

# Memorandum



Date: December 2, 2014

To: Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

Agenda Item No. 5(E)

From: Carlos A. Gimenez  
Mayor

Subject: Resolution Approving an Energy Performance Contract and Service Agreement between FPL Services, LLC and the Aviation Department to implement energy conservation measures at the Miami International Airport Terminal and related financing costs in an amount not to exceed \$34,000,000.00

## RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) adopt the attached resolution authorizing the Mayor or Mayor's designee to execute an Energy Performance Contract and Service Agreement between FPL Services, LLC and the Aviation Department to implement energy conservation measures in the Miami International Airport Terminal and related financing costs in an amount not to exceed \$34,000,000.00 and approve the third-party financing after a public hearing pursuant to Section 147(f) of the Internal Revenue Code of 1986 (Code).

## SCOPE

Miami International Airport (MIA) is located primarily within Chairwoman Rebeca Sosa's District Six; however, the impact of this agenda item is countywide as MIA is a regional asset.

## DELEGATION OF AUTHORITY

In addition to the authority to execute and implement this contract, the Mayor or Mayor's designee is authorized to (i) enter into a financial lease arrangement with a third-party institution at terms favorable to the County, (ii) approve project financing terms, (iii) exercise termination provisions, (iv) determine substantial completion of projects, and (v) approve modifications to the Energy Conservation Measures project scope of work as long as those changes uphold the contract's compliance with § 489.145, Florida Statutes, which govern and regulate the County's Energy Performance Contracting Program, or do not violate the terms of the third-party financing agreement that finances the implementation of energy conservation measures in the form of a municipal lease, energy saving 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 which may become evident only during the construction period, so long as the project cost is not exceeded.

## FISCAL IMPACT/FUNDING SOURCE

This Energy Performance Contract in an amount not to exceed \$32,004,867.00 (net of rebates received)(the "Contract Cost") is "budget neutral," meaning that all costs associated with the project will be covered by energy cost savings guaranteed by FPL Services. This project will be completed within 24 months after the County has obtained the appropriate third-party financing and will guarantee the Miami-Dade Aviation Department (MDAD) savings of \$40,767,165.00 over the 14 years following the implementation period. Third party financing will fund the Contract Cost, capitalized interest during construction of the project and financing costs, in an amount not to exceed \$34,000,000.

## TRACK RECORD/MONITOR

MDAD Chief of Engineering and Contracts Jorge Marin and Reinaldo Abrahante, Performance Contracting Program Manager at the Internal Services Department (ISD), Facilities and Utilities Management Division will monitor and manage the project.

## **BACKGROUND**

Pursuant to Resolution R-228-09, the County is required to reduce electricity consumption by 20% from 2007 levels by 2014; Resolution R-795-12 requires the County to reduce energy by density by 20% from 2009 levels by 2020.

Pursuant to Resolution R-740-08, the Board approved the establishment of an Energy Performance Contracting Program, allowing the County to use private energy services companies to recommend ways to reduce energy consumption by County facilities and equipment. These projects are performed in a turn-key fashion by the companies, who must guarantee that the projected savings in County utility expenses will meet or exceed all project costs. The program utilizes the pool of ten (10) energy services companies established by the State of Florida Contract 973-320-08-01. Subsection (4)(d) of Chapter 489.145 Florida Statutes regulates guaranteed energy performance savings contracting and requires performance savings contractors be selected competitively, in compliance with Chapter 287.055 F.S., unless it can be shown that fewer than three firms are qualified to perform the required services.

Energy Performance Contracting Program 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. Florida Statutes allow a maximum 20-year financing plan and provide:

1. An efficient system-wide approach to necessary life-cycle replacement of equipment that results in lower capital and long-term operating and maintenance costs;
2. Projected savings from projects guaranteed to cover all County costs, with the energy services companies (FPL Services) paying the difference if savings fall short;
3. Reduced financing costs, since projects qualify for tax-exempt municipal lease rates;
4. Consistency of performance from the installation of high-quality parts and equipment under the direction of highly qualified firms with specialized expertise that provide a turnkey service;
5. Faster implementation due to the use of preset vendor pools and a design/build no "change order" project structure;
6. A guarantee by energy services companies contractually and by statute that the equipment procured and installed will achieve the promised energy savings.

On January 28, 2013, the ISD notified FPL Services that it was selected to provide an Investment Grade Audit for MDAD facilities. This project will be completed over a 24-month period after the County has obtained the appropriate third-party financing and issued a Notice to Proceed.

The main areas of focus for this project are lighting, water, and Heat/Ventilation/Air Conditioning systems in the North, South and Central Terminals including the parking garages. The multi-step process used to analyze these systems began with gathering facility information, such as original construction documents, which were then supplemented by field observations of the as-installed conditions. This data was input into spreadsheets and computer analysis programs developed to accurately estimate energy consumption and demand. The data were then modified to reflect each proposed energy conservation measure, with the change in energy consumption and demand quantified and applied to current electrical rates to determine the cost savings.

In conjunction with each measure, a specific scope of work was defined. With the scope defined, the cost to implement each measure was developed along with associated project development expenses, including: labor, materials, warranty, savings guarantee, project management, overhead, and

engineering fees. The implementation costs were then compared against the annual savings to determine the technical and economic viability of the overall project.

To obtain the third-party financing, FPL Services solicits quotes from banks to provide the County with the most favorable financing terms and conditions to fund the cost of the energy conservation measures project. Since the County is expected to obtain better interest rates than the energy services companies, FPL Services itself will not finance the project. The County will arrange for the financing directly with a bank. This third-party financing arrangement will be made through a vehicle called a Municipal Lease and all financing costs will be funded from the operating and energy cost savings that are guaranteed by FPL Services. The third-party financing costs will be included in the payments made by the County pursuant to the Municipal Lease. To allow the County to quickly take advantage of quoted rates, this item also waives Resolution R-130-06, which requires that counterparties to a contract before the Board have signed all proffered contracts.

This agreement provides for an efficient system-wide approach that includes necessary life-cycle replacement of capital equipment, resulting in lower long-term operating and maintenance costs, and is guaranteed to be fully repaid from the energy savings.

With respect to the financing of the project, a public hearing by the Board is scheduled for the date of final Board approval for the Resolution in order to comply with the provisions of Section 147(f) of the Internal Revenue Code. The public hearing will be held in accordance with the form of public notice that is on file with the Clerk as Exhibit "A" and published in the Miami Herald. This hearing, once concluded, will satisfy the requirements needed for technical compliance with Internal Revenue Service regulations. The not-to-exceed amount of \$34,000,000.00 set forth in the public notice is to fund the costs of the energy savings measures under the Contract, capitalized interest during construction of the project and the third-party financing costs.



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Jack Osterholt, Deputy Mayor



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**DATE:** December 2, 2014

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

**SUBJECT:** Agenda Item No. 5(E)

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 Mayor'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 \_\_\_\_\_

Agenda Item No. 5(E)  
12-2-14

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE MAYOR OR MAYOR'S DESIGNEE TO EXECUTE AN ENERGY PERFORMANCE CONTRACT WITH FPL SERVICES LLC, PURSUANT TO SECTION 489.145 (4)(d) OF THE FLORIDA STATUTES, FOR PROVIDING FOR FPL SERVICES LLC TO CONSTRUCT NOT MORE THAN \$34,000,000.00 INCLUSIVE OF FINANCING COSTS IN ENERGY CONSERVATION MEASURES AT MIAMI INTERNATIONAL AIRPORT TERMINAL; AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO EXECUTE A THIRD-PARTY LEASE FINANCING AGREEMENT (THE "FINANCING") TO FUND THE PROJECT COST AND ANY RELATED FINANCING COSTS IF THE TERMS AND CONDITIONS ARE FAVORABLE AND ACCEPTED BY THE COUNTY, AND ANY OTHER AGREEMENTS NECESSARY TO EFFECTUATE THE TERMS OF THIS CONTRACT; AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO EXERCISE THE PROVISIONS OF THE CONTRACT, INCLUDING THE TERMINATION AND THE EXTENSION PROVISIONS; APPROVING THIRD PARTY FINANCING FOR THE PROJECT AFTER PUBLIC HEARING AS REQUIRED BY SECTION 147(F) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, IN AN AMOUNT NOT TO EXCEED \$34,000,000.00; AND WAIVING RESOLUTION NO. R-130-06

**WHEREAS**, Miami-Dade Resolution No. R-795-12 requires the County to reduce energy density by 20 percent by year 2020 from 2009 levels; and

**WHEREAS**, the County's Energy Performance Contracting program, managed by the Internal Service Department, provides an effective, cost-efficient and reliable method of implementing energy saving measures; and

**WHEREAS**, on August 3, 2012 the County issued a solicitation for qualification packages from all firms in the Florida State's pool of Energy Service Companies (ESCOs), as authorized by the Board under Resolution No. R-740-08; and

**WHEREAS**, the Mayor has appointed an Evaluation/Selection Committee and on January 9, 2013, approved the Committee's recommendation to select FPL Services, LLC (FPL) to conduct an energy survey and provide an Investment Grade Audit of Aviation Department facilities; and

**WHEREAS**, FPL conducted a thorough energy audit of the existing Miami-Dade County Aviation Department facilities and provided an "Investment Grade Audit" (IGA) to the County; and

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference (the "Memorandum"); and

**WHEREAS**, this Board, on this date, conducted a public hearing pursuant to the form of the public notice attached to this resolution as Exhibit "A", which was published in the Miami Herald, with respect to a third-party financing agreement such as a lease/purchase agreement (the "Financing") to finance the costs of certain energy savings conservation measures included in the attached Energy Savings Contract (the "Project"), all as further described in the Memorandum, in accordance with Section 147(f) of the Internal Revenue Code, as amended (the "Code"), and having the benefit of the hearing, this Board desires to approve the Financing for the Project, as required by Section 147(f) of the Code,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that:

Section 1. Subject to the execution of a separate financing agreement such as a lease to purchase agreement, that this Board hereby authorizes the Mayor or Mayor's Designee to execute the attached Energy Performance Contract between FPL Services, LLC and Miami-Dade County (the "Contract") for the purpose of implementing energy conservation measures for certain

terminal facilities located at Miami International Airport (MIA) (the "MIA Terminal"), 2100 NW 42 Avenue, Miami, FL 33126, and a chiller plant for the MIA Terminal located at 4770 NW 21<sup>st</sup> Street and 4800 NW 21st Street, Miami, FL 33122, and which provides for the installation of energy saving equipment at such locations in an amount not more than \$32,004,867.00 net of any rebates received (the "Contract Cost"), and an amount not more than \$34,000,000.00 inclusive of financing costs, and the Mayor or Mayor's designee is authorized enforce the terms of the Contract, including the termination and extension provisions.

Section 2. Pursuant to the requirements of the Memorandum, the County Mayor or designee is authorized to enter into and execute a separate financing agreement, in substantially the form attached hereto that allows for the financing of the (i) the Contract Cost, (ii) capitalized interest during construction of the Project and (iii) related financing costs (collectively, the "Financing"), and to enter into and execute other agreements as may be necessary to effectuate the Contract; and waiving the requirements of Resolution No. R-130-06 as in the best interests of the County for the reasons stated in the attached memorandum.

Section 3. After providing a reasonable opportunity to be heard to all persons present at the public hearing regarding the Project and the Financing, the Financing for the Project in an amount not to exceed \$34,000,000.00 is approved for the purposes of Section 147(f) of the Code.

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

Rebeca Sosa, Chairwoman	
Bruno A. Barreiro	Esteban L. Bovo, Jr.
Daniella Levine Cava	Jose "Pepe" Diaz
Audrey M. Edmonson	Sally A. Heyman
Barbara J. Jordan	Jean Monestime
Dennis C. Moss	Sen. Javier D. Souto
Xavier L. Suarez	Juan C. Zapata

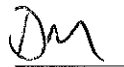
The Chairperson thereupon declared the resolution duly passed and adopted this 2<sup>nd</sup> day of December, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



David M. Murray



## EXHIBIT A

### NOTICE OF PUBLIC HEARING

NOTICE is hereby given that a public hearing of the Board of County Commissioners (the "Commission") of Miami-Dade County, Florida (the "County"), will be held on Tuesday, December 2, 2014, at a meeting of the Commission beginning at 9:30 a.m., local time, or as soon thereafter as practicable, in the Commission Chambers, located on the Second Floor of the Stephen P. Clark Center, 111 N.W. First Street, Miami, Florida, concerning a lease-purchase financing for the County in an aggregate principal amount not to exceed \$34,000,000 (the "Obligation"), the proceeds of which will be applied by the County to finance all or a part of the costs of the acquisition and installation of various energy conservation improvements (collectively, the "Project") to be located at Miami International Airport ("MIA including but not limited to the acquisition and installation of (i) lighting retrofits and lighting control upgrades, (ii) water conservation retrofits and improvements including high efficiency domestic plumbing fixtures, high efficiency laundry and kitchen equipment, ice and vending machine retrofits and cooling tower makeup water upgrades, (iii) heating, ventilation and air-conditioning ("HVAC") upgrades, and (iv) a voltage dip-proofing inverter for baggage handling system, to be owned and operated by the County and located at certain terminal facilities and the central chiller plant at building 3099, at 2100 NW 42nd Avenue, Miami, FL 33142 and 4770 NW 21<sup>st</sup> Street and 4800 NW 21st Street, Miami, FL 33122 (the "Project"). The Project will be financed with the Obligation in an amount not to exceed \$34,000,000.

The Obligation and the interest thereon will be limited obligations of the County payable from legally available non ad valorem funds which are budgeted and appropriated on an annual basis, subject to County's right to nonappropriate in any given year and terminate the obligations. The Obligation will not constitute a general indebtedness or a charge against the general credit of the County. Neither the faith and credit of the County, the State of Florida, or any political subdivision thereof, will be pledged to the payment of the principal of and interest on the Obligation.

The public hearing is required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"). Any person interested in the proposed issuance of the Obligation may appear and be heard. Subsequent to the public hearing, the Commission will consider whether to approve the issuance of the Obligation, as required by Section 147(f) of the Code.

The public hearing will be conducted in a manner that provides a reasonable opportunity to be heard for persons with differing views on the issuance of the Obligation and the location and nature of the Project. Any person desiring to be heard on this matter is requested to attend the public hearing or send a representative. The documents regarding the proposed Obligation and other public records regarding the Project are in the possession of the Miami-Dade County Aviation Department and may be examined at reasonable times during business hours, 9:00 a.m. to 5:00 p.m., Monday through Friday, at the office of the Aviation Department at Miami International Airport, Concourse E, Terminal Building, 5th Floor, Miami, Florida.

In accordance with the Americans with Disabilities Act of 1990, as amended, persons needing a special accommodation or an interpreter to participate in this proceeding should call 305-375-2035 or send an email to [agendaco@miamidade.gov](mailto:agendaco@miamidade.gov), no later than five days in advance of the proceeding.

Comments made at the hearing are for the consideration of the Commission and will not bind any legal action to be taken by the Commission in connection with the consideration and approval of the financing and the issuance of the Obligation by the County. IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND, FOR SUCH PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

Harvey Ruvlin, Clerk of the Board of County  
Commissioners of Miami-Dade County,  
Florida

GUARANTEED ENERGY, WATER, AND WASTEWATER PERFORMANCE SAVINGS  
CONTRACT

By and Between

FPL Services, LLC.

and

Miami-Dade County

Date: October 6, 2014

Miami-Dade Aviation Department Facilities

Table of Contents

CONTENTS .....1

RECITALS .....4

SECTION 1. DEFINITIONS.....5

SECTION 2. INCORPORATION OF OTHER DOCUMENTS.....7

SECTION 3. TERM OF CONTRACT.....8

SECTION 4. SCOPE OF WORK.....8

SECTION 5. PAYMENTS TO COMPANY.....11

SECTION 6. FISCAL FUNDING.....14

SECTION 7. TERMINATION.....15

SECTION 8. WARRANTIES .....16

SECTION 9. INDEMNICATION AND LIMITATION OF LIABILITY .....17

SECTION 10. OWNERSHIP .....18

SECTION 11. FACILITIES MAINTENANCE AND EQUIPMENT SERVICES.....18

SECTION 12. PROPERTY/CASUALTY/INSURANCE.....19

SECTION 13. BOND .....20

SECTION 14. EVENTS OF DEFAULT .....21

SECTION 15. REMEDIES UPON DEFAULT.....22

SECTION 16. ASSIGNMENT.....22

SECTION 17. ARBITRATION.....23

SECTION 18. REPRESENTATIONS AND WARRANTIES.....23

SECTION 19. MISCELLANEOUS .....24

SCHEDULES

Schedule A Conservation Measures to Be Installed by Company & Description of Facilities.36

Schedule B Pre-existing Equipment Inventory .....37

Schedule C Savings Guarantee.....38

Schedule D Compensation to Company and Deliverables .....39

Schedule E Compensation and Deliverables Required in Other Related Contracts .....40

Schedule F Savings Calculation Formula .....41

Schedule G Construction and Installation Schedule.....47

Schedule H Baseline .....48

Schedule I Standards of Comfort .....50

Schedule J County's Maintenance Responsibilities .....51

Schedule K Company's Maintenance Responsibilities and Training .....52

Schedule L Sample Financing Agreement .....53

Schedule M Performance Bond.....54

Schedule N Certificate of Acceptance Investment Grade Energy Audit .....55

Schedule O Projected Cash Flow .....56

Schedule P(i) Certificate of Substantial Completion.....57

Schedule P(ii) Certificate of Final Acceptance.....59

Schedule Q Equipment Warranties .....60

Schedule R Unconditional Corporate Guarantee .....61

Schedule S Specification of a Benchmark Cost of Capital, Minimum Rate of Return .....62

Schedule T Document Supporting Recurring Funds Requirement.....63

Schedule U Approval by the Head of the County .....64

Schedule V County Measurement & Verification Plan to Monitor Cost Savings .....65

APPENDICES

Appendix A State Term Contract No. 973-320-08-1 .....70

Appendix B Investment Grade Energy Audit..... 71

GUARANTEED ENERGY, WATER, AND WASTEWATER PERFORMANCE SAVINGS  
CONTRACT

This Guaranteed Energy, Water, and Wastewater Performance Savings Contract (this "Contract") is made and entered into as of the day last signed below, at Miami, in the County of Miami-Dade, State of Florida, by and between FPL Services, LLC ("Company"), having its principal offices at 6001 Village Blvd., West Palm Beach, Florida, and Miami-Dade County ("County") with its principal offices at 111 NW 1<sup>st</sup> Street, Miami, Florida, 33128, for the purpose of installing certain equipment, and providing other services designed to reduce energy or water consumption, wastewater production, or energy related operating costs for County with respect to the County's facilities located at Miami International Airport (MIA) terminal, 2100 NW 42 Ave., Miami, FL 33126.

RECITALS

WHEREAS, on January 1, 2013, the Company and the Florida Department of Management Services entered into State Term Contract No. 973-320-08-1, 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, 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, the qualified provider or providers give a written guarantee that the cost savings will meet or exceed the costs of the system and the actual cost savings must 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, water and/or wastewater performance characteristics of the facilities and existing Equipment described in Schedule B, 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 total annual contract payments made by the County under this Contract for such calendar year pursuant to § 489.145(3)(d)(2).

**“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 F (Savings Calculation Formula).

**“Baseline”** means County’s fuel, energy or water consumption, wastewater production for each CM Group. 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 H (Baseline). To the extent the Baseline may be adjusted, it shall be adjusted in accordance with Schedule H.

**“Commencement Date”** means, with respect to each CM Group, the first day of the calendar month after which all of the following events have occurred: (i) Company has delivered a Certificate of Substantial Completion with respect to the CM Group; and (ii) County has approved, or is deemed to have approved, the Certificate of Substantial Completion for the CM Groups pursuant to Section 4.2(b).

**“Company”** means 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 A, 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. CMs may only include, and this contract is void as to any other measures than, items listed in § 489.145 (3) (b) Florida Statutes.

**“Conservation Measure Group”** or **“CM Group”** means each group of CMs or other deliverables as listed in Schedule A.

**“Cost Savings”** means the measured reduction in the cost of fuel, energy, water consumption, or wastewater production, 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 F.

“**County**” has the meaning set forth in the first paragraph of this Contract.

“**County Shortfall Payment Demand**” shall have the meaning set forth in Section 5.3(b).

“**Equipment**” means all items of property described in the Schedule A (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 B, (Pre-existing Equipment Inventory). A Facility must be a distinct auditable unit, measurable by the FEMP standards referenced in Section 5.2.

“**Fiscal Year**” means the annual period from July 1<sup>st</sup> through June 30<sup>th</sup>.

“**Guarantee**” means Company’s guarantee reflected on Schedule C (Savings Guarantee), whereby Company guarantees that the savings will meet or exceed the costs of the CMs 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**” or “**Energy Audit Report**” means the detailed energy, water and/or wastewater audit performed by Company, along with an accompanying analysis of the Conservation Measures, and their costs, savings, and benefits prior to entry of this Contract. The Audit includes a narrative describing and justifying the need for the CMs. 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.

“**Minor Deficiencies**” means, with respect to a particular CM Group or CM, as applicable, any construction, installation or other conditions existing as of the date of the applicable Certificate of Substantial Completion which do not materially affect the ability of the CM Group or CM, as applicable, to properly operate and function in accordance with its intended purpose pursuant to 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.

“Party” means County or Company, as applicable.

“Punch List” means, with respect to a particular CM group or CM, as applicable, a list of Minor Deficiencies provided by the County to the Company in the form set forth in Schedule P(i).

“Savings Calculation Formula” means the Company’s Savings Calculation Formula reflected in Schedule F.

“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 and Appendixes listed in the Table of Contents
- 3- The State Term Contract [*currently 973-320-08-1*] (Appendix A)
- 4- The Investment Grade Energy Audit (Appendix B)

Section 2.2. Investment Grade Energy Audit. Company has, under separate agreement, submitted the complete Investment Grade Energy Audit and analysis of the Facilities attached as Appendix B and dated November 8, 2013, revised January 23, 2014, and addended on September 9, 2014, the addended version of which has been approved and accepted by County as set forth in Schedule N (Certificate of Audit Acceptance Investment Grade Energy Audit). The Investment Grade Energy Audit includes all Conservation Measures agreed upon by the parties.

### Section 2.3 The Contract shall now also contain.

(a) Supporting information required by § 216.023(4)(a)9 Florida Statutes, in § 287.063(5) Florida Statutes and § 287.064(11) Florida Statutes. For contracts approved under this section, the criteria at a minimum include the Schedule S, specification of a benchmark cost of capital and minimum real rate of return on energy, water, or wastewater savings against which proposals have been evaluated.

(b) Documentation supporting recurring funds requirements in § 287.063(5) Florida Statutes and § 287.064(11) Florida Statutes. (Schedule T)

### SECTION 3. TERM OF CONTRACT

Section 3.1 Initial Term; Interim Period. Each CM Group shall have its own individual Term. 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 [see § 489.145 (5)(g) ]; provided, however, the Term shall not extend beyond the earlier of (i) the term described in the Cash Flow in Schedule O of this Contract; (ii) the effective date of termination under Section 7 of this Contract; or (iii) twenty (20) years after the Commencement Date.

### SECTION 4. SCOPE OF WORK

#### Section 4.1 Installation of CMs

(a) Company shall install the CMs in the Facilities pursuant to specifications in Schedule A (CMs) and Appendix B (IGEA). Construction and installation shall proceed in accordance with the Construction Schedule approved by County and attached hereto as Schedule G (Construction and installation Schedule). County is not obligated to make any payments to the Company until Schedule P(i) (Certificate of Substantial Completion) has been issued to the Company.

(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, to minimize disruptions to airlines and passengers making use of the facility, and so as to conform to the Standards of Comfort set forth in Schedule I and the Construction Schedule specified in Schedule G (Construction and Installation Schedule). In order to provide the maximum degree of safety on airports during construction, the Contractor shall comply with the provisions of FAA Advisory Circular AC 150/5370-2 and AC 150/5340-1, Standards for Airport Markings. 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 or will be harmed, or if the work is causing significant impacts to passengers or airlines. All costs associated with such corrective action 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. The Company shall be responsible, at its sole cost, for the correction of all latent defects in the performance of the work discovered during the term of this Contract.

#### Section 4.2 Acceptance of CMs.

(a) Notice of Substantial Completion. When Company considers the CM Group to have been substantially completed in accordance with all contractual requirements, Company shall deliver to County a Certificate of Substantial Completion in the form set forth in Schedule P(i). Within thirty (30) calendar days from receipt of by the Customer of a Certificate of Substantial Completion, (i) the County shall conduct an inspection, (ii) the County shall deliver a Punch List in the form set forth in Schedule P(i) and notice of any potential material defects or deficiencies of the CM Group and (iii) if County does not believe that there are any potential material defects or deficiencies of the CM Group, County shall approve the Certificate of Substantial Completion by delivering to Company an executed and completed Certificate of Substantial Completion.

(b) Correction of Material Defects or Deficiencies. Following Company's receipt of notice by County of any potential defect or deficiency of the CM Group, the Company shall determine in the reasonable exercise of its professional judgment whether the alleged defect or deficiency is material. If the Company determines that a material defect or deficiency exists, then the Company shall cause any necessary corrections to be made to remedy the material defect or deficiency. Thereafter, Company shall deliver a new Certificate of Substantial Completion, which will restart the process of Section 4.2(a). Any dispute as to the existence of a material defect or deficiency shall be handled pursuant to Section 17, and the arbitrator or court of competent jurisdiction, as applicable, in such matter shall not be bound by the Company's determination and may instead conduct a de novo review as to the existence or materiality of any alleged defect. The County shall deliver written notification to the Company of a material deficiency or defect of the CM Group within thirty (30) calendar days following the County's receipt of a Certificate of Substantial Completion. The date on which the County approves the Certificate of Substantial Completion for a CM Group shall establish the date of substantial completion and the Commencement Date. The County acknowledges that following the Commencement Date, any remedies relating to alleged deficiencies of the applicable CM Group are limited to those provided by Section 8. Notwithstanding, the Company shall at all times during the term of this Contract remain liable for (1) latent defects in the performance of the work and (2) fraudulent workmanship or billing.

(c) Correction of Punch List Items. Following Company's receipt of notice by County of any Punch List, the Company shall, within a reasonable period of time not to exceed thirty (30) days, correct any Minor Deficiencies identified in the Punch List which the Company determines, in the reasonable exercise of its professional judgment, are necessary or appropriate for completion of the CM Group. Any dispute as to the existence of any Minor Deficiencies shall be handled pursuant to Section 17 and the arbitrator or court of competent jurisdiction, as applicable, in such matter shall not be bound by the Company's determination and may instead conduct a de novo review as to the existence or materiality of any alleged deficiency.

(d) Notice of Final Completion. Following approval of a Certificate of Substantial Completion by County, and the correction of any Minor Deficiencies identified in the Punch List

by Company, the Company shall deliver to Customer a Certificate of Final Acceptance in the form set forth in Schedule P(ii). If the CM Group is found to be complete, the County shall execute and return to the Company the Certificate of Final Acceptance within thirty (30) days following receipt by the County of the Certificate of Final Acceptance. If, upon inspection by the County, the CM Group is not found to be complete, then the County shall so notify the Company within such thirty (30) day period, and the Company shall promptly perform any necessary corrections and repairs. When the Company has completed such corrections and repairs, and when all training contemplated in Section 4.5 below has occurred, it shall again issue a Certificate of Final Acceptance to the County, and the foregoing procedure shall be repeated until such time as the County shall execute and return the Certificate of Final Acceptance.

(e) The Parties intend that a Certificate of Substantial Completion of CM will be executed for each CM Group installation as soon as the installation is substantially complete and beneficial use is provided. However, it is anticipated and agreed that County may require use of some installed and substantially completed CMs prior to the completion of all CMs of the CM Group. In such situations, the Parties will conduct the inspection and acceptance procedures of Sections 4.2(a) through Section 4.2(d) with respect to such individual CMs. Except as specified in Schedule K (Company's Maintenance), any maintenance and repairs due to ordinary wear and tear caused by such use will be made at the expense of County.

Section 4.3 Maintenance. County shall incur no cost obligations to Company for service, repairs, and adjustments, except as set forth in Schedule D (Compensation to Company and Deliverable); provided, however, that when the need for Company maintenance or repairs principally arises due to (1) the negligence or willful misconduct of County or any employee or other agent of County, and Company can so demonstrate such causal connection, or (2) the failure of the County to maintain the CMs in accordance with Schedule J, 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. Failure by the Company to use the appropriate technical requirements as identified in Schedule A (Conservation Measures to be Installed by Company & Description of Facilities) and Appendix B (Investment Grade Energy Audit) will result in automatic task rejection and may not be invoiced or paid until correction of the task. Failure by the Company to complete the required duties as outline in this Contract (including but not limited to Sections 4, 5, 8, 10 and Schedule K) may result in the rejection of the invoice.

#### 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 B (Pre-existing Equipment Inventory). During the Term, County will provide Company copies of all energy and water bills relevant to CMs on a regular basis so that Company may provide the Cost Savings report identified in subsections 4.4(b) and 5.3 below:

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

(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, 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 County 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 the 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, it shall promptly notify the Company and the 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 Training. Company shall conduct the training program described in Schedule K (Company's Maintenance Responsibilities and Training) hereto. The training specified in Schedule K (Company's Maintenance Responsibilities and Training) must be completed prior to acceptance of the CM. Company shall provide ongoing training 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 CMs and for the performance of its obligations hereunder. 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 and the operation of the equipment 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. Nothing contained herein shall restrict or limit the regulatory or police powers of the County with respect to the work or the contract.

## SECTION 5. PAYMENTS TO COMPANY

Section 5.1 Energy, Water, and Wastewater Performance Savings Guarantee. Company has formulated and provided a written Guarantee that the Cost Savings will meet or exceed the costs of the Conservation Measures 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. Any provisions providing for deemed savings are void and there will be no stipulation as to savings amounts achieved other than operating, maintenance, and cost avoidance as allowed, if applicable. The Guarantee is attached as Schedule C, providing the annual level of Cost Savings to be achieved as a result of the Conservation Measures provided for in this Contract and in accordance with the Savings Calculation Formula as set forth in Schedule F, 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 as set forth in Schedule D (Compensation to Company) and Schedule L (Financing Agreement if applicable).

Section 5.2 Measuring Cost Savings. The Parties will measure the Cost Savings using the Savings Calculation Formula set forth in Schedule F and the monitoring and verification plans set forth in Schedule V. Company will ensure that the reported Cost Savings have in fact been recognized or the provisions of Sec. 5.3 will apply. In the case of energy-related CMs, 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 2.2*.

### 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 ninety (90) days after each year from 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) business days to accept or reject the report; however this time period shall not be triggered until all supporting documentation necessary to analyze the reconciliation is received by the County. County shall provide written notice of such rejection, within the stated acceptance period, specifying the basis of the deficiency. Company shall have forty five (45) 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 60 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 60th business day period, unless a longer acceptance period is mutually agreed upon in writing. Such acceptance, however, shall not be deemed a waiver of any rights pursuant to Section 8 below, nor a waiver of rights with respect to any latent defects or fraud. Company shall provide copies of the reports to the Department of Management Services and the Chief Financial Officer to validate that savings have occurred. The Annual Reconciliation report verification requirements of the County's Measurement and Verification plan (M&V Plan) is in the form attached, see Schedule V (County Measurement & Verification Plan to Monitor Cost Savings).

(b) Annual Shortfalls. If the Annual Reconciliation reveals a shortfall in guaranteed Cost Savings, Company is liable for such shortfall and shall pay to County the amount of the shortfall, together with interest equal to that provided in any financing agreement from the time the Annual Reconciliation first revealed a shortfall and the time of repayment. County shall submit to Contractor a written statement as to the amount of the shortfall (County Shortfall Payment Demand) to the extent the Annual Reconciliation or a County M&V Plan review reveals such shortfall, which may be incorporated into the County's response to Company's Annual Reconciliation. Company shall remit such payments to County within sixty (60) days of written notice by County of such monies due. If Company fails to make such payment to County within 60 days after demand therefore, County may offset the amount due against payments required under Schedule D, or in the event of third-party financing, demand payment pursuant to the security instrument identified in Schedule C (Savings Guarantee).

(c) Annual Excess Savings. County shall be entitled to retain one hundred percent (100%) of any Annual Excess Savings

Section 5.4 County Payment. 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 L (Financing Agreement), if applicable. All other payment and contract provisions of § 287.058 (1) Florida Statutes, are incorporated herein by reference. 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 Schedule P 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 of a CM must be paid within two years from the Commencement Date by County, using straight-line amortization for the term of the loan, and (ii) the Cost Savings are guaranteed by the Company 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, a sample financing agreement is incorporated herein as Schedule L (Sample Financing Agreement). Company may assess late fees at the rate set pursuant to Florida Statutes Section 55.03 in the event that a document required from the County pursuant to Schedule L is not timely delivered to the third party lender, provided that Company has provided all invoices and other documentation required under Schedule L (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 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 Exhibit H, which has been based on the Federal Energy Management Program's (FEMP) *M&V Guidelines: Measurement and Verification for Federal Energy Management Projects version 2.2*. Details of the Monitoring and Verification methodology shall be agreed upon by the Parties and documented in Schedule F.

Section 5.8 False Claims Ordinance. The County reserves the right to require that the Company certify any invoice, bill, report, or audit pursuant to the County's False Claims Ordinance. Failure of the Company to certify such document pursuant to that Ordinance shall constitute a rejection of that document without need for further action of the County, and the County may not process or accept any such document until such certification is received.

## 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. The County is subject to the appropriation of funds by the governing body of County 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 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. County agrees to direct the person within such County in charge of preparing County's budget to include in the budget request for each Fiscal Year the payments becoming due in such Fiscal Year. 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 functions during the applicable Terms.

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 Company of such event ("Notice of Non-Appropriation").

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. However, Company may by written notice to the County, also to the Chief Financial Officer (CFO), request that County, within thirty (30) days of such written notice, cause all equipment in a CM Group 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 delivered to Company or Company's designee at a

place in the County designated by Company. The County shall be responsible for the condition of the equipment at the time of delivery, but will take commercially reasonable measures to deliver the equipment in its then existing condition.

Section 6.5 Company's Rights if Equipment is Not Returned. The Parties agree that there is no intention to create under this Contract a right in Company to dispossess County involuntarily of the legal title to or the use of the CMs or any underlying equipment. Company hereby irrevocably waives any right to specific performance of County's covenant to transfer legal title to and return possession of the equipment to Company. If County fails or refuses to voluntarily transfer such equipment to Company as provided in Section 6.4, then Company shall have the right, to the extent permitted by law, to obtain a judgment against County from Legally Available Funds for compensatory damages in the amount of the then applicable Principal Balances as shown on the applicable Schedule D (Compensation to Company and Deliverables). If the equipment or any portion of it has been destroyed or damaged beyond repair, County shall pay the applicable Principal Balance of the damaged or destroyed equipment as set forth in the Schedule relating thereto to Company only to the extent not covered by any insurance obtained by County.

Section 6.6 No Waiver of Sovereign Immunity. Nothing herein shall be construed as waiving the sovereign immunity of Miami-Dade County or any County or instrumentality thereof.

## Section 7. TERMINATION

Section 7.1 Termination for Non-Appropriation. This Contract shall immediately terminate with respect to each CM Group for which a Non-Appropriation has occurred. The termination shall be effective as of the last day for which funds were appropriated and Company may then pursue its rights under Section 6 above. However, 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 Balance of CMs. In the event of a termination under Section 7.1 above, Company may elect to terminate this Contract with respect to all, but not less than all, of the remaining CMs. 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 and 6.5 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 Group Schedule shall be executed after any termination due to Non-Appropriation or Event of Default. The parties may pursue any rights and remedies provided for herein or otherwise at law.

## 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 protected by appropriate original equipment manufacturer (OEM) written warranties covering all parts and equipment performance; provided that such warranties shall at a minimum warrant that the equipment shall (i) be new, unused and undamaged when delivered, (ii) be free from improper workmanship and defects. A minimum warranty period of one (1) year from the Commencement Date shall apply to all the equipment, except to the extent specified in Schedule Q (Equipment Warranties) ("Equipment Warranty Period"). In the event that any third party warranty required by this Section 8.1 is provided for a period of less than the Equipment Warranty Period, Company shall not be in breach of this Agreement, but shall itself be deemed to have provided such warranty during the period commencing with the expiration of such third party warranty and ending one (1) year from installation of such equipment. The Company further agrees to deliver to the County, for its inspection and approval, all such written warranties at the time of issuance by the Company of a Certificate of Final Acceptance with respect to the equipment or materials. All warranties shall be transferable and extend to the County. Company agrees to act as the County's agent in pursuing rights and remedies against manufacturers and suppliers of the equipment in the event of a malfunction or defect during the Equipment Warranty Period. County agrees to notify Company, in writing, within ten (10) days of detection of defects in equipment which give rise to such rights and remedies provided by this Section 8.1. After the end of the Equipment Warranty Period, County shall be responsible for pursuing any and all rights and remedies provided under such third party warranties. AS BETWEEN THE COMPANY AND THE COUNTY, WITH RESPECT TO SUCH EQUIPMENT MANUFACTURED BY THIRD PARTIES, ALL IMPLIED WARRANTIES AND EXPRESS WARRANTIES NOT INCLUDED HEREIN ARE EXPRESSLY DISCLAIMED BY THE COMPANY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF CUSTOM OR USAGE. COUNTY AGREES THAT IT WILL ONLY PURSUE ANY CLAIMS FOR WARRANTIES NOT PROVIDED UNDER THIS AGREEMENT AGAINST THE THIRD PARTY MANUFACTURER OF THE APPLICABLE EQUIPMENT, AND HEREBY RELEASES AND WAIVES IT RIGHT AS TO ANY SUCH CLAIMS AGAINST COMPANY.

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, for a period of one (1) year following the Commencement Date for such CM Group or CM, as applicable, 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. As the County's sole and exclusive remedy for any such claim against the Company's warranties under this Section 8.2, the Company shall, at its own cost and expense, as soon as reasonably possible following the Company's receipt of notice of any such claim, re-perform the defective work. All costs incidental to the Company's re-performance of the work and testing thereof shall be borne by the Company. The Company shall use reasonable efforts to perform such remedial actions and make any tests in a timely manner and at such times so as to minimize disruption of normal operations at the applicable County Facility.

Section 8.3 Warranty Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES OF THIS SECTION 8.0, COMPANY DOES NOT MAKE AND EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER, WRITTEN OR ORAL, EXPRESS OR IMPLIED BY LAW.

## SECTION 9. INDEMNIFICATION AND LIMITATION OF LIABILITY

Section 9.1 Indemnification by Company. Company shall hold and save County, the Miami-Dade County, 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 the County, 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, incidental, consequential, exemplary 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. Notwithstanding the foregoing, nothing in this section will be construed to limit any of the remedies afforded to County under Rule 60A-1.006(3), Florida Administrative Code. For all claims against the Company under this Contract, and regardless of the basis on which the claim is made, the Company's liability shall be limited to the greater of \$100,000, or the dollar amount of the Contract. The limitation of the preceding sentence shall not apply to claims arising under the indemnity provisions of this Section 9.1.

## 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 all rights for the duration of this Contract for any and all software or other intellectual property rights necessary for County to continue to operate, maintain, and repair the CM in a manner that will yield maximal consumption reductions.

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.

Section 10.3 Ownership of Installed Equipment; Risk of Loss. Upon the issuance of a Certificate of Acceptance for a CM Group, 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 Warranty of Title. The Company warrants good title to all CMs and components thereof (not including any licensed third party software components) furnished or installed by the Company or its subcontractors, and the Company warrants that title to such CMs and components (not including any licensed third party software components) shall pass to and vest in the County as set forth in Section 10.3 free and clear of all liens, claims, charges, security interests, encumbrances and rights of other parties arising as a result of the actions or failure to act of the Company, its subcontractors, or their employees.

## SECTION 11. FACILITIES MAINTENANCE AND EQUIPMENT SERVICES

Section 11.1 Conservation Procedures. County agrees that it shall adhere to, follow and implement the conservation procedures and methods of operation to be set forth on Schedule J (County's Maintenance Responsibilities).

Section 11.2 Changes to CMs and Facilities by County. County shall not move, remove, modify, alter, or change in any way the CMs or any part thereof without the prior written approval of Company, which consent shall not be unreasonably withheld, except as set forth in Schedule J (County's Maintenance Responsibilities). Notwithstanding the foregoing, County may take reasonable steps to protect a CM if, due to an emergency, it is not possible or reasonable to notify Company before taking any such actions. In the event of such an emergency, County shall take reasonable steps to protect the CM from damage or injury and shall follow

instructions for emergency action provided in advance by Company. 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 in accordance with Schedule J (County's 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 County, in consultation with Company, shall determine what, if any, adjustments to Baseline will be made.

Section 11.3 Changes to CMs 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 Cost Savings at the Facilities 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. At all times during the Term, Company shall maintain in full force and effect the following insurance coverages: (1) Worker's Compensation Insurance sufficient to cover all of the employees of Company working to fulfill this Contract, and (2) General Liability Insurance with limits 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. Except for Workers' Compensation, such policies shall add 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 non-renewed 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.

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, with respect to (i) and (ii), such damage or injury occurs as a result of Company's

performance under this Contract, but only to the extent caused by the negligent acts or negligent omissions of Company.

Section 12.3 Insurance Policy Guarantee. In the event an insurance policy is selected by Company to support the Schedule C, Guarantee, such policy shall be in an amount equal to the amount of the Guarantee during the remaining term of the Guarantee period. It shall name the County as a beneficiary and shall provide that payment shall be made to County upon presentation to the Insurer of one or more County Shortfall Payment Demands. It shall provide that the insurer may conclusively rely as to the completeness and accuracy of all statements in such County Shortfall Payment Demands. The insurer shall not be required to make any inquiry, inspection or investigation in connection therewith. In the event a dispute as to an Annual Reconciliation shortfall is resolved in Company's favor, Company will first reimburse the insurer from the funds it receives.

### 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 Construction Bond in the amount of \$ 32,004,867. The Construction Bond shall remain in effect until the CM is accepted by County as provided in Schedule P(ii) (Certificate of Acceptance of CM).

(b) Surety Bond: In the event a surety bond is selected to support the Schedule C Guarantee, Company shall furnish County a surety bond equal to the amount of the Guarantee during the remaining term of the guarantee period. As security for payment under Company's guarantee, Company shall provide to County such surety bond provided by an institution assigned one of the two highest policyholder ratings accorded insurers by A.M. Best & Company or any comparable service. Each surety bond shall be payable to County, or available to be drawn upon by it upon failure of Company to make payment in accordance with Section 5.4. If a disbursement is made under the surety bond, it shall be the obligation of Company, and not County, to reimburse the provider of the instrument. Company shall at all times maintain the surety bond in effect in an amount sufficient to cover the amount of the Guarantee during the remaining term of the guarantee period.

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 that the bond(s) has been renewed together and 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 County, Department of Financial Services, authorizing it to write surety bonds in the County.

(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 Best's Policyholder Rating of A- or Performance Index Rating of VI from 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. The 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 60 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 County's reasonable costs and expenses, including cost of cover pursuant to Fla. Admin. Code Rule 60A-1.006 (3).

## 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; provided Company can without prior approval from County assign this Contract, in whole or in part, to its parent or affiliate companies and, upon assumption of such obligations by the assignee, neither Company nor its parent will be or remain secondarily liable for any obligations under this Agreement.

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 County 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 County, 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 County, 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 Miami-Dade County 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 and all reasonable rules of County relative to the Facilities.

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. Any disputes resulting in litigation between the Parties shall be conducted in the state or federal courts of the State of Florida. Proceedings shall take place in the Circuit Court for Miami-Dade County or Palm Beach County, Florida or the United States District Court for the Southern District of Florida. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONTRACT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, OR STATEMENTS WHETHER ORAL OR PARTY HERETO.

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: Rex Noble P.E.  
Development Manager  
FPL Services, LLC  
6001 Village Blvd

West Palm Beach, FL 33407  
Telephone: 561-681-3050  
Facsimile: 561-681-3057  
[rex.noble@fpl.com](mailto:rex.noble@fpl.com)

TO COUNTY: Reinaldo Abrahante  
Engineer 3  
Internal Services Department  
Miami-Dade County  
200 NW 1<sup>st</sup> Street  
Miami, Florida 33128

Section 19.10 Statutory Notices and Requirements. County shall consider the employment by any 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 as required by 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.

19.13 County Right to Regulate: Nothing contained herein shall restrict or limit the regulatory or police powers of the County with respect to the work or the contract. Without limiting the preceding, these powers, include, but are not limited to: building codes, fire codes, regulation of Companies, environmental regulations, zoning and land use regulations and all similar matters. The Company shall be responsible for all costs incurred due to all regulations or impacts due to all regulations.

#### Section 20 – Airport Access

20.1 The Company shall mark all equipment with three foot square orange and white flags whenever such equipment is operating on the Air Operations Area (AOA) or in proximity to flight zones. Equipment employed on the AOA shall be withdrawn from work areas at the close of the work day. Equipment shall not be parked in any location where it will constitute a hazard to aircraft or aircraft operations. Equipment shall be night marked and lighted as required by the Technical Specifications and FAA Advisory Circular 150/5210-5 "Painting, Marking and Lighting of Vehicles Used on an Airport" latest edition.

20.2 Equipment will not be allowed on the airfield which is not properly equipped to contain all material, debris, etc. Constant inspections will be performed by the Company to insure a continuous, clean and safe aircraft operating area at all times.

20.3 The Company shall obtain from MDAD Airside Operations, for work at Miami International Airport, or from the airport manager for work at other MDAD General Aviation Airports, all equipment height limitations. Approval for use of cranes and other high equipment may be given, provided that the Company submits full data and scheduling to MDAD for approval by the FAA. Companies are cautioned that the FAA processing of this request may take eight (8) weeks from the time of application.

20.4 The Company shall furnish and erect signs, barricades, lights, flags and other protective devices as may be required, to protect aircraft, pedestrian and vehicular traffic and the work. All such signs, barricades, lights, flags and other protective devices shall be in accordance with the requirements of the Contract Documents.

20.5 The Company shall furnish flaggers in sufficient numbers to protect and divert vehicular and pedestrian traffic from working areas closed to traffic, or to protect any new work. Such flaggers shall be furnished on a twenty-four (24) hour basis when conditions and/or airport operations require.

20.6 The Company and all SubCompanies shall be governed by the provisions of the Miami - Dade County, Florida, Fire Prevention and Safety Code, and shall take all necessary precautions to guard against and eliminate all possible fire hazards and to prevent injury to persons or fire damage to any construction, building materials, equipment, temporary field offices, storage sheds, and all other property, both public and private, particularly when gas or arc welding and torch cutting is taking place. Open flames (except approved torch cutting equipment), including the use of flambeaux, are strictly prohibited.

20.7 The Company shall not use explosives on the Site, nor allow explosives of any type or nature to be brought upon the Site of the construction, without the prior express written approval of the Miami-Dade Aviation Department. Any such authorized use of explosives shall be governed by the provisions of Chapter 13, Code of Miami-Dade County, and other governing agencies in their use or storage. Subject to conditions outlined below, the Owner will permit the use of powder actuated fasteners and tools in connection with airport construction:

A. Permission to use powder actuated fasteners and tools will in no way relieve the Company or its SubCompanies from responsibilities under its Contract relating to liability for damages arising out of the use of such equipment.

B. Architect/Engineer approval must be given specifically, and in writing, for the use of such fasteners for each and every application for which the Company desires to use this type of fastener. The Company shall submit to the Architect/ Engineer for approval all structural and operational data pertinent to each and every application, such data to include, but not be limited to the following:

- (1) Make and model number of the powder actuated tool(s).
- (2) Manufacturer's brochure completely describing the proposed fastening system.
- (3) Sufficient drawings, cross-sections, and/or descriptive specification data to fully define the location(s) where powder actuated fasteners are intended for use. This information shall include the type and thickness of material into which the fasteners are to be driven, and the penetration of the proposed fasteners.
- (4) The name, address and social security number of each operator of the powder actuated tool(s)

who, has been certified by the manufacturer as a qualified operator of the equipment. The Company's submittal shall include an affidavit stating that only the certified operator(s) named shall be permitted to use the powder-actuated tool(s).

C. Only powder actuated tools of a safe, low-velocity, piston type which comply with all the requirements of OSHA regulations shall be allowed.

D. An operator of powder-actuated tools shall have on his/her person at all times the manufacturer's card certifying that he is a qualified operator. The Architect/Engineer shall immediately suspend any work being conducted by operators not having such certification on his/her person.

E. The Architect/Engineer the County or the Owner may suspend any work in progress using powder actuated fasteners and tools, if such powder actuated work is deemed to be unsafe, or is considered to be detrimental to the operation of the airport. Failure of the Architect/Engineer or the Owner to suspend any such work shall not impose any liability on the Architect/Engineer, or the Owner.

F. Powder actuated fasteners are specifically prohibited from use in prestressed concrete structural members. The Architect/Engineer may approve same after reviewing submittal data and after being satisfied as to procedures to be used to locate prestressed tendons.

G. Powder actuated fasteners will be disallowed when, in the opinion of the Architect/Engineer, or the Owner, the noise from the powder-actuated tool would create disruption of airport operations.

H. This specification is intended to encourage the use of economical, efficient, structurally sound fastening systems, and to use them in a manner that is safe for the operators, other workmen, the public, and the structure.

#### 20.8 Environmental Considerations:

A. Air pollution. The Company shall use emissions control devices on gasoline or diesel powered construction equipment and minimize idling and unnecessary operation of equipment to prevent and control air pollution in accordance with criteria issued by Federal, State and local agencies having relevant jurisdiction.

B. Dust Control: The Company shall employ appropriate measures to control the generation and accumulation of dust at the site to the extent of work generating dust. Sprinkling with water or other suitable means shall be used to prevent the dispersal of substantial amounts of dust produced by demolition and other work generating dust. Collection and removal measures shall be employed to prevent accumulation of dust deposits to the extent of work generating dust.

C. Asbestos: When asbestos materials are encountered or are suspected to be present in the area of the work, the Company shall immediately shut down all work in the area and notify the Architect/



Engineer of the asbestos discovery. The Company may be required to prepare and execute a program for asbestos disposal, abatement or encapsulation with the guidance and approval of the County's asbestos consultant. The program shall meet all applicable Federal, State and County regulations relating to asbestos removal, encapsulation, protection of workers and public and any other relevant procedures. Unless otherwise provided in the Contract Documents, all such work will be authorized by an appropriate Work Order or Change Order signed by both parties.

D. Flammable Materials: The Company shall store petroleum products, paint and other flammable materials in designated locations and in compliance with fire safety regulations. Spillages shall be collected and legally disposed of promptly and in a manner consistent with fire safety regulations and environmental protection regulations issued by Federal, State and local agencies having relevant jurisdiction.

E. Noise Controls: The Company shall minimize noise caused by work operations. The Company shall provide machinery and equipment fitted with efficient noise-suppression devices for protection of employees and public and he shall schedule working hours and operations to minimize public disturbance in vicinity of work. The Company shall employ sound barriers as directed by the Architect/Engineer.

F. Fumes: The Company shall not conduct operations that will result in the production of noxious, flammable, explosive or odoriferous fumes in locations or in quantities that constitute a hazard to health or safety or an objectionable environment for workers or public.

G. Hydrocarbons: The Company is hereby forewarned of a potential hazard peculiar to the working conditions on airport property consisting of the presence of hydro-carbon gas and its fumes in, on, or about the ground water table when exposed by open trench or pit excavation. Should the Company encounter the presence of hydrocarbon liquid or gas in an open excavation, it shall immediately cease all work in and about the excavation, notify the Architect/ Engineer of the presence of the hydrocarbon and await further instructions before proceeding with its operations in the affected area. The Company shall not perform any open-flame operations (such as torch-cutting, or electric welding, etc.) in or about any such open excavation without first having received approval of the Airport Fire Division, which shall have the authority to require the Company to provide, on a standby basis, such fire extinguishing apparatus and personnel as it deems appropriate. The Airport Fire Division shall have the authority to direct the Company to cease such operations and take whatever remedial actions are deemed appropriate and necessary, when, in its representative's opinion, continuing the work would jeopardize airport property, facilities, equipment or personnel.

20.9 Before commencing work in any given area, the Company shall carefully search the site for utility locations, and determine possible utility conflicts. It shall be the responsibility of the Company to verify the location of all such utilities, structures, etc., using magnetic and electronic detectors and by hand excavation or other appropriate measures before performing any work that could result in damage to such utilities or structures. The Company shall make a thorough search of the particular location for underground utilities, structures, etc., before excavation work is commenced in any particular location. To this end the Company shall provide and maintain throughout the term of the

Contract, electronic and magnetic detecting devices capable of locating underground utilities, etc.

20.10 NAVAIDS. The Company is hereby informed that there are installed on the Airport, and within the site, FAA NAVAIDS, including without limitations, FAA NAVAIDS such as ASR, IHF, and VHF receivers and transmitters, U.S. Weather Bureau Facilities, and electronic cables and controls relating to such NAVAIDS and facilities. Such NAVAIDS, Weather Bureau, and other facilities and electric cables are vital to the operation of the Airport and must be fully protected during the entire project. Work under this Contract can be accomplished in the vicinity of these facilities and cables only at approved periods of time. Approval is subject to withdrawal at any time because of changes in the weather, emergency conditions, and for any other reason determined by the County. Any instructions to the Company to clear any given area, at any time, given by the County or by any authority designated by the County such as the Federal Aviation Administration by any means including radio, shall be immediately executed. Construction work will resume in the cleared area only when such instructions are issued by the County.

20.10.1 Power and control cables leading to and from any FAA NAVAIDS, Weather Bureau, or other facilities will be protected from any possible damage from the elements or due to any crossing of these facilities by equipment.

20.10.2 The Company is hereby notified that he shall be required to immediately repair, at his own expense, with identical material by skilled workers, any underground cables serving FAA NAVAIDS, Weather Bureau and other existing FAA facilities which are damaged by his workers, equipment or work, and that prior approval of the FAA must be obtained for materials, workers, time of day or night, method of repairs, and for any temporary or permanent repairs the Company proposes to make to any FAA NAVAIDS and facilities damaged by the Company.

20.10.3 Damaged FAA cables (controls, NAVAIDS and NOAA) shall be repaired in accordance with the requirements of FAA-SO-STD-71 Specifications "Installation and Splicing of Underground Cables". Prior approval of the County must be obtained for the materials, workers, time of day or night, and for the method of repairs for any temporary or permanent repairs the Company proposes to make to any Airport facilities, cables, or existing utilities damaged by the Company. The FAA Airways Facilities Sector Field Office (AFSFO) Manager shall have the discretion of determining who shall perform repairs of damaged cables.

20.10.4 NAVAIDS shall be removed from service when construction activities occur within any NAVAIDS critical area, when the runways are closed or when the runway threshold is displaced. If a NAVAID must be removed from service for more than eight hours or for any period of time for three consecutive days, a minimum of fifty (50) day advance notice is required for coordinating the extended facility shutdown with the FAA. Facility shutdown coordination shall be initiated by the Company with the County; the County will coordinate the facility shutdown with the FAA AFSFO Manager responsible for this facility.

20.11 The Company shall not disrupt or disconnect any type of utility whatsoever without first obtaining the written permission of the County. If a suitable bypass of such utility cannot be

provided, then the County may direct the Company to proceed with the work on a twenty-four (24) hour per day basis until such interrupted utility services are completely restored. Requests for disconnection shall be submitted on a fully completed copy of the MDAD "Shut Down Form" delivered to the Owner, through the County for processing and approval at least five (5) working days prior to the time of the requested interruption, and shall state:

- A. The identity of the utility involved.
- B. Justification of the requested disconnect.
- C. The location of the requested disconnect.
- D. The exact date and time at which the disconnect is requested.
- E. The duration of the proposed disconnect.

## 20.12 AIRFIELD OPERATIONS AREA (AOA) SECURITY

20.12.1 Company acknowledges and accepts full responsibility for compliance with all applicable laws, rules and regulations including those of the Transportation Security Administration ("TSA"), Department of Homeland Security (DHS), Federal Aviation Administration (FAA), Customs and Border Protection (CBP) and MDAD as set forth from time to time relating to Company's activities at the Miami International Airport (MIA).

20.12.2 In order to maintain high levels of security at MIA, Company must obtain MDAD photo identification badges for all Company employees working in the Secured/AOA/Security Identification Display Area (SIDA)/Sterile Areas or any other restricted areas of the Airport. MDAD issues two types of identification badges: photo identification badges and non-photo passes. All employees, except temporary workers (working less than two weeks), will be required to obtain photo identification badges and will be subject to Federal Bureau of Investigation (FBI) fingerprint-based Criminal History Records Check (CHRC). Temporary workers (working less than two weeks) will be issued non-photo passes. At no time will an employee bearing a non-photo identification badge be authorized in a secured MIA location without being escorted by an MDAD authorized Escort Authority that has been issued a badge with an escort seal by the MDAD ID Section. No other individuals are allowed to escort under any circumstances.

20.12.3 The Company shall be responsible for requesting MDAD to issue identification badges to all employees who Company requests be authorized access to the Secured/AOA/SIDA/Sterile Areas or any other restricted areas of the Airport and shall be further responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel transferred from Airport assignment or terminated from the employ of the Company or upon final acceptance of the Work or termination of this Contract. Company will be responsible for fees associated with lost and unaccounted for badges or passes as well as the fee(s) for fingerprinting and ID issuance.

20.12.4 All employees of the Company, SubCompanies, or trade Companies who must work within MDAD Secured/AOA/SIDA/Sterile Areas or any other restricted areas at Miami International Airport shall be supplied with MDAD identification badges as specified above, which must be worn at all times while within the referenced areas. Badges shall be worn on outer garments above the waist so as to be clearly visible in order to distinguish, on sight, employees assigned to a particular Company. MDAD issues the non-photo passes on a daily basis, not to exceed two weeks. In order to obtain a non-photo pass the Company must submit a 48 Hour Advance Notification form with required information to the MDAD Security Division, ID Section for all temporary workers requiring access to the MDAD Secured/AOA/SIDA/Sterile Areas or other restricted areas of the airport. Non-photo passes will not be issued to temporary workers who have failed a criminal history records check, are in possession of an expired work permit and/or have an expired MDAD ID badge. Each employee must complete the SIDA training program conducted by MDAD and comply with all other TSA, DHS, CBP, FAA or MDAD requirements as specified by the MDAD at the time of application for the ID badge before an ID badge is issued. MDAD Security and Safety ID Section regularly provides SIDA Training.

20.12.5 Company Ramp Permits will be issued to the Company authorizing vehicle entrance to the Airfield Operations Area (AOA) through specified Miami-Dade Aviation Department guard gates for the term of any Project. These permits will be issued only for those vehicles (including vehicles belonging to the SubCompany) that must have access to the site during the performance of the Work. These permits will be only issued to company owned vehicles or to company leased vehicles (leased from a commercial leasing company). AOA decals, passes, or permits to operate within the Secured/AOA/SIDA will not be issued to privately owned or privately leased vehicles. All vehicles operating within the Secured/AOA/SIDA must have conspicuous company identification signs (minimum of three (3) inch lettering) displayed on both sides of the vehicle.

All vehicles operating within the Secured/AOA/SIDA must be provided with the Automobile Liability Insurance in the amounts directed by the County.

20.12.6 Vehicles delivering materials to the site will be given temporary passes at the appropriate guard gate. Such vehicles shall not be permitted to operate within the Secured/AOA/SIDA without MDAD escort to be provided by MDAD's Operations Division. To obtain an escort, the Company shall notify MDAD Airside Operations Division in writing twenty-four (24) hours in advance of such need. These passes shall be surrendered upon leaving the Secured/AOA/SIDA. All vehicles shall be marked with company name to ensure positive identification at all times while in the Secured/AOASIDA.

20.12.7 Only Company management level staff, supervisors and foremen with pictured MDAD I.D. badges shall be allowed to operate a motor vehicle on the Secured/AOA/SIDA without MDAD escort except when operating a vehicle that requires a specialized license to operate (CDL). Such vehicles must be under MDAD Airside Operations escort when moving on the AOA unless said vehicle is operating in an approved Maintenance of Traffic (MOT). The Company shall require such

employee to have a current, valid, appropriate Florida driver's license and to attend and successfully complete the AOA Driver Training Course conducted periodically by the Department. The privilege of a person to operate a motor vehicle on the Secured/AOA/SIDA may be withdrawn by the Department because of violation of AOA driving rules or loss of Florida driver's license.

20.12.8 The Company agrees that its personnel, vehicles, cargo, goods, and other personal property are subject to being searched when attempting to enter, leave or while on the Secured/AOA/SIDA/Sterile Areas or other restricted areas of the airport. It is further agreed that the MDAD has the right to prohibit an individual, agent, or employee of the Company or SubCompany from entering the Secured/AOA/SIDA/Sterile Areas or other restricted areas, based upon facts which would lead a person of reasonable prudence to believe that such individual might be inclined to engage in theft, cargo tampering, aircraft sabotage, or other unlawful activities, including repeated failure to comply with TSA, DHS,, FAA, CBP and MDAD SIDA/access control policies, rules and regulations. Any person denied access to the Secured/AOA/SIDA/Sterile areas or other restricted areas of the airport or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a review hearing before the Director or his/her authorized designee within a reasonable time. Prior to such hearing, the person denied access to the Secured/AOA/SIDA/Sterile Areas or other restricted areas of the airport shall be advised, in writing, of the reasons for such denial.

The Company acknowledges and understands that these provisions are for the protection of all users of the Secured/AOA/SIDA/Sterile Areas and are intended to reduce the incidence of terrorism, thefts, cargo tampering, aircraft sabotage, and other unlawful activities at the Airport and to maximize compliance with TSA, DHS, CBP, FAA, and MDAD access control policies and procedures.

20.12.9 The Company understands and agrees that vehicle and equipment shall not be parked/stored on the Secured/AOA/SIDA in areas not designated or authorized by MDAD nor in any manner contrary to any posted regulatory signs, traffic control devices, or pavement markings.

20.12.10 The Company understands and agrees that all persons entering and working in or around arriving international aircraft and facilities used by the various Federal Inspection Services agencies may be subject to the consent and approval of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies shall not be employed by the Company in areas under the jurisdiction or control of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies who enter such areas are subject to fines, which shall be borne entirely by the persons and/or the Company.

20.12.11 Prior to Substantial Completion or Beneficial Occupancy of any facility that will permit access to the Secured/AOA/SIDA/Sterile Areas via doors or gates, the Company shall either (a) keep all such doors and/or gates locked at all times or (b) position a security guard or designated employee to monitor any door and/or gate that must remain open. Keys to such doors and gates shall be limited and issued only to company employees with a current MDAD picture ID. Door/gate keys shall be numbered and stamped "Do Not Duplicate." The Company shall keep a log of all keys issued and to whom. The log is subject to audit by the Owner. Employees must have their assigned

key in their possession at the time of audit. Failure to comply with these requirements can result in monetary fines, loss of access to the Secured/AOA/SIDA/Sterile Areas, and/or termination of this Contract.

20.12.12 Notwithstanding the specific provisions of this Article, the Owner shall have the right to add to, amend, or delete any portion hereof in order to meet reasonable security requirements of MDAD or of the TSA/DHS/CBP/FAA.

20.12.13 The Company shall ensure that all employees so required participate in such safety, security, and other training and instructional programs, as MDAD or appropriate Federal agencies may from time to time require.

20.12.14 Company agrees that it will include in all contracts and subcontracts with its MIA SubCompanies, service providers, and suppliers an obligation by such parties to comply with all security requirements applicable to their operations at the Airport. Company agrees that in addition to all remedies, penalties, and sanctions that may be imposed by TSA, DHS, CBP, FAA or the MDAD upon Company's SubCompanies, suppliers, and their individual employees for a violation of applicable security provisions, Company shall be responsible to the Owner for all such violations.

20.12.15 In addition to the foregoing, the Company shall be required to comply with U.S. Customs and Border Protection (CBP) requirements for obtaining CBP seals for those Company employees that will be involved within the CBP/FIS environment at MIA. The Vendor shall be responsible for all related fees for required bonding, fingerprinting and background investigations of Company personnel.

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: Sam Forrest, Vice President

Date: 10/6/14

COUNTY:

By:

[Signature]

Title:

Date:

Schedule A  
Conservation Measures to Be Installed by Company and Description of Facilities

Facility Name:		<b>Miami International Airport –Terminal Areas</b>		
Address:		2100 NW 42 <sup>nd</sup> Ave Miami, Florida 33142		
Ref. in App. B	CM	Group	Description of Conservation Measure (i.e.: Energy Efficient Lighting)	Useful Life of the Equipment
Sec. 2,3,4 App. H, I	1	Lighting	Lighting Retrofit in areas identified throughout the facilities	20 years
Sec. 2,3,4 App. H, I	1	Lighting	Install lighting occupancy sensors and controls in areas identified throughout the facilities	Controls: 24.7 years
Sec. 2,3,4 App. J, K	2	Water	Water Conservation: Low flow fixture retrofit/replacement in areas identified throughout E,F,G, and H.	Sanitary Ware: 25 years Flush Valves: 20 years
Sec. 2,3,4 App. J, K	2	Water	HE Laundry Upgrades in identified areas	Equipment: 20 years
Sec. 2,3,4 App. L,M	3	HVAC	Replace six AHUs in selected terminals.	20 years
Sec. 2,3,4 App. J, K	4	Misc	Ice Machine Controls in E and F.	Controls: 24.7 years
Sec. 2,3,4 App. J, K	4	Misc	Install Dip-Proofer in North Terminal Baggage Handling System	Controls: 24.7 years

Facility Name:		<b>Terminal Chiller Plant 3099</b>		
Sec. 2,3,4 App. J, K	2	Water	Water Conservation: Low flow fixture retrofit/replacement in areas identified throughout Building 3099.	Sanitary Ware: 25 years Flush Valves: 20 years
Sec. 2,3,4 App. L,M	3	HVAC	Replace one 2500 Ton chiller in Chiller Plant 3099 and implement sequencing controls.	23 years

Note - All facilities in this list are owned and operated by Miami-Dade County.

Schedule B  
Pre-existing Equipment Inventory

For a description of the existing equipment, refer to the Miami-Dade County Performance Contracting Program Aviation Department IGA November 2013 and revised January 2014 and September 2014 by FPL Services, LLC.



Schedule C  
Savings Guarantee

Company has formulated and hereby guarantees the following annual levels of savings to be achieved as a result of the installation and acceptance of the Conservation Measures in the amounts guaranteed and for the Guarantee Periods stated below. Savings must equal the entire cost of the project, not just the amount financed.

The Savings Guarantee is set forth in annual increments for the term of the Contract, pursuant to Section 5 as follows:

Year	Total Annual Savings
Construction Period	\$1,791,537
1	\$2,939,432
2	\$3,006,276
3	\$2,363,848
4	\$2,434,763
5	\$2,507,806
6	\$2,583,040
7	\$2,660,532
8	\$2,740,347
9	\$2,822,558
10	\$2,907,235
11	\$2,870,665
12	\$2,956,785
13	\$3,045,488
14	\$3,136,853
Total	\$40,767,165

(Note: Must be structured to be sufficient to cover any and all annual payments. Actual savings achieved will be calculated pursuant to Section 6 – Measurement & Verification, and Appendices H, J, L, N – Analyses for each CM, of the Miami-Dade County Performance Contracting Program Aviation Department IGA November 2013 and revised January 2014 and September 2014 by FPL Services, LLC.)

For value received, the undersigned guarantees the payment of any amounts due Agency, its agents or assigns, for any failure to achieve these levels.

Company:



By: Sam Forrest

Title: Vice President, FPL Services, LLC.

Date: 10/6/14

Schedule D  
Compensation to Company and Deliverables

Construction disbursements to the Company are to be made in accordance with the attached draw schedule upon acceptance by Agency of each applicable CM Group (Schedule A). Company deliverables consist of:

1. CM Group has been installed and is operational per the Audit report scope of work, see Appendix B.
2. Design documents, where required, for the installed CM Group have been delivered.
3. Equipment has been installed in accordance with federal, state, county and local codes.
4. On-site training for equipment operation and warranty processes has been provided as required.
5. All as-built drawings have been provided.
6. All closeout documents have been provided.
7. All removed fluorescent lamps and ballasts have been properly recycled and removed from the site.
8. Facilities have been restored to original condition (including but not limited to sod replaced, storage facilities removed, and site cleaned).

The scope of work and timeline for the deliverables are more particularly described in Appendix B. Total compensation for each CM Group is included in the following matrix.

Costs		
CM Group	Description of Deliverable	Cost
Lighting	Lighting	\$23,823,215
Water	Water Conservation	\$2,262,562
HVAC	HVAC	\$2,375,038
Miscellaneous	Miscellaneous	\$3,650,363
	Original Principal Amount	\$ 32,111,178
	Rebates	(\$141,311)
	Issuance Fees	\$35,000
	Total Amount	\$32,004,867

Schedule E

Compensation and Deliverables Required in Other Related Contracts

Intentionally Deleted.

Schedule F  
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 if the CMs 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 as defined below.

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 CMs. Post-Installation Costs shall be the product of (i) the actual amount of fuel, energy or water consumption or wastewater production during the applicable time period, and (ii) the Utility Rates as defined below; together with

- The stipulated operation and maintenance cost savings resulting from the implementation and installation of the CMs. These cost savings have been negotiated and agreed upon by the parties and there is no need to verify the agreed savings. In addition, lighting hours of operation, pump run hours, fan motor run hours, and chiller and DX ton-hours/EFLF are hereby stipulated.

**Stipulated Cost Savings**

Description	Savings
Construction Savings	\$1,791,537
Lighting Materials – Bulbs, Ballasts, and Miscellaneous per year for 10 years	\$87,979
HVAC Lighting Interactive Savings	\$153,411
Occupancy Sensors and Lighting Controls	\$46,792
Domestic Water Conservation	\$365,290
Domestic Water Conservation Materials	\$4,130
Kitchen/Laundry Improvements	\$1,311
Dip Proofer Maintenance Savings	\$230,000
Ice Machine Controls	\$428
Capital Avoidance Savings	\$711,279
<b>TOTAL</b>	<b>\$3,392,157</b>

C. The Utility Rates shall be the base period utility unit costs set forth below and referenced in the Miami-Dade County Performance Contracting Program Aviation Department IGA dated November 2013 and revised January 2014 and September 2014 by FPL Services, LLC. Electricity, natural gas, and water are escalated at 3% per year after the year in which this Contract is entered. In no event shall the Utility Rate be lower than base year utility rate with appropriate escalation.

*Contract Utility Rates*  
2012-2013 Electric Rate Summary

Main Area Description	Additional Clarification	Multi Meter Average (Y/N)	Blended ON&OFF or Single Rate (\$/Kwh)	(\$/Kwd)	Blended (Overall) Kwd&Kwh (\$/Kwh)
Airport Wide	Exterior drive and main entrance of airport for high mast + E thru H	Y	0.0490	12.59	0.0687
Building 3030		N	0.0550	11.07	0.0792
Building 3033	Fed from 3090	N	0.0478	13.00	0.0685
Building 3037	Fed from 3040	N	0.0487	12.97	0.0716
Building 3038	Fed from 3040	N	0.0487	12.97	0.0716
Building 3040		N	0.0487	12.97	0.0716
Building 3041	FPL substation (No rate, average used from all 30xx rates)	Y	0.0493	12.63	0.072
Building 3050		N	0.0551	11.07	0.0755
Building 3090		N	0.0478	13.00	0.0685
Building 3091	Fed from 3090	N	0.0478	13.00	0.0685
Building 3095		N	0.0489	12.96	0.0732
Building 3099	CCPE	Y	0.0471	12.88	0.0754
Building 3104	Dolphin Ped. Bridge	Y	0.0461	13.00	0.0679
Building 5A		Y	0.0483	12.70	0.0723
Building 600		N	0.0555	11.02	0.0788
Building 845 (100)		Y	0.0519	13.81	0.0746
Building 846		N	0.0556	11.04	0.0780
Building 889		N	0.0478	12.72	0.0718
Bus Station		Y	0.0490	12.59	0.0687
Concourse & Terminal E		Y	0.0482	12.75	0.0745
Concourse & Terminal F		Y	0.0459	14.46	0.0705
Concourse & Terminal G		Y	0.0475	12.76	0.0678
Concourse & Terminal H		Y	0.0525	11.38	0.0702
Concourse E		Y	0.0482	12.75	0.0745
Concourse F		Y	0.0459	12.91	0.0681
Concourse G		Y	0.0475	12.76	0.0678
Concourse H		Y	0.0525	11.38	0.0702
Concourse J		N	0.0502	12.55	0.0778
Dolphin & Flamingo Garage Drive		Y	0.0486	13.00	0.0679
Dolphin Garage		Y	0.0486	13.00	0.0679
Employee Garage 3094		Y	0.0478	13.00	0.0685
Employee Garage 8 (3089)		N	0.0552	11.10	0.0855
Flamingo Garage		Y	0.0486	13.00	0.0679
Hangar 862A		N	0.0540	11.41	0.0822
Lower Drive		Y	0.0486	13.00	0.0679
Satellite E		N	0.0428	16.25	0.0724
Short Term Parking		Y	0.0486	13.00	0.0679
Terminal H		Y	0.0525	11.38	0.0702
Super D		Y	0.0466	13.06	0.0675
Super D - AA Area		Y	0.0466	13.06	0.0675
Super D - Terminal		Y	0.0466	13.06	0.0675
Terminal F		Y	0.0426	15.60	0.0665
Terminal G		Y	0.0426	15.60	0.0665
Terminal J		Y	0.0502	12.59	0.0687
Train Wash Area		Y	0.0466	13.06	0.0675
Tunnel 612		N	0.0557	11.44	0.0854
Upper Drive		Y	0.0486	13.00	0.0679

Main Area	Additional Clarification	Multi	Blended	(\$/Kwd)	Blended
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Description		Meter Average (Y/N)	ON&OFF or Single Rate (\$/Kwh)		(Overall) Kwd&Kwh (\$/Kwh)
700		Y	0.0635	12.33	0.0794
701		Y	0.0693	11.11	0.0895
702		Y	0.0512	12.50	0.0732
704		Y	0.0501	12.94	0.1093
706		Y	0.0553	14.82	0.0807
707		Y	0.0542	11.81	0.0773
708		Y	0.0556	11.91	0.0806
716		Y	0.0584	11.46	0.0814
719		N	0.0549	11.04	0.0776
720	Chiller Plant is on Bldg 702 House Meter	Y	0.0512	12.50	0.0732
721		N	0.0496	12.73	0.0737
727 / 728 / 729		Y	0.0553	12.12	0.084
Opa Locka		Y	0.0565	11.09	0.1085
Tamiami		Y	0.0547	11.13	0.0991

### 2012-2013 Water & Sewer Rate Summary

Water Cost (\$/kgal)	Sewer Cost (\$/kgal)	Blended (\$/kgal)
\$5.89	\$6.75	\$12.64

D. **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 H (Baseline) of the Contract. Adjustments may be necessary due to changes in operation, occupancy, etc. by the Agency that do not adhere to the operating parameters set forth in Miami-Dade County Performance Contracting Program Aviation Department IGA, dated November 2013 and revised January 2014 and September 2014 by FPL Services, LLC.

### Equations for Calculating Energy and Demand Savings - Lighting

Energy savings for lighting efficiency projects use the following equation:

$$kWh\ Svgs_t = \sum_u [(kW/Fixture_{baseline} \times Quantity_{baseline} - kW/Fixture_{post} \times Quantity_{post}) \times Hours\ of\ Operation]_{t,u}$$

$$kW\ Svgs_t = \sum_u [(kW/Fixture_{baseline} \times Quantity_{baseline} - kW/Fixture_{post} \times Quantity_{post})]^*12$$

where:

$KWh\ Savings =$  kilowatt-hour savings realized during the post-installation time period  $t$   
 $KW/fixture_{baseline} =$  lighting baseline demand per fixture for usage group  $u$   
 $kW/fixture_{post} =$  lighting demand per fixture during post-installation period for usage group  $u$   
 $Quantity_{baseline} =$  quantity of affected fixtures before the lighting retrofit for usage group  $u$ , adjusted for inoperative and inoperative lighting fixtures  
 $Quantity_{post} =$  quantity of affected fixtures after the lighting retrofit for usage group  $u$   
 $Hours\ of\ Operation =$  Number of operating hours during the time period  $t$  for the usage group  $u$ ,

assuming operating hours are the same before and after measure installation

## Equations for Calculating Savings - Water

To determine water savings use the following equation:

$$\text{Gallons Savings}_t = \sum_u [ (\text{Gal/Flush}_{\text{baseline}} \times \text{Quantity}_{\text{baseline}} - \text{Gal/Flush}_{\text{post}} \times \text{Quantity}_{\text{post}}) \times \text{Number of Uses}]_{t,u}$$

where:

<i>Gallons Savings</i> =	gallon savings realized during the post-installation time period <i>t</i>
<i>Gal/Flush<sub>baseline</sub></i> =	Gallons baseline per flush (or use) for usage group <i>u</i>
<i>Gal/Flush<sub>post</sub></i> =	Gallons per flush (or use) during post-installation period for usage group <i>u</i>
<i>Quantity<sub>baseline</sub></i> =	quantity of affected fixtures before the water conservation retrofit for usage group <i>u</i> and the number of flushes
<i>Quantity<sub>post</sub></i> =	quantity of affected fixtures post water conservation retrofit for usage group <i>u</i> and the number of flushes
<i>Number of Uses</i> =	number of uses during the time period <i>t</i> for the usage group <i>u</i> , assuming number of uses are the same before and after measure installation

To determine gas savings due to hot water reduction, use the following equation:

$$\text{Btu Svgs}_t = \text{Btu}_{\text{baseline}} - \text{Btu}_{\text{post}}$$

where:

<i>Btu Savings</i> =	British Thermal Unit savings realized during the post-installation time period <i>t</i>
<i>Btu<sub>baseline</sub></i> =	Baseline consumption for usage group.
<i>Btu<sub>post</sub></i> =	Consumption during post-installation period for usage group.

## Equations for Calculating Energy and Demand Savings – HVAC

Determine energy savings by comparing the energy usage associated with a facility or certain systems within a facility, before installation of the ECM (baseline) and after installation of the ECM (post-installation). Therefore:

$$\text{energy savings} = (\text{baseline energy use}) - (\text{post-installation energy use})$$

Electric Energy Savings Electric energy saved (kWh<sub>saved</sub>) is computed by taking the difference between the demand requirement measured for both pre- and post-implementation conditions. The formula is shown below.

$$\text{kWh}_{\text{saved}} = (\text{kWh}_{\text{pre}}) - (\text{kWh}_{\text{post}})$$

Electric Dollar Savings Dollar savings are computed by applying the applicable Contract Utility Rates (see



definition of this term).

Stipulated Ton Hours (after ECM implementation)	Measured Full Load Chiller kW/ton differential	Stipulated Effective Full Load Factor (EFLF)	Total Savings (\$)
---	--	--	--------------------

Where, Dollar savings = (Ton-Hours) x Delta kW/ton chiller x blended \$/kWh x EFLF

For other HVAC Savings, the following general equation should be used:

$$Btu\ Svgs_t = \sum_u [(Btuh/Unit_{baseline} \times Quantity_{baseline} - Btuh/Fixture_{post} \times Quantity_{post}) \times Hours\ of\ Operation]_{t,u}$$

where:

- Btu Savings* = British Thermal Unit savings realized during the post-installation time period *t*
- Btuh/Unit<sub>baseline</sub>* = baseline demand per fixture for usage group *u*
- Btuh/Unit<sub>post</sub>* = peak Btuh demand per unit during post-installation period for usage group *u*
- Quantity<sub>baseline</sub>* = quantity of affected units before the retrofit for usage group *u*
- Quantity<sub>post</sub>* = quantity of affected units after the retrofit for usage group *u*
- Hours of Operation* = Number of operating hours during the time period *t* for the usage group *u*, assuming operating hours are the same before and after measure installation

Gas Dollar Savings Dollar savings are computed by applying the applicable Contract Utility Rates (see definition of this term).

### **Equations for Calculating Energy Savings - Miscellaneous**

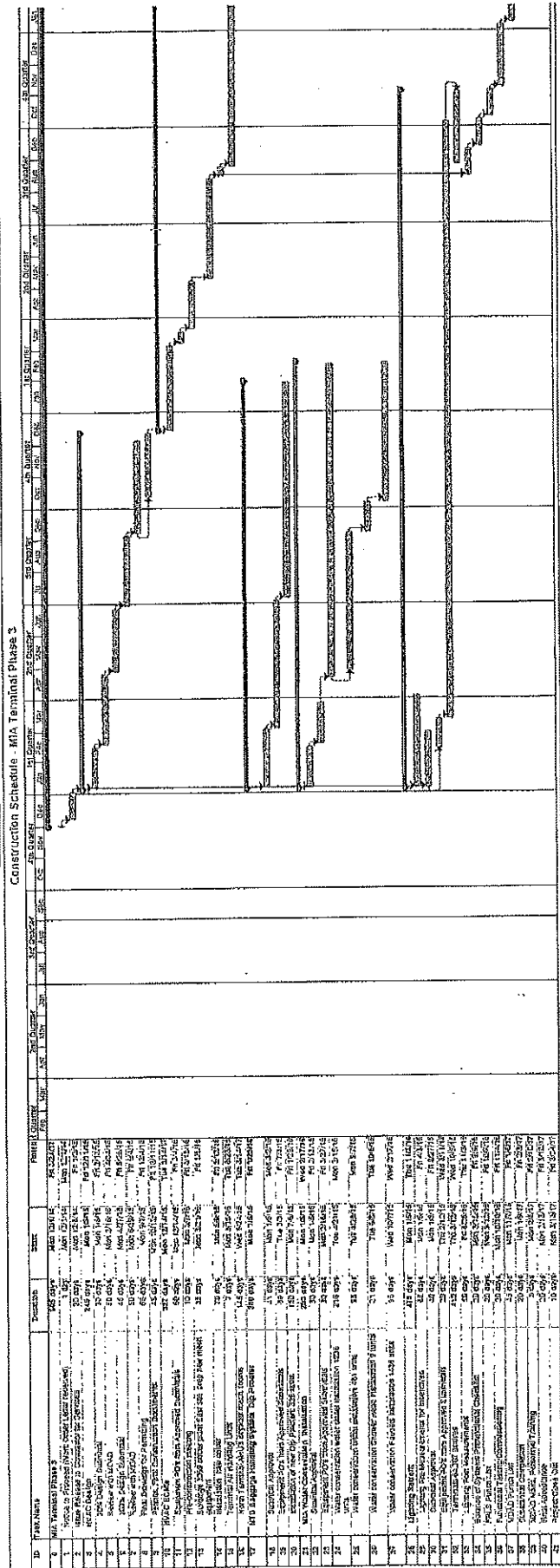
Energy savings (based on Btuh or kW, depending on measure and rate basis) for miscellaneous efficiency projects use the following equation:

$$Btu\ Svgs_t = \sum_u [(Btuh/Unit_{baseline} \times Quantity_{baseline} - Btuh/Fixture_{post} \times Quantity_{post}) \times Hours\ of\ Operation]_{t,u}$$

where:

- Btu Savings* = British Thermal Unit savings realized during the post-installation time period *t*
- Btuh/Unit<sub>baseline</sub>* = baseline demand per fixture for usage group *u*
- Btuh/Unit<sub>post</sub>* = peak Btuh demand per unit during post-installation period for usage group *u*
- Quantity<sub>baseline</sub>* = quantity of affected units before the retrofit for usage group *u*
- Quantity<sub>post</sub>* = quantity of affected units after the retrofit for usage group *u*
- Hours of Operation* = Number of operating hours during the time period *t* for the usage group *u*, assuming operating hours are the same before and after measure installation

Schedule G  
Construction and Installation  
Schedule



Schedule H  
Baseline

Baseline calculations, results, and descriptions are provided in the Modeling Methods section (Section 3) of the IGEA. All baseline calculations are established using computer models and input from field audits of all facilities included in the scope. Data used to develop the models for each CM are collected and inputted into the model software to generate baseline consumption.

**Lighting**

For lighting this includes room by room walk downs, representative foot candle readings and review of existing building plans. From page 70 (Modeling Methods), "After the process of selecting all the different lighting technologies and retrofit types to be proposed, the lighting ECM kW/kWh is calculated in Excel using the equipment published manufacturer data and estimated typical runtimes. The lighting ECM design/analysis was done with the goal of achieving kW and kWh savings while meeting or exceeding the existing light levels, without exceeding the existing circuits' power limits."

The sample measurements are taken at representative fixtures to confirm the actual power use. From page 70: "Once input, the spreadsheet calculated the fixture-by-fixture results, with all rows summed for the total ECM kW/kWh consumption. The savings will be a result of the energy difference between the baseline and the proposed ECM kW/kWh, once the kW/kWh savings were determined; the equivalent dollar savings were calculated using an average electric rate based on the previous 12 months billing history." The formulas used for the baseline values are:

$$kW_{baseline} = \sum [ (kW/Fixture_{baseline} \times Quantity_{baseline}) ]$$
$$kWh_{baseline} = \sum [ (kW/Fixture_{baseline} \times Quantity_{baseline}) \times Hours\ of\ Operation ]$$

The full lighting analysis is included in Appendix H of the IGEA.

**Water**

The water conservation analysis (modeling method) was accomplished in multiple steps. The first step was to collect the existing water consumption data. The second step was to conduct an interview with facilities management and maintenance to assess the building occupancy and equipment type/usage patterns. The third step was to note name plate fixture consumption and group them by type.

During the detailed audit of the facilities, all of the domestic fixtures on site were surveyed to determine flow rates. Water closet and urinal fixture flows were calculated by factoring fixture characteristics, timing of flush cycles and operational/performance observations to determine the flush flows for each fixture. Likewise, showers and faucets were analyzed to determine the consumption per fixture. Estimated flows are cross checked using a large database of fixture types operating under different operating conditions.

The final step was to model the total water consumption in order to create a realistic baseline comparison for the retrofit consumption proposed. The existing fixture annual consumptions were estimated to provide the consumption.

The formulas used for the baseline values are:

$$\begin{aligned} \text{Gallons Used} &= \sum [ (\text{Gal/Flush}_{\text{baseline}} \times \text{Quantity}_{\text{baseline}}) \times \text{Number of Uses} ] \\ \text{Gallons Used} &= \sum [ (\text{Gal/min}_{\text{baseline}} \times \text{min/use}_{\text{baseline}} \times \text{Quantity}_{\text{baseline}}) \times \text{Number of Uses} ] \end{aligned}$$

The full water conservation analysis is included in Appendix J of the IGEA.

## HVAC

For the HVAC and Mechanical CM baselines, information was gathered on the equipment, controls and operation based on observation of field conditions, existing facility drawings (where available) and interviews with maintenance, supervising and operating personnel. From this information, efficiencies, loading and usage were used to calculate the baseline energy consumption.

The formula used for the baseline values is simplified as:

$$\text{Therms}_{\text{baseline}} = \sum [ (\text{Btu/h/Unit}_{\text{baseline}} \times \text{Efficiency}_{\text{baseline}} \times \text{Quantity}_{\text{baseline}}) \times \text{Hours of Operation} ] \times \text{therms/Btu}$$

The full HVAC/Mechanical analysis is included in Appendix I of the IGEA.

For the HVAC cooling CM, building energy baseline consumption was determined using the Trane Trace 700 program developed by the Trane Company. The building features, existing equipment efficiencies and operating set points are input and the program uses local weather data and industry recognized ASHRAE heat transfer method to generate a dynamic energy model, as described in the ASHRAE Fundamentals Handbook to provide a baseline energy use. Buildings were first modeled as they currently stand and labeled the "baseline" run. From there it was possible to alter parameters of the building such as equipment replacement as well as equipment operation schedules. Energy consumption for on-peak and off-peak hours as well as energy cost savings were calculated and cross checked against electrical data collected by monitoring the buildings.

## Miscellaneous

For remaining miscellaneous measures the formula used for the baseline values is simplified as:

$$\text{kWh}_{\text{baseline}} = \sum [ (\text{kW/Unit}_{\text{baseline}} \times \text{Efficiency}_{\text{baseline}}) \times \text{Hours of Operation} ]$$

The full analyses are described in pages 122 in the "Modeling Methods" section and in Appendix N of the IGEA.

Schedule I

Standards of Comfort

Intentionally Deleted

Schedule J  
Agency's Maintenance Responsibilities

Agency maintenance responsibilities are in accordance with individual energy conservation measure operating schedules and manufacturer's maintenance guidelines, which are referenced in the Miami-Dade County Performance Contracting Program Aviation Department IGA, November 2013 and revised January 2014 and September 2014 by FPL Services, LLC (Appendix B of this contract) Operating schedules, guidelines, O&M manuals and training will be provided by FPL Services, LLC prior to Final Acceptance. Routine maintenance such as relamping of the lighting fixtures and replacement of plumbing valve diaphragms will continue to be the Agency's responsibility. As part of this contract FPL Services, LLC will not be responsible for any maintenance requirements after Substantial Completion documents have been executed.

Schedule K  
Company's Maintenance Responsibilities and Training

The company has no maintenance responsibilities. Training shall be provided by FPL Services, LLC, staff or designated manufacturer's representatives.

Training shall include descriptions of product equipment, details of operation, maintenance specifications, and warranty procedures for each of the following:

- Lighting systems
- Water conservation and electronic systems
- Mechanical measures.

Training will be conducted at a Miami-Dade County facility in which a central management team can easily coordinate attendance of local staff.

One hour minimum will be devoted to each of the categories listed above. It is estimated that 30 participants from the agency will be in attendance.

Schedule L

Sample Finance Agreement

Attached and numbered separately



Schedule L

FINANCING AGREEMENT

(ACQUISITION FUND)

This Financing Agreement (the "Agreement") dated as of \_\_\_\_\_, and entered into between \_\_\_\_\_ ("Lessor"), and Miami-Dade County, a political subdivision of the State of Florida ("Lessee").

WITNESSETH:

WHEREAS, Lessee desires to lease and acquire from Lessor certain Equipment (as such term is defined herein), subject to the terms and conditions hereof; and

WHEREAS, Lessee is authorized under the constitution and laws of the State to enter into this Agreement 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 Acquisition Amount is the amount represented by Lessee to be sufficient, together with proceeds from Lessee if any, to acquire the Equipment.

"Acquisition Fund" means the fund established and held by the Acquisition Fund Custodian pursuant to the Acquisition Fund Agreement, if any.

"Acquisition Fund Agreement" means the Acquisition Fund and Account Control 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 the Acquisition Fund Agreement, and its successors and assigns.

"Acquisition Period" means the period ending five (5) business days prior to \_\_\_\_\_.

"Agreement" means this Financing Agreement, including the exhibits hereto, together with any amendments and modifications to the Agreement pursuant to Section 13.04.

"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 the date when Lessee's obligation to pay rent commences hereunder, which shall be the date on which the Acquisition Amount is deposited with the Acquisition Fund Custodian.

*"Contract Rate"* means the rate identified as such in the Payment Schedule.

*"Equipment"* means the property listed in the Equipment Schedule 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, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment.

*"Equipment Costs"* means the total cost of the Equipment, including related costs such as freight, installation and taxes, capitalizable costs, and costs of issuance incurred in connection with the acquisition and/or financing of the Equipment.

*"Equipment Schedule"* means the equipment schedule attached hereto as Exhibit A and made a part hereof.

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

*"Lease Term"* means the Original Term and all Renewal Terms, with a final Renewal Term ending on \_\_\_\_\_ and final Rental Payment due on of \_\_\_\_\_.

*"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 this Agreement, including the Equipment, the Rental Payments and other amounts due hereunder, pursuant to Section 11.01, or the Acquisition Fund, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder.

*"Material Adverse Change"* means any change in Lessee's creditworthiness that could have a material adverse effect on (i) the financial condition or operations of Lessee, or (ii) Lessee's ability to perform its obligations under this Agreement.

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

*"Payment Schedule"* means the payment schedule attached hereto as Exhibit B and made a part hereof.

*"Renewal Terms"* means the renewal terms of this Agreement, each having a duration of one year and a term coextensive with Lessee's fiscal year.

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

"*State*" means the State of Florida.

"*Taxable Rate*" means an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any payment date would, after such interest was reduced by the amount of any Federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Lessor.

"*Termination Value*" means the amount provided in the Payment Schedule.

"*Vendor*" means the manufacturer, installer or supplier of the Equipment or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessor arranged Lessee's acquisition, installation, maintenance and/or servicing of the Equipment.

"*Vendor Agreement*" means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Equipment.

## ARTICLE II

*Section 2.01. Representations and Covenants of Lessee.* Lessee represents, covenants and warrants for the benefit of Lessor on the date hereof as follows:

(a) Lessee is a political subdivision of the State Florida, duly organized and existing under the constitution and laws of the State with full power and authority to enter into this Agreement and the transactions contemplated hereby, and to perform all of its obligations hereunder.

(b) Lessee has duly authorized the execution and delivery of this Agreement and the Acquisition Fund Agreement 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 the Acquisition Fund Agreement.

(c) 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.

(d) Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment.

(e) During the Lease Term, the Equipment will be used by Lessee only for the purpose of performing essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority. 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 hereunder.

(f) Lessee has kept, and throughout the Lease Term shall 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 (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within 210 days of its fiscal year end, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) its annual budget for any prior or current fiscal year or the following fiscal year. The financial statements described in subsection (g) 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.

(g) Lessee has an immediate need for the Equipment and expects to make immediate use of the Equipment. 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.

(h) The payment of the Rental Payments or any portion thereof is not directly or indirectly (x) 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 (y) 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. Lessee shall not permit the Federal government to guarantee any Rental Payments. 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 Acquisition Amount 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, other than as may be set forth in a tax certificate of Lessee executed in connection with this Lease.

(i) 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 under this Agreement or the Acquisition Fund Agreement. 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 rights and benefits under this Agreement and the Acquisition Fund Agreement.

(j) No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which lessee has been a party at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No event has occurred which would constitute, or with the giving of notice or the lapse of time or both would constitute, an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

### ARTICLE III

*Section 3.01. Lease of Equipment.* Subject to the terms of this Agreement, Lessor agrees to provide the Acquisition Amount to acquire the Equipment. Lessor hereby demises, leases, transfers and lets to Lessee, and Lessee hereby acquires, rents and leases from Lessor, the Equipment. The Lease Term 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 as set forth in the Payment Schedule. 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 this Agreement for the next Renewal Term unless Lessee shall have terminated this Agreement 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 Payment Schedule.

*Section 3.02. Continuation of Lease Term.* Lessee intends, subject to Section 3.03, to continue the Lease Term through the Original Term and all Renewal Terms. 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 can be obtained from legally available funds of Lessee. 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 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 following the then current Original Term or Renewal Term, this Agreement 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 promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section, Lessee agrees to cease use of the Equipment and peaceably remove and deliver at Lessee's expense the Equipment to Lessor at the location(s) to be specified by Lessor.

*Section 3.04. Conditions to Lessor's Performance.*

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

(i) An Acquisition Fund Agreement in the form set forth in Exhibit H hereto, satisfactory to Lessor and executed by Lessee and the Acquisition Fund Custodian;

(ii) A certified copy of a resolution, ordinance or other official action of Lessee's governing body, substantially in the form satisfactory to Lessor, authorizing the execution and delivery of this Agreement and the Acquisition Fund Agreement and performance by Lessee of its obligations under this Agreement and the Acquisition Fund Agreement;

(iii) A Certificate executed by the Clerk or Secretary or other comparable officer of Lessee, in substantially the form attached hereto as Exhibit C-2, completed to the satisfaction of Lessor;

(iv) An opinion of counsel to Lessee in a form satisfactory to Lessor;

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

(vi) All documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate at that time pursuant to Section 6.02;

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

(viii) A certified copy of any Surety Bond satisfying the conditions set forth in Section 7.04, or, at Lessor's sole discretion, such Surety Bonds may be provided after the Commencement Date, provided however, that no "Disbursement Request" pursuant to the Acquisition Fund Agreement shall be authorized by Lessor until such Surety Bonds satisfying the conditions set forth in Section 7.04 have been delivered to Lessor; and

(ix) Such other items reasonably required by Lessor.

(b) In addition, the performance by Lessor of any of its obligations under this Agreement and the Acquisition Fund Agreement shall be subject to: (i) no Material Adverse Change in the financial condition of Lessee since the date of this Agreement, and (ii) no Event of Default having occurred and continuing.

(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Acquisition Fund Custodian.

#### 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 the Payment Schedule. Interest on the Acquisition Amount shall begin to accrue as of the Commencement Date. Lessee shall pay Lessor a charge on any Rental Payment not paid on the date such payment is due at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less, from such date.

*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 as more fully detailed on the Payment Schedule.

*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 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, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of 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 HEREUNDER FROM THE COMPELLED LEVY OR 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 HEREUNDER.

*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 this Agreement 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, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances, or failure of any Vendor to deliver any Equipment or otherwise perform any of its obligations.

*Section 4.05. Tax Covenants.*

(a) Lessee agrees that it will not take 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, nor will it omit to take or cause to be taken, in timely manner, any action, which omission 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.

(b) In the event that Lessee does not spend sufficient moneys in the Acquisition Fund within six (6) months after the date the deposit is made pursuant to Section 3.04(c), Lessee will, if required by Section 148(f) of the Code to pay rebate: (i) establish a Rebate Account and deposit the Rebate Amount (as defined in Section 1.148-3(b) of the Federal Income Tax Regulations) not less frequently than once per year after the Commencement Date; and (ii) rebate to the United States, not less frequently than once every five (5) years after the Commencement Date, an amount equal to at least 90% of the Rebate Amount and within 60 days after payment of all Rental Payments or the Termination Value as provided in Section 10.01(a) hereof, 100% of the Rebate Amount, as required by the Code and any regulations promulgated thereunder.

Lessee shall determine the Rebate Amount, if any, at least every year and upon payment of all Rental Payments or the Termination Value and shall maintain such determination, together with any supporting documentation required to calculate the Rebate Amount, until six (6) years after the date of the final payment of the Rental Payments or the Termination Value.

*Section 4.06. Event of Taxability.* Upon the occurrence of an Event of Taxability, the interest component of Rental Payments and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the 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.

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.* Any funds not applied to Equipment Costs and remaining in the Acquisition Fund on the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee executes an Acceptance Certificate (in the form attached hereto as Exhibit E), shall be applied by Lessor on any Rental Payment date to all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining principal balance owing hereunder in the inverse order of Rental Payment dates.

## 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 Equipment Schedule and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. When the Equipment 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 E.

(b) Lessee shall deliver to Lessor original invoices (and proof of payment of such invoices) and bills of sale (if title to such Equipment has passed to Lessee) relating to each item of Equipment accepted by Lessee.

*Section 5.02. Quiet Enjoyment of Equipment.* So long as Lessee is not in default hereunder, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Equipment during the Lease Term.

*Section 5.03. Location; Inspection.* Once installed, no item of the Equipment will be moved or relocated from the location specified for it in the Equipment Schedule without Lessor's



prior written 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 where the Equipment is located for the purpose of inspecting the Equipment.

*Section 5.04. Use and Maintenance of the Equipment.* Lessee shall not install, use, operate or maintain the Equipment (or cause the Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. 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 hereunder.

Lessee agrees that it will maintain, preserve, and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to recertify 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 interest of Lessor.

## ARTICLE VI

*Section 6.01. Title to the Equipment.* During the 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 hereof. 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 this Agreement pursuant to Section 3.03 hereof, full and unencumbered legal title to the Equipment shall, at Lessor's option, pass to Lessor, and Lessee shall have no further interest therein. 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 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 the Equipment.

*Section 6.02. Personal Property.* Lessee agrees that the Equipment is deemed to be 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. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Equipment is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; provided, that if Lessor or its assigns is furnished with a waiver of interest in the Equipment acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld.

## 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 this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose 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 the Lease Term.

*Section 7.02. Insurance.* Lessee shall during the Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and additional insured 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 greater of (i) the then applicable Termination Value of the Equipment or (ii) the replacement cost of the Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability with limits of at least \$1,000,000 per occurrence/\$3,000,000 in the aggregate for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and 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 clauses (a) and/or (b). In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached hereto as Exhibit F. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout the 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.

*Section 7.03. Risk of Loss.* Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under this Agreement. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment, (c) 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 (d) the breach of any covenant of Lessee under or in connection with this Agreement or any material misrepresentation provided by Lessee under or in connection with this Agreement. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

*Section 7.04. Surety Bonds; Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties.* Lessee shall secure from each Vendor directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Equipment, a payment and performance bond ("Surety Bond") executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Lessor and naming Lessor as a co-obligee in a sum equal to the entire amount to become payable under each Vendor Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment and upon payment of all claims of subcontractors and suppliers. Lessee shall cause the surety company to add Lessor as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Lessor promptly upon receipt thereof by Lessee. Any proceeds from a Surety Bond shall be applied first to amounts due Lessor under this Agreement, and any remaining amounts shall be payable to Lessee.

In the event of a material default of any Vendor under any Vendor Agreement in connection with the acquisition, construction, maintenance and/or servicing of the Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Equipment, Lessee will promptly proceed to exhaust its remedies against the Vendor in default. Lessee shall advise Lessor of the steps it intends to take in connection with any such default. Any amounts received by Lessee in respect of damages, refunds, adjustments or otherwise in connection with the foregoing shall be paid to Lessor and applied against Lessee's obligations hereunder.

*Section 7.05. 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 a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less.

## ARTICLE VIII

*Section 8.01. Damage, Destruction and Condemnation.* If, prior to the termination of the 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, (i) 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 and any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee or (ii) Lessee shall exercise its option to purchase the Equipment in accordance with Section 10.01(b).

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 new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation. 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 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 Agreement. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment date after the occurrence of a casualty event, or be required to exercise its option to purchase the damaged equipment in accordance with Section 10.01(b).

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 Termination Value for the Equipment, and, upon such payment, the Lease Term shall terminate and Lessor's interest in the Equipment shall terminate as provided in Section 6.01 hereof. The amount of the Net Proceeds,

if any, remaining after completing such repair, restoration, modification or improvement or after purchasing such 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, the Equipment or the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement.

*Section 9.02 Vendor's Agreements; Warranties.* Lessee covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement without the prior written consent of Lessor. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default under this Agreement, 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 the applicable Vendor of the Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor hereunder, including the right to receive full and timely Rental Payments. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to the Equipment.

## ARTICLE X

*Section 10.01. Purchase Option.* Lessee shall have the option to purchase all, but not less than all, of the Equipment, at the following times and upon the following terms:

(a) From and after the date specified (if any) in the Payment Schedule (the "*Purchase Option Commencement Date*"), on the Rental Payment dates specified in the Payment Schedule, upon not less than 30 days' prior written notice, and upon payment in full of the Rental Payments then due and all other amounts then owing hereunder plus the then applicable Termination Value, which may include a prepayment premium on the unpaid balance as set forth in the Payment Schedule; or

(b) In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment, on the day specified in Lessee's notice to Lessor of its exercise of the purchase option (which shall be the earlier of the next Rental Payment date or 60 days after the casualty event) upon payment in full to Lessor of the Rental Payment then due plus the then applicable Termination Value (or, in the event such purchase occurs on a date other than a Rental Payment date, the sum of (i) the Termination Value relating to the Rental Payment

immediately prior to the date of such purchase plus (ii) accrued interest on the Outstanding Balance relating to the Rental Payment immediately prior to the date of such purchase, plus all other amounts then owing hereunder); 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 hereunder, and the payment of \$1.00 to Lessor.

After payment of the applicable Termination Value and all other amounts owing hereunder, Lessor's interests in and to such Equipment will be terminated and Lessee will own the Equipment free and clear of Lessor's interest in the Equipment.

## ARTICLE XI

### *Section 11.01. Assignment by Lessor.*

(a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Acquisition Fund Agreement, its interest in the Equipment and Acquisition Fund, and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor (which assignees or subassignees shall be Miami-Dade County Registered Vendors or shall agree to become a Miami-Dade County Registered Vendor as soon as practicable), without the necessity of obtaining the consent of Lessee; *provided*, 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; *provided* such certificates are sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represents that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment, (ii) such purchaser understands that neither this Agreement nor certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933; *provided further* 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 this Agreement with or to more than one individual or entity.

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, 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*, 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 this Agreement, 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 Lease Term, 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 interest in and to the Equipment and all rights in, to and under this Agreement related to such Equipment, and all of Lessor's interest in and to the Acquisition Fund, or all rights in, to and under the Acquisition Fund Agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment substantially in the form of Exhibit H attached hereto within five (5) business days after its receipt of such request.

*Section 11.02. Assignment and Subleasing by Lessee.* None of Lessee's right, title, and interest in, to and under this Agreement or any portion of the Equipment or the Acquisition Fund Agreement or the Acquisition Fund may be assigned, encumbered or subleased by Lessee for any reason, and any purported assignment, encumbrance or sublease without Lessor's prior written consent shall be null and void.

## ARTICLE XII

*Section 12.01. Events of Default Defined.* Any of the following events shall constitute an "Event of Default" under this Agreement:

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under this Agreement within 10 days after the date when due as specified herein or (ii) maintain insurance as required herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement contained in this 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 this Agreement 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, lease financing of property or otherwise receiving credit under which Lessee is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor, or (ii) arises under any



obligation under which there is outstanding, owing or committed an aggregated amount in excess of \$1,000,000.00;

(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, moratorium or insolvency proceeding; or

(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 for 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.

*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) By written notice to Lessee, Lessor may declare all Rental Payments payable by Lessee and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term to be due;

(b) With or without terminating the Lease Term, Lessor may enter the premises where the Equipment is located and retake possession of such Equipment or require Lessee at Lessee's expense to promptly return any or all of such Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease such Equipment or, for the account of Lessee, sublease such Equipment, continuing to hold Lessee liable, but solely from legally available funds, for the difference between (i) the Rental Payments payable by Lessee and other amounts hereunder on the Equipment that are payable by Lessee to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies hereunder, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities hereunder or the Equipment;

(c) Lessor may terminate the Acquisition Fund Agreement and apply any proceeds in the Acquisition Fund to the Rental Payments due hereunder; and

(d) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement or the Acquisition Fund Agreement or to any or all of the Equipment or the Acquisition Fund.



*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 hereunder 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.

### ARTICLE XIII

*Section 13.01. Notices.* All notices, certificates or other communications under this Agreement 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 13.02. Binding Effect.* This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

*Section 13.03. Severability.* In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

*Section 13.04. Amendments, Changes and Modifications.* This Agreement may only be amended by Lessor and Lessee in writing.

*Section 13.05. Execution in Counterparts.* This Agreement 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 13.06. Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State.

*Section 13.07. Captions.* The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

*Section 13.08. Public Records.* All documents, papers, letters or other material made or received in conjunction with this Agreement shall be subject to the public records provisions of Chapter 119, Florida Statutes.

[Remainder of Page Intentionally Left Blank]

[Signature Page Follows]

SAMPLE

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:

Miami-Dade

11333 McCormick Road  
Hunt Valley II  
M/C MD5-032-07-05  
Hunt Valley, MD 21031  
Attention: Contract Administration  
Fax No.: (443) 556-6977

200 NW 1<sup>st</sup> Street  
Miami, FL 33128  
Attention: Facilities and Utilities  
Management Division  
Fax No: (305) 375-3914

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(Seal)

Approved as to Form and Legal Sufficiency:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SAMPLE

*[Signature Page of Equipment Lease/Purchase Agreement]*

List of Exhibits

- Exhibit A -- Equipment Schedule
- Exhibit B -- Payment Schedule
- Exhibit C-1 -- [Reserved.]
- Exhibit C-2 -- Form of Incumbency and Authorization Certificate
- Exhibit D -- [Reserved.]
- Exhibit E -- Form of Acceptance Certificate
- Exhibit F -- Form of Self-Insurance Certificate
- Exhibit G -- Form of Notice and Acknowledgement of Assignment
- Exhibit H -- Form of Acquisition Fund and Account Control Agreement

SAMPLE

EXHIBIT A

EQUIPMENT SCHEDULE

Equipment Description (Scope of Work):

Location of Equipment:

SAMPLE

EXHIBIT B

PAYMENT SCHEDULE

<i>Pmt. No.</i>	<i>Payment Date</i>	<i>Payment Amount</i>	<i>Interest Portion</i>	<i>Principal Portion</i>	<i>Outstanding Balance</i>	<i>Termination Value</i>
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*Contract Rate.* The Contract Rate is \_\_\_\_\_<sup>9/6</sup>

*Purchase Option Commencement Date.* For purposes of Section 10.01 of the Agreement, the Purchase Option Commencement Date is \_\_\_\_\_.

SAMPLE

EXHIBIT C-1

[RESERVED]

SAMPLE

EXHIBIT C-2

FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, a duly elected or appointed and acting \_\_\_\_\_ of Miami-Dade County, Florida ("*Lessee*") certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the "*Officials*") in the capacity set forth opposite their respective names below and that the facsimile signatures are true and correct as of the date hereof;

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver the Equipment Lease/Purchase Agreement dated as of \_\_\_\_\_, by and between Lessee and \_\_\_\_\_ ("*Lessor*"), the Acquisition Fund and Account Control Agreement dated as of \_\_\_\_\_, among Lessor, Lessee and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, and all documents related thereto and delivered in connection therewith (collectively, the "*Agreements*"), and the Agreements are the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

Name of Official	Title	Signature
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(The signer of this Certificate cannot be listed above as authorized to execute the Agreements.)



EXHIBIT D

FORM OF OPINION OF COUNSEL TO LESSEE  
(to be typed on letterhead of counsel)

[Closing Date]

11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_ between \_\_\_\_\_, as Lessor, and Miami-Dade County, Florida, as Lessee

Ladies and Gentlemen:

As legal counsel to Miami-Dade County, Florida ("*Lessee*"), I have examined (a) an executed counterpart of a certain Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_, and Exhibits thereto by and between \_\_\_\_\_ ("*Lessor*") and Lessee (the "*Agreement*"), which, among other things, provides for the lease of certain property (the "*Equipment*") and a certain Acquisition Fund and Account Control Agreement among Lessor, Lessee, and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, dated \_\_\_\_\_ (the "*Acquisition Fund Agreement*"), (b) an executed counterpart of the ordinances or resolutions of Lessee which with respect to the transaction contemplated by the Agreement, the Acquisition Fund Agreement, and documents related thereto and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Acquisition Fund Agreement and the documents relating thereto are referred to collectively as the "Transaction Documents."

Based on the foregoing, I am of the following opinions:

1. Lessee is a public body corporate and politic, duly organized and existing under the laws of the State.
2. Lessee has the requisite power and authority to lease and acquire the Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents.
3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents are legal, valid and binding obligations of Lessee enforceable in accordance with their respective terms.

4. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state or federal laws.

5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or the interest of Lessor or its assigns, as the case may be, in the Equipment, the Acquisition Fund or other collateral thereunder.

All capitalized terms herein shall have the same meanings as in the Transaction Documents unless otherwise provided herein. Lessor and its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of the Rental Payments, are entitled to rely on this opinion.

Sincerely,

SAMPLE

EXHIBIT E

FORM OF ACCEPTANCE CERTIFICATE

11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_,  
between \_\_\_\_\_, as Lessor, and  
Miami-Dade County, Florida, as Lessee

Ladies and Gentlemen:

In accordance with the Equipment Lease/Purchase Agreement (the "Agreement"), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

1. All of the Equipment (as such term is defined in the Agreement) has been delivered, installed and accepted on the date hereof.
2. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
3. Lessee is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.
4. Lessee hereby reaffirms that the representations, warranties and covenants contained in the Agreement are true and correct as of the date hereof.
5. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

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

LESSEE:  
Miami-Dade County, Florida

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(Seal)

EXHIBIT F

FORM OF SELF INSURANCE CERTIFICATE

11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_ (the  
"Agreement") between \_\_\_\_\_, as  
Lessor, and Miami-Dade County, Florida, as Lessee

In connection with the above-referenced Agreement, Miami-Dade County, Florida (the  
"Lessee"), the Lessee warrants and represents to \_\_\_\_\_  
the following information. The terms capitalized herein but not defined herein shall have the  
meanings assigned to them in the Agreement.

1. The Lessee is self-insured for damage or destruction to the Equipment. The dollar  
amount limit for property damage to the Equipment under such self-insurance program is  
\$ \_\_\_\_\_. [The Lessee maintains an umbrella insurance policy for claims in excess  
of Lessee's self-insurance limits for property damage to the Equipment which policy has a dollar  
limit for property damage to the Equipment under such policy of \$ \_\_\_\_\_.]

2. The Lessee is self-insured for liability for injury or death of any person or damage  
or loss of property arising out of or relating to the condition or operation of the Equipment. The  
dollar limit for such liability claims under the Lessee's self-insurance program is  
\$ \_\_\_\_\_. [The Lessee maintains an umbrella insurance policy for claims in excess  
of Lessee's self-insurance limits for liability which policy has a dollar limit for liabilities for  
injury and death to persons as well as damage or loss of property arising out of or relating to the  
condition or operation of the Equipment in the amount of \$ \_\_\_\_\_.]

[3]. The Lessee maintains a self-insurance fund. Monies in the self-insurance fund  
[are/are not] subject to annual appropriation. The total amount maintained in the self-insurance  
fund to cover Lessee's self-insurance liabilities is \$ \_\_\_\_\_. [Amounts paid from  
the Lessee's self-insurance fund are subject to a dollar per claim of \$ \_\_\_\_\_.]

[3]. The Lessee does not maintain a self-insurance fund. The Lessee obtains funds to  
pay claims for which it has self-insured from the following sources:  
\_\_\_\_\_. Amounts payable for claims from the such sources are  
limited as follows: \_\_\_\_\_

4. Attached hereto are copies of certificates of insurance with respect to policies maintained by Lessee.

LESSEE:  
MIAMI-DADE COUNTY, FLORIDA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SAMPLE

**EXHIBIT G**  
**FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT**

DATED \_\_\_\_\_

\_\_\_\_\_ ("*Assignor*") hereby gives notice that it has assigned and sold to \_\_\_\_\_ ("*Assignee*") all of Assignor's right, title and interest in, to and under the Equipment Lease/Purchase Agreement (the "*Agreement*") dated as of \_\_\_\_\_, between Assignor and Miami-Dade County, Florida ("*Lessee*"), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Agreement, all of Assignor's right, title and interest in the Equipment (as defined in the Agreement), and all of Assignor's right, title and interest in, to and under the Acquisition Fund and Account Control Agreement dated \_\_\_\_\_ (the "*Acquisition Fund Agreement*") by and among Lessee, Assignor and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, together with the Acquisition Fund related thereto (collectively, the Assigned Property").

1. Pursuant to the authority of Resolution \_\_\_\_\_ adopted on \_\_\_\_\_, Lessee hereby [consents to and] acknowledges the effect of the assignment of the Assigned Property and absolutely and unconditionally agrees to deliver to Assignee all Rental Payments and other amounts coming due under the Agreement in accordance with the terms thereof on and after the date of this Acknowledgment.

2. Lessee hereby agrees that: (i) Assignee shall have all the rights of Lessor under the Agreement and all related documents, including, but not limited to, the rights to issue or receive all notices and reports; to give all consents or agreements to modifications thereto, to receive title to the equipment in accordance with the terms of the Agreement, to declare a default and to exercise all remedies thereunder; and (ii) except as provided in Section 3.03 of the Agreement, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in the Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense.

3. Lessee agrees that, as of the date of this Notice and Acknowledgment of Assignment (this "*Acknowledgement*"), the following information about the Agreement is true, accurate and complete:

Number of Rental Payments Remaining	—	_____
Amount of Each Rental Payment	—	\$ _____
Total Amount of Rents Remaining	—	\$ _____
Frequency of Rental Payments	—	_____
Next Rental Payment Due	—	_____
Funds Remaining in Acquisition Fund	—	\$ _____

4. The Agreement remains in full force and effect, has not been amended and no nonappropriation or Event of Default (or event which with the passage of time or the giving of notice or both would constitute a default) has occurred thereunder.

5. Any inquiries of Lessee related to the Agreement and any requests for disbursements from the Acquisition Fund, if applicable, and all Rental Payments and other amounts coming due pursuant to the Agreement on and after the date of this Acknowledgment should be remitted to Assignee at the following address (or such other address as provided to Lessee in writing from time to time by Assignee):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ACKNOWLEDGED AND AGREED:**

LESSEE: MIAMI-DADE COUNTY, FLORIDA  
[FOR EXHIBIT PURPOSES ONLY]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ASSIGNOR: \_\_\_\_\_  
[FOR EXHIBIT PURPOSES ONLY]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SAMPLE

## EXHIBIT H

### Form of Acquisition Fund and Account Control Agreement

This Acquisition Fund and Account Control Agreement (this "Agreement"), dated as of \_\_\_\_\_, by and among \_\_\_\_\_, a Kansas corporation (together with its successors and assigns, hereinafter referred to as "Lessor"), Miami-Dade County, Florida, a political subdivision of the State of Florida (hereinafter referred to as "Lessee") and Deutsche Bank Trust Company Americas, a New York banking corporation (hereinafter referred to as "Acquisition Fund Custodian").

Reference is made to that certain Equipment Lease/Purchase Agreement dated as of \_\_\_\_\_ between Lessor and Lessee (hereinafter referred to as the "Lease"), covering the acquisition and lease of certain Equipment described therein (the "Equipment"). It is a requirement of the Lease that the Acquisition Amount (\$ \_\_\_\_\_) be deposited into an escrow under terms satisfactory to Lessor, for the purpose of fully funding the Lease, and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment.

The parties agree as follows:

1. Creation of Acquisition Fund.

(a) There is hereby created a special trust fund to be known as the "Acquisition Fund" (the "Acquisition Fund") to be held in trust by the Acquisition Fund Custodian for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof.

(b) The Acquisition Fund Custodian shall invest and reinvest moneys on deposit in the Acquisition Fund in Qualified Investments in accordance with written instructions received from Lessee. Lessee shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Acquisition Fund Custodian for the reinvestment of any maturing investment. Accordingly, neither the Acquisition Fund Custodian nor Lessor shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Acquisition Fund, and Lessee agrees to and does hereby release the Acquisition Fund Custodian and Lessor from any such liability, cost, expenses, loss or claim. Interest on the Acquisition Fund shall become part of the Acquisition Fund, and gains and losses on the investment of the moneys on deposit in the Acquisition Fund shall be borne by the Acquisition Fund. The Acquisition Fund Custodian shall have no discretion whatsoever with respect to the management, disposition or investment of the Acquisition Fund and is not a trustee or a fiduciary to Lessee. The Acquisition Fund Custodian shall not be responsible for any market decline in the value of the Acquisition Fund and has no obligation to notify Lessor and Lessee of any such decline or take any action with respect to the Acquisition Fund, except upon specific written



instructions stated herein. For purposes of this agreement, "Qualified Investments" means any investments which meet the requirements of Florida law.

(c) Unless the Acquisition Fund is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Acquisition Fund shall be disbursed by the Acquisition Fund Custodian in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from Lessor, as is more fully described in Section 2 hereof. If the amounts in the Acquisition Fund are insufficient to pay such amounts, Lessee shall provide any balance of the funds needed to complete the acquisition of the Equipment. Any moneys remaining in the Acquisition Fund on or after the earlier of (i) the expiration of the Acquisition Period and (ii) the date on which Lessee executes an Acceptance Certificate shall be applied as provided in Section 4 hereof.

(d) The Acquisition Fund shall be terminated at the earliest of (i) the final distribution of amounts in the Acquisition Fund or (ii) written notice given by Lessor of the occurrence of a default or termination of the Lease due to non-appropriation.

(e) The Acquisition Fund Custodian may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Acquisition Fund Custodian shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same, and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Acquisition Fund Custodian, and for the disposition of the same in accordance herewith. In the event conflicting instructions as to the disposition of all or any portion of the Acquisition Fund are at any time given by Lessor and Lessee, the Acquisition Fund Custodian shall abide by the instructions or entitlement orders given by Lessor without consent of the Lessee.

(f) Unless the Acquisition Fund Custodian is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee agrees to and does hereby release and indemnify the Acquisition Fund Custodian and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Acquisition Fund Custodian under this agreement; and in connection therewith, does to the extent permitted by law indemnify the Acquisition Fund Custodian against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(g) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Acquisition Fund Custodian hereunder, the Acquisition Fund Custodian may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Acquisition Fund Custodian shall be reimbursed by Lessee for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

(h) The Acquisition Fund Custodian may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Acquisition Fund Custodian shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct.

(i) Lessee shall reimburse the Acquisition Fund Custodian for all reasonable costs and expenses, including those of the Acquisition Fund Custodian's attorneys, agents and employees incurred for extraordinary administration of the Acquisition Fund and the performance of the Acquisition Fund Custodian's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor and Lessee concerning the Acquisition Fund.

(j) The Acquisition Fund Custodian or any successor may at any time resign by giving mailed notice to Lessee and Lessor of its intention to resign and of the proposed date of resignation ("the Effective Date"), which shall be a date not less than 90 days after such notice is delivered to an express carrier, charges prepaid, unless an earlier resignation date and the appointment of a successor shall have been approved by the Lessee and Lessor. After the Effective Date, the Acquisition Fund Custodian shall be under no further obligation except to hold the Acquisition Fund in accordance with the terms of this Agreement, pending receipt of written instructions from Lessor regarding further disposition of the Acquisition Fund.

(k) The Acquisition Fund Custodian shall have no responsibilities, obligations or duties other than those expressly set forth in this Agreement and no fiduciary or implied duties responsibilities or obligations shall be read into this Agreement.

## 2. Acquisition of Property

(a) Acquisition Contracts. Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Equipment, with moneys available in the Acquisition Fund. Lessee represents the estimated costs of the Equipment are within the funds estimated to be available therefor, and Lessor makes no warranty or representation with respect thereto. Lessor shall have no liability under any of the acquisition or construction contracts. Lessee shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Equipment, and the operation and maintenance thereof.

(b) Authorized Acquisition Fund Disbursements. Disbursements from the Acquisition Fund shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment.

(c) Requisition Procedure. No disbursement from the Acquisition Fund shall be made unless and until Lessor has approved such requisition. Prior to disbursement from the Acquisition Fund there shall be filed with the Acquisition Fund Custodian a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 1, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is

due. Each such requisition shall be signed by an authorized representative of Lessee (an "Authorized Representative") and by Lessor, and shall be subject to the following:

1. Delivery to Lessor of an executed Disbursement Request in the form attached hereto as Schedule 1 certifying that:

(i) an obligation in the stated amount has been incurred by Lessee, and that the same is a proper charge against the Acquisition Fund for costs relating to the Equipment identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof); (ii) the Authorized Representative has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made; (iii) such requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date of such certificate, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee); (iv) the Equipment is insured in accordance with the Lease; (v) no Event of Default (nor any event which, with notice or laps of time or both, would become an Event of Default) has occurred and is continuing and (vi) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

2. Delivery to Lessor invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to such Equipment has passed to Lessee) therefor as required by Section 3.04 of the Lease and any additional documentation reasonably requested by Lessor; and

3. The disbursement shall occur during the Acquisition Period.

3. Deposit to Acquisition Fund. Upon satisfaction of the conditions specified in Section 3.04 of the Lease, Lessor will cause the Acquisition Amount to be deposited in the Acquisition Fund. Lessee agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Acquisition Fund.

4. Excessive Acquisition Fund. Any funds remaining in the Acquisition Fund on or after the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee executes an Acceptance Certificate, or upon a termination of the Acquisition Fund as otherwise provided herein, shall be distributed by the Acquisition Fund Custodian to the Lessor, as follows: (1) first, to the Lessee an amount which equals \$79,790, and (2) thereafter, if any funds remain, to Lessor to apply such funds to amounts owed under the Lease in accordance with Section 4.07 of the Lease.

5. Acquisition Account Lien. The Acquisition Fund Custodian and Lessee acknowledge and agree that the Acquisition Fund and all proceeds thereof are being held by Acquisition Fund Custodian for disbursement or return as set forth herein in accordance with the terms hereof. The Acquisition Fund Account hereby created shall be irrevocable and the Lessor

shall have an express lien on all cash and investments in the Acquisition Fund Account pursuant to the terms hereof and the interest earnings thereon until paid out, used and applied in accordance with this Agreement and the Lease. Neither the Lessee nor the Acquisition Fund Custodian shall cause nor permit any other lien or interest whatsoever to be imposed upon the Acquisition Fund Account.

6. Control of Acquisition Account. Lessor, Lessee and Acquisition Fund Custodian further agree as follows:

(a) Acquisition Fund Custodian will comply with all entitlement orders originated by Lessor with respect to the cash or investments held in the Acquisition Fund, or any portion thereof, without further consent by Lessee.

(b) Acquisition Fund Custodian hereby represents and warrants (a) that the records of Acquisition Fund Custodian show that Lessee is the sole owner of the cash and investments, (b) that Acquisition Fund Custodian has not been served with any notice of levy or received any notice of any claim to the cash and investments held in the Acquisition Fund, or any portion thereof, other than Lessor's claim pursuant to this Agreement, and (c) that Acquisition Fund Custodian is not presently obligated to accept any entitlement order from any person with respect to the cash and investments held in the Acquisition Fund, except for entitlement orders that the Acquisition Fund Custodian is obligated to accept from Lessor under this Agreement and entitlement orders that Acquisition Fund Custodian, subject to the provisions of paragraph (c) below, is obligated to accept from Lessee.

(c) Without the prior written consent of Lessor, Acquisition Fund Custodian will not enter into any agreement by which Acquisition Fund Custodian agrees to comply with any entitlement order of any person other than Lessor or, subject to the provisions of paragraph (d) below, Lessee, with respect to any portion or all of the cash and investments held in the Acquisition Fund. Acquisition Fund Custodian shall promptly notify Lessor if any person requests the Acquisition Fund Custodian to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the cash and investments held in the Acquisition Fund.

(d) Except as otherwise provided in this paragraph (c) and subject to Section 1(b) hereof, Acquisition Fund Custodian may allow Lessee to effect sales, trades, transfers and exchanges of the cash or investments within the Acquisition Fund, but will not, without the prior written consent of Lessor, allow Lessee to withdraw any cash or investments held in the Acquisition Fund from the Acquisition Fund. Acquisition Fund Custodian acknowledges that Lessor reserves the right, by delivery of written notice to Acquisition Fund Custodian, to prohibit Lessee from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any cash or investments held in the Acquisition Fund. Further, Acquisition Fund Custodian hereby agrees to comply with any and all written instructions delivered by Lessor to Acquisition Fund Custodian (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lessor, the amount of any obligations of Lessee to Lessor, the validity of any of Lessor's claims against or agreements with Lessee, the existence of any defaults under such agreements, or any other matter.

(e) Lessee hereby irrevocably authorizes Acquisition Fund Custodian to comply with all instructions and entitlement orders delivered by Lessor to Acquisition Fund Custodian.

(f) Acquisition Fund Custodian will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the cash or investments held in the Acquisition Fund, and Acquisition Fund Custodian will not exercise, enforce or attempt to enforce any right of setoff against the cash and investments held in the Acquisition Fund, or otherwise charge or deduct such cash or investments in any amount whatsoever.

(g) Acquisition Fund Custodian is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 8 below, concurrently with the sending thereof Lessee, duplicate copies of any and all monthly Acquisition Fund statements or reports issued or sent to Lessee with respect to the Acquisition Fund.

7. Information Required Under USA PATRIOT ACT. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Custodian such information as it may request, from time to time, in order for the Custodian to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

8. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This agreement may not be amended except in writing signed by all parties hereto. This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

If to Lessor:

---

11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration  
Fax: (443) 556-6977

If to Lessee:

Miami-Dade County, Florida  
200 NW 1<sup>st</sup> Street  
Miami, FL 32118  
Attn: Facilities and Utilities Division Management  
Fax: (305) 375-3914

If to Acquisition

Fund Custodian:

Deutsche Bank Trust Company Americas  
60 Wall Street, 27<sup>th</sup> Floor  
New York, NY 10005  
Attn: Lisa McDermid  
Phone: 212-250-6674  
Fax: 212-797-8600

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

SIGNATURE PAGE FOLLOWS

In Witness Whereof, the parties have executed this Acquisition Fund and Account Control Agreement as of the date first above written.

Miami-Dade

\_\_\_\_\_ as Lessor

\_\_\_\_\_ as Lessee

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Deutsche Bank Trust Company Americas  
As Acquisition Fund Custodian

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

Name: \_\_\_\_\_

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

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

Name: \_\_\_\_\_

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

SAMPLE

**SCHEDULE 1**  
**to the Acquisition Fund and Account Control Agreement**

**FORM OF DISBURSEMENT REQUEST**

Re: Equipment Lease/Purchase Agreement dated as of \_\_\_\_\_, by and between \_\_\_\_\_, as Lessor and Miami-Dade County, Florida, as Lessee (the "Lease") (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of \_\_\_\_\_ (the "Acquisition Fund and Account Control Agreement") by and among \_\_\_\_\_ ("Lessor"), Miami-Dade County, Florida ("Lessee") and Deutsche Bank Trust Company Americas, (the "Acquisition Fund Custodian"), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement (the "Acquisition Fund") for the following purposes.

Payee's Name and Address	Invoice Number	Dollar Amount	Purpose

The undersigned hereby certifies as follows:

(i) An obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for costs relating to the Equipment identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof), and the Equipment relating to such obligation has been delivered, installed and accepted by Lessee. Attached hereto is the original invoice with respect to such obligation.

(ii) The undersigned, as Authorized Representative, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.



(iii) This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee).

(iv) The Equipment is insured in accordance with the Lease.

(v) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Lease has occurred and is continuing at the date hereof.

(vi) The disbursement shall occur during the Acquisition Period.

(vii) The representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

Dated: \_\_\_\_\_

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

Name: \_\_\_\_\_

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

Disbursement of funds from the Acquisition Fund in accordance with the foregoing Disbursement Request hereby is authorized

\_\_\_\_\_  
as Lessor under the Lease

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

Name: \_\_\_\_\_

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

Schedule M  
Performance Bond  
Intentionally Deleted

Schedule N

Certificate of Acceptance Investment Grade Energy Audit

Intentionally Deleted

**Schedule O**

Project Cash Flow, Miami-Dade County Performance Guarantees Program

(Millions)

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Total	
Revenue	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	13,245,214	
Operating Expenses	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(13,245,214)
Net Annual Cash Flow	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Capital Expenditures	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(13,245,214)
Residual Cash Flow	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(13,245,214)

Notes:  
 1) All amounts are in US Dollars.  
 2) All amounts are in US Dollars.  
 3) All amounts are in US Dollars.  
 4) All amounts are in US Dollars.  
 5) All amounts are in US Dollars.

Category	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Total	
Operating Expenses	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	13,245,214	
Capital Expenditures	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(13,245,214)
Residual Cash Flow	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Notes:  
 1) All amounts are in US Dollars.  
 2) All amounts are in US Dollars.  
 3) All amounts are in US Dollars.  
 4) All amounts are in US Dollars.  
 5) All amounts are in US Dollars.

**Projected Cash Flow**

Category	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Total	
Operating Expenses	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	1,170,437	13,245,214	
Capital Expenditures	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(1,170,437)	(13,245,214)
Residual Cash Flow	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Notes:  
 1) All amounts are in US Dollars.  
 2) All amounts are in US Dollars.  
 3) All amounts are in US Dollars.  
 4) All amounts are in US Dollars.  
 5) All amounts are in US Dollars.

Schedule P(i)

Certificate of Substantial Completion

I, the undersigned, hereby certify that I am the duly qualified and acting officer of the Miami-Dade County(Agency) identified below and, with respect to Appendix B (Energy Audit Report), as accepted pursuant to an executed Schedule N, to the Contract dated as of \_\_\_\_\_, by and between the Agency and FPL Services, LLC (Company) represent and warrant that: The entirety of the work performed under the above-referenced contract between Company and the Agency or designated portion of the work as described below, has been reviewed by each of the undersigned and found to be substantially complete. The Date of Substantial Completion is also the date of commencement of applicable warranties required by the contract documents between the Agency and Company, except as stated below.

DEFINITION OF DATE OF SUBSTANTIAL COMPLETION

The Date of Substantial Completion of the work or designated portion thereof is the date certified by Company when construction is sufficiently complete, in accordance with the applicable contract documents between the Agency and Company, so the Agency can occupy or utilize the work or designated portion thereof for the use for which it is intended, as expressed in the contract documents between the Agency and Company.

Description of work:

A list of items to be completed or corrected by Company within 30 days of execution of this Certificate of Substantial Completion is attached hereto as Punch list Items.

Contractor (if applicable): \_\_\_\_\_ By: \_\_\_\_\_ Date: \_\_\_\_\_

FPL Services, LLC \_\_\_\_\_ BY: \_\_\_\_\_ DATE: \_\_\_\_\_

The AGENCY accepts the work (or designated portion thereof) as substantially complete. The AGENCY does hereby assume full possession thereof.

AGENCY: \_\_\_\_\_ BY: \_\_\_\_\_ DATE: \_\_\_\_\_

## Punch List Items

Schedule P(ii)  
Certificate of Final Acceptance

I, the undersigned, hereby certify that I am the duly qualified and acting officer of Agency identified below and, with respect to the above-referenced Conservation Measures Schedule dated \_\_\_\_\_, \_\_\_\_\_ to the Contract dated as of \_\_\_\_\_, by and between Agency and FPL Services, LLC ("Company"), represent and warrant that:

1. The equipment described in Schedule A purchased from Company, and properly invoiced, has been delivered and installed in accordance with Agency's Specifications, is in good working order and is fully operational and properly functioning and has been fully accepted by Agency on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.
  
2. Agency certifies that it has inspected the installation and operation of the Conservation Measure's listed on Schedule A, pursuant to Contract Section \_\_\_\_ and that it finds the equipment listed on Schedule A is fully and properly functioning.

AGENCY: Miami-Dade County

Signature: \_\_\_\_\_

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

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

Schedule Q  
Equipment Warranties

A general labor and material warranty is included for a period of one year after Final Acceptance. Warranties provided by the manufacturer that are beyond one year are itemized below. Labor and freight/shipping charges are not included. For detailed manufacturer warranty information, refer to the warranty information provided in the Miami-Dade County Performance Contracting Program Aviation Department IGA November 2013 and revised January 2014 and September 2014 by FPL Services, LLC.

Plumbing Products – Manufacturer provides a 3 year material warranty on fixtures and valves for toilets, urinals, and new lavatory faucets installed as part of this contract excluding diaphragms. The manufacturer also provides a 10 year material warranty on the pressure vessel on tank-type toilets.

Ice Machine Retrofits – Manufacturer provides a 2 year material warranty.

High Efficiency Laundry – Manufacturer provides a 3 year material warranty.

Bulbs – Manufacturer will provide a 4 year material warranty on all linear fluorescent lamps installed as part of this contract.

Ballasts – Manufacturer will provide a 10 year parts warranty on all new fluorescent T5 and T8 electronic ballasts installed as part of this contract.

LED New Fixture Installations: Manufacturer provides a 10 year warranty for internal components associated with new fixtures. For the LED fixture (housing), the manufacturer provides a one year warranty.

LED Retrofitted Fixtures: For fixtures that are retrofitted by FPLS, the manufacturer provides a 10 year warranty for retrofitted components.

LED bulbs (screw-in): The manufacturer provides a 5 year material warranty.

Induction Fixtures – Manufacturer provides a 10 year material warranty for internal components.

Chiller – Manufacturer provides a 5 year compressor parts warranty.



Schedule R

Unconditional Corporate Guarantee

Intentionally Deleted

Schedule S

Specification of a Benchmark Cost of Capital, Minimum Rate of Return

Intentionally Deleted

Schedule T

Document Supporting Recurring Funds Requirement

Intentionally Deleted

Schedule U

Approval by the Head of the Agency

Intentionally Deleted

Schedule V  
Agency Measurement & Verification Plan ("M&V Plan") to Monitor Cost Savings

Measure Specific Monitoring and Verification

LIGHTING:

The lighting retrofit guaranteed annual savings will be measured by using actual savings figures, which are to be compared against the baseline costs that have been measured by using the general method in Section 7, Method LE-A-02 of the FEMP M&V Guidelines, Version 2.2. Lighting run hours for the purpose of determining savings are hereby stipulated. Pre, Post, and Annual Performance readings will be taken.

Measurements will comply with FEMP Guidelines, Version 2.2 as follows:

- Wattage measurements are taken at the same fixture types identified in the pre-measurement phase of the lighting field reading plan. Use proper PPE at all times.
- Light level readings shall be measured in foot candles at each fixture. The reading shall be taken at task level. If no specific task is assigned under the fixture, then the reading shall be taken at a height of 3 ft.

HVAC Chillers and Variable Frequency Drives:

The HVAC Chillers and Variable Frequency Drives guaranteed annual savings will be measured by using actual savings figures, which are to be compared against the baseline costs that have been measured by using the general methods described in Section 10 (VSD-A-01) and Section 11 (CH-A-02) in the FEMP M&V Guidelines, Version 2.2.

HVAC Direct Expansion Air Conditioning:

The HVAC Direct Expansion Air Conditioning guaranteed annual savings will be measured by using actual savings figures, which are to be compared against the baseline costs that have been measured by using the general methods described in the FEMP M&V Guidelines, Version 2.2.

The parties agree to use the International Performance Measure and Verification Protocol. The Department reserves the right to perform M&V, and upon 90 days written notice to the Company, may require knowledge transfer to the Department to allow the smooth transition of such M&V services to the Department's designated staff. In the event a claim is made, the parties will use such standard protocol to review, and the parties may trigger the Contract Dispute Resolution process in the event of any dispute as to the claim.

Title to all property furnished by the Department under this Contract shall remain in the Department, and Contractor shall surrender to the Department all property of the Department prior to settlement upon completion, termination, or cancellation. The Contractor shall provide no less than a 60 days notice and provide a technical transition plan to the Department prior to any termination or data return.

Upon completion, termination, or cancellation, the Contractor will provide all data in a format designated by the Department in which the Contractor will return the data with the source code sufficient to read it, or alternatively provide the data in a non-proprietary or standard industry format.

The financial consequences for the Contractor's failure to timely perform the M&V services according to

the International Performance Measure and Verification Protocol, include the following: The Department may take over performance of the M&V, and will require delivery of all Contractor's M&V services data to the Department's designated staff upon 60 days notice after opportunity to cure.

**Summary of Savings by Measure**

Source of Savings	First Year Savings by CM
Lighting	\$1,466,007
Water	\$371,159
HVAC	\$160,987
Miscellaneous	\$230,000
<b>Total First Year Savings</b>	<b>\$2,228,153</b>

Note: Capital Avoidance Savings of \$711,278 is not included.

The savings identified above shall be the first year guaranteed savings, which are mutually agreed by MIAMI-DADE COUNTY and the COMPANY. The savings shall be deemed to increase during each year of the Savings Guarantee Term by the annual escalation percentages referenced in Schedule F, with such escalation being annually compounded upon the immediately preceding year escalated rate.

## Guarantee Report

Within 90 (90) days after the anniversary of the Final Acceptance or earlier if otherwise specified in the Agreement, the COMPANY shall provide the annual Guarantee Report to MIAMI-DADE COUNTY. In the annual Guarantee Report, the COMPANY shall calculate the Annual Energy Cost Savings and shall report to MIAMI-DADE COUNTY such amount (and shall detail any excess savings where the Annual Energy Cost Savings exceed the Annual Guaranteed Savings) during the preceding year.

In addition to the summary table below showing each year's Annual Guaranteed Energy Cost Savings, the report will include:

- all data collection sheets.
- savings will be reported by equipment group as described in Schedule A.
- all calculations supporting the savings report.
- any operational problems identified during measurement or site visits in support of the development of the report.

**Annual Guaranteed and Excess Savings**

<b>Savings Guarantee Term Year</b>	<b>Actual Savings</b>	<b>Annual Guaranteed Energy Cost Savings</b>	<b>Excess Savings</b>
<b>Construction Savings</b>	\$	\$1,791,537	%
<b>1</b>	\$	\$2,939,432	%
<b>2</b>	\$	\$3,006,276	%
<b>3</b>	\$	\$2,363,848	%
<b>4</b>	\$	\$2,434,763	%
<b>5</b>	\$	\$2,507,806	%
<b>6</b>	\$	\$2,583,040	%
<b>7</b>	\$	\$2,660,532	%
<b>8</b>	\$	\$2,740,347	%
<b>9</b>	\$	\$2,822,558	%
<b>10</b>	\$	\$2,907,235	%
<b>11</b>	\$	\$2,870,665	%
<b>12</b>	\$	\$2,956,785	%
<b>13</b>	\$	\$3,045,488	%
<b>14</b>	\$	\$3,136,853	%
<b>Totals</b>	\$	\$40,767,165	



The following table to the Guarantee Report provides a breakdown of guaranteed savings .

Schedule - from attachments to Guaranteed Savings Agreement	CM Description
\$1,419,214	Lighting Retrofit in areas identified throughout the facilities
\$46,792	Install lighting occupancy sensors and controls in areas identified throughout the facilities.
\$369,420	Water Conservation: Low flow fixture retrofit/replacement in areas identified throughout the facilities
\$1,311	HE Laundry Upgrades in identified areas
\$160,988	Replace one 2500 Ton chiller in Chiller Plant 3099 and implement sequencing controls.
0	Replace six AHUs in selected terminals.
\$230,000	Dip Proofer Installation in select areas
\$428	Ice Machine retrofits in select areas.
<b>Total</b>	
\$2,228,153	

Note: Construction Period Savings = \$1,791,537 (Stipulated)  
 Capital Avoidance Savings (Years 1-2) = \$711,278 (Stipulated)

Appendix A  
State Term Contract No. 973-320-08-1

To be furnished as required

Appendix B

Investment Grade Energy Audit

To be furnished as required