, including but not limited to fine tuning the CM, the addition of implementation methods, operation methods or energy conservation measures which would increase the Guaranteed Savings. In any such remedy case, the Company shall provide the County with notice of any such activity including an Annual Reconciliation report, which will provide the appropriate details. Any such actions shall not

adversely impact facility operations nor impede on normal facility functionality.

6.2 If after taking the actions described above (which the Company shall describe to the County in the Annual Reconciliation report) and performing any follow up which the Company deems necessary, such Annual Reconciliation report still indicates that the Guaranteed Savings in such Annual Reconciliation report is not at least equal to the Total Guarantee Year Savings amount for such period, then the Company shall pay to the County an amount equal to the difference for such respective annual period between the Guaranteed Savings amount and the Total Guarantee Year Savings amount in such Annual Reconciliation report. This shall only be for the then current Annual Reconciliation report and shall not affect any prior or any future annual Annual Reconciliation report. The County agrees not to offset, deduct, set-off, withhold or delay any payment due under the Contract. This is the County's sole and exclusive remedy under this Savings Guarantee, and no other rights or remedies are granted.

**6.3 THE COMPANY SHALL NOT BE RESPONSIBLE FOR INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT WITHOUT LIMITATION, PROPERTY DAMAGE RESULTING FROM, OR RELATED TO THE CONTRACT OR THE CM (INCLUDING BUT NOT LIMITED TO THE MALFUNCTION OR MISOPERATION THEREOF), BODILY INJURY, MENTAL ANGUISH, MENTAL INJURY OR DISEASE, LOSS OF PROFITS AND GOODWILL, REGARDLESS OF THE CAUSE OR BASIS OF SUCH ACTION, WHETHER IN STRICT LIABILITY, CONTRACT, TORT OR OTHERWISE.**

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this Contract by their duly authorized officers on the date first above written.

ATTACHMENT 1

SUMMARY OF STIPULATED/CALCULATED SAVINGS

The savings identified below shall be stipulated/calculated savings which are mutually agreed by County and the Company, but will not be specifically measured. The stipulated/calculated savings shall be deemed to increase during each year of the Savings Guarantee Term by the annual escalation percentages set forth below, with such escalation being annually compounded upon the immediately preceding year escalated rate.

<b>Source of Savings</b>	<b>First Year Savings (non-escalated)</b>	<b>Annual Escalation</b>
Operating Savings	\$200,000.00	3%
Capital Cost Avoidance Savings	\$981,146.00	None
<b>Total Calculated Savings:</b>	<b>\$1,181,146.00</b>	

ATTACHMENT 2

Annual Guaranteed Savings Allocation

Savings Guarantee Term Year	Measured Savings	Stipulated/Avoided Capital Cost Savings	Stipulated Operational Savings	Guaranteed Energy Cost Savings
1	\$370,500.00	\$ 981,146.00	\$200,000.00	\$1,551,646.00
2	\$381,615.00	\$ 981,146.00	\$206,000.00	\$1,568,761.00
3	\$393,063.00	\$ 981,146.00	\$212,180.00	\$1,586,389.00
4	\$404,855.00	\$ 981,146.00	\$218,545.00	\$1,604,546.00
5	\$417,001.00	\$ 981,146.00	\$225,102.00	\$1,623,249.00
6	\$429,511.00	\$ 981,146.00	\$231,855.00	\$1,642,512.00
7	\$442,396.00	\$ 981,146.00	\$238,810.00	\$1,662,352.00
8	\$455,668.00	\$ 981,146.00	\$245,975.00	\$1,682,789.00
9	\$469,338.00	\$ 981,146.00	\$253,354.00	\$1,703,838.00
10	\$483,418.00	\$ 981,146.00	\$260,955.00	\$1,725,519.00
11	\$497,921.00	\$ 981,146.00	\$268,783.00	\$1,747,850.00
12	\$512,859.00	\$ 981,146.00	\$276,847.00	\$1,770,852.00
13	\$528,244.00	\$ 981,146.00	\$285,152.00	\$1,794,542.00
14	\$544,092.00	\$ 981,146.00	\$293,707.00	\$1,818,945.00
15	\$560,414.00	\$ 981,146.00	\$302,518.00	\$1,844,078.00
<b>TOTALS</b>	<b>\$6,890,895.00</b>	<b>\$ 14,717,190.00</b>	<b>\$3,719,783.00</b>	<b>\$25,327,868.00</b>

Attachment 3  
Annual Reconciliation Report

Upon each anniversary of the Commencement Date during the Savings Guarantee Term, the Company shall provide the Annual Reconciliation report to County. In the Annual Reconciliation report, the Company shall calculate the Guaranteed Savings and shall report to County such amount (and shall detail any excess savings where the Guaranteed Savings exceed the Total Guaranteed Savings) during the preceding year.

**Annual Guaranteed and Excess Savings Allocation**

Savings Guarantee Term Year	Measured Savings	Stipulated/Operational Savings	Stipulated Avoided Capital Costs	Actual Savings	Annual Guaranteed Energy Cost Savings	Excess Savings
1	\$370,500.00	\$ 200,000.00	\$ 981,146.00		\$1,551,646.00	
2	\$381,615.00	\$ 206,000.00	\$ 981,146.00		\$1,568,761.00	
3	\$393,063.00	\$ 212,180.00	\$ 981,146.00		\$1,586,389.00	
4	\$404,855.00	\$ 218,545.00	\$ 981,146.00		\$1,604,546.00	
5	\$417,001.00	\$ 225,102.00	\$ 981,146.00		\$1,623,249.00	
6	\$429,511.00	\$ 231,855.00	\$ 981,146.00		\$1,642,512.00	
7	\$442,396.00	\$ 238,810.00	\$ 981,146.00		\$1,662,352.00	
8	\$455,668.00	\$ 245,975.00	\$ 981,146.00		\$1,682,789.00	
9	\$469,338.00	\$ 253,354.00	\$ 981,146.00		\$1,703,838.00	
10	\$483,418.00	\$ 260,955.00	\$ 981,146.00		\$1,725,519.00	
11	\$497,921.00	\$ 268,783.00	\$ 981,146.00		\$1,747,850.00	
12	\$512,859.00	\$ 276,847.00	\$ 981,146.00		\$1,770,852.00	
13	\$528,244.00	\$ 285,152.00	\$ 981,146.00		\$1,794,542.00	
14	\$544,092.00	\$ 293,707.00	\$ 981,146.00		\$1,818,945.00	
15	\$560,414.00	\$ 302,518.00	\$ 981,146.00		\$1,844,078.00	
<b>Totals</b>	<b>\$6,890,895.00</b>	<b>\$3,719,783.00</b>	<b>\$14,717,190.00</b>		<b>\$25,327,868.00</b>	

Schedule D  
Compensation to Company and Deliverables

Total Compensation for the CM is as follows:

CM	COST
Expansion and Interconnection of the two existing chilled water loops	\$20,310,546.00*

*[Payments to Company during construction are anticipated to be based on major milestones achieved and in accordance with the construction schedule. The first payment to Company would be 20% of the total cost, to allow for mobilization and ordering equipment. The remaining 80% of the total cost would be spread throughout the 18-month construction period and paid in accordance with the milestones achieved. Such milestones will be established after Contract execution and as agreed to mutually by the Parties. In addition, County's Project Management Fee of 1% of the Cost (as defined in the Project Economic Analysis in the Investment Grade Audit) will be retained by the County, in quarterly increments throughout construction.]*

The overall project cashflow is shown in the Project Economic Analysis contained in the Investment Grade Audit. It is based upon an indicative rate reflecting the market conditions as of May 18, 2010. The rate is subject to change based upon market conditions, formal lender quotes and final lender approval of the transaction. Final rate will be set upon receipt of lender commitment and confirmation of a closing date.

It is understood by both Parties that if: (a) the terms of the financing vehicle are substantively different than the previous financing vehicle model used in the Project Economic Analysis in the Investment Grade Audit and such terms are not reasonably acceptable to County or (b) a lender willing to provide a financing vehicle for the Term of the Guarantee reasonably acceptable to the County cannot be located, the County or Company may choose not to proceed with this Contract, at which time the County and Company will be freed of any costs incurred in connection with this Contract.

\*Company is in the process of preparing the paperwork necessary for the County to receive a rebate estimated to be \$1,742,400.00 from Florida Power & Light (the "Utility"). Company is responsible for the rebate submittal and the analysis, reporting, testing and commissioning as required by the Utility in connection with the rebate submittal. Company shall not commence construction until such rebate has been pre-approved by the Utility. Final approval by the Utility will occur after Company completes testing and commissioning on the tanks. The Cost, less the actual approved rebate amount as determined by the Utility after testing and commissioning of the tanks, will be paid for by County utilizing a combination of a capital buydown by the County and/or 3<sup>rd</sup> party financing.

Schedule E  
Savings Calculation Formula

Cost Savings under this Contract shall be determined according to the following formula:

$$\text{Cost Savings} = (\text{Baseline Costs} - \text{Post Installation Costs}) \pm \text{Adjustments}$$

The following definitions and methodologies shall apply:

A. **Baseline Costs.** The estimated costs of fuel, energy or water consumption or wastewater production that would have been incurred in the CM had not been installed or implemented. Baseline Costs shall be the product of (i) the Baseline amounts set forth in Exhibit H; and (ii) the utility rates.

B. **Post-Installation Costs.** Post-Installation Costs shall be the cost of fuel, energy or water consumption or wastewater production resulting from the installation and implementation of the CM. Post-Installation Costs shall be the product of actual measurable savings together with the stipulated operation and maintenance and capital cost avoidance cost savings resulting from the implementation and installation of the CM. These cost savings have been negotiated and agreed upon by the parties and there is no need to verify the agreed savings.

C. **Adjustments.** § 489.145 (4)c Florida Statutes, requires that any Baseline adjustments must be specified in the contract. The parties agree that Baseline adjustments are authorized only to the extent authorized in section 11 and/or Schedule G (Baseline) of the Contract.

**Other.** The parties acknowledge that § 489.145, Florida Statutes, requires the following:

1. County is to confirm & document estimated avoided operation, maintenance costs, if any.
2. County is to verify & document that the funds used for payments were appropriated for energy.
3. County is to document that savings are calculated from the date of installation of each measure. (§ 489.145 (4)(c)) Florida Statutes.
4. County is to document that costs of installation are less than calculated savings based on life cycle cost calculations based on § 255.255. (§ 489.145(4)(c)) Florida Statutes.
5. County is to document that calculating the life cycle costs excludes grants rebates or capital funding (§ 489.145(4)(g)) Florida Statutes.

57

Schedule F  
Construction and Installation Schedule

A Construction and Installation Schedule with Start and Finish dates will be established by Company once the Contract has been approved by the Board of County Commissioners. Company anticipates an eighteen (18) month construction period, from the commencement of the work through Final Acceptance.

Schedule G  
Baseline

		ECM BASELINE (New loads and Replace CSF w/ 4-2,050 TON UNITS)			
		THERMAL OUTPUT (10 <sup>3</sup> t-hrs)	ENERGY USE (MWH)	SYSTEM EFFICIENCY (KW/TON)	ENERGY COST (\$)
ON-PEAK	CSF CHILLER SYSTEM	8,545	7,589	0.89	1,200,000
	ICE MELT/BUILD	6,288	6,827	1.09	680,000
	NORTH PLANT CHILLERS	---	---	---	---
	SUBTOTAL	14,833	14,416	0.97	1,880,000
OFF-PEAK	CSF CHILLER SYSTEM	17,693	15,551	0.88	1,190,000
	NORTH PLANT CHILLERS	16,103	14,249	0.88	990,000
	SUBTOTAL	33,795	29,800	0.88	2,180,000
TOTAL		48,629	44,216	0.91	4,060,000

Schedule H  
Standards of Comfort

The Equipment will be maintained and operated in a manner that will provide the same Standards of Comfort for cooling for its customers that is currently being provided by the North Plant and the CSF Plant. If the Company anticipates that any of the work involving the CM may cause disruption to the services currently being provided by the North Plant and/or the CSF Plant, Company must first get prior written approval from the County's representative before proceeding with the work that would cause such disruption.

1. The heat exchanger installed in the Terramark Building that interconnects the North Plant to the CSF Plant would be sized to transfer approximately 5,000 tons from the ice storage system (Fed from the North Plant) to the standard chilled water system (CSF Loop).
2. The following are the general conditions for the heat exchanger:

Waterside	Water Flow (gpm)	Entering Water Temp (°F)	Leaving Water Temp (°F)
36°F side (North Plant)	7,100	36	53
42°F side (CSF)	10,000	54	42

Schedule I  
Company's Maintenance and Training Responsibilities

Company and County acknowledge that there will be a separate Service Agreement between County and Company ("Service Agreement") containing the terms, scope of services and fee associated with the operation and maintenance of the North Plant by Company through the construction and final acceptance of the CM by the County. Such Service Agreement is attached hereto as Exhibit IV. In addition to those responsibilities under the Service Agreement, Company shall also be required to provide a total of fifty (50) business days of training (8 hours per day) to train various County personnel on the operation and maintenance of the North Plant and the CSW Plant, as more fully described below.

The Company shall provide training to the County's Building Services staff who will be assigned to the operation and maintenance of the Facilities after Final Acceptance of the CM by the County. The training will provide general information on the CM project and the benefits of the CM, training in the use, operation and maintenance of equipment installed by Company, and provide ongoing information on the operation of this equipment.

There will be general orientation meetings to introduce County staff to the new types of equipment and special procedures that may be required to effect proper maintenance. More extensive training will also be provided to ensure proper operation of the CM equipment, so that the County staff is fully capable of performing all of the necessary operational and maintenance functions. Upon execution of this Contract by the Parties, County shall provide Company with a list of the staff that will need to be trained by Company.

It will be the goal of both the County and the Company that all training be completed prior to the commissioning of the equipment. Where possible, the Company shall include County staff in the project development process, including installation of equipment, to ensure familiarity with the completed CM.

Company may provide such training directly or through the use of third parties.

Schedule J  
Financing Agreement

[Financing Agreement will be in substantially the same format as this Master  
Equipment/Lease/Purchase Agreement Template]

MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT (FLORIDA VERSION)

This Master Equipment Lease/Purchase Agreement (this "Agreement") dated as of \_\_\_\_\_, and entered into between \_\_\_\_\_ ("Lessor"), and \_\_\_\_\_, a [body corporate and politic/municipality] existing under the laws of the State of Florida ("Lessee").

WITNESSETH:

Whereas, Lessee desires to lease and acquire from Lessor certain equipment described in each Schedule (as each such term is defined herein), subject to the terms and conditions of and for the purposes set forth in each Lease; and in the event of a conflict the terms of a Schedule prevail; and

Whereas, the relationship between the parties shall be a continuing one and items of equipment may be added to the Equipment from time to time by execution of additional Schedules by the parties hereto and as otherwise provided herein; and

Whereas, Lessee is authorized under the constitution and laws of the State to enter into this Agreement and the Schedules hereto for the purposes set forth herein;

Now, Therefore, for good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I

*Section 1.01. Definitions.* The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"*Acquisition Amount*" means the amount specified in each Lease and represented by Lessee to be sufficient to acquire the Equipment listed in such Lease, which amount shall be not less than \$100,000 per Lease for Leases where the Acquisition Amount is to be paid directly to the Vendor.

"*Acquisition Fund*" means, with respect to any Lease, the fund established and held by the Acquisition Fund Custodian pursuant to the related Acquisition Fund Agreement, if any.

"*Acquisition Fund Agreement*" means, with respect to any Lease, an Acquisition Fund Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Acquisition Fund Custodian, pursuant to which an Acquisition Fund is established and administered.

"*Acquisition Fund Custodian*" means the Acquisition Fund Custodian identified in any Acquisition Fund Agreement, and its successors and assigns.

"*Acquisition Period*" means, with respect to each Lease, that period stated in the Schedule to such Lease during which the Lease Proceeds attributable to such Lease may be expended on Equipment Costs.

"*Act*" means, collectively, \_\_\_\_\_, the Constitution of the State, and other applicable provisions of law.

"*Agreement*" means this Master Equipment Lease/Purchase Agreement, including the exhibits hereto, together with any amendments and modifications to the Agreement pursuant to Section 13.06.

"*Code*" means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

"*Commencement Date*" means, for each Lease, the date when Lessee's obligation to pay Rental Payments commences under such Lease, which date shall be the earlier of (i) the date on which the Equipment listed in such Lease is accepted by Lessee in the manner described in Section 5.01, or (ii) the date on which sufficient moneys to purchase the Equipment listed in such Lease are deposited for that purpose with an Acquisition Fund Custodian.

"*Equipment*" means the property listed in each of the Leases and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article V. Whenever reference is made in this Agreement to Equipment listed in a Lease, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment.

"*Equipment Costs*" means, to the extent permitted by the Act, the total cost of the Equipment listed in each Lease, including all delivery charges, installation charges, capitalizable consulting and training fees approved by Lessor, legal fees, financing costs, motor vehicle registration fees, recording and filing fees, and other costs necessary to vest full, clear legal title to the Equipment in Lessee, subject to the security interest granted to and retained by Lessor as set forth in each Lease, and otherwise incurred in connection with the financing provided by the lease-purchase of the Equipment as provided in each Lease; provided that in no event shall approved consulting and training fees or other non-capitalizable "soft" costs relating to the Equipment listed in any Lease which are to be financed by Lessor hereunder exceed 2% of the total cost of such Equipment as determined by Lessor; and provided further, that in no event shall capitalizable delivery charges, installation charges, taxes and similar capitalizable "soft costs" relating to such Equipment be included without Lessor's prior consent.

"*Expense Fund*" means, with respect to any Lease, the fund established and held by the Acquisition Fund Custodian pursuant to the related Acquisition Fund Agreement.

"*Event of Default*" means an Event of Default described in Section 12.01.

"*Lease*" means a Schedule and the terms of this Agreement which are incorporated by reference into such Schedule. Each Schedule with the incorporated terms of this Agreement shall constitute a separate and independent Lease.

"*Lease Proceeds*" means, with respect to each Lease, the total amount of money to be paid by Lessor to the Acquisition Fund Custodian for deposit and application in accordance with such Lease and the Acquisition Fund Agreement.

"*Lease Term*" for each Lease means the Original Term and all Renewal Terms therein provided and for this Agreement means the period from the date hereof until this Agreement is terminated.

"*Lessee*" means the entity referred to as Lessee in the first paragraph of this Agreement.

"*Lessor*" means (a) the entity referred to as Lessor in the first paragraph of this Agreement or (b) any assignee or transferee of any right, title or interest of Lessor in and to the Equipment under a Lease or any Lease (including Rental Payments thereunder) pursuant to Section 11.01, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform under a Lease.

"*Original Term*" means the period from the Commencement Date for each Lease until the end of the fiscal year of Lessee in effect at such Commencement Date.

"*Purchase Price*" means, with respect to the Equipment listed on a Lease, the amount that Lessee may pay to Lessor to purchase such Equipment as provided in such Lease.

"*Renewal Terms*" means the renewal terms of each Lease, each having a duration of one year and a term coextensive with Lessee's fiscal year, as specified in the Schedule applicable thereto.

"*Rental Payments*" means the basic rental payments payable by Lessee under each Lease pursuant to Section 4.01, in each case consisting of a principal component and an interest component.

"*Schedule*" means each separately numbered Schedule of Property substantially in the form of Exhibit A hereto together with a Rental Payment Schedule attached thereto substantially in the form of Exhibit A-1 hereto.

"*State*" means the State of Florida.

"*Utilization Period*" means the date, with respect to each Lease not funded under an Acquisition Fund Agreement, by which Lessee must deliver an Acceptance Certificate for the Equipment under such Lease as indicated in Section 5.01(a).

"*Vendor*" means the manufacturer or supplier of the Equipment or any other person as well as the agents or dealers of the manufacturer or supplier from whom Lessor arranged Lessee's acquisition and financing of the Equipment pursuant to the applicable Lease.

## ARTICLE II

*Section 2.01. Representations and Covenants of Lessee.* This Section 2.01 sets forth facts and estimates upon which Lessor and its counsel may rely regarding the exclusion of the interest portion of the Rental Payments from the gross income of Lessor, and the facts and estimates upon which Lessee bases its reasonable expectation that the obligation to make Rental Payments pursuant to the Leases does not create an arbitrage bond under Section 148 of the Internal Revenue Code of 1986, as amended, and applicable Treasury Regulations.

Lessee represents, covenants and warrants for the benefit of Lessor on the date hereof and as of the Commencement Date of each Lease as follows:

(a) Lessee is a state or a political subdivision thereof within the meaning of Section 103(c) of the Code, duly organized and existing under the constitution and laws of the State, including the Act, with full power and authority to enter into this Agreement and each Lease and the transactions contemplated hereby and to perform all of its obligations hereunder and under each Lease.

(b) Lessee has duly authorized the execution and delivery of this Agreement and each Lease by proper action of its governing body at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and each Lease.

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof. Lessee is not in default under any indenture, mortgage, deed of trust, bank loan, credit agreement or other instrument to which Lessee is a party.

(d) The entering into and performance of each Lease by Lessee will not violate any judgment, order, or regulation applicable to Lessee, and except as otherwise expressly provided in this Agreement, result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of Lessee pursuant to any indenture, mortgage, deed of trust, bank loans, credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound.

(e) There are no actions, suits or proceedings pending or, to the knowledge of Lessee, threatened against or affecting Lessee in any court or before any governmental commission, board or authority, which, if adversely determined, will have a material adverse effect on the ability on Lessee to perform its obligations under this Agreement or any Lease.

(f) Lessee has complied and will comply with Sections 218.38, 218.385(2) and 218.385(3), Florida Statutes, with respect to each Lease.

(g) The interest rate for the interest portion of the Rental Payments, on the first date interest begins to accrue, does not exceed a rate of interest permitted by Section 215.84, Florida Statutes.

(h) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.

(i) Lessee has complied and will comply with such open meeting laws and public bidding requirements as may be applicable to this Agreement and each Lease and the acquisition by Lessee of the Equipment as provided in each Lease or, in the case of public bidding requirements, has otherwise complied and will comply with Section 218.385(1), Florida Statutes, in connection with each Lease.

(j) During the Lease Term, the Equipment will be used by Lessee only for the purpose of performing essential governmental or proprietary functions of Lessee permitted under the Act. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last Rental Payment (including all Renewal Terms) scheduled to be paid under each Lease.

(k) Lessee has kept, and throughout the Lease Term will keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor (i) annual audited financial statements (including a balance sheet, statement of revenues, expenses and changes in fund balances for budget and actual, statement of cash flows and notes, and schedules and attachments to the financial statements) within 180 days of its fiscal year end, (ii) quarterly financial statements (including a balance sheet, statement of revenues, expenses and changes in fund balances for budget and actual and statement of cash flows and notes) upon the request of Lessor, within 60 days of the end of the fiscal quarter for which such information has been requested, (iii) such other financial statements and information as Lessor may reasonably request, and (iv) its annual budget for the following fiscal year within 90 days of the adoption of such budget. Such statements in clause (i) above shall be accompanied by an unqualified opinion of Lessee's auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

(l) The proceeds of the Lease, together with investment earnings thereon, will be expended to acquire Equipment within 6 months from the first day of the Original Term.

(m) Lessee has an immediate need for the Equipment listed on each Schedule and expects to make immediate use of the Equipment listed on each Schedule. Lessee's need for the Equipment is not temporary and Lessee does not expect the need for any item of the Equipment to diminish during the Lease Term of such item. The use of the Equipment is essential to Lessee's proper efficient and economic operation.

(n) The original proceeds of each Lease, and the interest to be earned thereon, do not and will not exceed the amount necessary for the purpose for which such Lease is executed.

(o) No sinking fund is expected to be created by Lessee with respect to any Lease or the Rental Payments.

(p) No other governmental obligations of Lessee are being issued at substantially the same time and sold pursuant to a common plan of financing which will be paid out of (or have

substantially the same claim to be paid out of) substantially the same source of funds as each Lease.

(q) No portion of the amounts received pursuant to each Lease will be used as a substitute for other funds which were otherwise to be used as a source of financing for any portion of the costs of Equipment and which have been and will be used to acquire, directly or indirectly, obligations producing a yield in excess of the yield on each Lease.

(r) In connection with the execution and delivery of each Lease, no action has or will be taken which attempts to circumvent the provisions of Section 148 of the Code and the regulations promulgated thereunder by (i) enabling Lessee to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage and (ii) over burdening the tax-exempt bond market.

(s) Lessee will not directly or indirectly use or permit the use of any proceeds of a Lease, or take or omit to take any action, that would cause the Rental Payments to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

(t) Lessee will submit to the Secretary of the Treasury information reporting statements and other information related to each Lease at the times and in the forms required by the Code.

(u) To the best of the knowledge and belief of Lessee, the expectations of Lessee, as set forth in this Section 2.01, are reasonable, and there are no present facts, estimates and circumstances which would change the expectations contained therein.

(v) There is no pending litigation, tax claim, proceeding or dispute that may adversely affect Lessee's financial condition or impairs its ability to perform its obligations hereunder. Lessee will, at its expense, maintain its legal existence in good standing and do any further act and execute, acknowledge, deliver, file, register and record any further documents Lessor may reasonably request in order to protect Lessor's security interest in the Equipment and Lessor's rights and benefits under this Lease.

(w) The payment of the Rental Payments or any portion thereof is not (under the terms of any Lease or any underlying arrangement) directly or indirectly (1) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (2) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Equipment Costs for the Equipment will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Equipment.

(x) Lessee has reviewed and will review Internal Revenue Service Form 8038-G to be filed in connection with the execution and delivery of each Lease, and all of the information contained therein is, and will be, to the best of Lessee's knowledge, true and correct, and Lessee

will cause such Form 8038-G to be filed not later than 30 days after the execution and delivery of each Lease.

(y) Lessee reasonably expects that at least 85% of the proceeds of each Lease will be expended for the governmental purpose of the Lease within 3 years of the initial date of the Lease term, and less than 50% of the proceeds of each Lease will be invested in investment securities with a substantially guaranteed yield for 4 years or longer.

### ARTICLE III

*Section 3.01. Lease of Equipment.* Subject to the terms of this Master Lease, Lessor agrees to provide the funds specified as the "Acquisition Amount" in each Lease to acquire the Equipment. Upon the execution of each Lease, Lessor demises, leases, transfers and lets to Lessee, and Lessee acquires, rents and leases from Lessor, the Equipment as set forth in such Lease and in accordance with the terms thereof.

*Section 3.02. Continuation of the Lease Term.* The Lease Term for each Lease may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Lease Term set forth in such Lease. At the end of the Original Term and at the end of each Renewal Term until the maximum Lease Term has been completed, Lessee shall be deemed to have exercised its option to continue each Lease for the next Renewal Term unless Lessee terminates such Lease pursuant to Section 3.03 or Section 10.01. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the applicable Lease.

Lessee intends, subject to Section 3.03, to continue the Lease Term of each Lease through the Original Term and all Renewal Terms and to pay the Rental Payments thereunder. Lessee affirms that sufficient funds are available for the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Lease Term of each Lease can be obtained from legally available funds of Lessee. Subject to Section 3.03, Lessee further intends to do all things lawfully within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Rental Payments due hereunder, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law, to have such portion of the budget or appropriation request approved and to exhaust all available reviews and appeals in the event such portion of the budget or appropriation request is not approved.

*Section 3.03. Nonappropriation.* Lessee is obligated only to pay such Rental Payments under each Lease as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments under any Lease following the then current Original Term or Renewal Term, such Lease or Leases shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least 90 days prior to the end of the then current Original Term or

Renewal Term, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If any Lease is terminated in accordance with this Section, Lessee agrees to peaceably deliver the Equipment to Lessor at the location(s) to be specified by Lessor.

*Section 3.04. Substitution.* Lessee reserves the right to substitute Equipment of the same quantity and general type with the approximate equal value, utility and remaining useful life as the Equipment so replaced. Such substitution is subject to Lessor's prior written consent, which consent shall not be unreasonably withheld, and shall be reflected in an amendment to the appropriate Schedule.

*Section 3.05. Conditions to Lessor's Performance Under Any Lease.*

(a) As a prerequisite to the performance by Lessor of any of its obligations pursuant to any Lease, Lessee shall deliver to Lessor the following:

(i) A fully completed Schedule, executed by Lessee;

(ii) An Acquisition Fund Agreement, executed by Lessee and the Acquisition Fund Custodian, unless Lessor pays 100% of the Acquisition Amount directly to the Vendor upon execution of the Lease;

(iii) A Certificate executed by the Clerk or Secretary or other comparable officer of Lessee, in substantially the form attached hereto as Exhibit C, completed to the satisfaction of Lessor;

(iv) A certified copy of a resolution or other official action of Lessee's governing body authorizing the execution and delivery of the Lease and performance by Lessee of its obligations thereunder;

(v) An opinion of counsel to Lessee in substantially the form attached hereto as Exhibit D respecting such Lease and otherwise satisfactory to Lessor;

(vi) An executed Essential Use/Source of Funds Certificate in substantially the form attached hereto as Exhibit E;

(vii) Evidence of insurance as required by Section 7.02 hereof;

(viii) All documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor;

(ix) A copy of a fully completed and executed Form 8038-G; and

(x) Such other items, if any, as are set forth in such Lease or are reasonably required by Lessor.

(b) In addition, the performance by Lessor of any of its obligations pursuant to any Lease shall be subject to: (i) no material adverse change in the financial condition of Lessee since the date of this Agreement, (ii) no Event of Default having occurred, and (iii) if no

Acquisition Fund has been established, the Equipment must be accepted by Lessee no later than \_\_\_\_\_ (the "Utilization Period").

(c) Subject to satisfaction of the foregoing, Lessor will pay the Acquisition Amount for Equipment described in a Schedule to the Vendor upon receipt of the documents described in Section 5.01; or if an Acquisition Fund has been established pursuant to an Acquisition Fund Agreement, Lessor will deposit the Acquisition Amount for Equipment described in the Schedule with the Acquisition Fund Custodian.

(d) This Agreement is not a commitment by Lessor to enter into any Lease not currently in existence, and nothing in this Agreement shall be construed to impose any obligation upon Lessor to enter into any proposed Lease, it being understood that whether Lessor enters into any proposed Lease shall be a decision solely within Lessor's discretion.

(e) Lessee will cooperate with Lessor in Lessor's review of any proposed Lease. Without limiting the foregoing, Lessee will provide Lessor with any documentation or information Lessor may request in connection with Lessor's review of any proposed Lease. Such documentation may include, without limitation, documentation concerning the Equipment and its contemplated use and location and documentation or information concerning the financial status of Lessee and other matters related to Lessee.

#### ARTICLE IV

*Section 4.01. Rental Payments.* Subject to Section 3.03, Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, to Lessor on the dates and in such amounts as provided in each Lease. Lessee shall pay Lessor a charge on any Rental Payment not paid on the date such payment is due at the rate of 16% per annum or the maximum amount permitted by law, whichever is less, from such date. Rental Payments consist of principal and interest payments as more fully detailed on each Schedule, the interest on which begins to accrue as of the Commencement Date for each such Schedule.

*Section 4.02. Interest and Principal Components.* A portion of each Rental Payment is paid as, and represents payment of, interest, and the Balance of each Rental Payment is paid as, and represents payment of, principal. Each Lease shall set forth the principal and interest components of each Rental Payment payable thereunder during the Lease Term.

*Section 4.03. Rental Payments to Constitute a Current Expense of Lessee.* Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments under each Lease shall constitute a current expense of Lessee payable solely from its general fund or other funds that are legally available for that purpose and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee. THE RENTAL PAYMENTS ARE TO BE MADE ONLY FROM LESSEE'S LEGALLY AVAILABLE REVENUES APPROPRIATED ON AN ANNUAL BASIS, AND NEITHER LESSEE, THE STATE, NOR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY ANY SUMS DUE UNDER A LEASE FROM THE COMPELLED LEVY OF AD VALOREM OR OTHER TAXES EXCEPT FROM THOSE LEGALLY AVAILABLE

REVENUES APPROPRIATED BY LESSEE ON AN ANNUAL BASIS, AND NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF LESSEE, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF ARE PLEDGED FOR PAYMENT OF SUCH SUMS DUE UNDER A LEASE.

*Section 4.04. Rental Payments to be Unconditional.* Except as provided in Section 3.03, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in each Lease shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment, after it has been accepted by lessee, any defects, malfunctions, breakdowns or infirmities in the equipment or any accident, condemnation or unforeseen circumstances.

*Section 4.05. Tax Covenant.* Lessee agrees that it will not take, or fail to take in a timely manner, any action that would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, including, without limitation, the calculation and payment of any rebate required to preserve such exclusion. Subject to Lessee's right to terminate the Lease as provided herein, the foregoing covenant shall remain in effect until the date on which all obligations of Lessee in fulfilling the above covenant under the Code have been met.

*Section 4.06. Event of Taxability.* Upon the occurrence of an Event of Taxability, the interest component shall be at a Taxable Rate retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for federal income tax purposes, and Lessee will pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate identified in the related Lease.

For purposes of this Section, "Event of Taxability" means a determination that the interest component is includible for federal income tax purposes in the gross income of the owner thereof due to Lessee's action or failure to take any action.

*Section 4.07. Mandatory Prepayment.* If the Lease Proceeds are deposited into an Acquisition Fund, any funds remaining in the Acquisition Fund on or after the Acquisition Period and not applied to Equipment Costs, shall be applied by Lessor on the next Rental Payment date, pro rata to the prepayment of the principal component of the outstanding Rental Payments due under the applicable Schedule.

## ARTICLE V

### *Section 5.01. Delivery, Installation and Acceptance of Equipment.*

(a) Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location specified in the Leases, and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. When the Equipment listed in any Lease has been delivered and installed, Lessee shall promptly accept such Equipment and

evidence said acceptance by executing and delivering to Lessor an acceptance certificate in the form attached hereto as Exhibit B.

(b) Lessee shall deliver to Lessor original invoices and bills of sale (if title to such Equipment has passed to Lessee) relating to each item of Equipment accepted by Lessee. With respect to Equipment not purchased through an Acquisition Fund, Lessor shall, upon receipt of an Acceptance Certificate from Lessee, prepare a Schedule of Property and Rental Payment Schedule. Lessee shall execute and deliver such Schedules to Lessor within 5 business days of receipt.

*Section 5.02. Enjoyment of Equipment.* Lessor shall provide Lessee with quiet use and enjoyment of the Equipment during the Lease Term, and Lessee shall peaceably and quietly have, hold and enjoy the Equipment during the Lease Term, without suit, trouble or hindrance from Lessor, except as otherwise expressly set forth in the related Lease. Lessor shall not interfere with such quiet use and enjoyment during the Lease Term so long as Lessee is not in default under the related Lease.

*Section 5.03. Location and Inspection of the Equipment.* Once installed, Lessee will not move any item of the Equipment from the location specified for it in the Lease on which such item is listed without Lessor's consent, which consent shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment. Lessee shall promptly provide any information about the Equipment or a Lease that may be reasonably requested by Lessor.

*Section 5.04. Use and Maintenance of the Equipment.* Lessee will not install, use, operate, or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by the related Lease. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body; provided that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest (including the reversionary interest) of Lessor in and to the Equipment or its interest or rights under the Lease.

Lessee agrees that it will maintain, preserve, and keep the Equipment in good repair and working order, in accordance with manufacturer's recommendations. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. If commercially available, Lessee will maintain in force a standard maintenance contract with the manufacturer of the Equipment, and upon request will provide Lessor with a copy of that contract. Upon the prior written consent of Lessor, which consent shall not be unreasonably withheld, Lessee may use another third party maintenance provider provided the maintenance contract between Lessee and such third party requires the third party to maintain the Equipment at the manufacturer's then current release, revision and engineering change levels, including hardware, software enhancements and microcode levels. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the Equipment as eligible for manufacturer's maintenance upon the return of the Equipment to Lessor as provided for herein.

Lessee shall not alter any item of Equipment or install any accessory, equipment or device on an item of Equipment if that would impair any applicable warranty, the originally intended function or the value of that Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Lessor.

## ARTICLE VI

*Section 6.01. Title to the Equipment.* During each Lease Term, and so long as Lessee is not in default under Article XII hereof, all right, title and interest in and to each item of the Equipment shall be vested in Lessee immediately upon its acceptance of each item of Equipment, subject to the terms and conditions of the applicable Lease. Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Equipment from and against all claims, liens and legal processes of its creditors, and keep all Equipment free and clear of all such claims, liens and processes. Upon the occurrence of an Event of Default or upon termination of a Lease pursuant to Section 3.03 hereof, full and unencumbered legal title to the Equipment shall pass to Lessor, and Lessee shall have no further interest therein except as provided in Section 12.02(c). In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Equipment to Lessor in accordance with Section 12.02. Upon purchase of the Equipment under a Lease by Lessee pursuant to Section 10.01, Lessor's interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's interest in Equipment subject to the related Lease.

*Section 6.02. Personal Property.* The Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Upon the request of Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

## ARTICLE VII

*Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges.* Lessee shall keep the Equipment free of all levies, liens, and encumbrances except those created by each Lease. The parties to this Agreement contemplate that the Equipment will be used for a governmental, municipal or public purpose or function of Lessee and that the Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a

period of years, Lessee shall be obligated to pay only such installments as accrue during each Lease Term. In the event that the installation of any component of any item of Equipment could be deemed to require a performance and payment bond under Section 255.05, Florida Statutes, or be deemed subject to the mechanic's lien provisions of Chapter 713, Florida Statutes, or any successor statute to each, as they may be amended from time to time, Lessee shall require such bonds, post such notices and do all other things provided for under such laws in order to keep the Equipment free of and exempt from all liens.

*Section 7.02. Insurance.* Lessee shall during each Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as additional insured and loss payee and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the then applicable Purchase Price of the Equipment; (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor; and (c) worker's compensation coverage as required by the laws of the State; provided that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clause (a). Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout each Lease Term. Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation or modification. All insurance policies required by this Section 7.02 shall be taken out and maintained with responsible insurance companies qualified to do business in the State and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least 30 days before the cancellation or revision becomes effective.

*Section 7.03. Advances.* In the event Lessee shall fail to keep the Equipment in good repair and working order, Lessor may, but shall be under no obligation to, maintain and repair the Equipment and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the then current Original Term or Renewal Term and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the due date until paid at the rate of 16% per annum or the maximum amount permitted by law, whichever is less.

## ARTICLE VIII

*Section 8.01. Damage, Destruction and Condemnation.* Unless Lessee shall have exercised its option to purchase the Equipment by making payment of the Purchase Price as provided in the related Lease, if, prior to the termination of the applicable Lease Term, (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

If Lessee elects to replace any item of the Equipment (the "Replaced Equipment") pursuant to this Section, the replacement equipment (the "Replacement Equipment") shall be of similar type, utility and condition to the Replaced Equipment and shall be of equal or greater value than the Replaced Equipment. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor's security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Equipment" for purposes of this Master Equipment Lease and the related Lease. Lessee shall complete the documentation of Replacement Equipment on or before the next Rent Payment date after the occurrence of a casualty event, or be required to exercise the Purchase Option with respect to the damaged equipment.

For purposes of this Article, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

*Section 8.02. Insufficiency of Net Proceeds.* If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) pay or cause to be paid to Lessor the amount of the then applicable Purchase Price for the Equipment, and, upon such payment, the applicable Lease Term shall terminate and Lessor's security interest in the Equipment shall terminate as provided in Article VI hereof. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing such Equipment and such other Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

## ARTICLE IX

*Section 9.01. Disclaimer of Warranties.* Lessor makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Equipment, or any other warranty or representation, express or implied, with respect thereto and, as to Lessor, Lessee's acquisition of the Equipment shall be on an "as is" Basis. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, any Lease, the Equipment or the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement or any Lease.

*Section 9.02. Vendor's Warranties.* Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during each Lease Term, so long as Lessee shall not be in default under the

related Lease, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that Lessor may have against Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against Vendor of the Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor with respect to any Lease, including the right to receive full and timely payments under a Lease. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties by Lessor of the Equipment.

#### ARTICLE X

*Section 10.01. Purchase Option.* Lessee shall have the option to purchase all of the Equipment listed in a Lease, upon giving written notice to Lessor at least 30, but not more than 120, days before the date of purchase, at the following times and upon the following terms:

(a) From and after the date specified in the related Schedule (the "Purchase Option Commencement Date"), on the Rental Payment dates specified in each Lease, upon payment in full of the Rental Payments then due under such Lease plus the then applicable Purchase Price, and any prepayment premium on the unpaid balance as set forth in the applicable Schedule; or

(b) In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment listed in a Lease, on the day specified in Lessee's notice to Lessor of its exercise of the Purchase Option upon payment in full to Lessor of the Rental Payments then due under such Lease plus the then applicable Purchase Price; or

(c) Upon the expiration of the Lease Term, upon payment in full of all Rental Payments then due and all other amounts then owing under the Lease, and the payment of \$1.00 to Lessor.

#### ARTICLE XI

*Section 11.01: Assignment by Lessor.* Lessor's right, title and interest in and to Rental Payments and any other amounts payable by Lessee under any and all of the Leases, and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor, without the necessity of obtaining the consent of Lessee; provided, however, that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable State law. Nothing in this Section 11.01 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust, interests in which are offered and sold in a private placement or limited offering only to investors whom Lessor reasonably believes are qualified institutional buyers or accredited investors within the meaning of the applicable federal securities law; provided further, however, that in any event, Lessee shall not be required to make Rental Payments, to send notices or to otherwise deal with respect to matters arising under a Lease with or to more than one individual or entity. No

assignment, transfer or conveyance permitted by this Section 11.01 shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; provided, however, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under a Lease, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank or trust company as trustee or paying agent. During the term of each Lease, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or the Vendor. Assignments in part may include without limitation assignment of all of Lessor's rights in, to and under the Lease related to the Equipment listed in a particular Lease. The option granted in this Section may be separately exercised from time to time with respect to the Equipment listed in each Lease, but such option does not permit the assignment of less than all of Lessor's interests in the Equipment listed in a single Lease.

*Section 11.02. Assignment and Subleasing by Lessee.* None of Lessee's right, title, and interest in, to and under any Lease or any portion of the Equipment may be assigned or encumbered by Lessee without prior written consent of Lessor.

## ARTICLE XII

*Section 12.01. Events of Default Defined.* Any of the following events shall constitute an "Event of Default" under a Lease, subject to Section 3.03:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid under any Lease at the time specified herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to any Lease or its execution, delivery or performance shall prove to have been false, incorrect, misleading, or breached in any material respect on the date when made;

(d) Any default occurs under any other agreement for borrowing money or receiving credit under which Lessee may be obligated as borrower, if such default consists of (i) the failure to pay any indebtedness when due or (ii) the failure to perform any other obligation thereunder and gives the holder of the indebtedness the right to accelerate the indebtedness;

(e) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding;

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 30 consecutive days; or

(g) Lessee shall consolidate, merge or otherwise combine with any other entity, or sell, lease or dispose of all or a substantial portion of its assets.

*Section 12.02. Remedies on Default.* Whenever any Event of Default exists, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) Lessor may by notice in writing to Lessee terminate the Lease, whereupon all rights of Lessee to use the Equipment shall cease and terminate;

(b) By written notice to Lessee, Lessor may demand that Lessee pay, as liquidated damages for loss of a bargain and not as a penalty, all unpaid Rental Payments payable by Lessee pursuant to such Lease and other amounts payable by Lessee under such Lease to the end of the then current Original Term or Renewal Term;

(c) With or without terminating the Lease Term under such Lease, Lessor may request that Lessee at Lessee's expense promptly return any or all of such Equipment to the possession of Lessor at such place within the United States as Lessor shall specify. In such event, Lessor shall use its best efforts to sell or lease such Equipment or, for the account of Lessee, sublease such Equipment. If Lessee returns the Equipment and Lessor sells, leases or otherwise disposes of any or all of the Equipment, Lessor shall apply the proceeds of such sale, lease or other disposition in the following order of priority: FIRST, to pay all of Lessor's costs, charges and expenses incurred in taking, holding, repairing, selling, leasing or otherwise disposing of Equipment, then SECOND, to the extent not previously paid by Lessee, to pay Lessor all Rental Payments under the applicable Lease through the termination date, then THIRD, to pay the Purchase Price applicable as of the end of the then current Original Term or Renewal Term, as set forth in the Schedule for such Equipment, then FOURTH to pay any remainder to Lessee. Lessee shall not be liable for any deficiency after sale, lease or other disposition of the Equipment. If Lessee elects not to return the Equipment, Lessor is entitled to payment of unpaid Rental Payments through the date of Lessor's request to return the Equipment plus the then applicable Purchase Price, as set forth in the applicable Schedule for such

Equipment. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities under any other Lease or the Equipment listed therein; and

(d) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under such Lease.

*Section 12.03. No Remedy Exclusive.* No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under a Lease now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice other than such notice as may be required in this Article.

*Section 12.04. Application of Moneys.* Any net proceeds from the exercise of any remedy under this Agreement, including the application specified in Section 12.02(b) (after deducting all expenses of Lessor in exercising such remedies including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing Equipment and all brokerage, auctioneer's or attorney's fees), shall be applied as follows:

(a) If such remedy is exercised solely with respect to a single Lease, Equipment listed in such Lease or rights thereunder, then to amounts due pursuant to such Lease and other amounts related to such Lease or such Equipment.

(b) If such remedy is exercised with respect to more than one Lease, Equipment listed in more than one Lease or rights under more than one Lease, then to amounts due pursuant to such Leases pro rata.

### ARTICLE XIII

*Section 13.01. No Fees Paid by Lessor.* Lessor hereby certifies that it has not paid or has not promised to pay, directly or indirectly, a fee to any person not regularly employed by Lessor to act as an intermediary between Lessee and Lessor for the purpose of influencing any transaction in connection with this Agreement or any Lease.

*Section 13.02. Notices.* All notices, certificates or other communications under any Lease shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or delivered by overnight courier, or sent by facsimile transmission (with electronic confirmation) to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and to any assignee at its address as it appears on the registration books maintained by Lessee.

*Section 13.03. Release and Indemnification.* To the extent permitted by law, but only from legally available funds, Lessee shall indemnify, protect, hold harmless, save and keep harmless Lessor from and against any and all liability, obligation, loss, claim, tax and damage

whatsoever, regardless of cause thereof, and all expenses in connection therewith (including, without limitation, counsel fees and expenses, penalties connected therewith imposed on interest received) arising out of or as a result of (a) the entering into of this Agreement or any Lease, (b) the ownership of any item of the Equipment, (c) the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment, (d) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (e) the breach of any covenant in a Lease or any material misrepresentation contained in a Lease. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under all Leases or the termination of the Lease Term under all Leases for any reason.

*Section 13.04. Binding Effect.* Each Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

*Section 13.05. Severability.* In the event any provision of any Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. Any provisions in this Lease which are in conflict with any statute, law or applicable rule shall be deemed omitted, modified or altered to conform thereto.

*Section 13.06. Amendments, Changes and Modifications.* Each Lease may only be amended by Lessor and Lessee in writing.

*Section 13.07. Execution in Counterparts.* Each Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*Section 13.08. Applicable Law.* Each Lease shall be governed by and construed in accordance with the laws of the State.

*Section 13.09. Captions.* The captions or headings in this Agreement and in each Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement or any Lease.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR: LESSEE:

By By  
Title Title  
(Seal)  
Attest:  
By

82

EXHIBIT A SCHEDULE OF PROPERTY NO. \_\_\_\_\_

Re: Master Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_,  
between \_\_\_\_\_,  
\_\_\_\_\_ as Lessee

1. Defined Terms. All terms used herein have the meanings ascribed to them in the above-referenced Master Equipment Lease/Purchase Agreement (the "Master Equipment Lease").

2. <u>Equipment</u> . The following items of Equipment are hereby included under this Schedule of the Master Equipment Lease. Quantity	Description	Serial No.	Model No.	Location
---	-------------	------------	-----------	----------

Schedule K  
County Measurement & Verification Plan to Monitor Cost Savings

**SAVINGS DETERMINATION METHODOLOGY**

The 2008 Federal Energy Management Program (FEMP) M&V Guidelines Version 3.2 and 2007 International Performance Measurement and Verification Protocol ("IPMVP") are voluntary consensus documents written by and for technical, procurement and financial personnel in government, commerce and industry. The FEMP M&V Guideline and IPMVP provide an overview of current measurement and verification (M&V) techniques and set the framework for verifying third-party-financed energy projects for public and private-sector projects. They dictate that energy or water savings are determined by comparing the energy or water use associated with a facility or certain systems within a facility before and after the installation of an energy conservation measure (ECM) or other measure. The "before" case is called the Baseline. The "after" case is called the post-installation, or performance period. Baseline and post-installation energy use measurements or estimates can be constructed using the methods associated with M&V Options, as described in these guidelines. Company will be using Option A (Partially Measured Retrofit Isolation) for the measured savings portion or non-stipulated/non-calculated portion.

Commencing upon the anniversary of the Final Acceptance Date, and upon each anniversary thereafter during the Savings Guarantee Period, in accordance with this Contract, the Company shall deliver an Annual Reconciliation report to the County. Such Annual Reconciliation report shall provide the results and supporting information of the Company's calculation of the Guaranteed Energy Savings.

The Guaranteed Energy Savings shall be determined by the Company in an annual Reconciliation report and based upon the Company's Baseline calculations as described in Schedule E and subject to adjustments by the Company in accordance with this Contract. The Company shall provide the County with a copy of the respective Annual Reconciliation report for that Guaranteed Savings Period. The Company's calculations shall be in accordance with trade industry standards and practices and the Company's calculations shall be final and conclusive. The county shall retain the right to review and approve, which approval shall not be unreasonably withheld, the data collection process, and the data to be used in updating the Baseline calculations.

In connection with each Annual Reconciliation report, the Company may also conduct a brief energy audit inspection of the Facilities. This shall enable the Company to determine what types of changes the County has made to the Facilities, business or operations.

If the Annual Reconciliation report indicates that the respective Guaranteed Savings for the then current Annual Reconciliation report is at least equal to the Total Guaranteed Savings for such period, then the Company shall be deemed to have achieved and performed the Savings Guarantee for such annual period and shall not be obligated to take any further action until the next scheduled Annual Reconciliation report period.

In the event of the County's removal, destruction, substitution, modification, or other alteration

of the CM, any changes or the County's failure to operate the CM for the hours or levels set forth in the Contract, the Company may adjust the Guaranteed Savings to reflect savings as if the County had not made any such changes and as if the County had continued to operate the CM in accordance with the Contract.

The proposed M&V approach for this project is the International Performance Measurement and Verification Protocol (IPMVP) Option A: End-Use Retrofits – Measured Efficiency, Stipulated Consumption Approach.

There are two components associated with this measure that will be used to determine if the savings is within compliance of this Contract. The first is chiller efficiency and the other is the temperature differential at the Central Supply Plant.

The chiller efficiencies will be measured annually by utilizing the points integrated into the control system. Every three years, the sensors shall be recalibrated under this Contract. If the data appears unreliable, those points may be recalibrated as needed. The Company may opt, at its discretion, to utilize 3<sup>rd</sup> party testing in lieu of control system data. The County is required to maintain the control system so that it functions as intended. As long as the efficiency is at or above the efficiency anticipated, this portion of the measure will be deemed as performing. Both new and existing machines degrade with time. They will be assumed to degrade at the rate of 0.5% per year over the term of the contract. The expected Year 1 chiller efficiencies are listed in the Investment Grade Audit. If the measured efficiency deviates from the expected efficiency for that year, the efficiency will be re-run in the model to determine the excess or shortfall of savings.

With regard to the chilled water temperature differential at the Central Supply Plant, the data obtained from the control system will be utilized. Every three years, the sensors shall be recalibrated under this Contract. If the data appears unreliable, those points may be recalibrated as needed. The Company may opt, at its discretion, to utilize 3<sup>rd</sup> party testing in lieu of control system data. The County shall maintain the control system so that it functions as intended. If the actual temperature differential deviates from the guaranteed value, the model shall be re-run to determine the savings excess or shortfall.



Schedule L  
Company's Test and Balance and Commissioning Responsibilities

**Construction Design Phase (95%)**

- Finalize commissioning specifications

**Construction Phase**

- Conduct a Cx kickoff meeting to review commissioning plan
- Prepare or finalize the commissioning plan
- Review A/E updated basis of design documents and OPR
- Coordinate integration of commissioning into the construction schedule
- Review all commissioned system submittals for approval
- Evaluation value engineering proposals
- Review TAB plan/forms/report format (pre-TAB)
- Review temperature controls documentation
- Review the project meeting minutes, RFIs, change orders, ASIs and other project documentation relating to systems being commissioned
- Write pre-functional checklists (PFC) for systems being commissioned
- Organize and conduct 10 on-site commissioning meetings
- Perform 3 site visits for construction observation (prior to spot check of the PFCs). Generate and distribute site inspection reports
- Review pre-functional checklist for completeness
- Verify 10% of pre-functional checklist in the field of accuracy
- Write Functional Performance Test procedures for systems being commissioned
- Maintain commissioning issues log
- Assist with issue resolution

**Acceptance Phase**

- Verify 10% of all TAB readings in End User Spaces
- Recommend acceptance of TAB Report
- Supervise and document all Functional Performance Testing (conducted by the installing contractor)
- Provide a Final Commissioning Report

**Sound and Vibration Services**

- Verify vibration isolation devices are installed

**LEED™ Services**

Provide LEED™ EA Prerequisite Commissioning Documentation

APPENDIX A  
STATE TERM CONTRACT NO.: 973-320-08-1

CONTRACT

This Contract is by and between the State of Florida, Department of Management Services ("Department"), an agency of the State of Florida with offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, and the entity identified below as Contractor ("Contractor").

The Contractor responded to the Department's Invitation to Negotiate (ITN) No. 24-973-320-X, Energy Savings. The Department has determined to accept the Contractor's response and to enter into this Contract in accordance with the terms and conditions of the solicitation.

Accordingly, and in consideration of the mutual promises contained in the Contract documents, the Department and the Contractor do hereby enter into this Contract, which is a state term contract authorized by section 287.042(2)(a) of the Florida Statutes (2001). The term of the Contract begins on January 1, 2008, and expires on December 31, 2012. The Contract consists of the following documents, which, in case of conflict, shall have priority in the order listed, and which are hereby incorporated as if fully set forth:

- Any written amendments to the Contract
- Technical Specifications
- Special Conditions
- Special Instructions to Respondents
- General Instructions to Respondents [PUR1001 (10/06)]
- General Contract Conditions [PUR1000 (10/06)]
- Any Purchase Order under the Contract
- Contractor's response

*Linda H. South*      12/20/07  
State of Florida,      Date  
Department of Management Services  
By: Linda H. South, Secretary

Contractor Name: BGA, Inc.      (Seal)  
Street Address or P.O. Box: 3101 W. MLK Jr. Blvd., Ste. 110  
City, State, Zip: Tampa, FL 33607

*Michael W. Gibson*      12-11-07  
By: Michael W. Gibson      Date  
Its: President

APPROVED AS TO FORM AND LEGALITY  
OFFICE OF THE GENERAL COUNSEL  
DEPARTMENT OF MANAGEMENT SERVICES  
BY *Clifford A. [Signature]*

**TABLE OF CONTENT:**

**1.0 INTRODUCTION**

**2.0 GENERAL INSTRUCTIONS TO RESPONDENTS (PUR 1001)**

**3.0 SPECIAL INSTRUCTIONS TO RESPONDENTS**

**4.0 GENERAL CONTRACT CONDITIONS (PUR 1000)**

**5.0 SPECIAL CONTRACT CONDITIONS**

**6.0 TECHNICAL SPECIFICATIONS**

SECTION 1.0

INTRODUCTION

CONTENT:

1.1 INTRODUCTION AND OVERVIEW

1.2 TIMELINE

90

1.1 Introduction and Overview:

The State of Florida ("State") is issuing this Invitation to Negotiate ("ITN") to obtain Responses from potential Contractors for the provisioning of Energy Savings Contracting, as more fully described in Section 6.0 of this ITN. Any resulting contract from this ITN will supersede and replace the current Comprehensive Energy Strategy Contract (No. 973-320-03-1).

1.2 Timeline:

Event	Event Date
Issue ITN	3/26/2007
Questions from Respondents Due (No later than 2:00 pm ET)	4/04/2007
Post Responses to Respondent's Questions	4/11/2007
ITN Responses Due (No later than 2:00 pm ET) Responses Will be Opened @ 2:00 pm ET In Building 4050 Rm. 360K	4/24/2007
Evaluators Review ITN Responses / Evaluators Scoring Session	4/25/2007 to 5/08/2007
Evaluation Committee Meeting	5/08/2007
Post Intent to Negotiate	5/08/2007
Commence Negotiations	5/15/2007 to 6/18/2007
Evaluation Committee Meeting	6/18/2007
Post Notice of Intent to Award	6/18/2007
Contract Award	6/25/2007

91

SECTION 2.0  
State of Florida  
PUR 1001  
General Instructions to Respondents

Contents

1. DEFINITIONS.
2. GENERAL INSTRUCTIONS.
3. ELECTRONIC SUBMISSION OF RESPONSES.
4. TERMS AND CONDITIONS.
5. QUESTIONS.
6. CONFLICT OF INTEREST.
7. CONVICTED VENDORS.
8. DISCRIMINATORY VENDORS.
9. RESPONDENT'S REPRESENTATION AND AUTHORIZATION.
10. MANUFACTURER'S NAME AND APPROVED EQUIVALENTS.
11. PERFORMANCE QUALIFICATIONS.
12. PUBLIC OPENING.
13. ELECTRONIC POSTING OF NOTICE OF INTENDED AWARD.
14. FIRM RESPONSE.
15. CLARIFICATIONS/REVISIONS.
16. MINOR IRREGULARITIES/RIGHT TO REJECT.
17. CONTRACT FORMATION.
18. CONTRACT OVERLAP.
19. PUBLIC RECORDS.
20. PROTESTS.
21. LIMITATION ON VENDOR CONTACT WITH AGENCY DURING SOLICITATION PERIOD

**I. Definitions.** The definitions found in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

- (a) "Buyer" means the entity that has released the solicitation. The "Buyer" may also be the "Customer" as defined in the PUR 1000 if that entity meets the definition of both terms.
- (b) "Procurement Officer" means the Buyer's contracting personnel, as identified in the Introductory Materials.
- (c) "Respondent" means the entity that submits materials to the Buyer in accordance with these Instructions.
- (d) "Response" means the material submitted by the respondent in answering the solicitation.
- (e) "Timeline" means the list of critical dates and actions included in the Introductory Materials.

**2. General Instructions.** Potential respondents to the solicitation are encouraged to carefully review all the materials contained herein and prepare responses accordingly.

**3. Electronic Submission of Responses.** Respondents are required to submit responses electronically. For this purpose, all references herein to signatures, signing requirements, or other required acknowledgments hereby include electronic signature by means of clicking the "Submit Response" button (or other similar symbol or process) attached to or logically associated with the response created by the respondent within MyFloridaMarketPlace. The respondent agrees that the action of electronically submitting its response constitutes:

- an electronic signature on the response, generally,
- an electronic signature on any form or section specifically calling for a signature, and
- an affirmative agreement to any statement contained in the solicitation that requires a definite confirmation or acknowledgement.

**4. Terms and Conditions.** All responses are subject to the terms of the following sections of this solicitation, which, in case of conflict, shall have the order of precedence listed:

- Technical Specifications,
- Special Conditions and Instructions,
- Instructions to Respondents (PUR 1001),
- General Conditions (PUR 1000), and
- Introductory Materials.

The Buyer objects to and shall not consider any additional terms or conditions submitted by a respondent, including any appearing in documents attached as part of a respondent's response. In submitting its response, a respondent agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect. Failure to comply with terms and conditions, including those specifying information that must be submitted with a response, shall be grounds for rejecting a response.

**5. Questions.** Respondents shall address all questions regarding this solicitation to the Procurement Officer. Questions must be submitted via the Q&A Board within MyFloridaMarketPlace and must be RECEIVED NO LATER THAN the time and date reflected on the Timeline. Questions shall be answered in accordance with the Timeline. All questions submitted shall be published and answered in a manner that all respondents will be able to view. Respondents shall not contact any other employee of the Buyer or the State for information with respect to this solicitation. Each respondent is responsible for monitoring the MyFloridaMarketPlace site for new or changing information. The Buyer shall not be bound by any verbal information or by any written information that is not contained within the solicitation documents or formally noticed and issued by the Buyer's contracting personnel. Questions to the Procurement Officer or to any Buyer personnel shall not constitute formal protest of the specifications or of the solicitation, a process addressed in paragraph 19 of these Instructions.

**6. Conflict of Interest.** This solicitation is subject to chapter 112 of the Florida Statutes. Respondents shall disclose with their response the name of any officer, director, employee or other agent who is also an employee of the State. Respondents shall also disclose the name of any State employee who owns, directly or indirectly, an interest of five percent (5%) or more in the respondent or its affiliates.

**7. Convicted Vendors.** A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted vendor list:

- submitting a bid on a contract to provide any goods or services to a public entity;

- submitting a bid on a contract with a public entity for the construction or repair of a public building or public work;
- submitting bids on leases of real property to a public entity;
- being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and
- transacting business with any public entity in excess of the Category Two threshold amount (\$25,000) provided in section 287.017 of the Florida Statutes.

**8. Discriminatory Vendors.** An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not:

- submit a bid on a contract to provide any goods or services to a public entity;
- submit a bid on a contract with a public entity for the construction or repair of a public building or public work;
- submit bids on leases of real property to a public entity;
- be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or
- transact business with any public entity.

**9. Respondent's Representation and Authorization.** In submitting a response, each respondent understands, represents, and acknowledges the following (if the respondent cannot so certify to any of following, the respondent shall submit with its response a written explanation of why it cannot do so).

- The respondent is not currently under suspension or debarment by the State or any other governmental authority.
- To the best of the knowledge of the person signing the response, the respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.
- Respondent currently has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.
- The submission is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.
- The prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other respondent or potential respondent; neither the prices nor amounts, actual or approximate, have been disclosed to any respondent or potential respondent, and they will not be disclosed before the solicitation opening.
- The respondent has fully informed the Buyer in writing of all convictions of the firm, its affiliates (as defined in section 287.133(1)(a) of the Florida Statutes); and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.
- Neither the respondent nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:

- o Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
- o Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.
- The product offered by the respondent will conform to the specifications without exception.
- The respondent has read and understands the Contract terms and conditions, and the submission is made in conformance with those terms and conditions.
- If an award is made to the respondent, the respondent agrees that it intends to be legally bound to the Contract that is formed with the State.
- The respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the response.
- The respondent shall indemnify, defend, and hold harmless the Buyer and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.
- All information provided by, and representations made by, the respondent are material and important and will be relied upon by the Buyer in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Buyer of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

**10. Manufacturer's Name and Approved Equivalents.** Unless otherwise specified, any manufacturers' names, trade names, brand names, information or catalog numbers listed in a specification are descriptive, not restrictive. With the Buyer's prior approval, the Contractor may provide any product that meets or exceeds the applicable specifications. The Contractor shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The Buyer shall determine in its sole discretion whether a product is acceptable as an equivalent.

**11. Performance Qualifications.** The Buyer reserves the right to investigate or inspect at any time whether the product, qualifications, or facilities offered by Respondent meet the Contract requirements. Respondent shall at all times during the Contract term remain responsive and responsible. In determining Respondent's responsibility as a vendor, the agency shall consider all information or evidence which is gathered or comes to the attention of the agency which demonstrates the Respondent's capability to fully satisfy the requirements of the solicitation and the contract.

Respondent must be prepared, if requested by the Buyer, to present evidence of experience, ability, and financial standing, as well as a statement as to plant, machinery, and capacity of the respondent for the production, distribution, and servicing of the product bid. If the Buyer determines that the conditions of the solicitation documents are not complied with, or that the product proposed to be furnished does not meet the specified requirements, or that the qualifications, financial standing, or facilities are not satisfactory, or that performance is

95

untimely, the Buyer may reject the response or terminate the Contract. Respondent may be disqualified from receiving awards if respondent, or anyone in respondent's employment, has previously failed to perform satisfactorily in connection with public bidding or contracts. This paragraph shall not mean or imply that it is obligatory upon the Buyer to make an investigation either before or after award of the Contract, but should the Buyer elect to do so, respondent is not relieved from fulfilling all Contract requirements.

**12. Public Opening.** Responses shall be opened on the date and at the location indicated on the Timeline. Respondents may, but are not required to, attend. The Buyer may choose not to announce prices or release other materials pursuant to s. 119.071(1)(b), Florida Statutes. Any person requiring a special accommodation because of a disability should contact the Procurement Officer at least five (5) workdays prior to the solicitation opening. If you are hearing or speech impaired, please contact the Buyer by using the Florida Relay Service at (800) 955-8771 (TDD).

**13. Electronic Posting of Notice of Intended Award.** Based on the evaluation, on the date indicated on the Timeline the Buyer shall electronically post a notice of intended award at [http://fc.state.fl.us/owa\\_vbs/owa/vbs\\_www.main\\_menu](http://fc.state.fl.us/owa_vbs/owa/vbs_www.main_menu). If the notice of award is delayed, in lieu of posting the notice of intended award the Buyer shall post a notice of the delay and a revised date for posting the notice of intended award. Any person who is adversely affected by the decision shall file with the Buyer a notice of protest within 72 hours after the electronic posting. The Buyer shall not provide tabulations or notices of award by telephone.

**14. Firm Response.** The Buyer may make an award within sixty (60) days after the date of the opening, during which period responses shall remain firm and shall not be withdrawn. If award is not made within sixty (60) days, the response shall remain firm until either the Buyer awards the Contract or the Buyer receives from the respondent written notice that the response is withdrawn. Any response that expresses a shorter duration may, in the Buyer's sole discretion, be accepted or rejected.

**15. Clarifications/Revisions.** Before award, the Buyer reserves the right to seek clarifications or request any information deemed necessary for proper evaluation of submissions from all respondents deemed eligible for Contract award. Failure to provide requested information may result in rejection of the response.

**16. Minor Irregularities/Right to Reject.** The Buyer reserves the right to accept or reject any and all bids, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if the Buyer determines that doing so will serve the State's best interests. The Buyer may reject any response not submitted in the manner specified by the solicitation documents.

**17. Contract Formation.** The Buyer shall issue a notice of award, if any, to successful respondent(s), however, no contract shall be formed between respondent and the Buyer until the Buyer signs the Contract. The Buyer shall not be liable for any costs incurred by a respondent in preparing or producing its response or for any work performed before the Contract is effective.

**18. Contract Overlap.** Respondents shall identify any products covered by this solicitation that they are currently authorized to furnish under any state term contract. By entering into the Contract, a Contractor authorizes the Buyer to eliminate duplication between agreements in the manner the Buyer deems to be in its best interest.

**19. Public Records.** Article 1, section 24, Florida Constitution, guarantees every person access to all public records, and Section 119.011, Florida Statutes, provides a broad definition of public record. As such, all responses to a competitive solicitation are public records unless exempt by law. Any respondent claiming that its response contains information that is exempt from the public records law shall clearly segregate and mark that information and provide the specific statutory citation for such exemption.

**20. Protests.** Any protest concerning this solicitation shall be made in accordance with sections 120.57(3) and 287.042(2) of the Florida Statutes and chapter 28-110 of the Florida Administrative Code. Questions to the Procurement Officer shall not constitute formal notice of a protest. It is the Buyer's intent to ensure that specifications are written to obtain the best value for the State and that specifications are written to ensure competitiveness, fairness, necessity and reasonableness in the solicitation process.

Section 120.57(3)(b), F.S. and Section 28-110.003, Fla. Adm'n. Code require that a notice of protest of the solicitation documents shall be made within seventy-two hours after the posting of the solicitation.

Section 120.57(3)(a), F.S. requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

Section 28-110.005, Fla. Adm'n. Code requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

**21. Limitation on Vendor Contact with Agency During Solicitation Period.** Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

SECTION 3.0

SPECIAL INSTRUCTIONS TO RESPONDENTS

SPECIAL INSTRUCTIONS TO RESPONDENTS CONTAINED IN THIS SECTION 3.0 MAY SUPERCEDE OR SUPPLEMENT GENERAL INSTRUCTIONS TO RESPONDENTS CONTAINED IN SECTION 2.0.

CONTENT

- 3.1 CONTACT PERSON
- 3.2 ORDER OF PRECEDENCE
- 3.3 DEFINITIONS
- 3.4 WHO MAY RESPOND
- 3.5 MYFLORIDAMARKETPLACE (MFMP) ITN OVERVIEW
- 3.6 AMENDMENTS TO THE ITN DOCUMENTS
- 3.7 SUBMITTAL OF RESPONSE
- 3.8 EVALUATION AND SELECTION PROCESS
- 3.9 RESERVATIONS
- 3.10 ORAL PRESENTATIONS
- 3.11 DISCLOSURE OF RESPONSE CONTENTS
- 3.12 RESPONDENT'S BUSINESS INFORMATION, EXPERIENCE AND EVALUATION CRITERIA
- 3.13 STATE OBJECTIVES

98

**3.1 Contact Person**

Refer ALL Inquiries to:

David A. Bennett  
Lead Purchasing Analyst, State Purchasing  
Department of Management Services  
4050 Esplanade Way, Suite 360  
Tallahassee, FL 32399-0950  
(850) 921-4072  
(850) 488-5498 (facsimile)  
[David.Bennett@dms.Mylorida.com](mailto:David.Bennett@dms.Mylorida.com)

**3.2 Order of Precedence**

Potential Respondents to the solicitation are encouraged to carefully review all the materials contained herein and prepare responses accordingly. In the event any conflict exists between the Special and General Instructions, those instructions specified in the Special Instructions shall prevail. After successful negotiations, Contractor(s) shall sign a Contract form incorporating the solicitation materials and any additional terms and conditions resulting from the negotiation process.

All responses are subject to the terms of the following sections of this ITN, which, in case of conflict, shall have the order of precedence listed:

- Technical Specifications
- Special Instructions to Respondents
- Special Conditions
- Forms, Attachments and Worksheets
- General Instruction to Respondents (PUR 1001)
- General Conditions (PUR 1000)

The Department will consider additional terms and conditions submitted by a Respondent that may be submitted as part of a Respondent's response. This willingness to consider additional terms and conditions takes precedence over the language contained in the General Instructions to Respondents (PUR 1001), Section 2.4. The Department's willingness to consider additional terms and conditions does not extend to the requirements listed in Section 3.9 which shall be considered non-negotiable.

Respondents shall submit any proposed additional terms and conditions in accordance with Section 3.7.

**3.3 Definitions**

3.3.1 The definitions found in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

3.3.2 "The Department" means the Department of Management Services.

3.3.3 "Procurement Officer" means the Buyer's contracting personnel, as identified in Section 3.1.

3.3.4 "Eligible Users" is defined in 60A-1.005, F.A.C. The following entities are eligible users:

1. All governmental agencies, as defined in Section 163.3164, F.S., which have a physical presence within the State of Florida;
2. Any independent, non-profit college or university that is located within the State of Florida and is accredited by the Southern Association of Colleges and Schools.

3.3.5 "Contractor" means any person who contracts to sell commodities or contractual services to an agency.

#### 3.4 Who May Respond

Fully capable providers, who are in good standing with the State of Florida, meet the Technical Specifications (Section 6.0), and which possess the financial capability, experience and personnel resources to provide service of the scope and breadth described in this ITN.

The Department and Eligible Users retain the right to request additional information pertaining to the Respondent's ability and qualifications to accomplish all services described in this ITN as deemed necessary during the ITN or after contract award.

Companies, their subsidiaries, affiliates, or related entities shall be limited to one (1) response as a prime contractor. A company/firm may serve as a prime contractor on ONLY one response. A company may serve as a subcontractor on multiple responses.

#### 3.5 MyFloridaMarketPlace ITN Overview

##### 3.5.1 MyFloridaMarketPlace Sourcing Tool Tips

Vendors must have a current and complete Vendor Registration Application identified on the MyFloridaMarketPlace Vendor Registration System at <https://vendor.myfloridamarketplace.com/>. If you have not registered, please be advised that a minimum of 48 hours will be required for access to the Sourcing Tool. Completion of this registration is mandatory for those Vendors who wish to submit a response.

##### 3.5.2 Questions & Answers.

Respondents shall examine this solicitation to determine if the Department's requirements are clearly stated. If there are any requirements which are unclear or may restrict competition, Respondents should submit notice to the Department during Stage 1 using the Sourcing Tool's Q&A Board by due date for Respondents to

100

submit questions listed in the Event Calendar. Do not contact the Purchasing Analyst or Customers directly. Within the submitted question, Respondents must do the following:

1. Identify and describe in detail their difficulty in meeting the Department's specifications
2. Provide detailed justification for a change
3. Provide recommended changes to the specifications

A Respondent's failure to request changes by the date described in the Introduction (Section 1) of this solicitation shall be considered to constitute Respondent's acceptance of the Department's specifications. The Department shall determine what changes to the solicitation shall be acceptable to the Department, if any. If required, the Department shall issue an addendum reflecting the acceptable changes to this solicitation, which shall be posted as an addendum to the solicitation in the Sourcing tool and on the State's Vendor Bid System in order that all Respondents shall be given the opportunity of submitting responses to the same specifications.

Please note that questions will NOT be answered via telephone or fax. The Department shall post the answers to the questions via the System by the date stated on the Event Calendar. Each Respondent is responsible for monitoring the System for new or changing information. New communications will be posted within the Message Center on the System. The Department shall not be bound by any verbal information or by any written information that is not either contained within the solicitation documents or formally noticed and issued by the Purchasing Analyst. Questions shall not constitute formal protest of the specifications or of the solicitation. The formal protest process is described in PUR Form 1001 (Section 19) of this solicitation.

### 3.5.3 MyFloridaMarketPlace Sourcing Will NOT be used to Submit Respondent's Reply

Five hard copies and one CD of the Respondent's reply to this ITN shall be submitted to and received by the Official Contact Person specified in Section 3.1 (or his designee) by the deadline specified in Section 1.2. DO NOT submit your response electronically through MFMP.

This Section, 3.5.3, supersedes and replaces Section 2.3, of this Solicitation.

### 3.5.4 MyFloridaMarketPlace Email Notification

Respondents are reminded that the Sourcing Tool's Email Notifications are an option provided as a courtesy. The State of Florida is not under any obligation and does not guarantee that Vendors will receive Email Notifications concerning the posting, amendment or close of solicitations. Vendors are responsible for checking the MyFloridaMarketPlace Sourcing Tool and / or the Vendor Bid System for information and updates concerning solicitations.

### 3.5.5 MyFloridaMarketPlace Sourcing Tool Training

This solicitation will be conducted using the MyFloridaMarketPlace Sourcing Tool. Optional training is offered at:

[http://marketplace.myflorida.com/vendor/vendor\\_solicitation\\_help.htm](http://marketplace.myflorida.com/vendor/vendor_solicitation_help.htm).

Download and review the document titled "ITB Event User Guide."

- For all technical questions about the Sourcing Tool, Vendors should contact the MyFloridaMarketPlace Customer Service Desk at 866-FLA-EPRO (866-352-3776) or: [vendorhelp@myfloridamarketplace.com](mailto:vendorhelp@myfloridamarketplace.com).
- For additional information or assistance on using the Sourcing Tool, please visit the MyFloridaMarketPlace website at the following link: [http://marketplace.myflorida.com/vendor/vendor\\_solicitation\\_help.htm](http://marketplace.myflorida.com/vendor/vendor_solicitation_help.htm).

This site includes:

- a. Solicitation User Guides
- b. On Demand web-based Sourcing training link
- c. WinZip FAQs
- d. Vendor FAQs

### 3.6 Amendments to the ITN Documents

The Department reserves the right to issue amendments to the ITN. Notice of any amendment will be posted within MyFloridaMarketPlace and/or the Vendor Bid System. Such notice, if required, will contain the appropriate details for identifying and/or reviewing the formal changes to the ITN. Each Respondent is responsible for monitoring the sites for new or changing information concerning this ITN.

### 3.7 Submittal of Response

Five Hard copies and one CD of the Respondent's reply to this ITN shall be received by the Official Contact Person specified in Section 3.1 (or his designee) by the deadline specified in Section 1.2. DO NOT submit your response electronically through MFMP.

The outer packaging of mailed documents shall clearly state: Solicitation Title and Number (STATE TERM CONTRACT FOR ENERGY SAVINGS, ITN No. 24-973-320-x) and the ITN Responses Due Date and Time from the Timeline in Section 1.2 of this solicitation. Failure to provide all required information within the solicitation response may result in rejection of the response.

Each Respondent is responsible for ensuring that the offer is received before the deadline noted on the Timeline in Section 1.2 of this solicitation. The Department shall not consider offers received after the due date and time specified in the Timeline (Section 1.2) or as amended by the Department.

102

**3.8 Evaluation and Selection Process**

In determining whether to select or reject a response, the Department will consider and balance all information submitted in response to this ITN. Responses that do not contain all the required information may be considered non-responsive and may be rejected. In its assessment of submitted responses, the Department will analyze the information submitted in relation to the information requirements and evaluation criteria of this ITN, the applicable provisions of Florida Statutes, and Florida Administrative Code. Respondents must meet or exceed the requirements outlined in Section 3.12.

**3.9 Reservations.**

The Department reserves the right to reject any and all Responses received pursuant to this Invitation to Negotiate, if the Department determines such action is in the best interest of the State of Florida or the Department. The Department reserves the right to negotiate concurrently or separately with competing Respondents. The Department reserves the right to accept portions of a competing Respondent's Responses and merge such portions into one project, including the inclusion of the entity offering such portions. The Department reserves the right to waive minor irregularities in submitted Responses.

**3.10 Oral Presentation.**

The Department reserves the right to require any Respondent to perform, prior to the selection of Respondent(s), an operational demonstration and, an oral presentation on any hardware, software or professional services included in its Response. If the Department determines that an operational demonstration and oral presentation are necessary, the Department shall schedule the presentation.

A written summary of the operational demonstration and oral presentation prepared by the Respondent shall be regarded as confirmation of this requirement and shall become part of the Respondent's response. A list of attendees and copies of the agenda and all visuals should accompany the written summary. The inability of the Respondent to conduct the operational demonstration and oral presentation within ten (10) days of written notification by the Department will result in disqualification. The Respondent(s) project manager(s) assigned to this Response must be present at the operational demonstration and oral presentation.

**3.11 Disclosure of Response Contents.**

All documentation produced as part of the Invitation to Negotiate will become the exclusive property of the Department and may not be removed by an employee or agent of the Respondent. All Responses received from Respondents in response to this Invitation to Negotiate will become the property of the Department and will not be returned to the Respondent. The Department shall have the right to use any or all ideas or adaptations of the ideas presented in any Response received in response to this Invitation to Negotiate. Selection or rejection of a Response will not affect this right. For additional information regarding public records, please refer to Section 2.19 of this solicitation.

3.12 Respondent's Business Information and Experience

3.12.1 Please, provide the following information regarding the Respondent's business:

- A. Full, legal name of prime Respondent;
- B. Federal Identification Number;
- C. Unemployment Compensation Number;
- D. State in which incorporated, and if not incorporated, indicate type of business (e.g., partnership, sole proprietorship, etc.);
- E. Date incorporated;
- F. Description of the Respondent's organization, including subsidiaries, parent corporations, officers; include organization charts and details concerning the number of facilities by geographic location;
- G. Brief description of the Respondent's principal type of business;
- H. Percentage of minority employees;
- I. State whether the Respondent has had a contract terminated for default within the past five years, and if so, describe in detail;
- J. State whether the Respondent has filed for bankruptcy protection in the past five (5) years, or is currently in the process of filing or planning to file for bankruptcy protection or financial restructuring or refinancing. If so provide Court and case number;
- K. Describe in detail a plan to provide continued service and support to the Department in the event the Respondent's company goes out of business, merges with another company, is acquired by another company, etc.;
- L. Certify that the Respondent is not currently under suspension or debarment by the Federal government, the State of Florida, or any other state government;
- M. Certify that the Respondent does not owe the Federal government, the State of Florida, or another state any outstanding taxes or fees;
- N. State whether any contract with the State, or negotiation with any other clients, would represent a possible conflict of interest;
- O. Indicate whether the Respondent has any pending or threatened litigation against the State or any agency of the State;
- P. If the Respondent is proposing to use any sub-contractors for the project, describe in detail the experience as a prime Respondent in dealing with sub-contractors, and how the plan to manage and coordinate any proposed sub-contractors;
- Q. Provide the names and addresses of all affiliated or related companies, partnerships or associations (including sub-contractor, if any) and a brief description of their relationship to the Respondent;
- R. Document the Respondent's insurability and ability to obtain bonding as required by the State;

104

- S. Provide a statement on the Respondent's letterhead that the Respondent agrees to comply with all Federal and state laws regarding fair employment practices and non-discrimination.

3.12.2 Evaluation Criteria for Stage 1 (Pre-Negotiation).

Respondent's will be awarded a Pass or Fail grade for each of the 3 criterion below and will only be considered for an award of the subsequent contract if a Passing grade is received for each criterion.

1. Please provide the following information regarding the Respondent's history and experience:

Please provide a summary of all projects as defined within F.S. 489.145 that your business has contracted for with any government entity during the last five years. The summary should be brief (approximately 2 pages) and include but not be limited to a description of the project, outcome, referral/contact information, and dollar amount. In order to receive a Passing grade, the Respondent must have five or more projects under contract with government entities with an aggregate amount of \$10 million or more over the last THREE years.

2. Respondent's License:

The Respondent must provide a copy of a license under F.S. 471, F.S. 481, or F.S. 489, and demonstrate that they are experienced in the analysis, design, implementation, or installation of energy conservation measures through energy performance contracts.

3. Respondent's Financial Capability—

The Respondent must provide information demonstrating its Financial Capability and resources available to satisfy the requirements proposed within this ITN.

3.12.3 Evaluation Criteria for Stage 2 (Negotiation and Award).

Evaluation Criteria for Stage 2 will be provided prior to Stage 2.

105

### 3.13 State Objectives (rev. 07/28/04)

Within thirty (30) calendar days following award of the Contract, the successful Respondent shall submit plans addressing each of the State's five (5) objectives listed below, to the extent applicable to the items / services covered by this solicitation.

#### 3.13.1 Environmental Considerations

The State supports and encourages initiatives to protect and preserve our environment. The Contractor shall submit as part of any response the Contractor's plan to support the procurement of products and materials with recycled content, and the intent of Section 287.045, Florida Statutes. The Contractor shall also provide a plan for reducing and or handling of any hazardous waste generated by Contractor's company. Reference Rule 62-730.160, Florida Administrative Code. It is a requirement of the Florida Department of Environmental Protection that a generator of hazardous waste materials that exceeds a certain threshold must have a valid and current Hazardous Waste Generator Identification Number. This identification number shall be submitted as part of Contractor's explanation of its company's hazardous waste plan and shall explain in detail its handling and disposal of this waste.

#### 3.13.2 Certification of Drug-Free Workplace Program

The State supports and encourages initiatives to keep the workplaces of Florida's Suppliers and Contractors drug free. Section 287.087 of the Florida Statutes provides that, where identical tie responses are received, preference shall be given to a response received from a Respondent that certifies it has implemented a drug-free workforce program. The Contractor shall describe how it will address the implementation of a drug free workplace in offering the items of the solicitation.

#### 3.13.3 Products Available from the Blind or Other Handicapped (RESPECT)

The State supports and encourages the gainful employment of citizens with disabilities. It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this Contract shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of this Contract the person, firm, or other business entity carrying out the provisions of this Contract shall be deemed to be substituted for the state agency insofar as dealings with such qualified nonprofit agency are concerned. Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

The Contractor shall describe how it will address the use of RESPECT in offering the items of the solicitation.

#### 3.13.4 Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE)

The State supports and encourages the use of Florida correctional work programs. It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this Contract shall be purchased from the corporation identified

106

under Chapter 946, F.S., in the same manner and under the same procedures set forth in Section 946.515(2), and (4), F.S.; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this Contract shall be deemed to be substituted for this agency insofar as dealings with such corporation are concerned. Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.

The Contractor shall describe how it will address the use of PRIDE in offering the items of the solicitation.

107

SECTION 4.0

State of Florida  
PUR 1000  
General Contract Conditions

Contents

1. Definitions.
2. Purchase Orders.
3. Product Version.
4. Price Changes Applicable only to Term Contracts.
5. Additional Quantities.
6. Packaging.
7. Inspection at Contractor's Site.
8. Safety Standards.
9. Americans with Disabilities Act.
10. Literature.
11. Transportation and Delivery.
12. Installation.
13. Risk of Loss.
14. Transaction Fee.
15. Invoicing and Payment.
16. Taxes.
17. Governmental Restrictions.
18. Lobbying and Integrity.
19. Indemnification.
20. Limitation of Liability.
21. Suspension of Work.
22. Termination for Convenience.
23. Termination for Cause.
24. Force Majeure, Notice of Delay, and No Damages for Delay.
25. Changes.
26. Renewal.
27. Purchase Order Duration.
28. Advertising.
29. Assignment.
30. Antitrust Assignment
31. Dispute Resolution.
32. Employees, Subcontractors, and Agents.
33. Security and Confidentiality.
34. Contractor Employees, Subcontractors, and Other Agents.
35. Insurance Requirements.
36. Warranty of Authority.
37. Warranty of Ability to Perform.
38. Notices.
39. Leases and Installment Purchases.
40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).
41. Products Available from the Blind or Other Handicapped.
42. Modification of Terms.
43. Cooperative Purchasing.
44. Waiver.

108

- 45. Annual Appropriations.
- 46. Execution in Counterparts.
- 47. Severability.

**1. Definitions.** The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

(a) "Contract" means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.

(b) "Customer" means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The "Customer" may also be the "Buyer" as defined in the PUR 1001 if it meets the definition of both terms.

(c) "Product" means any deliverable under the Contract, which may include commodities, services, technology or software.

(d) "Purchase order" means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

**2. Purchase Orders.** In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(15) and (16) of the Florida Statutes.

**3. Product Version.** Purchase orders shall be deemed to reference a manufacturer's most recently release model or version of the product at the time of the order; unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.

**4. Price Changes Applicable only to Term Contracts.** If this is a term contract for commodities or services, the following provisions apply.

(a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.

(b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the

109

Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.

(c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.

(d) Trade-in. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.

(e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

**5. Additional Quantities.** For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.

**6. Packaging.** Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.

**7. Inspection at Contractor's Site.** The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

**8. Safety Standards.** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and

110

the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

**9. Americans with Disabilities Act.** Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

**10. Literature.** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.

**11. Transportation and Delivery.** Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.

**12. Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

**13. Risk of Loss.** Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

**14. Transaction Fee.** The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

211

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.**

**15. Invoicing and Payment.** Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms - EDI 810, cXML, or web-based invoice entry within the ASN.

Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers.

**16. Taxes.** The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.

**17. Governmental Restrictions.** If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

**18. Lobbying and Integrity.** Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with

112

the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dls.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

**19. Indemnification.** The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.

The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

113

**20. Limitation of Liability.** For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the indemnity paragraph contain in this agreement.

Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

**21. Suspension of Work.** The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.

**22. Termination for Convenience.** The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

**23. Termination for Cause.** The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was

114

excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

**24. Force Majeure, Notice of Delay, and No Damages for Delay.** The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

**25. Changes.** The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.

**26. Renewal.** Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.

**27. Purchase Order Duration.** Purchase orders issued pursuant to a state term or agency contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in

115

accordance with the contract's terms and conditions. Purchase orders received by the contractor after close of business on the last day of the state term or agency contract's term shall be considered void.

Purchase orders for a one-time delivery of commodities or performance of contractual services shall be valid through the performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the single delivery/performance, and shall survive the termination of the Contract.

Contractors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of the state term or agency contract. For example, if a state term contract calls for delivery 30 days after receipt of order (ARO), and an order specifies delivery will occur both in excess of 30 days ARO and after expiration of the state term contract, the Contractor will accept the order. However, if the Contractor expressly and in writing notifies the ordering office within ten (10) calendar days of receipt of the purchase order that Contractor will not accept the extended delivery terms beyond the expiration of the state term contract, then the purchase order will either be amended in writing by the ordering entity within ten (10) calendar days of receipt of the contractor's notice to reflect the state term contract delivery schedule, or it shall be considered withdrawn.

The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the state term or agency contract by more than twelve months. However, if an extended pricing plan offered in the state term or agency contract is selected by the ordering entity, the contract terms on pricing plans and renewals shall govern the maximum duration of purchase orders reflecting such pricing plans and renewals.

Timely purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the Contract.

Ordering offices shall not renew a purchase order issued pursuant to a state term or agency contract if the underlying contract expires prior to the effective date of the renewal.

**28. Advertising.** Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

**29. Assignment.** The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.

116

**30. Antitrust Assignment.** The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

**31. Dispute Resolution.** Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.

Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

**32. Employees, Subcontractors, and Agents.** All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

**33. Security and Confidentiality.** The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

**34. Contractor Employees, Subcontractors, and Other Agents.** The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to,

117

ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

**35. Insurance Requirements.** During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

**36. Warranty of Authority.** Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

**37. Warranty of Ability to Perform.** The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.

**38. Notices.** All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Customer. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

**39. Leases and Installment Purchases.** Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.

**40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).** Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.

**41. Products Available from the Blind or Other Handicapped.** Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the

118

person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

**42. Modification of Terms.** The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

**43. Cooperative Purchasing.** Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser. State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.

**44. Waiver.** The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

**45. Annual Appropriations.** The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.

**46. Execution in Counterparts.** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**47. Severability.** If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

119 -

SECTION 5.0  
SPECIAL CONTRACT CONDITIONS

CONTENT

- 5.1 Definitions
- 5.2 Period of Agreement
- 5.3 Vendor Additions and Deletions
- 5.4 Contract Sales Summary

120

#### 5.1 Definitions

In case of conflict with Section 4.0 General Contract Conditions, the definitions in section 489.145 Florida Statutes and rules and definitions contained in s. 60A-1.001, F.A.C shall apply to this agreement.

#### 5.2 Period of Agreement

This agreement shall be in effect from the start date of the Contract for an initial period of Sixty (60) months, with an option to renew for an additional 60 month period. Renewal is contingent upon satisfactory performance by the Contractor.

#### 5.3 Vendor Additions and Deletions

On an annual basis and at the discretion of the Department, vendors may be removed or added the contract resulting from this ITN. All decisions to add a vendor will be made using the same criteria in Section 3.9 of this ITN.

#### 5.4 Contract Sales Summary

**Contract Sales Summary:** The Contractor is required to provide annual fiscal year Contract Sales Summaries to the Purchasing Analyst within fifteen (15) days after the end of each fiscal year during the term of the Contract. The fiscal year is a twelve (12) month period beginning July 1 and ending on June 30 of each year. Contract Sales Summaries shall document all orders completed, for which payment was received, during the specified fiscal year. The Report shall specifically document the quantity and total price by both Commodity and product sold differentiating between State Agencies & Political Subdivisions.

The Contractor is also required to provide partial year Contract Sales Summaries under the same terms as the annual summaries for portions of the Contract term that occur outside a complete fiscal year. These partial summaries will be due July 15, 2007 for the period beginning on the Contract start date and ending June 30, 2007, and within fifteen (15) days after the end of the Contract for the period beginning July 1 of the Contract's final year and ending on the Contract termination date. The Department may require additional Contract Sales Summaries for various periods of time; these specific summaries shall be submitted by the Contractor within twenty (20) days of notification.

Initiation and submission of the Contract Sales Summaries are to be the responsibility of the Contractor without prompting or notification by the Purchasing Analyst. The Contractor will submit the completed Contract Sales Summary forms by email to the Purchasing Analyst. The Department shall distribute, in electronic format, the Contract Sales Summary forms to be used by the awarded Contractor upon Contract signature.

121

SECTION 6.0  
TECHNICAL SPECIFICATIONS

CONTENT

- 6.1 DEFINITIONS
- 6.2 PURPOSE
- 6.3 GENERAL TECHNICAL REQUIREMENTS

122

**6.1 Definitions**

The definitions found in section 489.145 Florida Statutes and section 60A-1.001, F.A.C. shall apply to this ITN.

**6.2 Purpose**

The primary purpose of this ITN is to create a list of qualified Contractors to perform work for agencies of the State of Florida, and for other eligible users of state term contracts (collectively, "Eligible Users"), under the Guaranteed Energy Performance Savings Contract Act, codified in section 489.145 of the Florida Statutes. Users of the contract derived from this ITN must comply with the requirements in section 489.145 of the Florida Statutes which includes that a Guaranteed Energy Performance Savings Contractor must be selected in compliance with section 287.055 of the Florida Statutes.

**6.3 General Technical Requirements**

Pursuant to section 489.145(6) of the Florida Statutes, the Chief Financial Officer has developed model agreements and related forms that affected State agencies shall use, and others may use, to execute a purchase under this Contract (electronic copies of the model agreements are available at the Chief Financial Officer's web page devoted to this project, which is currently [www.fldfs.com/aadlr/cefp](http://www.fldfs.com/aadlr/cefp). An Agency Contract executed under this State Term Contract shall survive expiration of the State Term Contract in accordance with the agreement's terms.

At the Chief Financial Officer's web page devoted to this project, Eligible Users and Respondent's will find an Energy Savings Model Contract that addresses design and installation of energy conservation measures and an Energy Savings Financing Agreement. Also, at [Model Audit Agreement Website](#) Eligible Users and Contractor will find a Model Audit Agreement they may use to procure the report required by subsection 489.145(4)(b) of the Florida Statutes. Any questions regarding the Model Audit Agreement should be addressed to the attention of Dan Hedrick [Daniel.Hedrick@dms.Myflorida.com](mailto:Daniel.Hedrick@dms.Myflorida.com), phone (850) 413-9515.

Prior to entering into any agreement to effect a purchase under this Contract, including any financing agreement, state agencies shall submit the proposed agreement to the Chief Financial Officer for review and approval. Currently, all such agreements should be addressed to the attention of Roy Jeter [Roy.Jeter@fldfs.com](mailto:Roy.Jeter@fldfs.com), phone (850) 413-5363.

123

APPENDIX B  
INVESTMENT GRADE ENERGY AUDIT

**Investment Grade Audit**

*Miami-Dade County  
General Services Administration  
Facilities and Utilities Management Division  
200 NW 1 Street, Suite 103  
Miami, FL 33128*

---

---

**Expansion and Interconnection of  
County-owned District Cooling Plants and Loops  
Downtown Government Center**

**Request for Qualification No. 01**

**Presented on:**  
May 5, 2010

---

---

**Presented by:**

BGA, Inc  
A ConEdison Solutions Company  
3101 W. MLK Jr. Blvd.,  
Suite 110  
Tampa, Florida 33607  
(813) 375-3399



## TABLE OF CONTENTS

1. EXECUTIVE SUMMARY .....	1
1.1 Background .....	1
1.2 Major Findings .....	2
2. DISTRICT COOLING PLANT SYSTEMS .....	4
2.1 Central Support Facility Plant .....	4
2.1.1 Existing Chilled Water Generation .....	4
2.1.2 Existing Chilled Water Load .....	5
2.1.3 Existing Chilled Water Distribution System .....	6
2.1.3.1 Hydraulic Model .....	7
2.1.4 Existing Electric Rate Schedule .....	8
2.2 North Plant .....	18
2.2.1 Existing Chilled Water Generation .....	18
2.2.2 Existing Chilled Water Load .....	19
2.2.3 Existing Chilled Water Distribution System .....	20
2.2.4 Existing Electric Rate Schedule .....	21
3. ENERGY USE PROFILES .....	25
4. ANALYSIS METHODOLOGY .....	28
4.1 DESCRIPTION OF METHODS .....	28
4.1.1 Loads and Systems .....	28
4.1.2 Plant Equipment & Energy Consumption .....	28
4.1.3 Energy Economics .....	28
4.1.4 Method for Estimating Savings .....	29
4.1.5 Model Calibration .....	29
4.1.6 Method for Verifying Savings .....	32
5. ECM DESCRIPTION .....	33
5.1 RECOMMENDED ECM .....	33
5.1.1 ECM Baseline Scenario .....	33
5.1.2 ECM-1 Scenario .....	34
5.1.3 Baseline and ECM Scenario Comparison .....	36
6. PROJECT ECONOMIC SUMMARY .....	41
6.1 Construction Capital Costs .....	41
6.2 Construction Project Economic Comparisons .....	41

6.3 Performance Contract Project Economics.....42

7. APPENDICES..... 44

7.1 Appendix 1 - Cooling Loads.....45

7.2 Appendix 2 - Chiller Plant Efficiency.....47

7.3 Appendix 3 - Project Costing.....58

7.4 Appendix 4 - Project Economics.....64

---

## 1. EXECUTIVE SUMMARY

### 1.1 Background

Miami-Dade County, through its General Services Administration Facilities and Utilities Management Division, solicited for Performance Contractor qualifications to evaluate its options relating to its two district cooling plants.

"Miami-Dade County, as represented by the General Services Administration's Energy Performance Contracting Program Manager, hereby gives notice to designated members of the approved vendor pool for the Energy Performance Contracting (EPC) Program of the contracting opportunity described herein.

Through this solicitation, and pursuant to §489.145 Florida Statutes ("Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act"), §287.055 F.S. ("Florida Consultant's Competitive Negotiation Act"), the State of Florida's Department of Management Services Contract Number 973-320-08-1, and Miami-Dade County's Board of County Commissioners' Resolution No. R-740-08, Miami-Dade County (the County) is seeking qualification submittals from designated Energy Service Companies (ESCOs) in the approved vendor pool for the County's Energy Performance Contracting Program for the provision of an Investment Grade Audit to be possibly followed by energy-related services and/or capital improvements at the County's Thermal Storage Chilled Water Plant (Ice Plant) and associated District Cooling Loop, and, if necessary, at the County's Downtown Electric Chiller Plant and associated District Cooling Loop."

The solicitation went further defining the scope to contemplate more than a standard performance contract, because of the unique nature of this project:

"While it is recognized that a minimum scope should not normally be a part of an RFQ for a Guaranteed Energy Performance project, due to the specific situations described above, the following minimum project scope is expected to be eventually provided by the selected ESCO:

- Expansion of the existing Thermal Ice Chilled Water Plant [North Plant] to its full planned capacity, including the installation of the equipment listed in Schedule A that is in the process of being provided to the County, but not installed, as part of the present expansion project.
- Interconnection of the two existing loops so that the entire system can be operated in the most reliable and efficient manner possible.
- Operation and maintenance of the Thermal Storage (Ice) Chilled Water Plant by the ESCO during the period while this project is in

---

effect, and beyond completion through a mutually agreeable time period, during which the County's personnel will be trained and made to feel secure with its operation and maintenance, prior to the County's eventual takeover.

- Full commissioning of the operation of all of the equipment that is installed, as well as a Testing and Balancing of the primary flows for the entire, expanded loop for an entire year, and for each (peak, low and shoulder) operating season."

### 1.2 *Major Findings*

The results presented in this study develop the feasibility and economics of the contemplated project scope. After rigorous project development, that included regression analysis, hydraulic analysis, schematic design, and project costing, it has been determined a significant project is available, complying with Florida Performance Contracting Statutes.

This project offers strong economics to Miami-Dade County. Besides significant electric cost reduction, the County will reduce operating expenses, avoid imminent capital costs, and gain a flexible two-plant interconnected district chilled water system providing the platform to meet the County's future chilled water needs.

After considering the current and future chilled water loads of Miami-Dade County, the County will save \$375,000/yr to \$390,000/yr in annual electric costs over and beyond other options available to the County.

In addition to the electric cost savings, the County will reduce its operating expense budget by at least \$200,000/yr to \$360,000 through the synergies available with in-house staff being able to operate and monitor both plants, instead of having the North Plant operated and monitored by outside resources.

Additionally, the County, through this project effort, is mitigating the fast-approaching challenge of meeting the additional chilled water load of not only the newly connected Overtown II, but also chilled water loads from West Lot and Juvenile Justice Courts. Through this project the County is avoiding an otherwise necessary initiative to completely update the Central Support and provide a parallel distribution system pipe, with a preliminary cost estimate of \$10,616,000.

128

---

This project will allow for at least 3,600 tons of chilled water peak load shift. As such, based on \$484 rebate per ton shifted, this project should be eligible for a utility rebate of \$1,742,400.

After factoring a 95% calculated electric cost savings to be guaranteed savings, after considering only \$200,000 of the potential \$350,000 annual operating cost savings, after considering avoiding the \$10,616,000 CSF upgrade option, and the incremental cost to incremental savings of this project is 13.8 years.

This is a compelling incremental cost benefit considering the additional benefits of this project over the option of expanding the CSF plant:

1. County's two plants will now be interconnected for improved reliability and flexibility,
2. The North Plant will be fully expanded giving the County the flexibility to serve the growing retail load of Terremark, the American Airline and to consider other proximity-close and economically attractive revenue loads,
  - a. It should be noted the built-in economic benefit of increasing the retail revenue-producing loads cannot be factored into the "savings based" PC analysis, it remains, nonetheless, significant.
3. A foot print that will now allow for future expansion of CSF plant when revenue generating loads increase

Assuming authorization to proceed is let within 120 calendar days of report submittal, the turnkey project cost associated with the scope developed in this report is \$20,310,691, before any utility rebate project buy-down and County buy down through the remaining revenue bond funds obtained to purchase and expand the North Plant. The project includes turnkey expansion of the North Plant, a turnkey chiller replacement of two of the aged 1,500 ton chillers at Central Support Facility, turnkey loop interconnection, secondary chilled water loop modifications, standardization of controls, the installation of a rental chiller at Central Support to mitigate the summer cooling demands, study costs, and measurement and verification services.

Finally, the scope of the Operating Agreement contemplated by RFQ No. 01 during the first year period has been negotiated and is to be memorialized under separate document

---

## 2. District Cooling Plant Systems

### 2.1 Central Support Facility Plant

The Central Support Facility (CSF) chilled water system serves the following nine buildings:

Courthouse Center	Miami Dade County Courthouse
Cultural Center	140 W. Flagler
Hickman Building	Stephen P Clark Center (111 Building)
Central Support Facility	Carol Daycare Center
Overtown Transit Village I (OTV I)	

The OTV II is in the final stages of being fully occupied and will be fully operational by the Summer 2010.

#### 2.1.1 Existing Chilled Water Generation

The chilled water equipment within the CSF plant includes four electric centrifugal chillers that support the normal operation of the plant and one (smaller capacity) emergency unit that does not operate during normal conditions.

Three of the five chillers were installed in 1982 (Chiller Nos. 2, 3, and 4). These three chillers utilize chlorofluorocarbon (CFC) refrigerant R-11 which was phased out of production in 1995. These three chillers were retrofitted to operate on a non-CFC refrigerant (R-123) in 1993, but still utilize R-11. As a result of the conversion the chiller design capacity was reduced by 6%. The revised design capacities and efficiencies for each chiller are summarized in Table No. 1. The manufacturer suggests that the current design efficiency of each chiller (converted to R-123 but operating on R-11) is 0.708 kW/ton.

Degradation of chiller efficiency typically occurs over an extended period of time as a result of system fouling and aging of individual components. Because of the age and the retrofit of Chiller Nos. 2 through 4, it was anticipated that these units, and have since been verified, are operating less efficiently than design.

An electric and chilled water metering system was temporarily installed on each individual chiller to determine their existing operating efficiency. Also, electric meters were installed on the motor control centers to determine the electric use of the chilled water auxiliaries. The results of the metered data are summarized in

---

Table No. 2. During the testing period, Chiller No. 2 was being serviced and was not operational, and therefore no conclusive data was collected for Chiller No. 2. The older units (chiller Nos. 3 and 4) operated with an average chiller efficiency of approximately 1.1 kW/ton, while the Chiller No. 5 operated with an average chiller efficiency of approximately 0.71 kW/ton. A graphical representation of the chiller and chilled water auxiliary efficiency is presented in Figure No. 1. To estimate the total energy use of the plant the unitary electric use of the auxiliary is added to the chiller efficiency.

The CSF Plant chilled water pumping consists of a variable speed primary system which includes four pumps designed to circulate chilled water throughout the CSF plant and the distribution piping during normal operation. Each of the pumps is dedicated to an associated chiller. Three of the pumps are rated at 125 horsepower (HP) with a design flow rate of 4,860 gallons per minute (gpm). The fourth pump is dedicated to Chiller No.5 and is also rated at 125 HP but with a design flow rate of 4,300 gpm.

#### *2.1.2 Existing Chilled Water Load*

In order to evaluate the existing system and potential system improvements the annual chilled water load profile was established based upon the CSF plant hourly trend data from January 2009 to September 2009. The hourly data points include individual chiller flows, total chilled water flow exported from the plant, and the chilled water plant supply and return temperatures. A summary of the hourly metered data is included in the Appendix.

The relationship between the hourly wet-bulb temperature and the chiller load correlation is graphically presented in Figure No. 2. This correlation of wet-bulb temperature to load was used to estimate the hourly load profile from September 2009 through December 2009 based upon historic weather data. The annual chilled water load profile for a typical year is presented in Figure No. 3.

According to the log data the peak cooling load of approximately 4,900 tons occurred in June of 2009 at an outdoor wet-bulb temperature of 79 F. This peak cooling load is 17% higher than the existing firm capacity of the CSF plant (4,200 tons). Based upon the trend data the cooling load exceeded the plant firm capacity a total of 55 hours during 2009.

The average chilled water temperature differential throughout the year was approximately 5 F. This is substantially lower than the chiller design temperature (13 F to 15 F) difference. This lower temperature difference caused

---

an increase in chilled water flow (and energy) required to serve the district load. In addition, the excess flow may have caused additional chillers and auxiliaries to operate unnecessarily based upon the chiller design flow.

During peak load conditions, the system operates at a higher temperature difference (10 F), but is still 30% below the design conditions. The lower than design system temperature differential is a result of the terminal units and system interface at each building.

The elevated building flows can also result in limitations within the distribution system. To analyze the primary pumping and distribution capacities, individual building loads were estimated based upon Miami-Dade County's Energy Conservation and District Cooling Initiatives. The individual building loads and flows are summarized in Table No. 3.

#### *2.1.3 Existing Chilled Water Distribution System*

A site plan of the existing chilled water distribution system is presented in Figure No. 4. The piping system identified in the figure is the main network utilized during normal operation. There is a second set of smaller emergency pipes (not included in the site plan) that is utilized, if the main distribution system is out of service.

132

---

### 2.1.3.1 Hydraulic Model

A computerized hydraulic model was utilized to determine the maximum operating capacity of the main distribution and primary pumping systems.

The model was established using Pipe-Flo 2007 software developed by the Engineered Software Company. The pipe diameter, segment length, and roughness factor for each pipe, as well as the peak flow demand for each building were entered into the computer model. The results of the model indicate the flow, velocity, and pressure loss for each pipe segment, as well as the total distribution and building pressure loss for each facility. Friction losses are calculated in the program using the Hazen Williams formula as follows:

$$h_f = 0.002083 \times L \times (100 / C)^{1.85} \times (\text{gpm}^{1.85} / D^{4.8655})$$

$h_f$  = head loss due to friction (feet)  
L = length of pipe (feet)  
C = roughness factor  
D = pipe inside diameter (inches)  
gpm = flow (gallons per minute)

Each pipe segment was evaluated based upon the flow, velocity, and pressure loss. The limiting velocity criteria for ductile iron piping ranging from 8 to 24 inches in diameter is between 8 and 10 feet per second (fps). This velocity limitation is based upon potential water hammer on the mechanical joints of the ductile iron piping.

The results of the modeling include the balanced flow in each pipe segment, piping velocities, and pressures at each building. The model was developed based upon modulating the flow to each building to supply the estimated peak load at the recorded maximum demand. A schematic summarizing the results of the 2009 peak load scenario is presented in Figure No. 5. The velocity within the main pipe segment is below the maximum recommended velocities.

Based upon the hydraulic model, two of the buildings require booster pumps to operate in series to supplement the distribution pumping. Essentially without the booster pumps operating, the existing distribution pumps could not supply adequate flow to the building. A summary of the total losses for each building and the booster pump requirements is presented in Figure No. 6. A system curve was developed based upon the building with the highest primary pumping (Courthouse Center) requirement and is presented in Figure No. 7. A system

curve is intended to represent the pumping requirements necessary to serve the most hydraulically remote facility within a distribution system. The system curve is used to estimate pressure losses at varying flow rates.

In general the existing chilled water flow (at a system temperature differential of 10 F) is beyond the capacity of the existing primary pumps and will require the operation of building booster pumps to overcome losses in the distribution piping.

#### 2.1.4 Existing Electric Rate Schedule

The CSF plant is billed for its electric power by Florida Power and Light Company in accordance with the utility tariff for General Service Large Demand (GSLD-2).

The following is a summary of the rates:

Summer (April - October)	On-peak (noon to 9 pm)	Off - peak
Demand Costs	\$9.84 /kW	--- /kW
Usage Rates	\$0.0765 /kWh	\$0.0765 /kW
Winter (Jan-Mar & Nov-Dec)	On-peak (6 am to 10 am & 6 pm to 10 pm)	Off - peak
Demand Costs	\$9.84 /kW	--- /kW
Usage Rates	\$0.0765 /kWh	\$0.0765 /kW

Note: Includes a 7.81% gross receipt tax and franchise fee

134

**TABLE NO. 1: EXISTING CENTRAL SUPPORT PLANT CHILLER SUMMARY**  
MIAMI DADE COUNTY

CHILLER NO.	INSTALL DATE	REFRIG	ORIGINAL DESIGN DATA					CONVERSION DATA OF R-11 UNITS (R-123)					CONVERSION DATA OF R-11 UNITS (R-1)				
			CHILLER CAPACITY (TONS)	CHILLED WATER FLOW (GPM)	DESIGN LEAVING TEMP. (°F)	DESIGN ENT. TEMP. (°F)	ORIGINAL CHILLER EFF. (KW/TON)	CHILLER CAPACITY (TONS)	CHILLED WATER FLOW (GPM)	LEAVING TEMP. (°F)	ENT. TEMP. (°F)	REVISD CHILLER EFF. (KW/TON)	CHILLER CAPACITY (TONS)	CHILLED WATER FLOW (GPM)	LEAVING TEMP. (°F)	ENT. TEMP. (°F)	REVISD CHILLER EFF. (KW/TON)
1	1984	R-22	314	500	43.0	54.0	3.64	314	520	42.0	54.0	3.64	314	620	42.0	54.0	0.64
2	1982	R-11	1,352	2,752	42.0	56.0	3.87	1,429	2,772	42.0	56.4	3.76	1,412	2,770	42.0	54.2	0.71
3	1982	R-11	1,500	2,770	42.0	56.0	3.87	1,429	2,770	42.0	54.4	3.76	1,412	2,770	42.0	54.2	0.71
4	1982	R-11	1,500	2,770	42.0	56.0	3.87	1,429	2,770	42.0	54.4	3.76	1,412	2,770	42.0	54.2	0.71
5	1995	R-123	1,280	2,270	42.0	57.0	3.50	1,380	2,270	42.0	57.0	3.50	1,380	2,270	42.0	57.0	0.60
TOTAL CAPACITY			5,920	9,820	42.0	56.0	3.76	5,956	10,550	42.0	56.0	3.76	5,816	10,580	42.0	56.0	0.60
FIRM CAPACITY			4,204	7,270	42.0	56.0	3.76	4,204	7,270	42.0	56.0	3.76	4,204	7,270	42.0	56.0	0.60

NOTES: 1.  REPRESENTS EMERGENCY CHILLER AND IS NOT INCLUDED IN THE TOTAL AND FIRM CAPACITIES  
 2. CHILLER INFORMATION BASED UPON CHILLER MANUFACTURERS DATA  
 3. CHILLER NOS. 2, 3, 4 WERE CONVERTED TO OPERATED ON R-123 IN 1991. (CHILLERS ARE STILL OPERATING ON R-11)  
 4. DATA DOES NOT INCLUDE EFFICIENCY REDUCTION FOR  
 \* PART LOAD (AWAITING DATA FROM MANUFACTURERS)  
 \* AGE OF THE UNIT  
 \* FLOW IN EXCESS OF DESIGN (CURRENT OPERATION)

RMF 7 JAN 2010

125 135

136



---

## 2.2 North Plant

The North Plant chilled water system supplies chilled water to the Terremark Building and the American Airlines Arena.

The plant utilizes an ice storage system that generates and stores ice during non-peak electric rate periods. The ice is melted during the on-peak rate periods to provide system cooling in lieu of electric chiller operation. This technology is best applied when the utility rate structure includes high electric demand rates and the off-peak cooling load is minimal. During ice generation the chillers dedicated to "ice duty" are operated at substantially lower temperatures (22 F to 28 F) requiring additional energy and the utilization of a glycol solution as an intermediary fluid. Standard duty chillers are also installed in the North Plant to supplement the ice storage tanks during high demand hours.

### 2.2.1 *Existing Chilled Water Generation*

The North Plant includes three chillers that are designed for "ice duty" and four chillers that are intended for standard duty chilled water generation. The following table is a summary of the chillers and the corresponding capacities:

The design chilled water supply temperature exiting the North Plant is 36 F. Both of the buildings served by the North Plant include heat exchangers that provide 42 F water to the building systems.

The CSF Plant chilled water pumping system is a primary/secondary configuration. The primary pumps circulate chilled water through the chillers and the plant piping, while the secondary pumps circulate the water through the distribution piping and heat exchangers located in each of the buildings. Currently, there are three secondary pumps that are rated at 350 HP with a design flow rate of 3,200 gpm, each.

138

Chiller Duty	Chiller No.	Chiller Capacity (Tons)	Design Efficiency (kW/ton)
Ice Duty	GCH-1	850	0.819
	GCH-2	430	0.837
	GCH-3	1,580	0.792
Chilled Water	ECH-1	1,166	0.679
	ECH-2	1,166	0.679
	ECH-3	1,166	0.679
	ECH-4	2,500	0.640
	TES Tank No. 1 (17,280 ton-hr)	1,728	---
	TES Tank No. 2 (17,280 ton-hr)	1,728	---
	Total Capacity	9,454	---
	Firm Capacity	6,954	---

### 2.2.2 Existing Chilled Water Load

The existing chiller plant operation was established by reviewing the building chilled water trend data for the Torremark Building and the American Airlines Arena. The metered data points include chilled water flows and the chilled water supply and return temperatures. A summary of the hourly data is included in the Appendix.

Similar to the CSF Plant, the building log data was also used to establish a relationship between the hourly wet-bulb temperature and the chiller load. A graph representing the coincident wet-bulb temperature at each recorded load for January 2009 through August 2009 is presented in Figure No. 8. This relationship was utilized to extrapolate the estimated hourly load from September

through December based upon typical weather data. The resulting annual load profile is presented in Figure No. 9.

The peak cooling load of 3,500 tons was recorded in May of 2009. This peak cooling load is below the recently expanded firm capacity, now providing operational flexibility.

### 2.2.3 Existing Chilled Water Distribution System

A site plan of the existing chilled water distribution system is presented in Figure No. 10. There are two sets of ductile iron piping mains exiting the plant. The first set of 24-inch mains is dedicated to the American Airlines and the second set of 24-inch mains is dedicated to the Terremark Building. The following is a summary of the existing peak load and flow capacity of the two main pipe segments:

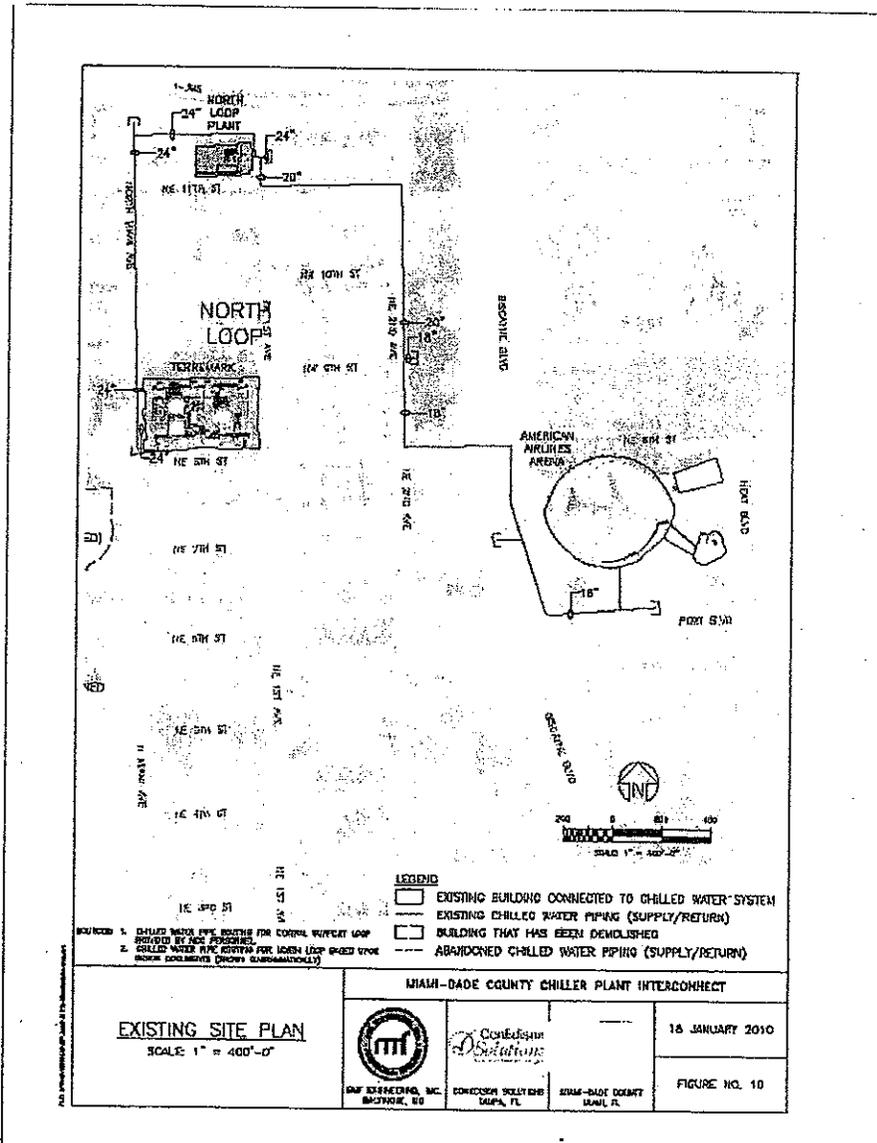
	Main Pipe Size (in)	Maximum Capacity (Based on 10 fps)	Existing Peak Flow	Available Capacity
American Airlines	24	14,000 gpm	2,700 gpm	11,300 gpm
Terremark	24	14,000 gpm	2,900 gpm	11,100 gpm

2.2.4 Existing Electric Rate Schedule

Due to the fact that the North Plant utilizes an ice storage system, the Plant is billed for the electric use on a different tariff rate than the CSF plant. The following is a summary of the General Service Large Demand - Time of Use (GSLDT-2) rates for the North Plant:

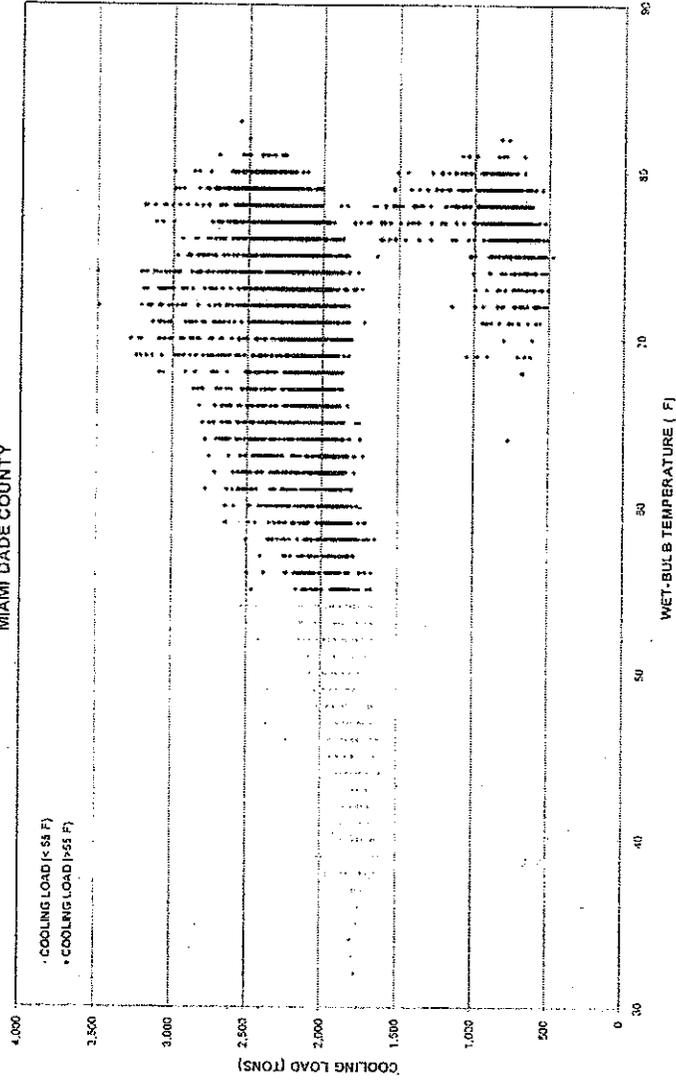
Table No. 7: Electric Rates for North Plant			
Summer (April - October)	On-peak (noon to 9 pm)		Off - peak
Demand Costs	\$9.84 /kW		--- /kW
Usage Rates	\$0.0957 /kWh		\$0.0694 /kW
Winter (Jan-Mar & Nov-Dec)	On-peak (6 am to 10 am & 6 pm to 10 pm)		Off - peak
Demand Costs	\$9.84 /kW		--- /kW
Usage Rates	\$0.0957 /kWh		\$0.0694 /kW

Note: Includes a 7.81% gross receipt tax and franchise fee



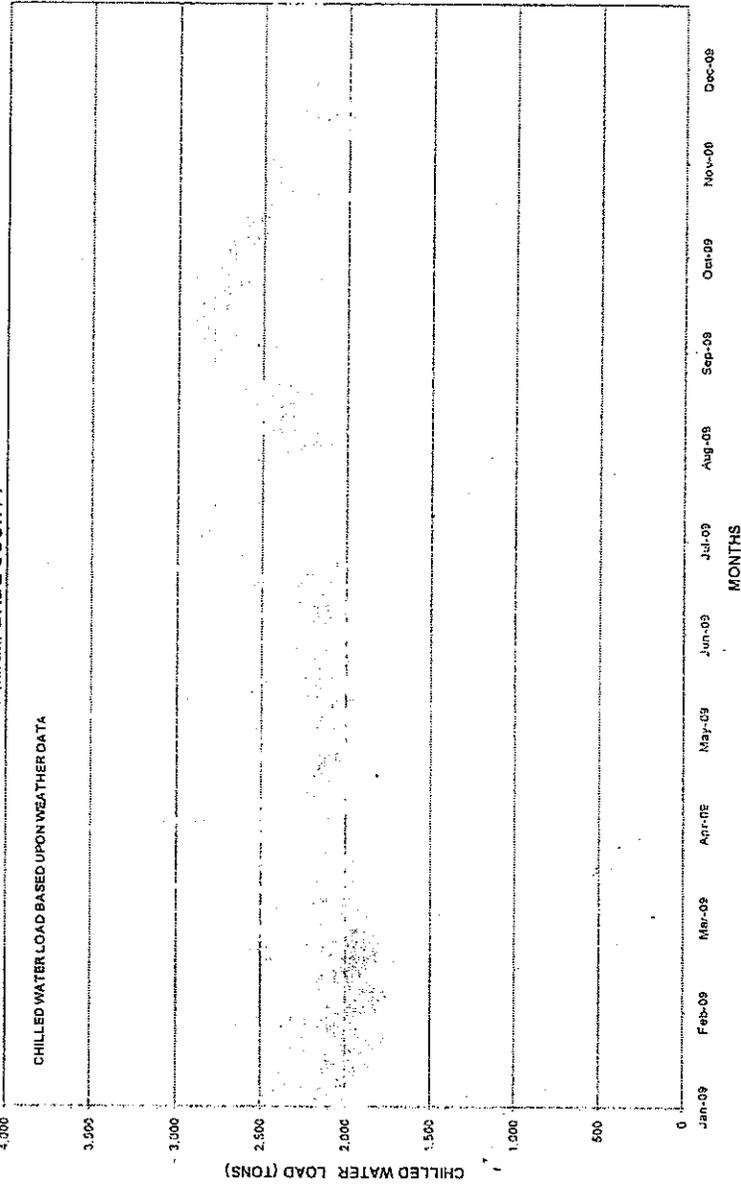
142

FIGURE NO. 8: COOLING LOAD VS WET-BULB TEMPERATURE  
 2009 NORTH CHILLER PLANT  
 MIAMI DADE COUNTY



143

FIGURE NO. 9: ANNUAL CHILLED WATER LOAD - 2009  
 NORTH CHILLER PLANT  
 MIAMI DADE COUNTY



Miami-Dade County

24

May 5, 2010

144

The on-peak usage rates for the North Plant are higher than the rates for the CSF Plant, but the North plant is charged a lower off-peak electric rate when compared to the CSF Plant. A comparison of the electric rates is summarized below:

Plant	Summer Rates			Winter Rates		
	Demand Costs (\$/kW)	On-Peak Usage Rate (\$/kWh)	Off-peak Usage Rate (\$/kWh)	Demand Costs (\$/kW)	On-Peak Usage Rate (\$/kWh)	Off-peak Usage Rate (\$/kWh)
CSF Plant	9.84	0.0765	0.0765	9.84	0.0765	0.0765
North Plant	9.84	0.0957	0.0637	9.84	0.0937	0.0695
Difference	---	+25%	-17%	---	+22%	-9%

### 3. ENERGY USE PROFILES

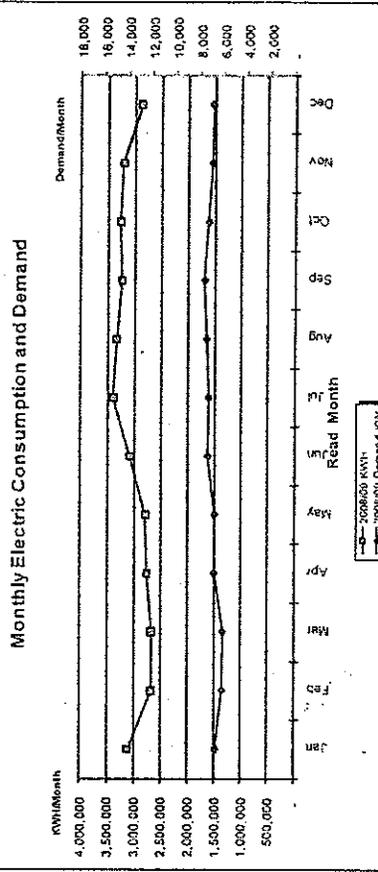
The following graphs and tables represent the actual/metered energy usage of this facility.

148

**Total Facility Utility History**

MDC CSF Main Meter Serving Plant and Other Buildings

Read Date	Day	KWH	Consumption (\$)	KV	Electric Rate		Total (\$)	KVA3	KVAH	LF
					General	Service Lamps Demand				
Jan	31	3,114,000	\$ 237,238	6,561	\$ 65,708	\$ 202,947	\$ 0.0973	61%	57%	
Feb	30	2,668,000	\$ 203,287	6,073	\$ 59,908	\$ 202,205	\$ 0.0953	61%	61%	
Mar	31	2,557,182	\$ 202,554	6,027	\$ 59,454	\$ 201,719	\$ 0.0951	59%	59%	
Apr	29	2,755,000	\$ 208,557	6,791	\$ 66,991	\$ 215,528	\$ 0.1050	58%	58%	
May	28	2,785,000	\$ 208,672	6,770	\$ 66,784	\$ 215,456	\$ 0.0959	59%	59%	
Jun	30	3,079,000	\$ 226,210	7,321	\$ 72,219	\$ 209,430	\$ 0.0959	58%	58%	
Jul	31	3,396,000	\$ 250,037	7,283	\$ 71,844	\$ 211,881	\$ 0.0948	61%	61%	
Aug	29	3,336,000	\$ 246,414	7,451	\$ 73,502	\$ 218,816	\$ 0.0950	64%	64%	
Sep	29	3,233,000	\$ 242,349	7,681	\$ 75,675	\$ 217,922	\$ 0.0963	61%	61%	
Oct	29	3,286,000	\$ 250,151	7,300	\$ 72,012	\$ 228,163	\$ 0.1005	64%	64%	
Nov	31	3,210,000	\$ 251,859	6,993	\$ 68,984	\$ 220,667	\$ 0.0959	62%	62%	
Dec	31	2,972,000	\$ 223,955	6,555	\$ 68,548	\$ 202,613	\$ 0.1019	55%	55%	
Totals	364	38,581,182	\$ 2,794,816	68,290	\$ 2,112,229	\$3,378,477	\$ 0.0983	65%	65%	
Average	30	2,798,352	\$ 211,000	6,407	\$ 63,203	\$ 208,037				

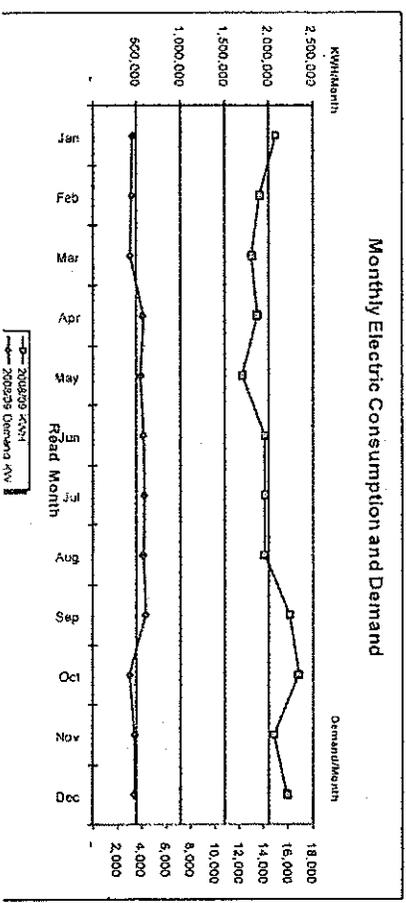


146

**Total Facility Utility History**

MDC Ice Plant

Rate	Days	KWH	Consumption (\$)	Basic Rate (\$/KWH)	General (\$/KWH)	Special (\$/KWH)	Lamp (\$/KWH)	Power (\$/KWH)	MF	LF
Jan	32	2,079,890	\$ 157,670	3,239	\$ 32,534	\$ 156,204	\$ 2,915	3,298	82%	
Feb	32	1,858,400	\$ 143,464	3,218	\$ 31,745	\$ 174,208	\$ 0,9923	3,297	76%	
Mar	29	1,806,480	\$ 136,914	3,082	\$ 30,403	\$ 107,317	\$ 0,9976	3,236	80%	
Apr	29	1,987,440	\$ 142,445	4,149	\$ 40,929	\$ 183,374	\$ 0,9982	4,149	82%	
May	28	1,859,690	\$ 129,013	3,879	\$ 38,252	\$ 108,265	\$ 0,9980	3,979	81%	
Jun	32	1,952,640	\$ 144,446	4,153	\$ 41,264	\$ 187,110	\$ 0,9981	4,183	81%	
Jul	30	1,956,480	\$ 145,096	4,295	\$ 42,073	\$ 187,169	\$ 0,9987	4,265	84%	
Aug	26	1,948,320	\$ 145,233	4,154	\$ 40,978	\$ 186,211	\$ 0,9985	4,288	86%	
Sep	32	2,238,440	\$ 168,806	4,358	\$ 43,080	\$ 211,895	\$ 0,9946	4,388	87%	
Oct	29	2,340,720	\$ 183,614	3,084	\$ 30,127	\$ 213,241	\$ 0,9913	4,431	78%	
Nov	29	2,058,580	\$ 162,858	3,480	\$ 34,221	\$ 197,078	\$ 0,9938	4,159	78%	
Dec	31	2,200,200	\$ 173,478	3,419	\$ 33,721	\$ 207,208	\$ 0,9938	3,511	78%	
<b>Totals</b>	<b>306</b>	<b>24,094,200</b>	<b>\$ 1,833,005</b>	<b>44,658</b>	<b>\$ 44,535</b>	<b>\$ 2,373,576</b>	<b>\$ 0,9945</b>	<b>3,636</b>	<b>90%</b>	
<b>Average</b>	<b>30</b>	<b>1,850,350</b>	<b>\$ 141,003</b>	<b>3,494</b>	<b>\$ 33,872</b>	<b>\$ 186,448</b>				



Miami-Dade County

27

May 5, 2010

147

---

#### 4. ANALYSIS METHODOLOGY

##### 4.1 DESCRIPTION OF METHODS

###### 4.1.1 *Loads and Systems*

Chiller plant load and plant energy calculations are performed using wet-bulb regression that has been field-verified for load calibration to confirm plant efficiency. Distribution system hydraulics were calculated by using PIPE-FLO hydraulic modeling.

Accurate HVAC systems information for the facility was obtained from mechanical plans provided by the County, as well as site surveys and interviews. The computer program uses the resulting loads and the system parameters to calculate the cooling and heating load profiles for the facility on an hourly basis. The program uses a weather file representing the average hourly temperature profiles for Miami, FL.

###### 4.1.2 *Plant Equipment & Energy Consumption*

Accurate information describing the energy consuming equipment in the central plant is input into this portion of the computer model. The program uses the load profiles and system requirements to calculate the energy consumption during on-peak and off-peak periods.

###### 4.1.3 *Energy Economics*

In this final section, current electric rate structures are defined in the computer model. The program uses this information to apply cost to the energy consumption calculated in sections b and c. The model is then adjusted until the following criteria are met:

- i. Calculated plant and system loads closely match the actual installed capacity.
- ii. Calculated energy consumption closely matches the actual energy consumption determined from the utility bills when available.
- iii. Calculated peak demand closely matches the actual demand determined from the utility bills.

---

#### 4.1.4 Method for Estimating Savings

The existing condition energy consumption calculated uses the appropriate electric rate structure and calculates the operating cost of each plant. This operating cost is then compared to the actual cost obtained from the utility bills and tweaked or calibrated until it closely matches the facility usage.

The input was interlaced with Miami's Typical Meteorological Year (TMY) weather data to calculate annual energy consumption and is representative of existing conditions.

Because weather conditions vary from year to year, the calculated annual energy consumption and cost will not (and should not) be exactly equal to the actual energy consumption over the past year. However, the calculated results should be close in value to the actual consumption and cost. Moreover, the calculated relative system efficiencies should track.

The resulting model is then used as the base model from which all energy and cost consumptions are computed under various load and plant configuration profiles. The baseline output model is shown in Table No. 10 of the report.

This model, once calibrated against actual, is modified to reflect the various scenarios developed in the report.

#### 4.1.5 Model Calibration

The model was run under existing conditions and compared to actual utility bills and chilled water production records.

Because the CSF electric meter serves house loads to many of the county buildings, the known house loads of the Courthouse Center, Hickman Building and OTV-1 was used as a basis to extract an estimated house load for the remaining buildings served by the CSF meter.

This exercise is developed in the Insert below:

Buildin	Sq Footage	FPL House Load	
		(kwh	KWH/ft <sup>2</sup> /yr
Courthouse Center	341,00	3,762,317	11.0
Hickman	69,000	1,182,067	17.1
OTV Phase 1	350,00	4,565,538	13.0
subrota	760,00	9,509,922	12.5
Stephen P Clark Ctr.	672,00		
Cultural Center	285,00		
Flagler Building	166,00		
Courthouse	280,00		
Carol Daycare	7,90		
Central Support	32,700	Estimated Remaining House	
subtota	1,443,600	18,063,847 kwh	
total	2,203,600		
		Last year's CSF FPL	
		36,381,182 kwh	
		Balance for Plant (kwh)	Chilled water produced (million ton-
	Balance for chiller	18,317,335	16.5
<i>Now Add OTV-2 full load</i>			
350,000 sq. ft.			
	Adjusted for new OTV Phase 2 load	22,758,363	19.1
	OTV-2 Added to Modelled Baseline	24,800,000	19.6

Based on this analysis, the existing CSF plant consumes 18.3 million KWH/yr producing 16.5 million ton-hrs of load by serving all but the recently connected OTV-2 building. The addition of OVT-2 should bring the annual electric consumption and load to 24.8 million KWH/yr and 19.6 million ton-hrs, respectively.

150

Referring to Table No. 10, the summary of these two comparisons are as follows:

**Comparison of Actual to Model**

Scenario	Central Support Plant	
	Electricity (kwh)	Chilled Water Production (Million ton-hrs)
Estimated Actual	22,758,363	19.1 million ton-hrs
Modelled Baseline	24,800,000	19.6 million ton-hrs
	9.0%	2.5%

Scenario	North Plant	
	Electricity (kwh)	Chilled Water Production Million ton-hrs
Actual	24,054,240	22.4 million ton-hrs
Modelled "As-Is"	23,032,000	22.4 million ton-hrs
	4.2%	0.0%

As can be seen, the model calibrates well to actual electric usage and chilled water production of the North Plant. The Central Support modeled electricity is a bit further from the estimated electricity consumed by the Central Support Plant, but the actual electricity used to compare is an estimate and less precise than an actual utility bill. Moreover, from a KWH/Ton-hr produced, the CSF model compares within 6% of the actual, which implies a closer correlation.

151

---

#### 4.1.6 Method for Verifying Savings

The International Protocol for Measurement and Verification of Performance will be followed and memorialized in the project contract. This protocol specifies that the measurement and verification ("M&V") of energy savings for implemented projects follow one of four verification schemes, titled Option A, Option B, Option C or Option D.

The proposed metering and verification approach for this project is the International Performance Measurement and Verification Protocol (IPMVP) Option A: End-Use Retrofits - Measured Efficiency, Stipulated Consumption Approach.

There are three two performance elements that will be part of the M&V Plan:

1. Chiller efficiencies pre-retrofit and post-retrofit at the Central Supply Plant and the North Plant.
2. Chilled water load shift capacity from the thermal storage tanks.

The existing chiller efficiencies will be agreed to based on actual measurements of their performances. The project will also make, or cause to be made via a factory certified test, the efficiency measurements of the new chillers to be installed as part of this project.

The new chiller efficiencies will be measured annually. As long as the efficiency is at or above the efficiency anticipated, this measure will be deemed as performing. Both new and existing machines degrade with time. They will be assumed to degrade at the rate of 0.5% per year over the term of the contract. If the measured efficiency deviates from the expected efficiency for that year, the efficiency will be re-run in the model to determine the excess or shortfall of savings.

Specific to the thermal storage tank to be installed, a guarantee of capacity storage and the controls sequence to provide the project's load shift will be established at project hand off.

---

## 5. ECM DESCRIPTION

### 5.1 RECOMMENDED ECM

A comprehensive Energy Conservation Measure was evaluated to determine if the associated system changes resulted in an economic advantage to meet both the current load, as well as the future loads associated with two new building loads soon coming on line. The evaluation was based on comparing the Energy Conservation Measure to an ECM Baseline Scenario (expanded CSF plant). The energy model was utilized based upon the annual load profile developed from both the chiller log data and historic weather data.

As developed in the previous section, the CSF load profile utilized was based upon the current system requirements without the 2010 addition of OVT-2, was modeled to be 16.3 million ton-hrs. With the new OVT-2 load, the annual ton-hr load is 19.6 million ton-hrs.

Miami Dade County has identified two new building projects to occur in the near future, which will be connected to the CSF system. A site plan indentifying the future projects is presented in Figure No. 12. The imminent new cooling loads were based upon previous studies and are summarized in below:

West Lot Garage and Office Building:	200 tons
Juvenile Justice Courts	1,520 tons

The cooling load profile utilized in the energy model was adjusted to include both future buildings. According to Table No. 10, the future annual load with these two buildings on line will be 26,238 ton-hrs/yr, which is up from 19,600 ton-hrs/yr that includes the newly added OVT-2, which was already up from 16.3 million ton-hrs established prior to the addition of OVT-2.

Clearly, CSF has been stretched beyond its designed operating capacity.

#### 5.1.1 *ECM Baseline Scenario*

---

The existing condition related to the CSF plant cannot be the ECM Baseline for subsequent analysis. This is because the loads on the CSF plant will exceed its capacity. As such, the ECM Baseline option available to Miami Dade County, which assumes the North Plant is not available for use to meet the increased load, would be to upgrade the existing CSF plant with new, larger chillers and to mitigate the distribution capacity limitation by running a parallel supplemental distribution line. As referenced in Table No. 9, the baseline scenario for the CSF Plant includes the replacement of Chiller Nos. 2, 3, and 4 with three 2,050 ton chiller units and the installation of one additional 2,050 ton units. These new chiller units would be required to support the future chilled water load should the North Plant not be available for interconnect.

According to the results of the modeling shown in Table No. 10, the ECM Baseline scenario has an annual energy cost of \$4,060,000 per year meeting a annual load for the two plants of 48,629 ton-hrs.

It should be noted that comparing the ECM Baseline against the existing load model, the CSF-specific annual cooling load increases from 19,626 ton-hrs to 26,238 ton-hrs, while the electric cost increases from \$ 2,380,000/yr to only \$2,390,000/yr. The minimal electric annual cost increase to serve the larger annual load is because it was assumed for this baseline new chillers would be installed with present-day efficiencies, which are much better than the existing chillers.

As just mentioned, the ECM Baseline scenario bakes in a built-in efficiency gain, which lowers the electric cost savings potential of the ECM-1, which is to combine the two plants and fully build out the North Plant. But, that Baseline ECM benefit comes at a significant cost and significant operational disruption – as it would require a complete update of the CSF plant, as well as an installation of a supplemental distribution pipe run parallel to the existing CSF distribution pipe run. Further, this ECM Baseline scenario offers no future expandability and flexibility option, for the County.

#### *5.1.2 ECM-1 Scenario*

The Energy Conservation Measure (ECM-1) considered includes interconnecting the two campuses with a 24-inch main from the corner of OTV-1 Building, on NW 8<sup>th</sup> Street side, and N. Miami Avenue and NW 8<sup>th</sup> Street

(adjacent to the Terremark Building). This would allow the two plants to operate together to optimize system operation based upon unit efficiency, thermal storage benefits, and utility rates. Since the North Plant distributes water at 36 F, a heat exchanger is recommended to supply chilled water to the CSF loads. The general pipe routing is presented in Figure No. 11.

The preferred location for the heat exchanger is within the Terremark mechanical room. The size of the heat exchanger is limited by maximum chilled water flow of 10,000 gpm (at 10 fps) in the existing 20-inch piping supply to the Overtown Transit Villages. The interconnecting heat exchanger would transfer approximately 5,000 tons to the CSF system.

The following is a quick summary on the capacity needs for the future heat exchanger.

The heat exchanger installed in the Terremark Building that interconnects the North Plant to the CSF Plant would be sized to transfer approximately 5,000 tons from the ice storage system (fed from the North Plant) to the standard chilled water system (CSF Loop). The following are the general conditions for the heat exchanger:

Waterside	Water Flow (gpm)	Entering Water Temp (°F)	Leaving Water Temp (°F)
36°F side (North Plant)	7,100	36	53
42°F side (CSF)	10,000	54	42

Additionally, ECM-1 includes two new 1,500 ton chillers to replace two existing 1,500 tons chillers in the CSF plant and a temporary 900 ton rental chiller in the short term to address the deficient redundancy of installed capacity with the addition of the OTV-2 cooling load in 2010. Also, these two new 1,500 ton chillers will allow the interconnected system to operate without the use of the existing R-11 units.

In general this option reduces on-peak energy costs by serving a significant portion of the CSF load from the North Plant thermal storage system. The off-peak energy costs are reduced by utilizing the more efficient North Plant standard duty chillers at an electric rate lower than the CSF Plant. This option is estimated to save \$390,000 per year in annual electric costs beyond the savings that would have been available through the ECM Baseline scenario.

155

---

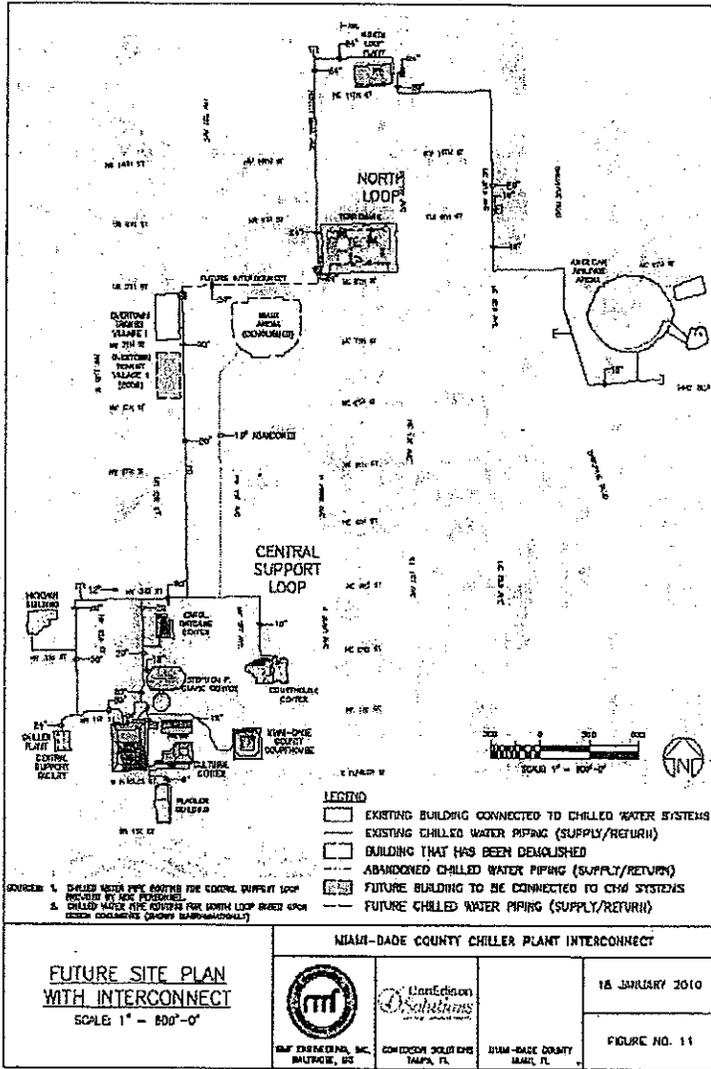
### 5.1.3 Baseline and ECM Scenario Comparison

A comparison of the key assumption for each scenario is presented in Table No. 9.

The annual cost for each of the scenarios was completed by applying the appropriate utility rate to the energy usage developed in the energy model. The annual energy use and cost for each of scenario is summarized in Table No. 10.

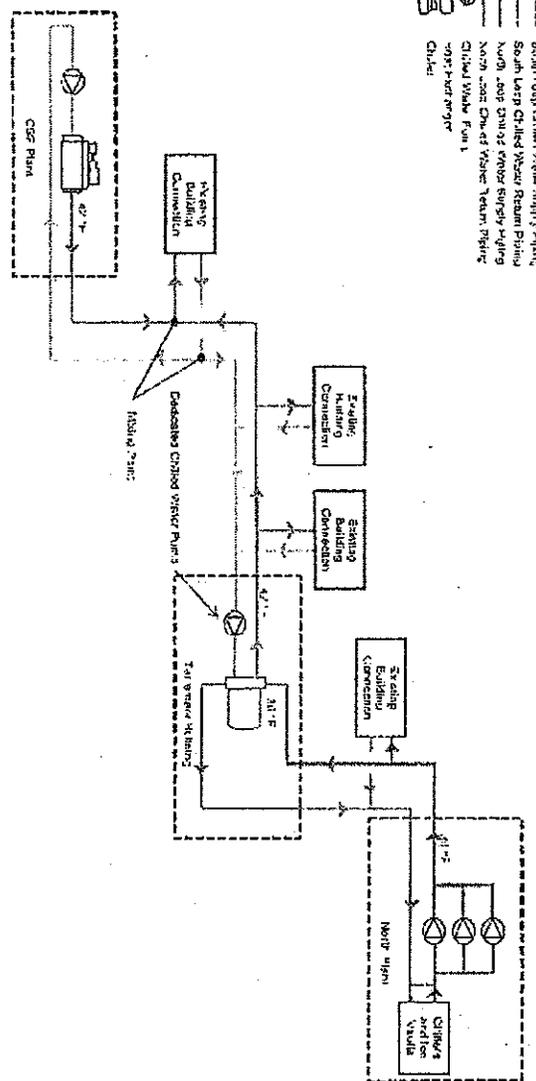
It should be noted the sequencing of the chillers between the two plants can be driven to either 1) emphasize full-storage first at the North Plant and then move excess load to CSF to avoid partial storage, or 2) first base load CSF's new equipment and serve the balance of the remaining load through the North Plant.

Preliminary assessment of these two options shows a near-neutral impact to the savings. As such, for the purpose of this report, the full storage priority was selected for presentation purposes. As the North Plant's retail load increases, which is good for the County, but whose value cannot be reflected in this PC analysis, the County has the option to shift its internal cooling load to the two new CSF chillers.



157

- South Loop Chilled Water Return Piping
- North Loop Chilled Water Supply Piping
- Chilled Water Plant
- 100% Fresh Air
- Chiller



**PRELIMINARY FUTURE INTERCONNECTION SCHEMATIC**  
CONNECTIONS

PAKISTANI A&E INTERCONNECTION OF EQUITY-DIVIDED DISTRICT COOLING PLANTS AND LOOPS			
26 MARCH 2010			

158

TABLE NO. 9: ASSUMPTION COMPARISON FOR ENERGY MODELING  
MIAMI DADE COUNTY

PLANT	DESCRIPTION	UNITS	BASISLINE SCENARIO (2,350 UNITS)	ECM MODEL	COMMENTS
CENTRAL SUPPORT FACILITY	PEAK LOAD	TONS	7,500	7,500	
	AVERAGE CHILLED WATER TEMPERATURE DIFFERENCE	°F	5	11	
	EXISTING CHILLER CAPACITY	TONS	1,150	5,610	
	FUTURE CHILLER CAPACITY	TONS	2,100	3,000	
	CHILLER NOS. 2, 3, AND 4 EFFICIENCY	KW/TON	...	1.10	LAST PRIORITY
NORTH PLANT	CHILLER NOS. 5 EFFICIENCY	KW/TON	0.70	0.70	SECOND PRIORITY
	FUTURE CHILLER EFFICIENCY	KW/TON	0.58	0.55	FIRST PRIORITY
	PEAK LOAD	TONS	4,000	4,000	
HEAT EXCHANGER	AVERAGE CHILLED WATER TEMPERATURE DIFFERENCE	°F	17	17	
	PLANT CAPACITY	TONS	5,000	5,200	
	ICE STORAGE CAPACITY	TON-HRS	33,000	52,500	
	STANDARD DUTY CHILLER EFFICIENCY	KW/TON	0.68	0.68	AT 36°F SUPPLY TEMPERATURE
	ICE STORAGE DISCHARGE EFFICIENCY	KW/TON	0.04	0.04	PUMPING ONLY
HEAT EXCHANGER	ICE STORAGE GENERATION EFFICIENCY	KW/TON	0.88	0.88	
	PLANTS INTERCONNECTED		N	Y	
	HEAT EXCHANGER CAPACITY	TONS	...	5,000	
HEAT EXCHANGER PUMPING EFFICIENCY		KW/TON	...	0.02	PUMPING ONLY

NOTES: ... INDICATES CHANGES FROM BASELINE  
 Miami-Dade County's Assumptions Changed from ECMI 39 May 5, 2010  
 RRAFT MAY 2010

TABLE NO. 10: ENERGY AND COST COMPARISON FOR BASELINE AND ECM SCENARIOS  
MIAMI DADE COUNTY

	EXISTING LOAD AND EQUIPMENT (INCL. OVT-2)						ECM BASELINE (New loads and Replace CSF w/ 4-2,050 TON UNITS)						ECM-1			
	THERMAL OUTPUT (10 <sup>6</sup> kWhrs)	ENERGY USE (MWH)	SYSTEM EFFICIENCY (KW/TON)	ENERGY COST (\$)	THERMAL OUTPUT (10 <sup>6</sup> kWhrs)	ENERGY USE (MWH)	SYSTEM EFFICIENCY (KW/TON)	ENERGY COST (\$)	THERMAL OUTPUT (10 <sup>6</sup> kWhrs)	ENERGY USE (MWH)	SYSTEM EFFICIENCY (KW/TON)	ENERGY COST (\$)	THERMAL OUTPUT (10 <sup>6</sup> kWhrs)	ENERGY USE (MWH)	SYSTEM EFFICIENCY (KW/TON)	ENERGY COST (\$)
ON-PEAK																
CSF CHILLER SYSTEM	6,392	7,596	1.19	1,190,000	8,545	7,589	0.89	1,200,000	2,479	1,837	0.74	340,000				
ICE BELT BUILD	6,289	6,827	1.09	680,000	5,288	6,827	1.09	680,000	12,356	12,710	1.03	1,300,000				
NORTH PLANT CHILLERS	***	***	***	***	***	***	***	***	***	***	***	***				
SUBTOTAL	12,680	14,413	1.14	1,870,000	14,833	14,416	0.87	1,880,000	14,836	14,547	0.98	1,640,000				
OFF-PEAK																
CSF CHILLER SYSTEM	13,234	15,613	1.20	1,190,000	17,693	16,551	0.88	1,190,000	434	900	2.07	70,000				
NORTH PLANT CHILLERS	16,103	14,263	0.89	990,000	16,103	14,249	0.88	990,000	33,361	28,226	0.86	1,960,000				
SUBTOTAL	29,337	30,880	1.03	2,180,000	33,795	29,800	0.88	2,180,000	33,795	29,126	0.88	2,000,000				
TOTAL	42,017	44,493	1.06	4,050,000	48,629	44,216	0.91	4,060,000	48,631	43,672	0.90	3,670,000				
DIFFERENCE FROM ECM BASELINE (\$)	390,000															

NOTE: ENERGY USE FOR ICE BELT BUILD INCLUDES THE OFF-PEAK ELECTRIC FOR ICE GENERATION WHICH IS ALSO REFLECTED IN THE ENERGY COST.

RMF 8 MAY 2010

160

---

## 6. Project Economic Summary

### 6.1 Construction Capital Costs

As developed in the Appendix, the turnkey cost to fully expand the North Plant, to install a heat exchanger in the Terremark facility, to connect the two loops by running a line from Terremark to Overtown II, to make appropriate secondary loop modifications, install a temporary 900 ton chiller at CSF and to install two 1,500 ton chillers in Central Support (ECM-1 scope) is \$19,614,546.

For the work contemplated here, this project will allow for 3,600 tons of chilled water peak load shift. As such, based on \$484 rebate per ton shifted, this project should be eligible for a rebate of up to \$1,742,000.

Rebate paperwork is already in process and will be completed and submitted to FPL prior to submitting this project for County Commission approval.

So, the total project construction cost listed above will be \$19,614,546 before rebate that will be reduced to \$17,872,146 after rebate.

Similarly, as developed in the Appendix, the ECM Baseline preliminary cost estimate of upgrading the CSF to meet the future load by installing four 2,000 ton chillers, adding a second distribution line to serve the County buildings, by providing a temporary chiller during the extended construction period is estimated at \$10,616,892.

### 6.2 Construction Project Economic Comparisons

Considering the breadth of this interconnect project, this project offers strong economic vehicle to meet the County's growing chilled water load.

In addition to the annual electric cost savings developed above, the County will reduce its operating expense budget by at least \$200,000/yr, and perhaps as much as \$350,000, through the synergies available in-house staff being able to operate and monitor both plants, instead of having the North Plant operated and monitored by outside resources.

Adding the operational cost savings benefit, the annual savings is \$590,000/yr compared against the Baseline ECM of upgrading the CSF plant. Thus, the incremental simple payback is 15.3 years before thermal rebate considerations, which improves to 12.3 years after thermal rebate consideration.

---

This is a compelling incremental cost benefit considering the additional benefits of this project over the option of just expanding the CSF plant:

1. The two County's two plants will now be interconnected for improved reliability and flexibility, which was the thesis of the County purchasing the North Plant,
2. The North Plant will be fully expanded giving the County the flexibility to serve the growing retail load of Terremark, the American Airline and to consider other proximity-close and economically attractive revenue loads,
  - a. It should be noted the built in economic benefit of increasing the retail revenue producing loads cannot be factored into the "savings based" PC analysis, it remains, nonetheless, significant.
3. A foot print that now allows for future expansion of CSF plant when revenue generating loads increase.

### 6.3 Performance Contract Project Economics

The previous section established that the incremental construction cost vs. incremental savings benefit is attractive, the project is proposed to be facilitated through a Performance Contract. While this will increase the project costs to cover financing, measurement and verification, and savings guarantees, the project is more robust and comprehensive for the County.

The full PC Project cost, before financing, is developed in the Appendix to be \$20,310,691, and that fee now includes Miami-Dade program administration cost, the IGA analysis fee, the subsequent and on-going M&V services. With consideration of following assumptions lined out in the Appendix, this project can be financed in a 15 year term, provide a neutral to positive cash flow to the County and provide for an SIR greater than 1.0:

1. Calculated savings of \$390,000 will be guaranteed at 95%, or \$370,000/yr.
2. The low end of the \$200,000/yr to \$350,000/yr of the go-forward operating and maintenance savings will be applied,
3. Thermal storage rebate is \$1,742,400,
4. The ECM Baseline alternative cost of completely upgrading the CSF is considered and it is assumed that the \$10,616,892 would have been financed through a bond,
5. The remaining \$2,500,000 available from the revenue bond that purchased the plant is used as a capital cost buy down. It should be emphasized the capital cost buy down is factored into the SIR analysis, but the County is benefiting by the elimination of the finance charge of that amount in the project economics.

---

It should be noted that even without the thermal storage rebate and without the capital buy down, the project is still eligible for a performance contract (i.e. SIR greater than 1.0), but the contract term would have to extend to the statutory limit of 20 years.

---

7. APPENDICES

104

---

7.1 Appendix 1 - Cooling Loads

165



---

7.2 Appendix 2 - Chiller Plant Efficiency

107

---

As part of the Expansion and Interconnection analysis a baseline of the CSF Chilled Water plant operating efficiency was developed. The existing plant automation system has most of the data continuously monitored although after further review it was decided to apply independent measurements to verify the system instrumentation and attain a set of data from a known source.

To determine the various operating efficiencies of the plant the kW/ton of each machine and the kW/ton of the entire plant was calculated and trended for a full seven days. The kW/ton of each machine is a comparison of the power drawn by the chiller itself compared to the amount of chilled water produced by that specific machines evaporator at the same time. The kW/ton of the plant is a comparison of the power drawn from all operating equipment associated with the chilled water production compared to the chilled water production of the plant at the main supply and return lines. The plant kW/ton includes cooling tower fans, condenser pumps and primary chilled water supply pumps in the plant although it doesn't include any distribution system pumping at the buildings.

Each of the four chillers are electric driven centrifugals run on a three phase 4160V electric feed directly off of the main 13.8kV bus. Within the chiller plant each of the chillers has an independent 4160MCC panel. Since the service is above 600V and direct access wasn't available to the PT's(Potential Transformers) for voltage readings or CT's(Current Transformers) for amperage readings the instruments were applied to the leads for the panel displays. CH-5 was the only chiller with panel displays for both voltage and amperage. CH-2, 3 and 4 had amperage display feeds readily available so they were monitored and recorded. Since the machines are very similar the voltage and power factor data of CH-5 was also applied to CH-2, 3 and 4 for the calculation of kW on each machine.

The pumps, cooling tower fans and emergency chillers are powered using MCC-1, MCC-2 and MCC-EM respectively(although CT-1 is fed through MCC-EM to maintain a CT for the emergency chiller operation) with a three phase 480V connection. These MCC's are also located in the chiller plant and were each metered independently which accumulated the ancillary power consumption of the plant.

---

### Review of Data

A summary of the quantitative data analysis is contained in "Table No. 2" of the report listing the performance of each day from 12/10/09 through 12/17/09. The data collection was performed at the same time as the plant intended to perform annual maintenance on the condenser tube bundles of each machine. In planning this would have worked well with a different machine taken out of service every 24-48 hours which would have presented several different combinations of machines to meet the load at the given time. Unfortunately CH-2 was more difficult to reseal than the service team expected so it was out of service the majority of the data collection period.

The data collection period gave a decent representation of the yearly plant operation as the wet bulb temperature varied from a high of 75° to a low of 48° and combined with a system load high of a 4,500 ton rate down to a 1000 ton rate. These ranges allowed machines to demonstrate performance under full and part loads. The data collection period also gave some perspective to differences between day, night and weekend (12/12, 12/13) operation.

As a general overview CH-2, 3 and 4 seemed to behave very similar based on the field readings, which is expected as they are of the same vintage. The newer machine CH-5 operated at an efficiency closer to its original design parameters than the other machines.

It's interesting to note that while the average plant kW/ton was compiled as 1.10 the recorded range was from 1.0 to 1.46 which seemed to reflect the full to part load performance. This indicates that the part load performance of the plant has a significant amount of room for improvement since the efficiency in optimized plants increases as the plant load is reduced.

As a general note, the kW readings of the portable instrumentation were considerably higher than the data being fed to the Siemens automation system for each of the machines and the Siemens values for CH-3 are significantly lower. We didn't take the time to troubleshoot the associated fixed instrumentation although it will need to be investigated, calibrated or replaced in order to have accurate "Measurement & Verification" procedures in place should the project be implemented. The flow readings of the fixed meters were in range of the portable equipment most likely because there is fairly adequate straight run of pipe available for most of the pipes in the plant. That said, the main plant meters could be repositioned to attain a higher level of accuracy and repeatability for the M&V.

### Recording interval

The data of each individual logger was recorded for all measurements with a

date and time stamp in 5 minute intervals from 12:00PM on 12/10/09 through 12:00PM on 12/17/09. All the data samples were then integrated into one spreadsheet and values were averaged for a 15 minute and 60 minute interval analysis.

#### **Power Monitoring Equipment Used**

The power data measurements for the 7 day period were monitored and recorded using a Dent Instruments ELITEpro™ Power Logger's with ELOG 2004 software for interface and set up. The logger has integral voltage clips and utilized Hi Accuracy 5amp current transducers for the 4160V Chiller monitoring applied to the panel display amp meters. The configuration is rated at 1% of rate accuracy and is calibrated every other year to maintain factory standards.

MCC-1, MCC-2 and MCC-EM were also separately monitored and recorded using a Dent Instruments ELITEpro™ Power Logger with ELOG 2004 software for interface and set up. The logger has integral voltage clips and utilized 500 amp clamp or model CON-0500 current transducers. The configuration is rated at 1% of rate accuracy and is calibrated every other year to maintain factory standards.

To increase the confidence level of the power measurements a power factor and power quality measurement of Chiller #5 was also taken on 1/21/10 using a Dranetz Power Platform PP-4300 with Dran-View 6.0 software. The unit has integral voltage clips and utilized TR2510 10amp current transducers TR2510 10amp.

#### **Thermal Energy Metering Equipment Used**

The thermal energy measurements for the 7 day period were monitored and recorded from two different sources. The Siemens automation system currently employs Onicon insertion turbine chilled water flow meters on each chillers, the emergency CHW return line and the plant main CHW return line. The Siemens system also records the CHWST and CHWRT of each chiller, the emergency lines and the main plant lines.

To independently field verify these measurements a Siemens SITRANS FUE1010 EDP Dual Channel Thermal Energy Flow Computer with software version 4.03.00 was used to monitor and record flow, CHWST, CHWRT, tons and other diagnostic data. Siemens D1H High Precision Transducers were mounted on the pipes to measure flow using an ultrasonic transit time reflect mode measurement. The temperature sensors are precision matched 4 wire 1000ohm platinum RTDs directly wired into the thermal energy computer.

---

Michael W. Gibson

To: Joseph Hoose  
Subject: RE: MDC results review

From: Joseph Hoose [mailto:jhoose@icetec.biz]  
Sent: Friday, December 11, 2009 12:52 AM  
To: 'Andrew Jones'; Michael W. Gibson; 'Steve McAdams'; Phillip Alvarez  
Subject: RE: MDC results review

Team,

We were able to install instrumentation on each of the chillers and MCC panels today. Today's data seems to suggest that the MDC CSF kW readings are low. While setting up the loggers CH-5 was around 800kW versus the CSF number of 635kW, CH-4 and CH-3 were around 1100kW versus the CSF number of 800kW and 495kW(CH-3's kW reading has been suspect for some time) respectively. My plan was to have the loggers record for about a week while they rotate the sequence of machines each day. What is nice right now is that they need 3 machines to meet the flow and they are doing tube cleaning so they have to rotate the machines anyway. That said, to get good data I probably won't be able to get the loggers off until 12/17 and the data downloaded into a usable format and passed along to the team until Monday 12/21.

Merry Christmas,

Joseph C. Hoose  
JC

**The Trane Company**

Existing Building  
La Crosse, WI

Engineered © Performance Selection

Prepared For Central Support Facility

Area: Miami  
Contact: Unknown

Date Prepared: 10/11/1996  
Machine Model Number: CVHB - 155  
Machine Serial Number: L82M08685

**Performance**

	CFC-11		HCFC-123 Selections			
	Original Conditions	#1 #1	#2 #2	#3 #3	#4 #4	
Tons	1500	1426				
Kw	1000	1000				
Kw/Ton	0.667	0.701				
Evaporator Entering Temp	55.0	54.4				
Evaporator Leaving Temp	42.0	42.0				
Evaporator GPM	2770	2770				
Evaporator Fluid Type/%	WATER	WATER				
Condenser Entering Temp	86.0	86.0				
Condenser Leaving Temp	94.9	94.5				
Condenser GPM	4860	4860				
Condenser Fluid Type/%	WATER	WATER				

Selection Information/Explanation:

This information is based upon actual lab test data for compressor and shell performance on new equipment. Actual field performance of this unit may vary depending upon the condition of the existing components.

172

# The Trane Company

Existing Building  
La Crosse, WI

Engineered @ Performance Selection

Prepared For CENTRAL SUPPORT

Area: Miami  
Contact: Unknown

Date Prepared: 1/25/1993  
Machine Model Number: CVHD - 155  
Machine Serial Number: LB2M08684

## Performance

	CFC-11 Original Conditions	HCFC-123 Selections			
		#1 #1	#2 #2	#3 #3	#4 #4
Tons	1500	1428			
Kw	1000	1000			
Kw/Ton	0.667	0.701			
Evaporator Entering Temp	55.0	54.4			
Evaporator Leaving Temp	42.0	42.0	0.0	0.0	0.0
Evaporator GPM	2770	2770		0	0
Evaporator Fluid Type:%	WATER	WATER			
Condenser Entering Temp	86.0	86.0		0.0	0.0
Condenser Leaving Temp	94.9	94.5			
Condenser GPM	4860	4860		0	0
Condenser Fluid Type:%	WATER	WATER			

Selection Information/Explanation:

This information is based upon actual lab test data for compressor and shell performance on new equipment. Actual field performance of this unit may vary depending upon the condition of the existing components.

# The Trane Company

Existing Building  
La Crosse, WI

Engineered @ Performance Selection

Prepared For CENTRAL SUPPORT

Area: Miami  
Contact: Unknown

Date Prepared: 1/25/1993  
Machine Model Number: CVHB - 155  
Machine Serial Number: L82M08684

## Performance

	CFC-11 Original Conditions	HCFC-123 Selections			
		#1 #1	#2 #2	#3 #3	#4 #4
Tons	1500	1426	1412		
Kw	1000	1000	1000		
Kw/Ton	0.667	0.701	0.708		
Evaporator Entering Temp	55.0	54.4	54.2		
Evaporator Leaving Temp	42.0	42.0	42.0	0.0	0.0
Evaporator GPM	2770	2770	2770	0	0
Evaporator Fluid Type/%	WATER	WATER	WATER		
Condenser Entering Temp	86.0	86.0	86.0	0.0	0.0
Condenser Leaving Temp	94.9	94.5	94.4		
Condenser GPM	4860	4860	4860	0	0
Condenser Fluid Type/%	WATER	WATER	WATER		

Selection Information/Explanation:  
Selection 1 is on R-123, Selection 2 is on R-11

This information is based upon actual lab test data for compressor and shell performance on new equipment. Actual field performance of this unit may vary depending upon the condition of the existing components.

---

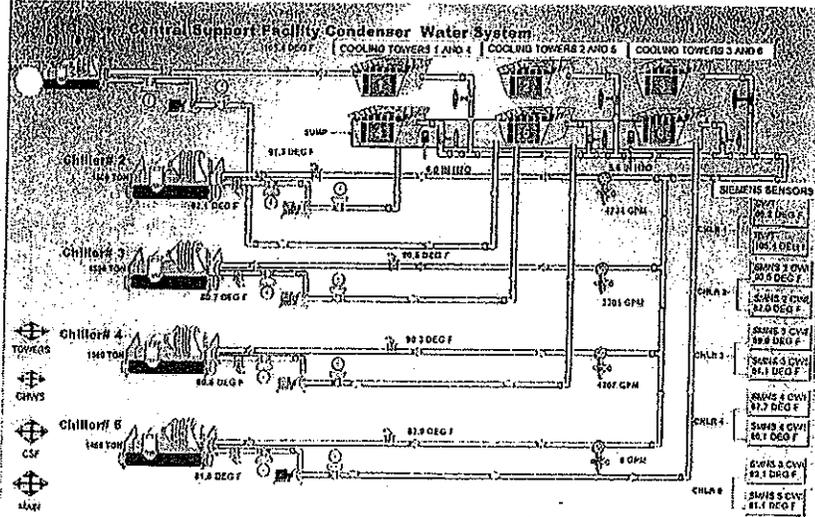
### Miami Dade Chiller Plant

	Tons	KW	KW/Tons
Chiller #2	1125	1013.6	0.901
CHW Pump #2	1125	103.7	0.092
CW Pump #2	1125	79.8	0.071
		Total	1.064
Chiller #3	1295	911.4	0.704
CHW Pump #3	1295	102	0.079
CW Pump #3	1295	78.9	0.061
		Total	0.843
Chiller #4	1057.5	1031	0.975
CHW Pump #4	1057.5	104.9	0.099
CW Pump #4	1057.5	78.2	0.074
		Total	1.148
Chiller #5	1303	781.2	0.600
CHW Pump #5	1303	98.6	0.076
CW Pump #5	1303	98.23	0.075
		Total	0.751

BCH 2001 7#8

175





Area Set For P&S & VALVES

81°F SENSING CWS SENSORS

---

7.3 Appendix 3 – Project Costing

867

**COST ESTIMATE WORKSHEET**

PROJECT NAME: DCA JV  
 DATE: 28 Jun 2010  
 ADDRESS: DCA TRACT CHILLER PLANT FULL SCALE EXPANSION  
 ESTIMATE PREPARED BY: PA, BDI  
 CITY/STATE: MIAMI, FL  
 CONTRACTOR: BDI INC.  
 CUSTOMER CONTACT NAME/PHONE NUMBER: UZUNCIAN@DCA.COM/305-376-3382  
 BID DOCUMENTS: 79A

DESCRIPTION	MATERIALS				LABOR/EXP				ITEM COST
	COST	UNIT	QTY	EXTENDED	COST	QTY	EXTENDED		
North Plant									
ECM Chiller (2500 Tons 300HP)	2,841,814	EA	1	2,841,814	1,500,000	EA	1	1,500,000	4,341,814
ECM Chiller (1500 Tons 300HP)	1,437,144	EA	1	1,437,144	819,912	EA	1	819,912	2,257,056
Tonnes Case 20 Ton/24"	1,373,937	EA	1	1,373,937	700,000	EA	1	700,000	2,073,937
COHP Pump 300 HP	1,352,000	EA	1	1,352,000	720,000	EA	1	720,000	2,072,000
COHP Pump 250 HP	1,200,000	EA	1	1,200,000	650,000	EA	1	650,000	1,850,000
COHP Pump 150 HP	1,150,000	EA	1	1,150,000	600,000	EA	1	600,000	1,750,000
COHP Pump 100 HP	1,100,000	EA	1	1,100,000	550,000	EA	1	550,000	1,650,000
COHP Pump 75 HP	1,050,000	EA	1	1,050,000	500,000	EA	1	500,000	1,550,000
COHP Pump 50 HP	1,000,000	EA	1	1,000,000	450,000	EA	1	450,000	1,450,000
COHP Pump 25 HP	950,000	EA	1	950,000	400,000	EA	1	400,000	1,350,000
COHP Pump 15 HP	900,000	EA	1	900,000	350,000	EA	1	350,000	1,250,000
COHP Pump 10 HP	850,000	EA	1	850,000	300,000	EA	1	300,000	1,150,000
COHP Pump 7.5 HP	800,000	EA	1	800,000	250,000	EA	1	250,000	1,050,000
COHP Pump 5 HP	750,000	EA	1	750,000	200,000	EA	1	200,000	950,000
COHP Pump 3 HP	700,000	EA	1	700,000	150,000	EA	1	150,000	850,000
COHP Pump 2 HP	650,000	EA	1	650,000	100,000	EA	1	100,000	750,000
COHP Pump 1.5 HP	600,000	EA	1	600,000	75,000	EA	1	75,000	675,000
COHP Pump 1 HP	550,000	EA	1	550,000	50,000	EA	1	50,000	600,000
COHP Pump 0.75 HP	500,000	EA	1	500,000	25,000	EA	1	25,000	525,000
COHP Pump 0.5 HP	450,000	EA	1	450,000	15,000	EA	1	15,000	465,000
COHP Pump 0.3 HP	400,000	EA	1	400,000	10,000	EA	1	10,000	410,000
COHP Pump 0.2 HP	350,000	EA	1	350,000	5,000	EA	1	5,000	355,000
COHP Pump 0.1 HP	300,000	EA	1	300,000	2,500	EA	1	2,500	302,500
COHP Pump 0.075 HP	250,000	EA	1	250,000	1,250	EA	1	1,250	251,250
COHP Pump 0.05 HP	200,000	EA	1	200,000	625	EA	1	625	200,625
COHP Pump 0.03 HP	150,000	EA	1	150,000	312.5	EA	1	312.5	150,312.5
COHP Pump 0.02 HP	100,000	EA	1	100,000	156.25	EA	1	156.25	100,156.25
COHP Pump 0.01 HP	50,000	EA	1	50,000	78.125	EA	1	78.125	50,078.125
COHP Pump 0.0075 HP	40,000	EA	1	40,000	62.5	EA	1	62.5	40,062.5
COHP Pump 0.005 HP	30,000	EA	1	30,000	46.875	EA	1	46.875	30,046.875
COHP Pump 0.003 HP	20,000	EA	1	20,000	31.25	EA	1	31.25	20,031.25
COHP Pump 0.002 HP	15,000	EA	1	15,000	23.4375	EA	1	23.4375	15,023.4375
COHP Pump 0.001 HP	10,000	EA	1	10,000	15.625	EA	1	15.625	10,015.625
COHP Pump 0.00075 HP	7,500	EA	1	7,500	11.71875	EA	1	11.71875	7,511.71875
COHP Pump 0.0005 HP	5,000	EA	1	5,000	7.8125	EA	1	7.8125	5,007.8125
COHP Pump 0.0003 HP	3,500	EA	1	3,500	5.46875	EA	1	5.46875	3,505.46875
COHP Pump 0.0002 HP	2,500	EA	1	2,500	3.90625	EA	1	3.90625	2,503.90625
COHP Pump 0.0001 HP	1,500	EA	1	1,500	2.34375	EA	1	2.34375	1,502.34375
COHP Pump 0.000075 HP	1,000	EA	1	1,000	1.5625	EA	1	1.5625	1,001.5625
COHP Pump 0.00005 HP	750	EA	1	750	1.171875	EA	1	1.171875	751.171875
COHP Pump 0.00003 HP	500	EA	1	500	0.78125	EA	1	0.78125	500.78125
COHP Pump 0.00002 HP	350	EA	1	350	0.546875	EA	1	0.546875	350.546875
COHP Pump 0.00001 HP	250	EA	1	250	0.390625	EA	1	0.390625	250.390625
COHP Pump 0.0000075 HP	175	EA	1	175	0.29375	EA	1	0.29375	175.29375
COHP Pump 0.000005 HP	125	EA	1	125	0.20625	EA	1	0.20625	125.20625
COHP Pump 0.000003 HP	87.5	EA	1	87.5	0.144375	EA	1	0.144375	87.644375
COHP Pump 0.000002 HP	62.5	EA	1	62.5	0.103125	EA	1	0.103125	62.603125
COHP Pump 0.000001 HP	43.75	EA	1	43.75	0.0721875	EA	1	0.0721875	43.821875
COHP Pump 0.00000075 HP	32.8125	EA	1	32.8125	0.051125	EA	1	0.051125	32.863625
COHP Pump 0.0000005 HP	23.4375	EA	1	23.4375	0.0360625	EA	1	0.0360625	23.473625
COHP Pump 0.0000003 HP	16.4583	EA	1	16.4583	0.02554375	EA	1	0.02554375	16.48384375
COHP Pump 0.0000002 HP	11.9423	EA	1	11.9423	0.017925	EA	1	0.017925	11.960225
COHP Pump 0.0000001 HP	8.4556	EA	1	8.4556	0.01265625	EA	1	0.01265625	8.46825625
COHP Pump 0.000000075 HP	6.3417	EA	1	6.3417	0.0091875	EA	1	0.0091875	6.3508875
COHP Pump 0.00000005 HP	4.7563	EA	1	4.7563	0.00651875	EA	1	0.00651875	4.76281875
COHP Pump 0.00000003 HP	3.5672	EA	1	3.5672	0.004663125	EA	1	0.004663125	3.571863125
COHP Pump 0.00000002 HP	2.6754	EA	1	2.6754	0.003346875	EA	1	0.003346875	2.678746875
COHP Pump 0.00000001 HP	1.9316	EA	1	1.9316	0.002390625	EA	1	0.002390625	1.933990625
COHP Pump 0.0000000075 HP	1.4487	EA	1	1.4487	0.001721875	EA	1	0.001721875	1.450421875
COHP Pump 0.000000005 HP	1.0865	EA	1	1.0865	0.00124125	EA	1	0.00124125	1.08774125
COHP Pump 0.000000003 HP	0.8149	EA	1	0.8149	0.00088875	EA	1	0.00088875	0.81578875
COHP Pump 0.000000002 HP	0.6112	EA	1	0.6112	0.00064125	EA	1	0.00064125	0.61184125
COHP Pump 0.000000001 HP	0.4584	EA	1	0.4584	0.0004659375	EA	1	0.0004659375	0.4588659375
COHP Pump 0.00000000075 HP	0.3438	EA	1	0.3438	0.000334375	EA	1	0.000334375	0.344134375
COHP Pump 0.0000000005 HP	0.2578	EA	1	0.2578	0.0002390625	EA	1	0.0002390625	0.2580390625
COHP Pump 0.0000000003 HP	0.1934	EA	1	0.1934	0.0001721875	EA	1	0.0001721875	0.1935721875
COHP Pump 0.0000000002 HP	0.1451	EA	1	0.1451	0.000124125	EA	1	0.000124125	0.145224125
COHP Pump 0.0000000001 HP	0.1088	EA	1	0.1088	0.000088875	EA	1	0.000088875	0.108888875
COHP Pump 0.000000000075 HP	0.0816	EA	1	0.0816	0.000064125	EA	1	0.000064125	0.081664125
COHP Pump 0.00000000005 HP	0.0612	EA	1	0.0612	0.00004659375	EA	1	0.00004659375	0.06124659375
COHP Pump 0.00000000003 HP	0.0459	EA	1	0.0459	0.0000334375	EA	1	0.0000334375	0.0459334375
COHP Pump 0.00000000002 HP	0.0344	EA	1	0.0344	0.00002390625	EA	1	0.00002390625	0.03442390625
COHP Pump 0.00000000001 HP	0.0258	EA	1	0.0258	0.00001721875	EA	1	0.00001721875	0.02581721875
COHP Pump 0.0000000000075 HP	0.0194	EA	1	0.0194	0.0000124125	EA	1	0.0000124125	0.0194124125
COHP Pump 0.000000000005 HP	0.0146	EA	1	0.0146	0.0000088875	EA	1	0.0000088875	0.0146088875
COHP Pump 0.000000000003 HP	0.0109	EA	1	0.0109	0.0000064125	EA	1	0.0000064125	0.0109064125
COHP Pump 0.000000000002 HP	0.0082	EA	1	0.0082	0.000004659375	EA	1	0.000004659375	0.008204659375
COHP Pump 0.000000000001 HP	0.0061	EA	1	0.0061	0.00000334375	EA	1	0.00000334375	0.00610334375
COHP Pump 0.00000000000075 HP	0.0046	EA	1	0.0046	0.000002390625	EA	1	0.000002390625	0.004602390625
COHP Pump 0.0000000000005 HP	0.0034	EA	1	0.0034	0.000001721875	EA	1	0.000001721875	0.003401721875
COHP Pump 0.0000000000003 HP	0.0026	EA	1	0.0026	0.00000124125	EA	1	0.00000124125	0.00260124125
COHP Pump 0.0000000000002 HP	0.0019	EA	1	0.0019	0.00000088875	EA	1	0.00000088875	0.00190088875
COHP Pump 0.0000000000001 HP	0.0014	EA	1	0.0014	0.00000064125	EA	1	0.00000064125	0.00140064125
COHP Pump 0.000000000000075 HP	0.0011	EA	1	0.0011	0.0000004659375	EA	1	0.0000004659375	0.0011004659375
COHP Pump 0.00000000000005 HP	0.0008	EA	1	0.0008	0.000000334375	EA	1	0.000000334375	0.000800334375
COHP Pump 0.00000000000003 HP	0.0006	EA	1	0.0006	0.0000002390625	EA	1	0.0000002390625	0.0006002390625
COHP Pump 0.00000000000002 HP	0.0004	EA	1	0.0004	0.0000001721875	EA	1	0.0000001721875	0.0004001721875
COHP Pump 0.00000000000001 HP	0.0003	EA	1	0.0003	0.000000124125	EA	1	0.000000124125	0.000300124125
COHP Pump 0.0000000000000075 HP	0.0002	EA	1	0.0002	0.000000088875	EA	1	0.000000088875	0.000200088875
COHP Pump 0.000000000000005 HP	0.0001	EA	1	0.0001	0.000000064125	EA	1	0.000000064125	0.000100064125
COHP Pump 0.000000000000003 HP	0.0001	EA	1	0.0001	0.00000004659375	EA	1	0.00000004659375	0.00010004659375
COHP Pump 0.000000000000002 HP	0.0001	EA	1	0.0001	0.0000000334375	EA	1	0.0000000334375	0.0001000334375
COHP Pump 0.000000000000001 HP	0.0001	EA	1	0.0001	0.00000002390625	EA	1	0.00000002390625	0.00010002390625
COHP Pump 0.00000000000000075 HP	0.0001	EA	1	0.0001	0.00000001721875	EA	1	0.00000001721875	0.00010001721875
COHP Pump 0.0000000000000005 HP	0.000								

**COST ESTIMATE WORKSHEET**

<b>PROJECT NAME</b>		<b>DATE:</b>	
BGA INC		26-Apr-2010	
<b>CENTRAL SUPPLY CHILLER PLANT BASELINE MODEL</b>		<b>ESTIMATE PREPARED BY:</b>	
<b>ADDRESS</b>		PA, BG	
<b>MARKET PL</b>		<b>ENGINEER</b>	
		BGA, Inc.	
<b>CUSTOMER CONTACT NAME/PHONE NUMBER</b>		<b>BID DOCUMENTS</b>	
Michael Gibson(813) 365-3382		N/A	

DESCRIPTION	MATERIALS				LABOR/EQP.				ITEM COST
	COST	UNIT	QTY	EXTENDED	COST	UNIT	QTY	EXTENDED	
Chiller Description	\$	LG	1	\$	1,500	EA	3	\$	22,500
Pump Description	\$	LS	7	\$	1,500	EA	5	\$	9,000
25.0 Ton Centrifugal Chiller	\$	EA	4	\$	3,200,000	EA	4	\$	3,600,000
8750 GPM Pump 200 HP	\$	EA	4	\$	125,000	EA	4	\$	350,000
4700 GPM Pump 150 HP	\$	EA	4	\$	104,000	EA	4	\$	356,000
Valve	\$	EA	4	\$	14,000	EA	4	\$	56,000
Reliquant monitor & stems	\$	EA	1	\$	8,500	EA	1	\$	8,500
Exhaust system allowance	\$	EA	1	\$	5,000	EA	1	\$	5,000
Controls	\$	EA	1	\$	125,000	EA	1	\$	125,000
Electrical	\$	EA	1	\$	350,000	EA	1	\$	350,000
IT&D	\$	EA	1	\$	9,500	EA	1	\$	9,500
Supplemental Piping	\$	EA	900	\$	400,000	EA	300	\$	1,200,000
Rental Chiller (2 6 month windows)	\$	EA	1	\$	435,000	EA	1	\$	435,000
<b>SUBTOTALS</b>				\$	4,328,500			\$	2,551,400

Materials Index	100.0%
Labor Index	100.0%
Job Conditions Index	100.0%
	\$ 4,328,500
State Sales Tax%	6.0%
Local Sales Tax%	0.9%
Sales Tax (PL)	\$ 259,615
Subtotal	\$ 4,588,115
Contractor Labor & Material Com	\$ 7,537,516
Permit Fees @ 3%	\$ 226,125
Contractor Subtotal	\$ 7,763,641
Contingency (Schematic Stage)	\$ 388,182
Guarantee	\$ -
Prime Contractor Allowance	\$ 1,370,054
Contractor Total	\$ 9,521,877
Professional Fees	
Engineering Design/CPG	\$ 260,875
CM	\$ 350,875
Commissioning	\$ 91,210
General Conditions, Bonds, Insurance	\$ 238,047
Professional Fees Subtotal	\$ 1,038,018
<b>GROSS COST</b>	\$ 10,616,872

180

---

Miami Dade Central Support Plant

Temporary Chiller

Overview

The temporary chiller will be a 900 ton water cooled centrifugal chiller, located in the future expansion bay (chiller 6) of the existing plant. The chiller will be provided with rented matching condenser water and chilled water pumps. The chiller will be tied in the existing condenser and chilled water return and supply water headers and will utilize the existing ceramic cooling tower. The 460 Volt / 3 phase power for the chiller and pumps will be provided from an existing switchgear room. At present, Carrier Rental Systems has a 900 ton chiller that is available when we need it, but without a commitment from us, they cannot guarantee that the chiller will be available in the future. (See below)

I need to have a signed proposal and purchase order which specifies the dates that the unit is required and I will work with Sr. Management to hold it.

Thanks.

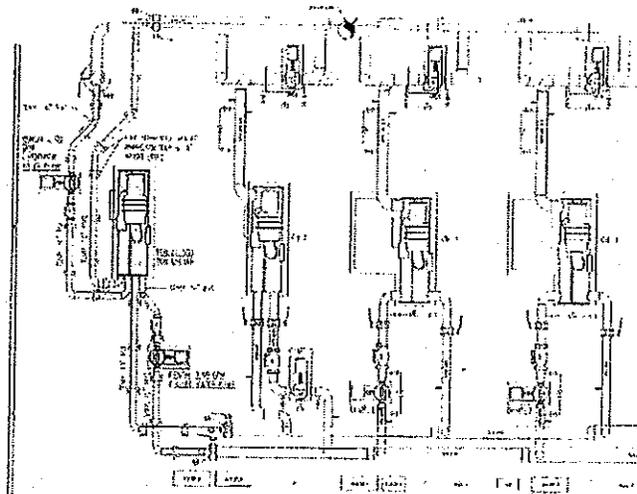
Guy A. Griesse

Carrier Rental Systems

Office: 863-667-0101

The chiller and pump rental will be \$5,546.05 per week or \$16,638.15 per month.

181



Existing Chiller Plant

**Mechanical Installation**

The pumps will require balancing valves and check valves so that they will not pump back through an inoperable chiller. The rented pumps will have butterfly valves that can be used for balancing. The chiller supplier will only provide flexible rental hose up to 6" diameter. The 6" diameter lines can only handle about half of the required flows and the supplier proposed to run two parallel lines. Additionally, they do not provide hose that is suitable for suction on the condenser water side. Due to the piping constraints, installation and duration of the rental period, it is recommended that in lieu of using flexible rental hoses, all piping be done with 10" diameter schedule 40 PVC. The chilled water piping can be insulated with elastomeric insulation to prevent condensation.

---

The cost for the PVC condenser and chilled water piping and check valves is approximately \$40,000. (\$30,000 for PVC pipe and \$10,000 for check valves). (There may be check valves on the abandoned cogeneration pumps that can be used in lieu of purchasing new ones.)

The temporary chiller and pumps will be activated manually by the plant's operating personnel as required.

Electrical Installation

Carrier Rental Systems will provide temporary cable from the chiller and pumps starters to a local point of connection in the chiller room. The Owner / BGA shall provide a 480V 3-phase power source and wiring to the Chiller Room.

Power for the chiller will be obtained from existing 480V switchgear. The equipment layout will be modified to add a new 1600A power breaker of the same characteristics as the existing. Four sets of 500kcm wiring will be run in conduit up to the temporary chiller location and terminated in a connector box where the cables will be terminated in power blocks.

Power for the pumps will be obtained from a new panelboard located in the temporary chiller location. The panel feeder will be obtained from the existing 480V switchgear by activating a spare breaker. Wiring will be run to the new panel (400A capacity).

The cost for the switchgear modifications and new panelboard is approximately \$85,000. Estimated lead time 10 weeks from shop drawing approval.

The cost for the wiring, raceways and pull boxes is approximately \$140,000.

---

7.4 Appendix 4 – Project Economics

184

**PROJECT ECONOMIC ANALYSIS**

May 1, 2010  
and

[avoided cost/ is considered] thermal rebate is considered)

Recommended Energy Conservation Measure Package

NOTE:

All Dollars are in Constant 2010 Dollars  
Escalation Rates are real escalation rates above inflation.  
Average Escalation Rates for energy are based on Commercial Florida DOE Projections  
Minimum Study Period is 15 years  
RESIDUAL VALUE/Initial Capital Equipment Investment x (Remaining Useful Life/Total Expected Useful Life)  
Usable life shall be as defined in Table 3 of 1995 ASHRAE HVAC Applications, Chapter 33.  
Client Discount Rate = 2.0%  
CPI = 3.0%

Item	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
YEAR	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
SAVINGS & COST																					
ELECTRIC SAVINGS =																					
Water Consumption (0H)																					
CHILLED WATER SAVINGS =																					
HWSTEAM SAVINGS =																					
PROPANE SAVINGS =																					
TOTAL SAVINGS =																					
Operations SAVINGS =																					
NET SAVINGS =																					
PRESENT VALUE =																					
SUM of Annual PV =	\$ 8,990,655																				
FINANCE RATE =	4.00%																				
COSTS & SAVINGS																					
PROJECT COST OUTLAYS =																					
Capital Cost Avoidance =																					
MCC Program Oversight																					
STUDY COST =																					
Avoided Capital Cost																					
Avoided Bond Funding Annual Cost																					
M&V COST =																					
M&V COST PV =																					
Project Cost before rebate and buy down																					
Thermal Storage rebate (0H2)																					
CAPITAL COST BUY DOWN (0H)																					
FINANCE AMOUNT =																					
FINANCE PAYMENT =																					
FINANCE PAYMENT PV =																					
RETRIBUT PV =																					
Accumulated annual PV																					
Net Cash From "balloon" payments =																					
SUM of Annual PV Savings =	\$ 21,587,669																				
SUM of Annual PV Costs =	\$ 21,580,254																				

Item	Calculated	Use %
ECM-1	\$ 370,500	95%
	\$ 370,500	380,000

Item	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
YEAR	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
PROJECT COST OUTLAYS =	\$ 18,614,546																				
Capital Cost Avoidance =	\$ 196,146																				
MCC Program Oversight	\$ 200,000																				
STUDY COST =	\$ 10,610,892																				
Avoided Capital Cost	\$ 981,146																				
Avoided Bond Funding Annual Cost	\$ 981,146																				
M&V COST =	\$ 400,000																				
M&V COST PV =	\$ 20,310,661																				
Project Cost before rebate and buy down	\$ 1,742,400																				
Thermal Storage rebate (0H2)	\$ 2,500,000																				
CAPITAL COST BUY DOWN (0H)	\$ 18,068,281																				
FINANCE AMOUNT =	\$ 1,484,930																				
FINANCE PAYMENT =	\$ 1,455,814																				
FINANCE PAYMENT PV =	\$ 65,408																				
RETRIBUT PV =	\$ 65,408																				
Accumulated annual PV	\$ 65,408																				
Net Cash From "balloon" payments =	\$ 65,408																				
SUM of Annual PV Savings =	\$ 21,587,669																				
SUM of Annual PV Costs =	\$ 21,580,254																				

Cost Simple Payback = 12.1

SIR = 1.001

SIR = \$ 21,587,669  
\$ 21,580,254

185

Exhibit I  
Equipment Warranties

EQUIPMENT	WARRANTY PERIOD
Cooling Towers	Extended 5-year warranty, parts and labor, from the shipment date
Chillers (all sizes)	Extended 5-year warranty, parts and labor, from the shipment date
Glycol Coils	Extended 2-year warranty, parts and labor, from final acceptance by the County
Pumps	12 months from final acceptance by County
Controls	12 months labor warranty from startup of controls
Heat Exchanger	18-month warranty, parts and labor, from the shipment date
VFDs	10 year warranty from final acceptance by the County

Exhibit II  
Form of Corporate Guarantee

*[Regardless of this Corporate Guarantee being provided by the parent company of BGA, Inc. ("BGA"), BGA is providing an Energy Savings Guarantee for the full value of the Contract for the entire Term of the Guarantee, as provided in the Florida Statutes. This Corporate Guarantee given by BGA's parent company, Consolidated Edison Solutions, Inc. ("Guarantor") provides a backup guarantee, in addition to the guarantee provided by BGA, for all non-measured/stipulated savings portion of the Energy Savings Guarantee.]*

To: Miami-Dade County

Ladies and Gentlemen:

Where, BGA, Inc. ("BGA") has entered into that certain Guaranteed Energy and Water Performance Savings Contract (the "Contract") with Miami-Dade County ("Counterparty") in connection with the Miami Chilled Water Plant Interconnection Project. In consideration of Counterparty entering into the Contract with BGA, Consolidated Edison Solutions, Inc. ("Guarantor") for the Term of the Guarantee, as defined under the Contract and as set forth in Attachment I to this Guarantee (the "Guarantee Limit"), and subject to the terms and conditions hereof, hereby irrevocably and unconditionally guarantees to Counterparty, with effect from the date hereof, the due and punctual payment of all amounts payable by BGA to Counterparty under the Agreement as a result of any shortfalls of guaranteed savings, if or when the same shall become due and payable, in accordance with the terms of the Contract and giving effect to any applicable grace or cure period. Upon failure of BGA punctually to pay any such amounts, and upon written demand by Counterparty to Guarantor to the address set forth herein (or to such other address as Guarantor may specify in writing to Counterparty), Guarantor, subject to the Guarantee Limit, agrees promptly to pay or cause to be paid such amounts; provided that delay by Counterparty in giving such demand shall in no event affect Guarantor's obligations under this Guarantee. This is a guarantee of payment and not of collection.

Guarantor hereby agrees that its obligations hereunder shall not be affected by the Contract's validity, enforceability or the lack of authority of BGA to execute or deliver the Contract, or any change in or amendment to the Contract.

Guarantor hereby waives diligence, presentment, and demand on BGA for payment or otherwise (except as provided hereinabove), filing of claims, requirement of a prior proceeding against BGA and protest or notice, except as provided for in the Contract with respect to amounts payable by BGA. If at any time payment by BGA to Counterparty under the Contract is rescinded or must be otherwise restored or returned by Counterparty to BGA due to the insolvency, bankruptcy or reorganization of BGA or otherwise, Guarantor's obligations hereunder with respect to such payment shall be reinstated upon such restoration or return to BGA being made by Counterparty.

Guarantor represents to Counterparty as of the date hereof, that:

1. it is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guarantee and to perform the provisions of this Guarantee on its part to be performed;
2. its execution, delivery and performance of this Guarantee have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;
3. all consents, authorizations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
4. this Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

In the event of any default by BGA, Counterparty shall have the right to proceed first and directly against Guarantor under this Guarantee without proceeding against any other person or entity or exhausting any other remedies which it may have and without resorting to any other security held by it.

By accepting this Guarantee and entering into the Contract, Counterparty agrees that Guarantor shall be subrogated to all rights of Counterparty against BGA in respect of any amounts paid by Guarantor pursuant to this Guarantee, provided that Guarantor shall be entitled to enforce or to receive any payment arising out of or based upon such right of subrogation only to the extent that it has paid all amounts payable by BGA under the Contract that are payable pursuant to this Guarantee.

All notices or other communications to the Guarantor and Counterparty shall be in writing and shall be sent by hand delivery, mail (return receipt requested), facsimile (provided a copy is also sent by overnight courier) or overnight courier. Notices sent by hand-delivery shall be deemed received on the date delivered, provided that if is delivered after the close of the business day, it shall be deemed received on the next business day, notices sent by mail shall be deemed received on the date stamped on the return receipt, notices sent by facsimile (provided a copy is also sent by overnight courier) shall be deemed received on the date stated on the facsimile confirmation unless sent or transmitted after the close of the business day, in which case it shall be deemed received on the next business day), and notices sent by overnight courier shall be deemed received on the next business day. Notices shall be sent to:

**If to Guarantor:**

Consolidated Edison Solutions, Inc.  
100 Summit Lake Drive, 4<sup>th</sup> Floor  
Valhalla, NY 10595-1336  
Attention: Vice President and Treasurer

**If to Counterparty:**

---

General Services Administration  
Facilities and Utilities Management Division  
200 NW 1<sup>st</sup> Street  
Miami, FL 33128

This Guarantee shall be binding upon Guarantor and upon its successors and assigns and shall be for the benefit of Counterparty and its successors and assigns.

This Guarantee shall become effective upon Acceptance of the CM under the Contract, and shall be automatically renewed on an annual basis, through the end of the Term of the Guarantee (the "Expiration Date"). However this Guarantee may be terminated prior to the Expiration Date upon at least 15 days' prior written notice to that effect being actually received by Counterparty. Such expiration or termination shall not, however, affect or reduce Guarantor's obligation hereunder for any liability of BGA pursuant to the Contract incurred prior to such expiration or termination.

In case any clause, provision, or section of this Guarantee, or any application thereof, is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder thereof or any other clause, provision, or section, and each such clause, provision, or section shall be deemed to be effective and operative in the manner and to the full extent permitted by law.

This Guarantee shall not be binding and shall be null and void and without any force and effect unless and until it is fully executed and delivered by each of Guarantor and Counterparty.

This Guarantee may not be modified or amended except in a writing signed by all the parties, provided, however that the Guarantor may increase the Guarantee Limit and/or extend the Expiration Date in writing without the consent or signature of Counterparty.

This Guarantee shall be governed by and construed in accordance with the laws of the State of New York, without reference to its choice of law doctrine.

**CONSOLIDATED EDISON SOLUTIONS, INC.**

**MIAMI-DADE COUNTY GOVERNMENT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTACHMENT A

<u>GUARANTEE YEAR</u>	<u>GUARANTEED AMOUNT UNDER CORPORATE GUARANTEE (non-stipulated savings)</u>
Year 1	\$370,500.00
Year 2	\$381,615.00
Year 3	\$393,063.00
Year 4	\$404,855.00
Year 5	\$417,001.00
Year 6	\$429,511.00
Year 7	\$442,396.00
Year 8	\$455,668.00
Year 9	\$469,338.00
Year 10	\$483,418.00
Year 11	\$497,921.00
Year 12	\$512,859.00
Year 13	\$528,244.00
Year 14	\$544,092.00
Year 15	\$560,414.00

Total Amount Guaranteed by Consolidated Edison Solutions, Inc.: **\$6,890,895.00**

Exhibit III  
Certificate of Acceptance

I, the undersigned, hereby certify that I am the duly qualified and acting officer of County identified below and, with respect to the CM identified in the Contract dated as of \_\_\_\_\_, by and between County and BGA, Inc. ("Company"), represent and warrant that:

1. The equipment described in Schedule B of the Contract, purchased from BGA, Inc., and properly invoiced, has been delivered and installed in accordance with County's Specifications, is in good working order and is fully operational and properly functioning and has been fully accepted by County on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.
2. County certifies that it has inspected the installation and operation of the CM listed on Schedule B, and that it finds the equipment listed on Schedule B is fully and properly functioning.

COUNTY: MIAMI-DADE COUNTY

Signature: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

192

EXHIBIT IV

SERVICE AGREEMENT

between

BGA, INC.

and

MIAMI-DADE COUNTY GOVERNMENT

dated as of

---

## SERVICE AGREEMENT

This Service Agreement is entered into by and between BGA, Inc. ("BGA"), and Miami-Dade County Government ("Owner"), dated \_\_\_\_\_ (the "Agreement").

WHEREAS, BGA has prior experience in the operation and maintenance of the thermal plant owned by the County located at 1110 NE 1<sup>st</sup> Avenue, Miami, FL 33142 ("Facility"); and

WHEREAS, Owner desires to use BGA to perform such operation and maintenance services for the Facility;

WHEREAS, BGA desires to perform such operation and maintenance services for the Facility;

NOW, THEREFORE, for the consideration hereinafter provided, and in consideration of the mutual promises and other benefits accruing to the parties stated herein, the parties hereto agree as follows:

### ARTICLE 1. - DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below.

"Additional Services" shall mean any services, other than Administrative Services, Operation Services, Maintenance Services and Unscheduled Maintenance Services, in relation to the Facility that requires cooperation and participation by BGA in order for the additional services to be performed, and for which BGA is the most qualified vendor as a result of its knowledge and operation of the Facility.

"Administrative Services" shall mean all services necessary for the operation of the business of the Facility, including any administrative, customer service and accounting functions (invoicing, collections and formulation of data to be used by Owner for financial reporting purposes), and specifically the services described in Section 2.1(a) and in Part III of Schedule A attached hereto.

"Agreement" shall mean this service agreement and any and all exhibits attached hereto as the same may be amended or modified from time to time.

"Chilled Water Agreement" shall mean any agreement for the provision of chilled water and/or ancillary services between Owner and any of its customers, as amended from time to time.

"Commencement Date" shall mean \_\_\_\_\_.

"Force Majeure" shall mean any cause beyond the reasonable control of the nonperforming party, including in such cases, the following causes which shall not be understood as limiting, but as examples: strike, blockages or other economic sanctions of an official nature, flood, earthquake, storm, sand storm, lightning, fire, epidemic, war, explosion, riot, plague, holocaust, public enemy acts, civil or military authority acts, terrorist or guerilla activity, civil riots or disobedience, sabotage, restrictions by order of a court or public authority, in the case of the Owner, impossibility to obtain power, water or other public services necessary for the operation of the Facility, any other action or non-action on the part of a Government Agency that directly or indirectly prevents or delays performance by BGA of its obligations under this Agreement including sabotage, misuse or abuse of the equipment set forth in Exhibit A as well as Owner and Owner's representatives' failure to repair or maintain equipment not included in Exhibit A, for which the party asserting Force Majeure shall furnish the other party hereto with any pertinent information when so required.

"Government Agency" shall mean any governmental department, ministry, political division, agency, authority, corporation or committee.

"Prudent Industry Practices" means those practices, methods, techniques and standards, as the same may change during the Term, that are generally accepted for use in the central station chilled water service industry in the United States to test, operate and maintain equipment lawfully, safely, reliably, efficiently and economically as applicable to equipment of the size, service and type used in the Facility. Prudent Industry Practices shall in all events include compliance with applicable Laws.

"Law" shall mean any law, regulations, rule, treaty, order, Permit, statute, or decree, including decisions, findings, and judgments made by any government agency applicable to the Facility or the Parties.

"Maintenance Services" shall mean routine and scheduled maintenance that must be performed periodically to keep the Facility in working order including without limitation lubrication, repacking of valves, leak repair, adjustments, calibrations, replacement of consumables, waste removal and disposal and similar work, periodic overhaul and repair of the mechanical and electrical equipment of the Facility in accordance with manufacturers' recommendations and the reasonable recommendations of the Owner, and specifically the services described in Part II of Schedule A attached hereto.

"Operation Services" shall mean all services necessary for the operation of the Facility, including specifically the services described in Section 2.1(b) and in Part I of Schedule A attached hereto.

"Permit" shall mean any approval, permit, authorization, notice, environmental permit, discharge, exemption, acknowledgment, agreement, license, consent, decision, or any

similar matter to be obtained from any government agency in connection with the Operation and Maintenance of the Facility.

"Reimbursables" shall mean payments made by BGA on behalf of the Owner to vendors listed in Schedule B to this Agreement, as modified from time to time, for which the Owner will reimburse BGA, in addition to the Monthly Fee and any fee associated with Unscheduled Maintenance.

"Services" shall mean the Administrative Services, Operation Services, Maintenance Services and Unscheduled Maintenance Services to be performed by BGA pursuant to the provisions of this Agreement.

"Unscheduled Maintenance Services" shall mean non-routine maintenance and repair of the Facility equipment, whether of an emergency or non-emergency nature, other than Maintenance as defined herein

## ARTICLE 2. - SCOPE OF BGA'S DUTIES

2.1 BGA Duties. BGA shall perform the Services in a timely fashion and in compliance with Law and each applicable Chilled Water Agreement. In addition, BGA shall perform the Operation Services, Maintenance Services and Unscheduled Maintenance Services in accordance with Prudent Industry Practices, and shall perform the Administrative Services in a good and workmanlike manner observing the standard of care applicable to persons performing such services for hire generally.

- (a) As part of the Administrative Services, BGA shall:
  - i. Provide a detailed service report to Owner upon completion of any Unscheduled Maintenance;
  - ii. Maintain all Facility records, manuals, instructions, drawings, and information;
  - iii. Facilitate and assist Owner in the maintenance by Owner of all Permits necessary for the continued operation of the Facility;
  - iv. Report to the Owner on a monthly basis regarding the status, condition, performance, expenditures, requirements, and projections for the Facility, and promptly notify the Owner of any event having a material adverse effect on the operation of the Facility; and
  - v. Administer equipment and parts warranty claims procedure(s).
- (b) As part of the Operation Services, BGA shall:

- i. Provide Facility operational inspection services as requested by the Owner;
- ii. Initiate the review of, recommendations for, and procurement of spare parts for the Facility, subject to the approval of the Owner;
- iii. Take such action as may be reasonably necessary to respond appropriately to, and to mitigate, emergency situations which involve the safety of persons or the security of property and that interfere with the normal operation of the Facility, follow established procedures for a safe and orderly shutdown of the Facility in the event of an emergency, and notify the Owner's Representative immediately of any such emergency situations.

(c) As part of Additional Services, BGA shall:

- i. Provide chilled water capacity enhancement and/or piping connection services; and
- ii. Any other services that would require an adjustment, either temporary or permanent, to BGA's operation or maintenance of the Facility.

(d) In addition, BGA shall:

- i. Promptly after the execution hereof, appoint an operator's representative having full authority to bind BGA;
- ii. Provide qualified and capable operation, management and staff personnel for the provision of the Services;
- iii. Implement all required personnel, managerial, maintenance, operational, dispatch, environmental, safety, plant accounting, inventory, procurement, security, and other procedures and programs necessary for Facility operation, including administrative procedures particular to the Services provided hereunder; and
- iv. Perform such other activities as may be mutually agreed upon in writing between the parties from time to time.

2.2 Changes to the Facility. BGA shall not make any material changes to the Facility, other than necessary Maintenance (including Unscheduled Maintenance), or any changes in the exterior appearance of the Facility without the prior written approval of the Owner. Any repairs to the Facility necessary for the Maintenance and/or Unscheduled Maintenance that (a) incur an expense under \$5,001.00, including the allowed 10% markup for BGA, or (b) incur an expense of more than \$5,000.00, and previously

authorized in writing by the Owner and effected by BGA hereunder, shall be at the expense of Owner.

2.3 Scope of Authority. BGA shall not, without the prior written consent of Owner, do or, to the extent the same is within its control, permit to occur or to continue, any of the following:

- (a) initiate any lawsuit by the Owner or intentionally and expressly compromise any claim or lawsuit brought by or against the Owner;
- (b) create, incur or assume any lien, security interest or encumbrance upon the Facility;
- (c) sell, lease, pledge, mortgage, assign, transfer or otherwise dispose of any of Owner's now owned or hereafter acquired assets or interests,
- (d) make any expenditure of, or otherwise use, any funds of Owner (including the making of any loans or advances to any person) except as part of the Budget;
- (e) directly commit Owner to be or to become directly or contingently responsible or liable for obligations of any other person, by assumption, guarantee, endorsement or otherwise;
- (f) enter into, execute, amend, revise or terminate any Chilled Water Agreement or any other contract on behalf of the Owner;
- (g) waive any breach by any party under any Chilled Water Agreement or any other contract of the Owner;
- (h) remove or replace any vendor of goods or services to the Owner;
- (i) commence or cause any person to commence any bankruptcy, reorganization, arrangement, insolvency, or receivership proceeding under applicable Law on behalf of the Owner;
- (j) retain, on behalf of and for the account of the Owner (i) legal counsel or (ii) accounting firms or auditors; or
- (k) make any Tax election or change any method of accounting of the Owner.

2.4 Qualifications. BGA represents and warrants that it has: (i) examined this Agreement thoroughly and become familiar with the terms; (ii) full experience and proper qualifications to perform its Services; and (iii) carefully reviewed, or shall review, all Chilled Water Agreements, documents, plans, drawings and other information that it deems necessary regarding the Facility and its performance of the Services.

### ARTICLE 3 - RESPONSIBILITIES OF THE OWNER

3.1 The Owner shall be responsible for providing BGA with unlimited access to copies of all manuals, drawings, information, and documents required for BGA to perform the Services, and for making such business and strategy decisions as may be required from time to time in connection with the Operation and Maintenance of the Facility.

### ARTICLE 4. - COMPENSATION

4.1 Compensation for Services. In exchange for performing the Services hereunder, Owner shall pay BGA a flat fee of Thirty-Seven Thousand Seven Hundred Seventy-Three Dollars (\$37,773.00) per month ("Monthly Fee"), prorated for any partial month. Each monthly payment of the Monthly Fee shall be due in advance and payable by Owner to BGA on the first of each month. This Monthly Fee shall cover all materials, consumables, parts, supplies, replacements, travel charges, subcontracted services and insurance required for BGA to provide the Services, except for Additional Services, as more fully described in Part V of Schedule A attached hereto.

4.2 Compensation for Additional Services. Compensation for Additional Services shall be BGA's costs plus an agreed upon markup, dependent on the type of Additional Service, as mutually agreed to by BGA and the Owner. BGA shall invoice Owner for Additional Services on a monthly basis, for Additional Services completed in the prior month, or as otherwise agreed to by BGA and the Owner.

4.3 Compensation for Unscheduled Maintenance. For all Unscheduled Maintenance, as previously defined, BGA shall pass all charges relating to labor and materials onto Owner at cost plus 10%. BGA shall provide Owner with an invoice for any Unscheduled Maintenance, with appropriate backup, which shall be due and payable by Owner to BGA within 20 calendar days from the date of the invoice.

4.4 Reimbursables. For all payments made by BGA to vendors listed in Schedule B, BGA shall pass all such charges relating to these vendors onto Owner at cost, with no markup, which shall be due and payable by Owner to BGA within 20 calendar days from the date of a properly submitted invoice with supporting documentation showing the payments were made by BGA.

4.5 Interest on Overdue Amounts. If Owner fails to make timely payments of any amount due hereunder, interest on such amount shall accrue in accordance with the Florida Prompt Payment Act.

4.6 Taxes and Other Fees. BGA and Owner shall be responsible, respectively, for payment of all income taxes incumbent upon each of them. Owner shall be responsible for all other taxes, fees, payments, assessments, permits, licenses and approvals from any

and all public/governmental and private entities resulting from the ownership and operation of the Facility.

#### ARTICLE 5 - TERM

5.1. Term. This Agreement shall become effective upon the Commencement Date and, unless subject to prior termination as provided elsewhere, shall remain in full force and effect for a period of two (2) years from the Commencement Date ("Term"). Thereafter, this Agreement shall extend automatically for one (1) additional year until or unless either party gives at least sixty (60) days' written notice to the other of its intention to terminate this Agreement ("Extension Term").

#### ARTICLE 6 - [RESERVED]

#### ARTICLE 7 - TERMINATION

7.1 Owner's Right to Terminate for Default. Owner shall have the right, upon written notice to BGA ("Default Termination Notice"), to terminate this Agreement upon the happening of any of the following events, which termination shall be effective upon receipt of the Default Termination Notice:

(a) BGA becomes insolvent or files or has filed against it a petition for bankruptcy, reorganization, composition or compromise for protection of creditors, or a similar proceeding, and BGA fails to take prompt action to cure said insolvency or to vacate or stay such proceeding within thirty (30) days of receipt of Owner's written preliminary notice of intent to terminate identifying the basis therefor.

(b) BGA is in default of any of its material obligations hereunder, and has failed to cure the default within thirty (30) days of receipt of notice thereof ("Preliminary Default Notice"). In the event the default cannot be reasonably cured within thirty (30) days of receipt of the Preliminary Default Notice (excluding the obligation to pay money when due), BGA shall submit to Owner, within five (5) days of receipt of said Preliminary Default Notice, a plan to cure, and shall commence to effect the cure and thereafter diligently pursue the cure, which cure shall be completed within sixty (60) days of receipt of such Preliminary Default Notice.

7.2 Owner's Right to Terminate for Convenience. Owner shall have the right, upon written notice to BGA ("Convenience Termination Notice"), to terminate this Agreement for Owner's convenience, which termination shall be effective sixty (60) days from the receipt of the Convenience Termination Notice.

7.3 BGA's Obligations Upon Termination. Upon receipt of a Default Termination Notice or Convenience Termination Notice, BGA shall take the following actions as of the date specified in said notice, unless the Termination Notice requires otherwise:

- (a) BGA shall convey to Owner the policies, procedures, manuals, records, and equipment belonging to Owner or generated or purchased by BGA for use in connection with the Facility;
- (b) Reasonably cooperate with Owner and the new operator to ensure a smooth transition of the Services, such that there is a minimal impact to the operation and maintenance of the Facility;
- (c) Place no further orders or enter into any subcontracts for materials, equipment, or services, other than as may be approved in writing by Owner;
- (d) BGA shall, at Owner's request and at Owner's expense, reasonably assist Owner in preparing an inventory of all equipment, fuel, and supplies in use or in storage at the Facility and move from the Site all such equipment, supplies, and rubbish as Owner may reasonably request.

7.4 BGA's Termination for Certain Defaults. If Owner is in default of any of its obligations involving the payment of money hereunder and has failed to cure such default within fifteen (15) days of receiving written notice of the default from BGA (except in the case of amounts disputed in good faith by Owner), BGA shall have the right to terminate this Agreement.

7.5 BGA's Right to Terminate for Convenience. BGA shall have the right, upon written notice to Owner ("Convenience Termination Notice"), to terminate this Agreement for BGA's convenience, which termination shall be effective sixty (60) days from the receipt of the Convenience Termination Notice.

7.6 Transition Services. Upon termination or expiration of the Agreement for any reason, and at the request of the Owner, any purchaser of the Facility, or any successor to or assignee of the Owner (other than BGA), BGA shall continue to operate and maintain the Facility. BGA shall continue to fulfill all of its obligations hereunder until such new operator assumes the duties of BGA hereunder; provided, however, that BGA shall not be required to continue to perform its obligations hereunder for a period in excess of sixty (60) days after the selection of such new operator. During any such transition period, BGA shall be reimbursed for its reasonable out-of-pocket costs incurred including the cost of training or double coverages of operating shifts or non-shift positions as well as

all other fees and payments due under Article 4 hereof.

7.7 Right to Take Over. Upon written notice to BGA, Owner shall have the right from time to time during the term hereof to take over and provide for itself any or all of the Services otherwise provided hereunder. BGA agrees to cooperate with any such action by the Owner and to vacate the Facility from time to time upon request. During any such period of take-over, so long as this Agreement remains in effect and BGA is not in default hereunder, BGA shall continue to earn the Monthly Fee.

#### ARTICLE 8 – [Reserved]

#### ARTICLE 9 INDEMNIFICATION

9.1 Indemnification By BGA. Notwithstanding any other provision herein to the contrary, BGA expressly agrees, in the event that claims are made against Owner or either becomes a party in a lawsuit, to defend, indemnify and hold harmless Owner and its respective affiliates, officers, directors, agents, servants, employees, successors and assigns of and from any and all claims:

(a) for personal injury (including bodily injury and mental injury), death or property damage (including damage to the property of Owner and environmentally-related claims caused by BGA) and any other losses, damages, taxes, fines, penalties, charges or expenses, including reasonable attorneys' fees and costs incurred in connection with the defense of such claims, to the extent such arise or are alleged to have arisen out of, or in connection with, or by reason of BGA's performance or non-performance of the Services under this Agreement;

(b) for fines or penalties (including reasonable attorneys' fees and costs incurred in connection with the defense of such fines or penalties) payable to any governmental authority arising out of BGA's failure to comply with any Laws, including without limitation Laws pertaining to health, safety or the environment in connection with the performance of this Services under this Agreement; or

(c) for the breach of any representation, warranty or covenant of this Agreement.

#### ARTICLE 10 – INSURANCE

10.1 BGA's Insurance. BGA shall secure and maintain (or cause to be secured and maintained) during the term of this Agreement, the following insurance:

- (a) Worker's Compensation insurance in the amounts and types required by Chapter 440, Florida Statutes or other applicable Law.
- (b) Employer's Liability, with minimum limits as follows:
  - (i) Bodily Injury by Accident - U.S. \$1,000,000 per accident;
  - (ii) Bodily Injury by Disease - U.S. \$1,000,000 policy limit.
- (c) Automobile Liability in an amount required by Law and not less than a "combined single limit" coverage for bodily injury and property damage limit of One Million Dollars (U.S. \$1,000,000) per accident, in comprehensive form and covering hired, owned and non-owned vehicles. Such insurance shall name Owner as an additional insured.
- (d) Owner shall be named as additional insured in all of the foregoing policies (except for any workers' compensation), including the policies of any subcontractor or agent of BGA performing Services hereunder, with respect to liability arising out of the Services being performed under this Agreement. Such insurance shall be primary coverage afforded the additional insured and shall contain a cross-liability or severability of interest clause. BGA hereby waives and shall cause its subcontractors and suppliers and their insurers to waive all rights of subrogation against Owner in the event of any covered loss under the policies.
- (e) The requirements contained herein as to types and limits, as well as Owner's approval of insurance coverage to be maintained by BGA (or any of BGA's subcontractors), are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by BGA under this Agreement. BGA shall be solely responsible for any unpaid premium or breach of warranty by BGA. BGA shall permit any authorized representative of Owner to examine BGA's original insurance policies, should Owner so request. Should BGA (or any of BGA's subcontractors) at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, without waiving any other rights or remedies which Owner may have under the circumstances, Owner shall have the right to purchase such insurance and the cost thereof shall be deducted from monies due BGA. Failure to provide insurance in accordance with this clause shall constitute a material breach of this Agreement.
- (f) BGA shall not commence Services under this Agreement until the Owner has been furnished a certificate from BGA's insurance carrier, certifying that policies of insurance providing coverage, as listed above, have been issued to the BGA and are in force, and until the certificate has been examined and approved by Owner. The certificates of insurance shall clearly evidence that BGA's insurance policies contain the minimum limits of coverage and special provisions prescribed in this Article of the

Agreement. In addition, the certificate shall state that the insurance carrier will give the Company thirty (30) days' prior written notice of any cancellation of, termination of or change in coverage of these policies. Additionally, the following statement, in substance, shall be quoted in full on the certificate: "It is further expressly certified that the General Liability Policy includes contractual coverage to the full limits of the policy for all bodily injury and property damage liability assumed by BGA under Article 9 of this Agreement."

#### ARTICLE 11 - FORCE MAJEURE

11.1 Effects of Force Majeure. If either party hereto should be delayed in or prevented from performing or carrying out any of the agreements, covenants, and obligations made by and imposed upon said party by this Agreement, by reason of or through Force Majeure, then and in such case or cases, the affected party shall be excused, to the extent it has been affected by such Force Majeure, without cost or liability to the other for failure or delay in performance of any obligation set forth in this Agreement except the obligation to pay money when due and any obligation of either party that arose before the Force Majeure event, and in the event of a delay, all times of performance shall be extended by a period equal to the time lost solely by reason of such delay; provided, however, that the affected party shall use due and practicable diligence to remove the cause or causes thereof; and provided, further, that neither party nor its contractors shall be required by the foregoing provisions to settle a labor action, legal action or administrative proceeding except when, in its sole discretion, such a settlement seems advisable. The term of this Agreement shall not be extended by the duration of any events of Force Majeure. In the event of a Force Majeure that extends beyond a period of thirty (30) continuous days, the non-affected party may terminate this Agreement by written notice to the other party hereto.

11.2. Required Notice . The party affected by such Force Majeure event shall notify the other party in writing of the occurrence of the event including a description of the event as soon as practicable but no later than three (3) days from the date the affected party becomes aware of the Force Majeure event. Within five (5) days of the date on which performance was suspended, the party that is prevented from performing its obligations under this Agreement because of a Force Majeure event shall give written detailed notice to the other party with respect to its plan to cure the situation and shall begin to perform the repairs or take the reasonable measures necessary in order to cure its inability to perform its obligations. If despite its acting with reasonable diligence the affected party continues to be unable to formulate a corrective plan within the five (5) day period, said party shall submit its corrective plan as soon as reasonably possible, but in no instance later than ten (10) days following the date on which the Force Majeure occurred.

## ARTICLE 12 - DISPUTES

12.1 Waiver of Jury Trial. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT.

12.2 Submission to Jurisdiction; Service of Process. With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:

(a) submits to the exclusive jurisdiction of the courts of the State of Florida and the County of Miami-Dade; and

(b) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

12.3 Continuing Obligations. Regardless of the nature of the dispute between the parties, BGA agrees to continue to perform the Services during the course of any proceeding for resolution of a dispute (other than a dispute respecting an event of Force Majeure regarding which BGA has given notice to Owner), and Owner agrees to continue to make payments to BGA of all amounts which are due and owing to BGA, and which are not disputed in good faith by Owner.

## ARTICLE 13 - OWNER'S REPRESENTATIVE

13.1 Promptly upon execution hereof, Owner shall appoint and designate in writing to BGA a person ("Owner's Representative") authorized to act on behalf of Owner under this Agreement. Until such designation is received by BGA, the individual who signs this Agreement on behalf of the Owner shall be deemed to be the Owner's Representative.

## ARTICLE 14 - ASSIGNMENT AND SUBCONTRACTING

14.1 Assignment. Neither party shall assign this Agreement or its duties, rights or obligations hereunder without the prior written consent of the non-assigning party; provided, however, that the Owner may assign its rights hereunder as security for the financing of the Facility. Any other attempted assignment by the Owner or BGA, whether by operation of law or otherwise, shall be void.

14.2 Subcontracting. BGA shall have the right to subcontract with third parties its obligations hereunder, provided such subcontracting is conducted in accordance with

BGA's ordinary business practice. BGA shall ensure that all subcontracts are expressly assignable to the Owner and its permitted successors and assigns in the event of the termination of BGA under this Agreement.

ARTICLE 15 - COMPLIANCE WITH LAWS

15.1 In the performance of this Agreement, BGA shall comply with all applicable Laws as in effect from time to time, and shall comply with any and all Permits required of BGA to operate the Facility.

15.2 In the performance of this Agreement, Owner shall be responsible for compliance with all applicable Laws as in effect from time to time, and shall comply with and pay for all Permits required as the owner of the Facility.

ARTICLE 16 - NOTICE

16.1 All notices required or provided for in this Agreement shall be in writing and shall be delivered by hand or sent by telefacsimile or by overnight courier service, addressed to the parties at the addresses or numbers listed below; provided, however, that such addresses may be changed from time to time by written notice given by one party to the other. Notices shall be deemed effective when hand delivered or otherwise received.

If to BGA:

BGA, Inc.  
3101 W. Dr. MLK Jr. Blvd., Suite 110  
Tampa, Florida 33607  
Attention: Michael Gibson  
Fax: (813)375-3400

With a copy to:

Paul Mapelli  
General Counsel  
100 Summit Lake Drive, Fourth Floor Valhalla, NY 10595-1336  
Fax: (914) 686-1413

If to the Owner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ARTICLE 17 - MISCELLANEOUS

17.1 Independent Contractor. BGA shall at all times be deemed an independent contractor and none of its employees or the employees of its subcontractors shall be considered employees of the Owner under the meaning or application of the Law, including any federal or state unemployment or insurance laws or Workers' Compensation laws, or otherwise. Nothing in this Agreement shall be construed as creating a partnership, joint venture, corporation or entity taxable as a corporation between Owner and BGA. BGA assumes all liabilities or obligations imposed by any one or more of such laws with respect to employees of BGA in the performance of this Agreement. Without Owner's prior written consent, BGA shall not have any authority to assume or create any obligation, expressed or implied, on behalf of Owner.

17.2 Inspections. The Owner and the Owner's designees shall have full right of access to the Facility at all times. BGA agrees to cooperate with inspections of the Facility, upon reasonable notice, by the Owner and their designated representatives, provided such cooperation does not materially interfere with BGA's safe and timely performance of obligations under this Agreement.

17.3 Books and Records. The Owner and the Owner's designees shall have the right to inspect and audit BGA's books and records relating to the Facility and BGA's performance of its obligations under this Agreement during normal business hours and upon reasonable request. BGA shall retain all such information for a minimum of three (3) years, or for such longer period as the Owner may, in writing, reasonably request.

17.4 Visitors. Visitors invited for a tour of the Facility by BGA shall be allowed access only with the express approval of the Owner and provided that such visits do not materially interfere with BGA's safe and timely performance of obligations under this Agreement. Visitors invited for a tour of the Facility by Owner shall be allowed access provided that the Owner gives adequate notice to BGA and that such visits do not materially interfere with BGA's safe and timely performance of its obligations under this Agreement. Any party hereto inviting visitors for a tour of a Facility shall advise said visitors of the site regulations applicable to visitors and secure agreement by each visitor to comply with same.

207

17.5 Consequential Damages. In no event shall either party be liable, whether in contract, tort, negligence, strict liability or otherwise for any special, indirect, incidental or consequential damages of any nature arising at any time from any cause arising out of or relating to this Agreement whatsoever, except as provided in Section 9.1 hereof.

17.6 Severability. The invalidity, in whole or in part, of any of the foregoing articles, sections or paragraphs of this Agreement shall not affect the validity of the remainder of such articles, sections or paragraphs.

17.7 Entire Agreement. This Agreement together with Schedule A contains the complete agreement between the Owner and BGA with respect to the matters contained herein and supersedes all other agreements, whether written or oral, with respect to the matters contained herein.

17.8 Amendment. No modification, amendment, or other change to this Agreement shall be binding on any party unless consented to in writing by the Owner's and BGA's authorized representatives.

17.9 Interpretation. This Agreement shall be interpreted and construed according to the laws of the State of Florida as applied to contracts made and to be performed wholly within such state.

17.10 Waiver. Unless otherwise specifically provided by the terms of this Agreement, failure by either party to exercise any of its rights under this Agreement shall not constitute a waiver of such rights. Neither party shall be deemed to have waived any right resulting from any failure to perform by the other unless it has made such waiver specifically in writing.

17.11 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

17.12 Captions and Headings. Captions and headings in this Agreement are for ease of reference only and are not intended to, nor shall they define, limit or interpret the substantive provisions of this Agreement.

17.13 Survival. Notwithstanding the expiration or earlier termination of this Agreement pursuant to Article 6, the obligations of each party hereto to the other under this Agreement on the date of such expiration or termination, including any obligation to indemnify the other party under this Agreement, shall survive such expiration or termination.

IN WITNESS THEREOF the parties have executed this Agreement, in duplicate,  
effective as of the date first written above.

**MIAMI-DADE COUNTY GOVERNMENT**

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

**BGA, INC.**

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

Title: \_\_\_\_\_

## Schedule A

### I. Operation Work Inclusions

- Daily plant operation with on-site Plant Operator; Monday through Friday 7:30 a.m. to 4:00 p.m.
  - Maintain and modify equipment operating schedules via the energy management system.
  - Change Lead/Lag rotation schedule for chillers & pumps on a scheduled basis.
  - Maintain daily operational & maintenance logs for all major pieces of equipment.
- Providing plant operation and monitoring for American Airlines Arena scheduled events with on-site Plant Operator as required in Chilled Water Services Agreement:
- Providing 24-hour remote monitoring of the plant operation, including at a minimum:
  - Weeknights – Two 15-minute intervals, once at changeover and once before retiring to bed.
  - Weekends-15-minute intervals approximately every 4-hours during waking hours.
- For all Alarm responses:
  - Plant Operator will carry a pager at all times and will respond to all critical alarms.
    - ALARMS-Any time the pager receives an alarm from the plant control system, an attempt will be made to connect to the plant control system (via dial-up) and attempt to remedy the situation remotely. If and when the situation is returned to normal, that person will contact the General Manager (via cell phone) to communicate the cause of the alarm and the corrective measures taken.
    - EMERGENCIES-Should there be a situation when an alarm cannot be mitigated remotely, then the Plant Operator shall immediately proceed to the facility and attempt to resolve the problem. If the Plant Operator is unable to correct the problem on his/her own, then that person will contact the General Manager (via cell phone) to communicate the cause of the alarm and the proposed corrective measures. The General Manger will then contact the Owner for notice to proceed with repairs, in the event the Owner cannot be reached and the repairs are such that they are required to return the plant to normal operation, they will be provided under Section 4.2.
- Daily/weekly logging of water chemistry as direct by Chem-Treat or successor.

## II. Maintenance Work Inclusions

- Cooling tower cleaning twice per year per manufacturer's published recommendations.
- Routine lawn maintenance including trash removal.
- Routine plant and office housekeeping.
- Providing those materials required by the preventive maintenance and housekeeping activities included with this agreement. This includes materials such as replacement air filters, cleaners, bearing grease, crankcase oils gasket material, etc.
- Maintenance and/or minor repair labor that can be accomplished by Plant Operator during normal working hours without supplemental labor:
  - Greasing of motor bearings for equipment other than chillers and towers.
  - Changing of belts and oils for equipment other than chillers and towers
  - Changing filters for equipment other than chillers and towers
  - Minor piping, plumbing and/or electrical service
  - Painting equipment to maintain appearance
- Maintenance services associated with the chillers and towers shall be performed through a combined effort by both the Plant Operator and through a service contract with Johnson Controls Inc. or their successor. Service responsibility, scope and frequency shall be as shown in the detailed spreadsheet included at the end of the section. Eddy current testing shall be performed if the vibrational analysis testing indicates a need to perform. Eddy current testing costs are not included with this agreement.
- Water treatment services via subcontract with ChemTreat Inc. or their successor. Service responsibility, scope and frequency shall be as shown in detailed spreadsheet included at the end of this section.
- Maintenance services via subcontract with Industrial Electrical Testing Inc. or their successor on the 480 and 4160V electrical systems. Service responsibility, scope and frequency shall be as shown in detailed spreadsheet included at the end of this section.
- Outside contractor services as required for annual maintenance on Emergency Generator per manufacturer's published recommendations (Sun Power Diesel).
- Monthly trash removal via local service.

## III. Administrative Work Inclusions

- Monthly chilled water meter reading and recording.
- Preparation and distribution of monthly invoices to customers for chilled water services.
- Responses to customer billing concerns, questions, problems, etc.
- Monthly review meetings of financials with Owner.
- Annually preparing billing rate adjustments per terms and conditions of Chilled Water Services Agreements with Customers, for Owner's review and approval.
- Budgetary projections as required for Owner's accounting purposes.

**IV. Administrative Work Exclusions**

- Payments from customer for invoiced amounts will be collected and deposited by Owner, as directed by Owner's Representative, with Owner's Representative reporting such collections and deposits to BGA's Representative on a bi-monthly basis.
- BGA shall not be responsible for responding to customer billing concerns, questions, problems, etc., unless directed to provide assistance from Owner's Representative.
- Any other Administrative Services not specified in Section III above.

**V. Additional Services**

- Engineering and/or construction management services to accomplish any chilled water capacity enhancement and/or piping connection services.
- Any other services that would require an adjustment, either temporary or permanent, to BGA's operation or maintenance of the facility.
- operation or maintenance of the facility.

MAINTENANCE RESPONSIBILITIES FOR YORK YK CHILLERS						
PROCEDURE	DAILY	WEEKLY	MONTHLY	QUARTERLY	YEARLY	OTHER
Record operating conditions on Log Form (BGA)	X					
Check oil levels (BGA)	X					
Check oil return system operation (BGA)			X			
Check operation of motor starter (BGA)			X			
Check sump heater & thermostat operation (BGA)			X			
Test refrigerant monitor (BGA)				X		
Check 3-phase voltage & current balance (BGA)			X			
Verify proper operation /setting/calibration of safety controls (JCI)				X		
Verify condenser and evaporator water flows (BGA)			X			
Check refrigerant charge, leak check/repair leaks (JCI)				X		
Check and tighten all electrical connections (JCI)					X	
Megohm motor windings (JCI)					X	
Replace oil filter and oil return filter/driers (JCI)					X	
Perform oil analysis on compressor lube oil (JCI)					X	
Perform refrigeration analysis (JCI)					X	
Perform vibration analysis (JCI)					X	
Clean and inspect tube sheets (JCI)					X	
Lubricate motor (JCI)						1800 hrs of operation
MAINTENANCE RESPONSIBILITIES FOR YORK YS CHILLERS						
PROCEDURE	DAILY	WEEKLY	MONTHLY	QUARTERLY	YEARLY	OTHER
Record operating pressures & temperatures (BGA)	X					
Check oil and refrigerant levels (BGA)	X					
Check operation of oil heater (BGA)			X			
Check 3-phase voltage and current balance (JCI)				X		
Leak check and repair leaks (JCI)				X		
Calibrate safety controls (JCI)					X	
Check slide valve operation and calibrate slide valve potentiometer (JCI)					X	
Lubricate motor bearings & clean motor (JCI)					X	1800 hrs of operation
Mechanically brush condenser tubes (JCI)					X	
Megohm motor (JCI)					X	
Perform refrigeration analysis (JCI)					X	
Perform oil analysis on compressor lube oil (JCI)					X	
Remove condenser water boxes & inspect tube sheets (JCI)					X	
Replace filters/driers (JCI)					X	
Replace oil filters(s) (JCI)					X	
Verify evaporator and condenser water flow rates vs design conditions (JCI)					X	
Perform vibration analysis (JCI)					X	
MAINTENANCE RESPONSIBILITIES FOR COOLING TOWERS						
PROCEDURE	DAILY	WEEKLY	MONTHLY	BI- QUARTERLY	YEARLY	OTHER
General :Inspect each cooling tower cell for general operation and condition (BGA)	X					
Gearreducer Drive : Inspect and tighten all fasteners including plug (BGA)				X		
Check for oil leaks (BGA) (repair leaks as necessary)			X			

Check oil level (BGA) (add oil as necessary)			X			
Change oil (JCI)				X		
Inspect vent cap to ensure it is open & unplugged (BGA)				X		
Check driveshaft or coupling bushing/flex elements for unusual wear (JCI)					X	
Inspect & tighten driveshaft of coupling fasteners (JCI)					X	
Inspect driveshaft coupling alignment (JCI)					X	

**MAINTENANCE FOR WATER TREATMENT**

PROCEDURE	DAILY	WEEKLY	MONTHLY	QUARTERLY	SEMI-ANNUAL	OTHER
Record Operating conditions (BGA)	X					
Evaluation of chemical applications and feed equipment (CHEMTREAT)			X			
Microbiological study for all treated systems (CHEMTREAT)				X		
Corrosion coupon studies (CHEMTREAT)					X	
Deposit analyses (CHEMTREAT)						As needed
Metallurgical analyses (CHEMTREAT)						As needed
Equipment inspections (CHEMTREAT)						As needed
Technical Training (CHEMTREAT)						As needed

## MAINTENANCE RESPONSIBILITIES FOR ELECTRICAL SYSTEMS

<b>Cables (600V max)</b>	<b>Frequency</b>
Inspect for physical damage or overheating (IET)	Yearly
Verify tightness of bolted electrical connections (IET)	Yearly
Perform thermal graphic scan (IET)	Yearly
Perform resistance measurements through bolted connections with low resistance ohm meter (IET)	Yearly
Perform insulation resistance tests on each conductor with respect to ground and adjacent conductors with applied potential of 500V DC for 300V rated cable, and 1000V DC for 600V rated cable (IET)	Yearly
<b>Cables (5kv)</b>	Yearly
Inspect exposed sections of cables for physical damage and/or overheating (IET)	Yearly
Inspect terminations and splices for evidence of overheating and/or corona (IET)	Yearly
Inspect bolted electrical connections for high resistance (IET)	Yearly
Perform thermographic scan (IET)	Yearly
Verify tightness of bolted electrical connections (IET)	Yearly
Verify that visible cable bends meet or exceed ICEA and/or manufactures minimum allowable bending radius (IET)	Yearly
Perform resistance measurements through bolted connections with low resistance ohm meter (IET)	Yearly
Perform an insulation resistance test utilizing a megohmmeter with a voltage output of at least 2500 volts for one minute (IET)	Yearly
<b>Circuit Breakers and Fuses (200A frame and above)</b>	Yearly
Inspect physical and mechanical condition (IET)	Yearly
Operate tripping mechanism (IET)	Yearly
Clean out breaker housing (IET)	Yearly
Inspect connections and operating mechanism and lubricate (IET)	Yearly
Check all trip settings (IET)	Yearly
Perform secondary injection tests (480V breakers) (IET)	Yearly
Perform ground fault protection tests (IET)	Yearly
Perform fuse and contact resistance tests (using 15% variance as a guideline) (IET)	Yearly
Perform thermographic scan of termination lugs (IET)	Yearly
Provide "As found" and "As left" tests (IET)	Yearly
<b>Switchboard Assemblies</b>	Yearly
Perform cleaning of switchboard internals (IET)	Yearly
Inspect physical, electrical, and mechanical condition (IET)	Yearly
Inspect bolted electrical connections (IET)	Yearly
Perform ground resistance tests (IET)	Yearly
Perform insulation resistance tests (IET)	Yearly
Confirm correct operation (IET)	Yearly
Perform thermographic scan of switchboard bus, and connections (IET)	Yearly
Perform resistance test of switchboard bus (IET)	Yearly
<b>Switches (480 &amp; 4160V)</b>	Yearly
Inspect physical and mechanical condition (IET)	Yearly
Clean, lube and exercise mechanical parts (IET)	Yearly
Inspect anchorage and alignment (IET)	Yearly
Provide "As found" and "As left" tests (IET)	Yearly
Inspect/correct blade alignment (IET)	Yearly
Measure contact resistance (IET)	Yearly
<b>Grounding system (to include ground fault protection system)</b>	Yearly
Inspect physical and mechanical condition (IET)	Yearly
Inspect anchorage (IET)	Yearly
Inspect/test ground fault relays (IET)	Yearly
Perform ground resistance tests (IET)	Yearly
Inspect components for damage and errors (IET)	Yearly
Provide "As found" and "As left" tests (IET)	Yearly
Clean all connections and GF units (IET)	Yearly
Inspect bolted electrical connections (IET)	Yearly

Verify correct operation of all functions (IET)	Yearly
Verify pickup and time delay (IET)	Yearly
<b>Transformers</b>	Yearly
Inspect physical and mechanical condition (IET)	Yearly
Inspect anchorage, alignment and grounding (IET)	Yearly
Inspect bolted electrical connections (IET)	Yearly
Perform insulation resistance measurements (IET)	Yearly
Clean out equipment (IET)	Yearly
Perform thermographic scan (IET)	Yearly
Voltage measurements (IET)	Yearly
<b>Motor Controllers, Motor starters (low voltage)</b>	Yearly
Inspect physical and mechanical condition (IET)	Yearly
Inspect anchorage, alignment and grounding (IET)	Yearly
Inspect bolted electrical connections (IET)	Yearly
Provide "As found" (prior to cleaning) and "As left" tests (IET)	Yearly
Lubricate all moving parts as required (IET)	Yearly
Perform resistance measurements thru bolted connections (IET)	Yearly
Perform operational tests by initiating control devices (IET)	Yearly
<b>Motor Controllers, Motor starters (medium voltage)</b>	Yearly
Inspect physical and mechanical condition (IET)	Yearly
Inspect anchorage, alignment and grounding (IET)	Yearly
Provide "As found" (prior to cleaning) and "As left" tests (IET)	Yearly
Clean unit (IET)	Yearly
Inspect electrical connections for high resistance (IET)	Yearly
Verify correct barrier and shutter installation and operation (IET)	Yearly
Exercise all components and verify correct operation (IET)	Yearly
Perform contact resistance tests (IET)	Yearly
Lubricate as required (IET)	Yearly
Perform resistance measurements thru bolted connections (IET)	Yearly
Test control power transformers (IET)	Yearly
Measure resistance on power fuses (IET)	Yearly
<b>VFD's</b>	Yearly
Inspect physical and mechanical condition (IET)	Yearly
Inspect anchorage, alignment and grounding (IET)	Yearly
Provide "As found" and "As left" tests (IET)	Yearly
Clean unit (IET)	Yearly
Perform resistance measurements thru bolted connections (IET)	Yearly
Perform continuity tests on bonding conductors (IET)	Yearly
Perform operational tests by initiating control devices (IET)	Yearly
<b>Automatic Transfer Switches (ATS)</b>	Yearly
Inspect physical and mechanical condition (IET)	Yearly
Inspect anchorage, alignment and grounding (IET)	Yearly
Inspect bolted electrical connections (IET)	Yearly
Provide "As found" (prior to cleaning) and "As left" tests (IET)	Yearly
Lubricate all moving parts as required (IET)	Yearly
Perform resistance measurements thru bolted connections (IET)	Yearly
Test ATS functionality by simulating loss of normal power(IET)	Yearly
Exercise all moving parts (IET)	Yearly

216

**SCHEDULE B**  
**Approved Vendor List for Reimbursables to BGA**  
**(as may be modified from time-to-time)**

**Bellsouth** – phone service to the plant, including modem, with long distance to be added

**Central Locating Service Ltd.** – underground pipe locating services

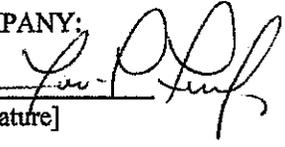
**Florida State Fire and Security** – Alarm monitoring

**Verizon Wireless Messaging Services** – Pager Service for three pagers connected to the plant server

**Sunshine State One Call of Florida, Inc.** – State-run database for underground utilities

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers on the date last executed below

COMPANY:

By:   
[Signature]

Title: Director  
(Corporate Seal)

Date: September 29, 2010

COUNTY:

By: \_\_\_\_\_  
[Signature]

Title: \_\_\_\_\_

Date: \_\_\_\_\_

218

IN WITNESS THEREOF the parties have executed this Agreement, in duplicate, effective as of the date first written above.

**MIAMI-DADE COUNTY GOVERNMENT**

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

**BGA, INC.**

By: Neil Long

Title: President

9/10/10

## Schedule A

### I. Operation Work Inclusions

- Daily plant operation with on-site Plant Operator; Monday through Friday 7:30 a.m. to 4:00 p.m.
  - Maintain and modify equipment operating schedules via the energy management system.
  - Change Lead/Lag rotation schedule for chillers & pumps on a scheduled basis.
  - Maintain daily operational & maintenance logs for all major pieces of equipment.
- Providing plant operation and monitoring for American Airlines Arena scheduled events with on-site Plant Operator as required in Chilled Water Services Agreement:
- Providing 24-hour remote monitoring of the plant operation, including at a minimum:
  - Weeknights – Two 15-minute intervals, once at changeover and once before retiring to bed.
  - Weekends-15-minute intervals approximately every 4-hours during waking hours.
- For all Alarm responses:
  - Plant Operator will carry a pager at all times and will respond to all critical alarms.
    - ALARMS-Any time the pager receives an alarm from the plant control system, an attempt will be made to connect to the plant control system (via dial-up) and attempt to remedy the situation remotely. If and when the situation is returned to normal, that person will contact the General Manager (via cell phone) to communicate the cause of the alarm and the corrective measures taken.
    - EMERGENCIES-Should there be a situation when an alarm cannot be mitigated remotely, then the Plant Operator shall immediately proceed to the facility and attempt to resolve the problem. If the Plant Operator is unable to correct the problem on his/her own, then that person will contact the General Manager (via cell phone) to communicate the cause of the alarm and the proposed corrective measures. The General Manger will then contact the Owner for notice to proceed with repairs, in the event the Owner cannot be reached and the repairs are such that they are required to return the plant to normal operation, they will be provided under Section 4.2.
- Daily/weekly logging of water chemistry as direct by Chem-Treat or successor.

Schedule A  
Description of Facilities

The North Plant contains 28,644 square feet of improvements, specifically designed and constructed to operate as a commercial district chiller plant. Initial construction was completed in 1999. The North Plant was then expanded in 2009. The North Plant includes the following equipment and/or systems:

**PUMPS**

TAG	CHP-1	CHP-2	CHP-3	CHP-4	CHP-5
SERVICE	Primary Chilled Water				
LOCATION	1st Floor				
MANUFACTURER	Armstrong	Armstrong	Armstrong	Armstrong	Armstrong
MODEL/SERIES	4300	4300	4300	4300	4300
SIZE	8x8x10	8x8x10	8x8x10	10x10x13	12x12x13
TYPE	Vert. Inline				
FLOW (GPM)	1,400	1,400	1,400	2,400	3,000
HEAD (FT.)	75.0	75.0	75.0	75.0	75.0
IMPELLOR SIZE (IN.)	9.68	9.68	9.68	10.33	10.06
MOTOR SIZE (HP)	40	40	40	60	100
SPEED (RPM)	1780	1780	1780	1775	1800
FRAME SIZE	324TC	324TC	324TC	364VPZ	
ENCLOSURE	DP	DP	DP	DP	ODP
SERVICE FACTOR	1.15	1.15	1.15	1.15	1.15
VOLTS/PH/HZ	460/3/60	460/3/60	460/3/60	460/3/60	460/3/60
INSULATION CLASS	B	B	B	B	B
NEMA EFFICIENCY	94.1%	94.1%	94.1%	Energy Eff.	Premium

221