

# Memorandum



**Date:** December 6, 2011

**To:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor 

**Subject:** Resolution Ratifying the Action of the County Mayor or County Mayor's  
Designee Relating to the Purchase of an Energy Utility Billing Management  
System under the Economic Stimulus Plan

Agenda Item No. 8(F)(6)

Resolution No. R-1047-11

## **RECOMMENDATION**

It is recommended that the Board of County Commissioners (Board) adopt the attached resolution ratifying the action of the County Mayor or County Mayor's designee on October 13, 2011 in approving the purchase and implementation of an Energy Utility Billing Management System (System), from EnergyCAP, Inc., for the Sustainability, Planning and Economic Enhancement Department (SPEED) on behalf of all County departments as authorized by Section 2-8.2.7 of the Code of Miami-Dade County, Economic Stimulus Ordinance.

## **SCOPE**

The System will benefit all County departments; therefore, the impact is countywide.

## **FISCAL IMPACT/FUNDING SOURCE**

The initial purchase of the software, implementation, configuration, interface development, training services, and software escrow in the amount of \$650,000 is being funded through the Energy Efficiency and Conservation Block Grant (EECBG) program under the American Recovery and Reinvestment Act of 2009 (ARRA). There are no County general funds required for this phase.

Following the implementation of the System, to be completed by September 2012, Internal Service Funds will be required in the amount of \$56,000 per year to provide continued software maintenance support services and software escrow. These funds will be appropriated annually as part of the budget development process.

## **TRACK RECORD / MONITOR**

The staff assigned to manage this contract is Patricia Gomez, Sustainability Program Manager, SPEED.

## **DELEGATION OF AUTHORITY**

The authority of the County Mayor or County Mayor's Designee to execute and implement this contract is consistent with those authorities granted under the Code of Miami-Dade County, 2-8.2.7 Economic Stimulus Ordinance.

## **BACKGROUND**

The County receives in excess of 4,500 electricity bills on a monthly basis, which totals over one billion kilowatt hours (kWh) of electricity consumption per year with expenses of over \$100 million dollars annually. A legacy system that was developed in-house and implemented in the early 1980s is currently used to track energy consumption and related invoices. The legacy system in use is not capable of countywide utility management and has limited functionality when compared with modern utility billing management software. It requires staff to manually enter data into the different financial systems, including the Financial Accounting Management Information System (FAMIS) and Oracle/PeopleSoft Enterprise Resource Planning (ERP) used by County departments. Additionally, all bill auditing is done manually.

In 2009, the Board adopted Resolution R-228-09 requiring a reduction in electricity consumption in County operations by 20 percent from 2007 usage levels by 2014. Subsequently, the County was awarded \$12.5 million in federal funds through ARRA for the implementation of the County's EECBG program. The EECBG program, which is managed by SPEED, includes the objective of obtaining and implementing an energy and utility management solution to update current County processes that will lead to reduced consumption and waste. As a result, SPEED identified the need to implement a modern utility billing management system to meet the County's energy reduction goals and allocated EECBG funds to obtain a suitable system.

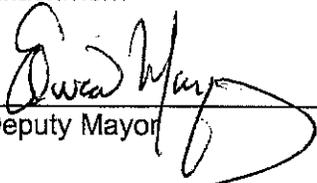
A County team, which included representatives from SPEED, Internal Services Department (ISD), Information Technology Department (ITD), Water and Sewer Department (WASD), Miami-Dade Aviation Department (MDAD) and the Finance Department, prepared a scope of work to acquire and implement a countywide solution. In May 2011, the County issued a competitive Request for Proposals to replace the existing legacy system with one that met the requirements of the EECBG program. The system proposed by EnergyCAP, Inc. will provide an unlimited user software license, configuration, historical data transfer, integration with the County's financial systems, testing, implementation, training and subsequent software maintenance and support services. The System provides the benefit of introducing technology that will facilitate the transition of all departments to a single utility billing software, as well as billing management and interfaces with the current FAMIS and ERP financial systems, and the INFOR Enterprise Asset Management (EAM) system. It will also link to external data sources provided by Florida Power and Light and the Environmental Protection Agency. The System will allow the County to analyze energy consumption based on numerous factors such as data normalized for weather conditions, actual versus estimated usage, and meter data. Additionally, it will provide a website to allow members of the public to review and track energy usage for both private and commercial properties.

Staff was able to negotiate a reduction of \$213,000 from the original proposal to obtain the best value and ensure responsible use of federal funds. Staff was also able to obtain seven additional days of onsite training and additional remote training valued at \$17,500 at no additional cost to the County, to allow for customized training to meet the needs of various departments during implementation. Countywide implementation will be facilitated by a County team that includes SPEED, ISD, ITD, WASD, MDAD and Finance.

It is expected that by the acquisition and implementation of this System, the County could potentially reduce electricity charges by up to two percent in the first year, equal to approximately 20 million kWh of electricity and \$2 million in energy costs. These potential savings will likely offset the cost of annual maintenance and support services. Throughout the term of the contract, as countywide use of the System is phased in, reductions in electricity charges may exceed five percent or \$5 million per year.

On October 13, 2011, the County entered into a contract to purchase and implement the System. Full implementation of the system will be on an expedited timeline because the funds must be expended by September 30, 2012, when the ARRA grant expires.

Attachment

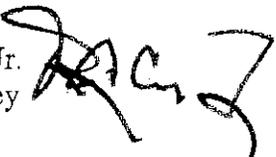
  
Deputy Mayor



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Joe A. Martinez      **DATE:** December 6, 2011  
and Members, Board of County Commissioners

**FROM:** R. A. Cuevas, Jr.       **SUBJECT:** Agenda Item No. 8(F)(6)  
County Attorney

Please note any items checked.

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

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

Agenda Item No. 8(F)(6)

Veto \_\_\_\_\_

12-6-11

Override \_\_\_\_\_

RESOLUTION NO. R-1047-11

RESOLUTION RATIFYING THE COUNTY MAYOR'S OR COUNTY MAYOR'S DESIGNEE ACTIONS, AS AUTHORIZED BY SECTION 2-8.2.7 OF THE CODE OF MIAMI-DADE COUNTY, IN APPROVING EXECUTION OF AN AGREEMENT WITH ENERGYCAP, INC. IN THE AMOUNT OF \$762,000 TO PURCHASE AN ENERGY UTILITY BILLING MANAGEMENT SYSTEM FOR THE MIAMI-DADE SUSTAINABILITY, PLANNING AND ECONOMIC ENHANCEMENT DEPARTMENT ON BEHALF OF ALL COUNTY DEPARTMENTS AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE AN AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY, TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN

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

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board ratifies the actions of the County Mayor or County Mayor's Designee, as authorized by Section 2-8.2.7 of the Code of Miami-Dade County, in approving the selection of EnergyCAP, Inc in substantially the form attached hereto and made a part hereof, in the amount of \$762,000 for the purchase of an Energy Utility Billing Management System for the Sustainability, Planning and Economic Enhancement Department on behalf of all County departments, authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and exercise any other rights contained therein.

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

	Joe A. Martinez, Chairman	<b>aye</b>	
	Audrey M. Edmonson, Vice Chairwoman	<b>aye</b>	
Bruno A. Barreiro	<b>aye</b>	Lynda Bell	<b>aye</b>
Esteban L. Bovo, Jr.	<b>aye</b>	Jose "Pepe" Diaz	<b>aye</b>
Sally A. Heyman	<b>aye</b>	Barbara J. Jordan	<b>aye</b>
Jean Monestime	<b>aye</b>	Dennis C. Moss	<b>aye</b>
Rebeca Sosa	<b>aye</b>	Sen. Javier D. Souto	<b>aye</b>
Xavier L. Suarez	<b>absent</b>		

The Chairperson thereupon declared the resolution duly passed and adopted this 6<sup>th</sup> day of December, 2011. 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 **Christopher Agrippa**  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

Oren Rosenthal

# Memorandum



**Date:** October 11, 2011  
**To:** Honorable Carlos A. Gimenez  
Mayor  
**From:** Miriam Singer, CPPO  
Internal Services Department *M. Singer*  
**Subject:** Recommendation for Approval to Award: Energy Utility Billing Management System

## RECOMMENDATION

It is recommended that the County Mayor approve award of this contract to EnergyCAP, Inc. to provide an Energy Utility Billing Management System to be implemented countywide by the Sustainability, Planning and Economic Enhancement Department (SPEED) on behalf of all County departments.

**CONTRACT NUMBER:** RFP766  
**CONTRACT TITLE:** Energy Utility Billing Management System  
**TERM:** Three years with four, two-year options-to-renew  
**APPROVAL TO ADVERTISE:** May 27, 2011  
**METHOD OF AWARD:** To the responsive and responsible proposer whose offer results in the best value to the County.  
**PREVIOUS CONTRACT AMOUNT:** There is no current contract for these services.  
**CONTRACT AMOUNT:** \$762,000  
\* If the County chooses to exercise the four, two-year options-to-renew, the cumulative value will be \$1,232,000. The initial term includes \$650,000 for full implementation and two years of maintenance and support; future terms cover maintenance, technical support, and support services.

## BACKGROUND

The County receives in excess of 4,500 electricity bills on a monthly basis totaling over one billion kilowatt hours (kWh) of electricity consumption per year, with expenses over \$100 million dollars annually. Currently, a legacy system that was developed in-house and implemented in the early 1980s is used for tracking energy consumption and related invoices. The legacy system is not capable of countywide utility management and has limited functionality compared with modern utility billing management software. It requires staff to manually enter data into the different financial systems, including the Financial Accounting Management Information System (FAMIS) and Oracle/PeopleSoft Enterprise Resource Planning (ERP), used by County departments. Additionally, all bill auditing is done through manual processes.

In 2009, the Board of County Commissioners adopted Resolution No. R-228-09, requiring a reduction in electricity consumption in County operations by twenty percent (20%) from 2007 usage levels by 2014. The County was awarded \$12.5 million in federal funds via the American Recovery and Reinvestment Act of 2009 (ARRA) for the implementation of the County's Energy Efficiency and Conservation Block Grant (EECBG) program. The EECBG program, which is managed by SPEED, includes the objective of obtaining and implementing an energy and utility management solution to update current County processes to reduce consumption and waste. SPEED identified the need for a modern utility billing management system in order to meet the County's energy reduction goals, and allocated EECBG funds to acquire and implement a suitable system. Full implementation of the system will be on an expedited timeline because the funds must be expended by September 30, 2012, when the ARRA grant expires. The cost of the software license and complete implementation will be fully funded by SPEED via ARRA funds under the EECBG program. In future years, ISD will use funds previously allocated to maintain the legacy system to fund ongoing maintenance and support services.

A County team that included representatives from SPEED, Procurement Management, Internal Services (ISD), Information Technology (ITD), Miami-Dade Water and Sewer (WASD), Miami-Dade Aviation (MDAD) and Finance departments prepared a scope of work to acquire and implement a countywide solution. In May 2011, the County issued a competitive Request for Proposals to obtain an Energy Utility Billing Management System (System) to replace the existing legacy system with one that met requirements of the EECBG program. The System proposed by EnergyCAP, Inc. will provide an unlimited user software license, configuration, historical data transfer, integration with the County's financial systems, testing, implementation, training and subsequent software maintenance and support services. The System provides the benefit of introducing technology that will facilitate the transition of all departments to a single utility billing software, as well as billing management and interfaces with the current FAMIS and ERP financial systems, and the INFOR Enterprise Asset Management (EAM) system. It will also link to external data sources provided by Florida Power and Light (FPL) and the Environmental Protection Agency (EPA). The System will allow the County to analyze energy consumption based on numerous factors such as data normalized for weather conditions, actual versus estimated usage, and meter data. Additionally, it will provide a website to allow members of the public to review and track energy usage for both private and commercial properties.

Staff was able to negotiate a reduction of \$213,000 from the original proposed cost to obtain the best value to County and ensure responsible use of federal funds. Staff was also able to obtain seven additional days of onsite training and additional remote training valued at \$17,500 at no additional cost, to allow for customized training to meet the needs of various departments during the implementation. countywide implementation will be facilitated by a County team that includes SPEED, ISD, ITD, WASD, MDAD and Finance. It is expected that, with the implementation of this System, the County could potentially reduce electricity charges by up to two percent (2%) in the first year, equal to approximately 20 million kWh of electricity and \$2 million in energy costs. Throughout the term of the contract, as countywide use of the System is phased in, reductions in electricity charges may exceed five percent (5%) or \$5 million per year.

**USING/MANAGING AGENCIES  
 AND FUNDING SOURCES:**

Department	Allocation	Funding Source	Contract Manager
Sustainability, Planning and Economic Enhancement Department	\$ 650,000	ARRA – Federal Funds	Patricia Gomez

Internal Services Department	\$ 112,000	Internal Service Funds/ General Fund/ Proprietary Funds	Jerry Hall
<b>Total</b>	<b>\$ 762,000</b>		

**PROCUREMENT CONTRACTING OFFICER:** Beth Goldsmith

**VENDOR RECOMMENDED FOR AWARD:**

Awardee	Address	Principal
EnergyCAP, Inc. (Non-local Vendor)	110 Radnor Road Suite 101 State College, PA 16801	Steven Heinz

**PERFORMANCE DATA:** There are no performance issues with the recommended firm.

**COMPLIANCE DATA:** There are no compliance issues with the recommended firm.

**VENDORS NOT RECOMMENDED FOR AWARD:**

Bidders	Reason for Not Recommending
Hara Software (Non-local Vendor)	Evaluation Scores/Ranking. This firm's offer was ranked lower than the recommended proposer.

**REVIEW COMMITTEE DATE:** April 13, 2011

**CONTRACT MEASURES:** Not applicable due to funding source.

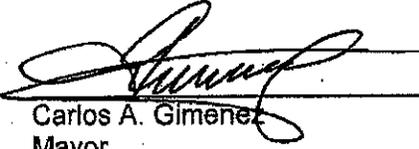
**LIVING WAGE:** The services being provided are not covered under the Living Wage Ordinance.

**USER ACCESS PROGRAM:** The contract does not include the 2% User Access Program provision due to the funding source.

**LOCAL PREFERENCE:** The Local Preference was not applied due to the funding source.

**ESTIMATED CONTRACT COMMENCEMENT DATE:** Upon approval by the County Mayor.

**Approved**

  
\_\_\_\_\_  
Carlos A. Gimenez  
Mayor

\_\_\_\_\_  
Date

**Not Approved**

\_\_\_\_\_  
Carlos A. Gimenez  
Mayor

\_\_\_\_\_  
Date



**CONTRACT NO. RFP766  
ENERGY UTILITY BILLING MANAGEMENT SYSTEM**

THIS SOFTWARE LICENSING, MAINTENANCE, AND SUPPORT AGREEMENT ("AGREEMENT") IS MADE AND ENTERED INTO BY AND BETWEEN MIAMI-DADE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, HAVING ITS PRINCIPAL OFFICE AT 111 N.W. 1ST STREET, MIAMI, FLORIDA 33128 (HEREINAFTER REFERRED TO AS THE "COUNTY"), AND ENERGYCAP, INC., A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF PENNSYLVANIA, HAVING ITS PRINCIPAL OFFICE AT 110 RADNOR ROAD, SUITE 101, STATE COLLEGE, PENNSYLVANIA 16801 (HEREINAFTER REFERRED TO AS THE "CONTRACTOR" OR "ECI").

**RECITALS**

WHEREAS, the Contractor has submitted a written proposal dated June 10, 2011, hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein. The Contractor has offered to provide the County with an Utility Billing Management System, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals, RFP No.766 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the County desires to procure from the Contractor such Energy Utility Billing Management System inclusive of all software licensing, implementation, configurations, customizations, training, maintenance, and technical support services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**ARTICLE 1. DEFINITIONS**

1.1 "Documentation" shall mean all manuals, user documentation, and other related materials pertaining to the Software which are furnished to the County in connection with the Software.

1.2 "Maintenance" shall mean the product updates and product upgrades required for the County to achieve optimal performance of the Software.

1.3 "Projects" and "Services" shall mean enhancements or modifications to the Software in the areas of business strategy, business integration, business process improvement, training, management development, project management, computer programming, systems integration, data processing, software development and other specific activities related to improving the County's computer systems, training or personnel to operate the same, creation or modification of software, and related consulting activities.

1.4 "Software System" shall mean the computer programs in machine readable object code form listed in Appendix A "Scope of Services" attached hereto and any subsequent error corrections or updates supplied to the County by the Contractor pursuant to this Agreement. Appendix A "Scope of Services" may be amended from time to time by the parties in writing.

1.5 "Support Services" shall mean the process to resolve reported incidents through error correction, patches, hot fixes, workarounds, replacements or any other type of correction or modification required to fully utilize the Software capabilities.

1.6 "Web Access" shall mean the portion of the Software System to be made available to both public users and County staff via the internet.



**ARTICLE 2. ORDER OF PRECEDENCE**

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows:

- 1) These terms and conditions including all attachments, exhibits, and appendixes and any associated addenda thereof;
- 2) County's RFP including all Addendums;
- 3) Contractor's proposal to RFP No. 766 and any associated addenda and attachments thereof.

**ARTICLE 3. RULES OF INTERPRETATION**

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

**ARTICLE 4. NATURE OF THE AGREEMENT**

- a) The Contractor shall provide the services set forth in the Scope of Services (Appendix A), and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

**ARTICLE 5. MANNER OF PERFORMANCE**

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any



Miami-Dade County, Florida

Contract No. RFP766

Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

**ARTICLE 6. DELIVERY**

6.1 Delivery of the Software System shall be according to Appendix A "Scope of Services" and contingent upon final acceptance by the County.

6.2 Documentation. The Contractor shall provide electronic copies of the associated Software Documentation as provided by the developer of the Software System to the County upon final System acceptance.

**ARTICLE 7. AGREEMENT TERM**

7.1 The Agreement shall become effective on the date that it is signed by the County or the Contractor, whichever is later and shall continue through the last day of the 36<sup>th</sup> month following signature. The County, at its sole discretion, reserves the right to exercise the option-to-renew this Agreement for four (4) additional two (2) year terms, for a maximum total of eleven (11) years.

7.2 Extension. The County also reserves the right to exercise its option to extend this Agreement for up to one hundred-eighty (180) calendar days beyond the current Agreement period or beyond any of the renewals. The County will notify the Contractor in writing of the extension. This Agreement may be further extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

**ARTICLE 8. GRANT OF LICENSE**

8.1 License: Contractor agrees to provide the County with licensed Software System and Documentation in accordance with the provisions contained within this Agreement.

8.2 Contractor grants the County a limited, non-transferable, non-exclusive license to use the licensed Software System and Documentation in accordance with the terms of this Agreement. Such license shall not be construed to be any license to source code for any of the System Software.

8.3 Contractor grants the County a limited, perpetual, non-transferable, non-exclusive unlimited access license to allow public users to utilize the Web Access in accordance with the terms of this Agreement. Such license shall not be construed to be any license to source code for any of the System Software.

**ARTICLE 9. SUPPORT AND MAINTENANCE SERVICES**

9.1 Contractor shall provide the County with the required technical support and maintenance services for the Software System throughout the term of this agreement, including any options or extensions exercised by the County. Contract will



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ensure of Software System availability twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty five (365) days a year including weekends and holidays, excluding periods of scheduled maintenance at no additional charge.

9.2 Technical Support Services. Technical Support Services shall include but not be limited to general support activities; remedial resolution activities to resolve System issues; correcting programming and coding errors; and supplying solutions to known system errors which affect the operation any or all portions of the Software System. Technical Support Services shall be available from the hours of 8:00AM to 5:00PM (Eastern Standard Time), Monday through Friday, excluding holidays.

Contractor shall provide telephone advice and e-mail assistance by individuals with experience in functional and operational areas of the Software System regarding issues involving the usage of the Software System (rather than error correction), including, but not limited to, advice and assistance covering the Software System, and general usage issues such as capacity and/or response times.

The Support Services shall be conducted in the following manner:

For the term of this Agreement, Contractor shall provide technical support via telephone and/or e-mail. Contractor shall provide a list of assigned contact names and phone numbers (a "Contact List") for technical support. The Contact List may be updated by Contractor from time to time upon written notice to County, provided that if County has any reasonable objections to any such revisions, Contractor will work with County to resolve such objections. Contractor will provide after hours emergency technical support 24x7x365 via a telephone support paging system. Contractor guarantees a call-back to the County within 60 minutes of the initial after hours emergency telephone page.

For this purpose, the County will contact the Contractor and indicate the exact problem description and a classification based on the following priority levels:

The categories are Priority 1, 2, and 3 as further defined below:

**"Priority 1 – Critical Business Impact Event"** means the impact of the reported defect is such that the County or third party users are unable to either use the System or reasonably continue work using the System.

- Contractor shall respond to the County within one (1) hour of notification. Contractor guarantees a minimum of one-hour continuous effort on Priority 1 issues. Following the one-hour of continuous effort, Contractor will use all reasonable efforts to resolve the issue. Contractor shall use commercially reasonable efforts to resolve or reduce to Priority 2 all Priority 1 Events within eight (8) hours after notification.

**"Priority 2 – Significant Business Impact Event"** means important features of the System are not working properly. While other areas of the System may not be impacted, the reported defect has created a significant, negative impact on the County's productivity and/or service level.

- Contractor shall maintain a response time goal of four (4) hours and shall use commercially reasonable efforts to resolve or reduce to Priority 3 all Priority 2 Events by the close of the next business day after notification.

**"Priority 3 – Some Business Impact Event"** means features of the System are not working properly, but County impact is minimal loss of operational functionality but the System can still operate.

- Contractor shall maintain a response time goal of one (1) day and shall use commercially reasonable efforts to resolve the Event in a time period to be mutually agreed upon by both parties.

9.3 Customer Support Services. For the term of this Agreement, Contractor shall provide telephone advice and e-mail assistance by individuals with experience in functional and operational areas of the Software System and e-mail assistance to public users of the Web Access regarding issues involving the usage of the System (rather than error correction), including, but not limited to, advice and assistance covering the System, and general usage issues such as capacity and/or response times.

9.4 Maintenance Services. Maintenance Services shall be conducted in the following manner:



- a) Contractor shall offer the County all software error corrections, upgrades, patches and fixes, Updates, Upgrades, and Releases of the Software System as they are made available by the Software developer at no additional charge.
- b) Contractor shall provide notice to the County via E-mail when new minor/medium/major updates are available and will advise of any System downtime.

#### **ARTICLE 10. SOFTWARE ENHANCEMENTS OR MODIFICATIONS**

10.1 Software Enhancements or Modifications. The County may, from time to time, request that the Contractor incorporate certain features, enhancements or modifications into the Software. When requested by the County, the Contractor shall provide the requested system enhancements/modifications including all relevant source code. Upon the County's request for such enhancements/modifications the County shall prepare a Statement of Work ("SOW") for the specific Project that shall define in detail the Services to be performed. The Contractor shall submit a cost and/or temporary revenue sharing proposal including all costs pertaining to furnishing the County with the enhancements/modifications.

- a) After the SOW has been accepted a detailed requirements and detailed design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed Project staffing, anticipated Project schedule, and other information relevant to the Project. Each SOW executed hereunder shall automatically incorporate the terms and conditions of this Agreement. Intellectual property rights to such enhancements or modifications shall be specified in the agreed-to SOW. Notwithstanding the foregoing, performance of any such modifications shall not compromise the Contractor's warranty obligations.
- b) Following the County's acceptance of all enhancements/modification, the Contractor shall provide the County, if so requested with written confirmation of the date the enhancements/modification was applied to the Software System, and any and all Documentation relating to the Software and or enhancements/modification thereto. Upon the County's acceptance, grant of license for such enhancements/modification shall be in accordance with Article 8.2.

#### **ARTICLE 11. IMPLEMENTATION SERVICES**

- a) The County shall accept or reject the Software System and/or Deliverables within fifteen business (15) days of receipt unless otherwise provided elsewhere in this Agreement.
- b) If the Contractor fails to provide deliverables within the time specified or if the Software System and/or Deliverables delivered fails to conform to the requirements or are found to be defective in material or workmanship, then the County may reject the delivered Software System and/or Deliverable or may accept any item of Software System and/or Deliverable and reject the balance of the delivered Software System and/or Deliverable. The County shall notify Contractor of such rejection in writing and specify in such notice, the reasons for such rejection. Contractor agrees to deliver a fix or workaround replacement for the Software System and/or Deliverables for such items of rejected Deliverables and/or Software System within fifteen (15) business days of Contractor's receipt of the County's rejection notice.
- c) The Contractor shall bear the risk of loss or damage to delivered Software System and/or Deliverables until the time the Project Manager certifies that the System(s) has successfully completed the System Acceptance test whether such loss or damage arises from acts or omissions (whether negligent or not) of the Contractor or the County or from any other cause whatsoever, except loss or damage arising solely from the negligence or willful acts of the County.
- d) Contractor agrees, with the County's IT support, to install the Software System at the County's Enterprise Technology Services Data Facility. Contractor agrees to commence installation of the Software System according to the Implementation Schedule unless a different time for implementation is otherwise mutually agreed upon by the parties hereto. All implementation services will be performed during normal business hours. Whenever possible, however some services to be provided may be required outside of normal business hours to accommodate County operations. Work to be performed outside normal business hours will be mutually agreed by both parties. Contractor shall diligently pursue and complete such implementation services without interruption and in accordance with the Implementation Schedule, so that such Software System is in good working order and ready for use by the dates set forth in the Schedule.



1. Contractor agrees to do all things necessary for proper implementation of the Software System and to perform its implementation obligations hereunder in an orderly, skillful and expeditious manner, with sufficient labor and materials to ensure efficient and timely completion of such obligations. If applicable, Contractor shall coordinate with the Project Manager all work with all other Contractors and/or County personnel performing work to complete Software System installation. The County shall be responsible for resolving all disputes relating to Site access between Contractor and/or County personnel. Contractor shall provide all materials necessary to properly implement the Software System. The County shall attempt to provide reasonable working and secure storage space for the performance by Contractor of the implementation services described herein.
2. Unless otherwise agreed to by the County, Contractor agrees as part of the implementation to perform all required services to successfully achieve all objectives set forth in the scope of work, including, but not limited to, (a) system configuration; (b) interface development; (c) software testing; (d) acceptance and user acceptance testing; (e) training; (f) cooperating with all other vendors supplying peripheral or ancillary equipment that will interface with the System; and (g) any additional services necessary to ensure Contractor's compliance with this Article 11.
  - e) Software testing shall consist of the tests described in the Scope of Services which are to be conducted collectively by the Contractor and the County. The purpose of these tests is to demonstrate the complete operability of the Software System in conformance with the requirements of the Contract. This will include an actual demonstration of all required Software System functionality. All tests shall be in accordance with test plans and procedures prepared by Contractor and previously approved by the County. In the event of any outstanding deficiencies at the conclusion of installation testing, as determined by the County, Contractor shall be responsible for instituting necessary corrective measures, and for subsequently satisfactorily demonstrating and/or re-demonstrating system performance.

#### **ARTICLE 12. TESTS**

The Contractor shall configure and program the Software System to conform to the Scope of Services. The software and associated equipment will be subject to several tests, including a System Acceptance test as further defined in the Scope of Services, Implementation Plan, and Acceptance Criteria to be developed and agreed by both parties. To assure System performance, the County's Project manager will coordinate all testing of the Software System and provide Final Acceptance upon completion of all milestones and deliverables as outlined in the Scope of Services.

Failure of the Software System to satisfy the acceptance criteria and conform to the requirements set forth in the Scope of Services by the timeframes set forth in the Implementation Timeline may result in the County withholding payment until satisfactory acceptance is granted to the Contractor.

After Final Acceptance is granted, any modifications, fixes, enhancements, and/or new releases of the Software System require separate testing periods and sign-off from the County Project Manager prior to migrating it into the production software. The testing protocol shall be as follows:

- Contractor's Project Manager will provide written notice to the County Project Manager of modifications, fixes, enhancements, and/or new releases of the software available for testing.
- The Contractor's Project Manager will coordinate all user acceptance testing dates, acceptance criteria, and training for the new functionality for the test group.
- The County will be granted five (5) business days or other timeframe agreed to by both parties in writing to perform testing based on the outlined functionality being delivered to the County on the Acceptance Criteria sign off sheet;
- The County's Project Manager will provide the Contractor with written notice of acceptance (sign-off) or rejection (with documented material nonconformities in the functionality) within 5 business days, unless more time is needed, in which case the County will notify the Contractor in writing accordingly;
- Deficiencies found will be noted on the Acceptance Criteria sign off sheet and the Contractor will be provided an opportunity to correct the issues. The Contractor will be required to provide the County with an updated timeline and work around (fix) within three (3) business days unless additional time is requested in writing and agreed by both parties;
- Once the release is accepted, the functionality will be moved into the production module. And updated documentation will be provided to the County



Miami-Dade County, Florida

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- The updated source code for the software will be then provided to the authorized Escrow Agent referenced in Article 55.

### **ARTICLE 13. FEES AND PAYMENT**

13.1 Fees. Prices shall remain firm and fixed for the term of the Contract as stated in Appendix B "Price Schedule", including any option or extension periods; however, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.

13.2 Travel. With respect to travel costs and travel related expenses, the Contractor agrees to adhere to CH. 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

13.3 Invoices. All invoices issued by the Contractor, shall be supported by receipt bills or other documents reasonably required by the County. Invoices shall show the County's Agreement number, and shall have a unique invoice number assigned by the Contractor. Invoices for Professional Service shall be issued in accordance with the Phases and Tasks outlined in Appendix A, "Scope of Services" and Appendix B, "Payment Schedule." Invoices for Software Maintenance and Support Services shall be issued on an annual basis 60 days in advance of the expiration date of the previous year's Services. It is the policy of Miami-Dade County that payment for all purchases by County agencies shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. In the event of any difference concerning the payment obligations between the parties, the County, by the County Mayor, shall deliver a clear statement of its position on all matters at issue not later than sixty (60) days after the date on which the subject invoice was received by the County.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County  
Office of Sustainability  
111 N.W. 1<sup>st</sup> Street, 22<sup>nd</sup> Floor  
Miami, FL 33128-1974

The County may at any time designate a different address and/or contact person by giving written notice to the Contractor.

### **ARTICLE 14. PROTECTION OF SOFTWARE**

14.1 Proprietary Information. The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

14.2 Proprietary Rights. The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subconsultants and suppliers may use only in connection of the performance of Services under this Agreement.

- a) All rights, title and interest in and to certain ideas, designs and methods, specifications and other documentation related thereto developed in its entirety by the Contractor and its subconsultants specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County. In the case of works enhanced or modified by Contractor for County that embody existing Contractor intellectual property hereinafter referred to as "Derivative Works," Contractor shall retain all rights and title and shall grant County a perpetual, unlimited irrevocable license to use.



- b) Accordingly, neither the Contractor nor its employees, agents, subconsultants or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subconsultants or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- c) Except as otherwise provided in subsections a and b above, or elsewhere herein, the Contractor hereunder shall retain all proprietary rights in and to all Software provided hereunder, that have not been customized to satisfy the performance criteria set forth by the County in a defined SOW.

14.3 No Reverse Engineering. The County agrees not to modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof.

**ARTICLE 15. CONFIDENTIALITY**

15.1 Acknowledgement. As a political subdivision of the State of Florida, Miami-Dade County is subject to Florida's Public Records Law and compliance with Florida Public Records Laws or good faith attempt to comply with Florida Public Records Laws shall not be a violation of this Article 15.

15.2 All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, may include Confidential Information and if so, may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County.

15.3 The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

15.4 It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

15.5 Survival. Licensee's obligations under this Article 13 will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason.

**ARTICLE 16. WARRANTIES**

16.1 Ownership. The Contractor represents that it is the owner of the entire right, title, and interest in and to Software System, and that it has the sole right to grant licenses there under, and that it has not knowingly granted licenses there under to any other entity that would restrict rights granted hereunder except as stated herein.

16.2 Limited Warranty. Contractor represents and warrants to the County that the Software System, when properly installed by the County, will perform substantially as described in Contractor's then current Documentation for such Software for a period of one year from the date of acceptance.

16.3 Limitations. Notwithstanding the warranty provisions set forth in Section 15.2 above, all of Contractor's obligations with respect to such warranties shall be contingent on County's use of the Software System in accordance with this



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Agreement and in accordance with Contractor's instructions as provided to the County in the Documentation, as such instructions may be amended, supplemented, or modified by the Contractor from time to time. The Contractor shall have no warranty obligations with respect to any failures of the Software System which are the result of accident, abuse, misapplication, or extreme power surge.

#### **ARTICLE 17. FUNCTIONALLY EQUIVALENT SOFTWARE**

For as long as the County remains current on Support and/or the service fees for the Software System, the Contractor is obligated to provide maintenance and support pursuant to the contract. In the event that Contractor should wish to discontinue maintenance and support of the then current version of the Licensed Software as set-forth in Appendix A, "Scope of Services" or any amendment thereto, and as long as the County is current on Support, Contractor shall be required to provide to the County, free of charge, and with reasonable time to allow for uninterrupted use by the County, a new version of the software, if one is generally made available to all Contractor customers of the Software System current on Support, which shall replace the previous version and perform the functions described in Appendix A, "Scope of Services" or any amendment thereto, and to support and maintain such new version of the License Software for the balance of the term of this Agreement without additional costs to the County, other than the payment of applicable Support fees.

In the case that Contractor is providing Support of the then current version of the Software System being used by the County, Contractor shall only provide any new version of the Software System if the County is current on Support and there are no outstanding account receivables and the new Software System is generally made available to all Contractor's customers current on Support. Any Software System that includes additional functionality or modules that the County wishes to use may require additional fees which shall be mutually agreed upon in writing by the parties herein.

In the event of a conflict between this Article 17 and any other Articles contained within this Agreement, this Article 17 will prevail.

#### **ARTICLE 18. INDEMNIFICATION AND INSURANCE**

Provider shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Provider or its employees, agents, servants, partners principals or subcontractors. Provider shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Provider expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Provider shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The vendor shall furnish to the Vendor Assistance Section, Department of Procurement Management, Administration Division, 111 NW 1st Street, Suite 1300, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440.
- B. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
- D. Professional Liability Insurance in the amount of \$1,000,000 per claim.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:



The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

**NOTE: DADE COUNTY CONTRACT NUMBER AND TITLE OF CONTRACT MUST APPEAR ON EACH CERTIFICATE.**

**CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY  
111 NW 1<sup>st</sup> STREET  
SUITE 2430  
MIAMI, FL 33128**

Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this Agreement.

The Contractor shall submit a certificate of insurance within ten (10) business days after notification of recommendation to award. If certificate does not include the coverages outlined in the terms and conditions of this solicitation, the vendor shall be given an additional five (5) business days to submit a corrected certificate to the County. Failure of the Contractor to provide the required certificate of insurance within fifteen (15) business days may result in the Contractor being deemed non-responsible and the issuance of a new award recommendation.

The Contractor shall be responsible for assuring that the insurance certificate required in conjunction with this Article remain in force for the duration of the contractual period; including any and all option years that may be granted to the Contractor in accordance with Article 7 of this Agreement. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the contract until such time as the new or renewed certificates are received by the County in the manner prescribed in the solicitation; provided, however, that this suspended period does not exceed thirty (30) calendar days. If such suspension exceeds thirty (30) calendars days, the County may, at its sole discretion, terminate this contract for cause and seek re-procurement damages from the vendor in accordance with Article 16 of this Agreement.

**ARTICLE 18. DEFAULT AND TERMINATION**

18.1 Termination based on fraud. The County may terminate this Agreement if the Contractor, an individual or corporation or other entity attempts to meet its obligations under this Agreement with the County through fraud, misrepresentation or material misstatement.

- a) The County may, as a further sanction, terminate or cancel any other Agreement(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- b) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its obligations with the County under this Agreement through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.



**Miami-Dade County, Florida**

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18.2 Termination for Convenience. In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- a) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County: (i) stop work on the date specified in the notice ("the Effective Termination Date"); (ii) take such action as may be necessary for the protection and preservation of the County's materials and property; (iii) take no action which will increase the amounts payable by the County under this Agreement; and
- b) In the event that the County exercises its right to terminate this Agreement for convenience only, the Contractor will be compensated as stated in the payment Articles, herein, for the portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
- c) All compensation pursuant to this Article are subject to audit.

18.3 Termination for Default. This Agreement may be terminated by the nondefaulting party if any of the following events of default occur: (1) if a party materially fails to perform or comply with this Agreement or any provision hereof; (2) if either party fails to strictly comply with the provisions of Article 15 (Confidentiality) or makes an assignment in violation of Article 20 (Nonassignability); (3) if the Contractor becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors.

18.4 Effective Date of Termination. Termination due to a material breach shall be effective on notice. In all other cases, termination shall be effective thirty (30) days after notice of termination to the defaulting party if the defaults have not been cured within such thirty (30) day period.

18.5 Obligations on Termination. Within ten (10) days after termination of this Agreement, County shall cease and desist all use of the Software and Documentation.

**ARTICLE 19. NOTICES**

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

**(1) To the County Project Manager:**

Miami-Dade County  
Office of Sustainability  
111 N.W. 1<sup>st</sup> Street, 22<sup>nd</sup> Floor  
Miami, FL 33128-1974

Attention: Patricia Gomez  
Phone: (305) 375-4775  
E-mail: gomezp@miamidade.gov

**and to the Contract Manager:**

Miami-Dade County  
Department of Procurement Management  
111 N.W. 1<sup>st</sup> Street, Suite 1300  
Miami, FL 33128-1974

Attention: Beth Goldsmith  
Phone: (305) 375- 4417  
Fax: (305) 375- 5688  
E-Mail: bgoldsm@miamidade.gov

**(2) To the Contractor**



Miami-Dade County, Florida

EnergyCAP, Inc.  
110 Radnor Rd, Ste 101  
State College, PA 16801

Contract No. RFP766

Attention: John Heinz, Director of Sales  
Phone: 877-327-3702 x28  
Fax: 719-623-0577  
E-mail: JohnH@EnergyCAP.com

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

**ARTICLE 20. NONASSIGNABILITY**

Contractor shall not assign this Agreement or its rights hereunder without the prior written consent of the County.

**ARTICLE 22. GOVERNING LAW**

This Agreement, including appendices, and all matters relating to this Agreement (whether in Agreement, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida, the county of Miami-Dade.

**ARTICLE 24. VENDOR REGISTRATION AND FORMS**

(A) Vendor Registration. The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. *Miami-Dade County Ownership Disclosure Affidavit* (Section 2-8.1 of the County Code)
2. *Miami-Dade County Employment Disclosure Affidavit* (Section 2-8-1(d)(2) of the County Code)
3. *Miami-Dade Employment Drug-free Workplace Certification* (Section 2-8.1.2(b) of the County Code)
4. *Miami-Dade Disability and Nondiscrimination Affidavit* (Section 2-8.1.5 of the County Code)
5. *Miami-Dade County Debarment Disclosure Affidavit* (Section 10.38 of the County Code)
6. *Miami-Dade County Vendor Obligation to County Affidavit* (Section 2-8.1 of the County Code)
7. *Miami-Dade County Code of Business Ethics* (Section 2-8.1(f) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)
8. *Miami-Dade County Family Leave Affidavit* (Article V of Chapter 11 of the County Code)
9. *Miami-Dade County Living Wage Affidavit* (Section 2-8.9 of the County Code)
10. *Miami-Dade County Domestic Leave and Reporting Affidavit* (Article 8, Section 11A-60 11A-67 of the County Code)
11. *Subcontracting Practices* (Ordinance 97-35)
12. *Subcontractor /Supplier Listing* (Section 2-8.8 of the County Code)
13. *Environmentally Acceptable Packaging* (Resolution R-736-92)
14. *W-9 and 8109 Forms*

(as required by the Internal Revenue Service)

**15. FEIN Number or Social Security Number**

In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- Identification of individual account records
- To make payments to individual/Contractor for goods and services provided to Miami-Dade County ***Affidavit***
- Tax reporting purposes
- To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

**16. Office of the Inspector General**

(Section 2-1076 of the County Code)

**17. Small Business Enterprises**

The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

**18. Antitrust Laws**

By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida

(B) Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or



business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

**ARTICLE 25. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.
- d) An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:
  - *Acknowledgment:* "This material is based upon work supported by the Department of Energy [National Nuclear Security Administration] [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)]."
  - *Disclaimer:* "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

**ARTICLE 26. CONFLICT OF INTEREST**

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
  - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
  - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.

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- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

**ARTICLE 27. SEVERABILITY**

If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the same shall be deemed to be of no effect and deemed stricken from this Agreement. The remaining provisions of the Agreement shall remain in full force and effect.

**ARTICLE 28. ANNUAL APPROPRIATION**

The County's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners. Cancellation will not cause any penalty or expense to the County, and shall be treated as Termination for Convenience. Service/Maintenance can be cancelled at any time that the Contractor is notified in writing, at least thirty (30) days prior to cancellation. There will be no early termination charges from the Contractor for canceling service/maintenance during the year.

**ARTICLE 29. FORCE MAJEURE**

Neither party hereto shall be responsible for any failure or delay in the performance of any obligation hereunder if such failure or delay is due to a cause beyond the party's control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts.

**ARTICLE 30. SURVIVAL**

The parties acknowledge that the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

**ARTICLE 27. AUDITS**

The County, or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to County Ordinance No. 03-2, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

**ARTICLE 55. SOFTWARE ESCROW**

The County requires that the Contractor maintain a software escrow account throughout the life of the Agreement to



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protect against failure of the Contractor to provide the agreed upon services. A copy of the vendor's source code is to be kept by a trusted third party to ensure that the County will have access to the source code in the event that the Contractor is unable to support the software. The Contractor is required to maintain the most current version of the application with the escrow agent including but not limited to all incremental releases and upgrades. Contractor will use the following company to administer the software escrow account:

InnovaSafe, Inc.  
28502 Constellation Road  
Valencia, CA 91355  
Phone: (661) 310-1810  
Fax: (661) 295-5515

**ARTICLE 36. ENERGY CONSERVATION**

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. Section 6321 et seq.).

**ARTICLE 37. U.S. FEDERAL GRANT CONTRACTING REQUIREMENTS**

This contract is funded by a U.S. Federal Grant requiring compliance by Contractor to specific terms and conditions as incorporated as Exhibit No. 1 to the Agreement.

**ARTICLE 38. PATENT AND COPYRIGHT INDEMNIFICATION**

JASS JAINATON  
HEJITH BHATTARAJ  
JASS JAINATON  
HEJITH BHATTARAJ

- a) The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, or other intellectual property rights or any other third party proprietary rights in the performance of the Work.
- b) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.
- c) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- d) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- e) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.



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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Agreement date set forth below.

**Contractor**

**Miami-Dade County**

By: [Signature]

By: [Signature]

Name: John Heinz

Name: Jack Osterholt

Title: Director of Sales

Title: Deputy Mayor

Date: 10/5/11

Date: 10/13/11

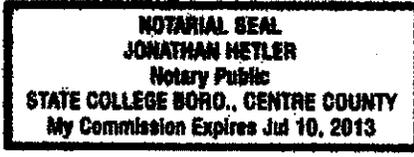
Attest: [Signature]  
Notary/Corporate Secretary

Attest: [Signature]  
Clerk of the Board



Notary/Corporate Seal

Approved as to form and legal sufficiency



[Signature]  
Assistant County Attorney



# **Exhibit 1 - Department of Energy Federal Grant Terms and Conditions**



Exhibit 1 - Department of Energy Federal Grant Terms and Conditions

1. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (May 2009)

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds -- the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or



used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized --

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages --- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov), maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

**Prohibition on Reprisals:** An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

**Agency Action:** Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:



- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.)

G. Reserved

H. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in Support of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

J. Availability of Funds

Funds obligated to this award are available for reimbursement of costs until 36 months after the award date.

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor – For funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

L. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.



## 2. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the Recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier subrecipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

## 3. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

## 4. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient



awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

## 5. DAVIS-BACON ACT AND CONTRACT WORKHOURS AND SAFETY STANDARD ACT

**Definitions:** For purposes of this provision, "Davis Bacon Act and Contract Work Hours and Safety Standards Act," the following definitions are applicable:

(1) "Award" means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors, and subcontractors.

(2) "Contractor" means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients' or Subrecipients' contractors, subcontractors, and lower-tier subcontractors. "Contractor" does not mean a unit of State or local government where construction is performed by its own employees."

(3) "Contract" means a contract executed by a Recipient, Subrecipient, prime contractor, or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. "Contract" does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.

(4) "Contracting Officer" means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

(5) "Recipient" means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement, or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(6) "Subaward" means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient's procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.

(7) "Subrecipient" means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

### (a) Davis Bacon Act

#### (1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and, without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.



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Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract.



In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable; that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347Instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.



(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.



(iii) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's, and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in(a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors), and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**(b) Contract Work Hours and Safety Standards Act.** As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as



may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) **Contracts and Subcontracts.** The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**(c) Recipient Responsibilities for Davis Bacon Act**

(1) On behalf of the Department of Energy (DOE), Recipient shall perform the following functions:

(i) Obtain, maintain, and monitor all Davis Bacon Act (DBA) certified payroll records submitted by the Subrecipients and Contractors at any tier under this Award;

(ii) Review all DBA certified payroll records for compliance with DBA requirements, including applicable DOL wage determinations;

(iii) Notify DOE of any non-compliance with DBA requirements by Subrecipients or Contractors at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (ii) above;

(iv) Address any Subrecipient and any Contractor DBA non-compliance issues; if DBA non-compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to DOE;

(v) Provide DOE with detailed information regarding the resolution of any DBA non-compliance issues;

(vi) Perform services in support of DOE investigations of complaints filed regarding noncompliance by Subrecipients and Contractors with DBA requirements;

(vii) Perform audit services as necessary to ensure compliance by Subrecipients and Contractors with DBA requirements and as requested by the Contracting Officer; and

(viii) Provide copies of all records upon request by DOE or DOL in a timely manner.

**(d) Rates of Wages**

The prevailing wage rates determined by the Secretary of Labor can be found at <http://www.wdol.gov/>.



## **Appendix A – Scope of Services**



Appendix A – Scope Of Services

**BACKGROUND**

The Miami-Dade County General Services Administration (GSA) requires a County hosted, turnkey enterprise Energy Utility Billing Management System that is capable of tracking, reporting, managing and archiving energy savings and issues, such as bill abnormalities, changes in usage, or changes in billing programs from energy utility providers, within the County.

**REQUIREMENTS AND SERVICES TO BE PROVIDED**

The Contractor shall provide the County with a perpetual license for an unlimited number of users for the EnergyCAP Enterprise Software System ("System") in accordance with the terms and conditions of the agreement. The System shall include the following functionality:

- EnergyCAP Enterprise version 6.2.64.120 or later, EnergyCAP database version 64 or later, and EnergyCAP web version 2.8 or later.
- EnergyCAP Enterprise (installed version) functionality shall include:

<b>Bill Tracking</b>
Track any type of utility bill (any commodity, energy or non-energy)
Track any level of bill details (taxes, various charges, KW demand)
Bill entry screen layout looks like actual bill
Bill entry screen shows past history with tables and graphs
"Fat finger" tests to catch obvious keying errors (select bill entry "audits" from a list of approx 50 available tests)
Provisions for complex unbundled/deregulated accounts with multiple vendors
Rate schedules can recreate and verify accuracy of bills, wizard to easily create simple to complex rate schedules
Bill audits to spot potential problems
User-defined work flow process for optional supervisor approval of bills
Bill 'Batch Entry' with batch control totals
Flexible interface with A/P systems; use EnergyCAP as a "smart" front-end to the bill payment process
Scanned image of each bill can be retrieved and viewed
Imports and charts Interval Data (15-minute 'raw' data from large electric meters; data files are imported to EnergyCAP in CSV or other formats)
Budgets/Forecasts – Create multiple budgets by cost, blended rate and consumption, print reports
Submeter Readings – establish reading routes, enter readings manually or via upload of data from metering systems
Simple or complex formulas to split usage and costs in shared facilities using Virtual Meters: example: Split electric bill to two agencies 60%-40%
Assign costs to submeters and virtual meters via rate schedules
Tenant and customer/reimbursable account billing using rate schedules
EDI 810 bill entry – Electronic Data Interchange formats accepted as well as CSV flat file for bill import
Accrual functions for month and year-end accounting needs
<b>Organizational Structure</b>
Total flexibility for regions, departments, divisions, units, sites, etc. No limits on levels or complexity
Unlimited number of buildings, meters, accounts, vendors
"Treeview" interface to easily navigate within organization
User-defined fields for building, meter, account, vendor data can link to external URLs
Unlimited number of user-defined "groups" of meters or buildings for reporting
Data importer allows new user to easily lay out entire structure (accounts, meters, buildings, etc) in Excel and import to EnergyCAP.
<b>Security &amp; Access</b>
Login requires user name and strong password using Microsoft Active Directory
Variable levels of user access (view only, view & edit, etc)
User access can be limited to specific buildings, depts., etc
No limit on number of users
<b>Reports</b>
PowerViews™ – Exclusive EnergyCAP feature! Instant charts, continuously updated; of cost, use, unit cost and current year vs. last year
Over 250 available reports
Reports use Crystal Reports engine
Crystal Reports, Access or Excel can be used to design new reports



Future integrated report development tools shall be included at no additional cost to the County
Report settings can be saved as <b>Favorites</b>
Many reports can be packaged into <b>batches</b> ; one click runs many reports
Flexible options for <b>filtering report data</b>
Reports can be <b>exported</b> to many file formats
Reports can be <b>directly emailed</b> (no prior export required)
Special export formats designed specifically for <b>Excel</b>
<b>Auto-Groups</b> give you instant benchmark charts and rankings by unit cost, cost/sq ft and more. Groups are automatically maintained. Benchmarks are the most efficient way to spot outliers and problems.
<b>Deployment and Development</b>
<b>LAN client-server</b> version using Microsoft SQL Server 2005 or later
<b>Web-based</b> with browser client
Web-based with <b>'rich' Windows client</b> (port 80, no ODBC)
<b>Specialty Features</b>
<b>Weather normalization</b> using tried and true degree day statistical techniques first pioneered by the EnergyCAP development team in 1983.
Cost Avoidance – <b>Measurement &amp; verification</b> of savings in accordance with IPMVP, U.S. Dept of Energy, and industry standards.
Loadshape manager creates <b>normalized load profiles</b> – benefits electric procurement process, helps ensure the best possible quotes/bids
<b>Rate/Tariff analysis</b> compares your rates with alternatives
<b>Production tracking</b> – occupancy, production, etc
<b>Electric interval data features</b> - import via CSV or MV-90 format, charting, analysis, application of rate schedule to range of dates
<b>Issue Tracking</b> feature to easily track savings opportunities and problems; assign to any user, track status, email to building managers.
<b>Greenhouse Gas emissions &amp; Green Energy</b> credits tracking & reporting; ability to import or create own emission factors.
<b>ENERGY STAR benchmarking interface</b> stores and distributes building attribute data to ENERGY STAR Portfolio Manager and receives energy efficiency ratings back.
<b>Energy supply contract</b> tracking and administration
<b>Email report publisher</b> automatically distributes reports to lists of recipients per County defined schedules and filter options via the County's existing email server.

The Contractor shall provide the County with public facing Web Access ("Web Access") capable of the following:

<b>Utility Bill Tracking</b>
Account Tracking
Bill Audit results
Ability to import bills via Excel formats
Create bill memos and flags
Setup Wizards
<b>Savings &amp; Analysis</b>
Benchmarking Charts
Calendarization of data
Weather data
Weather Normalization
<b>Reporting &amp; Presentation</b>
Energy Dashboards
Powerviews of data
Reports, Charts, & Graphs
Treeview navigation
<b>Sustainability &amp; Compliance</b>
ENERGY STAR Benchmarking and ratings
Greenhouse Gas Emission tracking and reporting
<b>Web Access &amp; Permissions</b>
Unlimited number of users
Web-based with browser client
User permissions



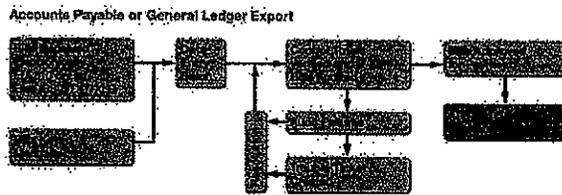
Specialty Features
Help videos
Search functions
Ability to place County's logo in application

The Contractor shall provide the County with customization services and interface development to include the following:

EnergyCAP is often used as a "smart and friendly front end" to audit and approve utility bills prior to passing the bill details to the Accounts Payable or General Ledger system.

Through the use of the customized interfaces defined below, EnergyCAP will integrate with County financial systems. This will be accomplished via the export of bills to an intermediate file, reformatting to A/P specification, and import to A/P system.

In a like manner, accruals and reversals will be created in EnergyCAP, exported, reformatted and imported to G/L



County's Requirement	Contractor Solution
System shall interface with FAMIS Systems.	<p>Invoice data will be provided in a minimum of 4 separate files from EnergyCap to an FTP service provided by the County to be processed by the FAMIS System for invoice processing.</p> <p>A Confirmation File will be generated by the FAMIS System for each payment transaction and posted to an FTP service provided by the County. EnergyCAP will read the Confirmation File to upload payment transactions to the corresponding account.</p> <p>ECl will use a SQL table to store the County's Index Code Table from FAMIS to be used for accounting code validation within EnergyCAP.</p>
System shall interface with Oracle/PeopleSoft ERP.	<p>Invoice data will be provided in either EDI format or acceptable alternative as defined by the County from EnergyCAP to the County's secure servers or file share.</p> <p>A Confirmation File will be generated by ERP for each payment transaction and posted to County's secure servers or file share.. EnergyCAP will read the Confirmation File to upload payment transactions to the corresponding account.</p> <p>ECl will use a SQL table to store the County's Index Code Table from ERP to be used for accounting code validation within EnergyCAP.</p>
System shall interface with the County to obtain data from Florida Power & Light (FP&L) in Electronic Data Interchange (EDI) standard utility billing to process 810 billing	<p>ECl will develop an EDI interface "map" to the County's secure file share to receive bills in "native" EDI format provided by FP&amp;L. FP&amp;L will send EDI 810files via the County's secure FTP site to the County.</p> <p>EnergyCAP will retrieve the EDI 810 file on a daily basis and generate an EDI 997 confirmation that will be placed on the County's secure file share site for FP&amp;L.</p>



and 997 confirmation transactions.	processing.
System shall interface to a third party weather service for the purpose of downloading data in order to determine weather normalization by using degree day statistical techniques.	EnergyCAP interface will automatically download current and historical mean daily temperature from AccuWeather.
System shall interface to the Environment Protection Agency's (EPA) Energy Star Portfolio Manager Automated Benchmarking System (ABS) to allow staff to enter building attributes such as such as number of occupants, hours of occupancy, etc in order for peer benchmarking to be completed. Benchmarking criteria include building types, location/region of buildings, primary use of buildings, year constructed, buildings sharing similar control systems, meters on same rate code, and departments.	EnergyCAP interfaces with the EPA Portfolio Manager to provide County data to the EPA and return the associated ENERGY STAR ratings.
System shall interface with the INFOR Enterprise Asset Management System Version 8.5 Asset Sustainability Edition (ASE).	EnergyCAP incidents from the Issue Tracker Module shall be uploaded to EAMS via a web service or other acceptable method.

**The Contractor shall provide the County with implementation services in the following manner:**

- In summary, responsibilities are:
  - County – Provide as much setup and historical billing data as possible in electronic format, provide specifications for all interfaces, provide user lists.
  - Contractor – Provide EnergyCAP software, perform software implementation service and project management, obtain all required data from County and vendors as necessary, enter setup and historical billing data electronically, convert data in electronic formats, develop/implement all interfaces, set up all license features, train County personnel. Provide knowledge transfer document to include interface specification, file layouts, automation information such as scripts and tasks.

Work Item	Methodology
Project Management	<p>ECI will perform project management and coordination functions working with the County's Project Manager and IT Project Manager.</p> <p>ECI and the County will work from a mutually approved project schedule which will include tasks for which ECI and the County are responsible for performing during the project. The County's IT Project Manager will be updating the project schedule with input from ECI.</p>
EnergyCAP Installation	ECI will provide phone and email assistance for the installation of the EnergyCAP application on County workstations.
Data Collection	<p>The electronic data provided by County falls into these categories for any commodities for which the County has available data:</p> <ul style="list-style-type: none"> <li>- Sites, units and organizational hierarchies</li> </ul>



	<ul style="list-style-type: none"> <li>- Accounts, meters, vendors, rates</li> <li>- Historical billing data</li> <li>- Ongoing billing data</li> <li>- 15 minute data trends</li> <li>- Users</li> </ul>
Data Management	ECI will be responsible for coordinating closely with County to: 1) determine accounts and utility vendors; identification of data sources, 2) collect electronic data from County in whatever file formats are available, 3) notify County of missing data, 4) obtain and enter missing data
Data Entry (Electronic)	ECI will electronically manipulate and enter whatever data is available in electronic format, such as facilities data provided by County and vendor files of historical bills.
Data Entry (Manual)	ECI will manually enter setup data – organizational hierarchies, user records, rate schedules, specialty items (interval data meters, submeters), and accounts/meters – that is not available electronically.
Data Interfaces	ECI will develop data interfaces for ongoing bill upload from County vendors: FP&L. ECI will also create interfaces to FAMIS, Oracle/PeopleSoft, INFOR, FPL EDI, AccuWeather and EPA Portfolio Manager ABS.
Training	ECI will provide training as outlined herein.
Technical Support	ECI will provide ongoing technical support and software upgrades.

The Contractor shall provide the County with training services in the following manner:

- Initial Training
  1. Administrator Training – ECI will conduct onsite training at a County-provided training facility tailored to technical personnel that are responsible for maintaining and updating the System, including training regarding the System/information technology functionality and features, accounting processes, and energy management. This training shall consist of three six-hour sessions and shall be completed after the population of data into the System and prior to System go-live.
  2. Phase One End User Training – ECI will conduct onsite training at a County-provided training facility tailored to End Users. This training shall consist of two six-hour sessions. The first session will be tailored to view-only users and basic knowledge. The second session shall include additional information tailored to advanced users. This training shall be completed prior to Phase One go-live.
  3. Phase Two End User Training – ECI will conduct onsite training at a County-provided training facility tailored to End Users. This training shall consist of two six-hour sessions. The first session will be tailored to view-only users and basic knowledge. The second session shall include additional information tailored to advanced users. This training shall be completed prior to Phase Two go-live.
  4. Phase Three End User Training – ECI will conduct onsite training at a County-provided training facility tailored to End Users. This training shall consist of two six-hour sessions. The first session will be tailored to view-only users and basic knowledge. The second session shall include additional information tailored to advanced users. This training shall be completed prior to Phase Three go-live.

Training is provided in a classroom-type setting and includes hands-on exercises to reinforce training topics. ECI will provide written and bound instructional materials for each attendee. The County will provide a standard projector to display images from a laptop to a screen that is readily visible by all trainees.

- On-going Training

In addition to the initial training sessions, County personnel will have multiple options for continuing to improve their knowledge and use of EnergyCAP:

- **Customized online training** – ECI can provide, upon request, custom online training sessions for County personnel. Online sessions are divided into one-hour sessions and are an easy way to provide EnergyCAP training to people in multiple locations. ECI predominantly uses [www.GoToMeeting.com](http://www.GoToMeeting.com) as the Web platform, in addition to a conference call line. Additional fees apply beyond the specified five (5) included sessions.
- **Annual Catalyst training in State College, PA** – All EnergyCAP users are invited to attend the company's annual Catalyst training conference. The session offers up to three days of hands-on classroom instruction, with numerous opportunities to interface directly with other EnergyCAP users from across North America. Next Catalyst training conference is April, 2012. First year attendance shall be provided for up to 3 participants, including airfare and lodging.



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*Contract No. RFP766*

- **Online resources** –Through its website at [www.EnergyCAP.com](http://www.EnergyCAP.com), ECI offers tremendous resources to assist EnergyCAP users. Resources include an online, searchable knowledgebase, online videos, technical bulletins, and a searchable Help manual. The resources are free and accessible by all EnergyCAP users.

### **DELIVERABLES**

All items outlined below are further detailed in Appendix C, "Implementation Timeline."

- Milestone 1 – Project Initiation
- Milestone 2 – Initial Load and Data Set-up
- Milestone 3 – Interface Development Completion
- Milestone 4 – Phase 1 Go Live, Phase 2 Set-up, Training and Testing
- Milestone 5 – Phase 2 Go Live, Phase 3 Set-up, Training and Testing
- Milestone 6 – Phase 3 Go Live
- Milestone 7 – Annual Maintenance Year 2
- Milestone 8 – Annual Maintenance Year 3



## **Appendix B – Payment Schedule**



Appendix B – Payment Schedule

**A. PAYMENT SCHEDULE**

Scheduled Payment	Total Amount Due
Milestone 1	\$97,423.50
Milestone 2	\$97,423.50
Milestone 3	\$162,372.50
Milestone 4	\$97,423.50
Milestone 5	\$97,423.50
Milestone 6	\$97,423.50
Milestone 7	\$56,000.00
Milestone 8	\$56,000.00
<b>Total For the Initial Term:</b>	<b>\$ 761,490.00</b>

**B. PRICE BREAKDOWN – INITIAL TERM**

DESCRIPTION	PRICE
Software License Fees	\$ 350,000.00
Implementation and Configuration Services	\$ 250,000.00
Software Interfaces	\$ 37,500.00
Training	\$ 11,990.00
<i>Sub-Total for Software Licenses, Implementation Services, Customization Services, Interfaces, Training, and Miscellaneous Costs</i>	<b>\$ 649,490.00</b>
Software Maintenance Support and Escrow Services – Year 1	Included
Software Maintenance Support and Escrow Services – Year 2	\$ 56,000.00
Software Maintenance Support and Escrow Services – Year 3	\$ 56,000.00
<b>Total Price for Initial Three Year Term:</b>	<b>\$ 761,490.00</b>

**C. OPTIONAL YEARS TO RENEW FEE SCHEDULE**



OPTIONAL YEARS TO RENEW (OTR) FEE SCHEDULE	ANNUAL FEE YEAR 1	ANNUAL FEE YEAR 2	EXTENDED TOTAL
OTR 1 - Software Maintenance and Technical Support and Escrow Service Fees - Year 4 and 5	\$ 56,000.00	\$ 57,680.00	\$ 113,680.00
OTR 2 - Software Maintenance and Technical Support and Escrow Service Fees - Year 6 and 7	\$ 57,680.00	\$ 57,680.00	\$ 115,360.00
OTR 3 - Software Maintenance and Technical Support and Escrow Service Fees - Year 8 and 9	\$ 59,410.00	\$ 59,410.00	\$ 118,820.00
OTR 4 - Software Maintenance and Technical Support and Escrow Service Fees - Year 10 and 11	\$ 59,410.00	\$ 61,192.00	\$ 120,602.00
<b>Total for all Optional Years to Renew Software Maintenance and Support Services</b>			<b>\$ 468,462.00</b>

**D. OPTIONAL ADDITIONAL SERVICES**

Description	Proposed Rate
Project Manager	\$150.00 Per Hour
Programmer	\$200.00 Per Hour
Junior Programmer	\$150.00 Per Hour
Web Developer	\$200.00 Per Hour
Trainer	\$200.00 Per Hour
System Administrator	\$150.00 Per Hour
On-Site Training (Per Day, beyond initial training, all expenses included)	\$ 2,500.00 Per Day



## **Appendix C – Implementation Timeline**



Appendix C – Implementation Timeline

Item	Task Name	Duration	Start	Finish	Predecessor	Resource Name
0	MDC Energy Cap Implementation Project Schedule	255 days	Wed 9/25/11	Fri 1/15/12		
1	Notice to Proceed	1 day	Wed 9/28/11	Wed 9/28/11		MAN
2	Establish contract, Escrow account, contract certificate, form requirements	1 day	Thu 9/29/11	Thu 9/29/11		MAN
3	Issue RFP's to 3 PROPOSED CONTRACTORS (General)	25 days	Fri 10/1/11	Fri 10/1/11		ECI/CSA, WAS/ET/PPC
4	Project Kick-off Meeting	1 day	Fri 10/1/11	Fri 10/1/11		ECI/CSA, WAS/ET/PPC
5	RFP Evaluation Meeting	6 days	Wed 10/26/11	Thu 10/27/11		MAN
6	Develop contract and ask management questions	2 days	Wed 10/26/11	Thu 10/27/11		MAN
7	Prepare detailed project schedule	1 day	Wed 10/26/11	Wed 10/26/11		MAN
8	Finalize contract, sign-off, start after for Energy Cap	2 days	Thu 10/27/11	Fri 10/28/11		MAN
9	Finalize tasks for MDC, including as a contractor in the field	1 day	Fri 10/28/11	Fri 10/28/11		MAN
10	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
11	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
12	Submittal Review and Installation for Gas Meter Installation	1 day	Fri 10/28/11	Fri 10/28/11		MAN
13	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
14	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
15	Configure A/S	1 day	Fri 10/28/11	Fri 10/28/11		MAN
16	Configure with construction	1 day	Fri 10/28/11	Fri 10/28/11		MAN
17	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
18	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
19	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
20	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
21	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
22	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
23	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
24	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
25	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
26	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
27	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
28	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
29	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
30	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
31	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
32	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
33	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
34	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
35	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
36	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN
37	Finalize contract, sign-off, start after for Energy Cap	1 day	Fri 10/28/11	Fri 10/28/11		MAN

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**Miami-Dade County Energy CAP Implementation Project Schedule**

ID	Task Name	Duration	Start	Finish	Predecessor	Resource Name
1	Move ECA Billing DBS AUC Migration	1 day	Thu 11/10/11	Thu 11/10/11		ECI
2	Upload Relocated (GSA and WASH) data to ECA and WASH	1 day	Mon 11/14/11	Mon 11/14/11		ECI
3	Entry of GSA and WASH setup data	22 days	Wed 11/16/11	Wed 11/16/11		ECI
4	Set Up Helpdesk	5 days	Thu 11/17/11	Thu 11/17/11		ECI
5	Set Up Accounts	5 days	Fri 11/18/11	Mon 11/21/11		ECI
6	Set Up Accounts	5 days	Wed 11/23/11	Thu 11/24/11		ECI
7	Set Up Cost Centers	5 days	Wed 11/23/11	Thu 11/24/11		ECI
8	Set Up Vendors	1 day	Wed 11/23/11	Wed 11/23/11		ECI
9	Set Up Rates	2 days	Thu 11/24/11	Fri 11/25/11		ECI
10	ATP of Relocated program tables using old County's setup	10 days	Thu 11/24/11	Thu 11/24/11		ECI
11	MITIGATION AND RISK ANALYSIS REPORT SUBMITTAL 2	0 days	Wed 11/23/11	Wed 11/23/11		ECI
12	IMPLEMENTATION PHASE 1: INTERFACED DEVELOPMENT COMPLETED (10 weeks)	0 days	Wed 11/23/11	Wed 11/23/11		ECI
13	Develop System Interface	27 days	Mon 11/28/11	Mon 11/28/11		ECI
14	Develop ECA and WASH Interface	5 days	Thu 11/24/11	Thu 11/24/11		ECI
15	Develop ECA and WASH Interface	5 days	Fri 11/25/11	Fri 11/25/11		ECI
16	Develop ECA and WASH Interface	5 days	Mon 11/28/11	Mon 11/28/11		ECI
17	Develop ECA and WASH Interface	5 days	Tue 11/29/11	Tue 11/29/11		ECI
18	Develop ECA and WASH Interface	5 days	Wed 11/30/11	Wed 11/30/11		ECI
19	Develop ECA and WASH Interface	5 days	Thu 12/01/11	Thu 12/01/11		ECI
20	Develop ECA and WASH Interface	5 days	Fri 12/02/11	Fri 12/02/11		ECI
21	Develop ECA and WASH Interface	5 days	Mon 12/05/11	Mon 12/05/11		ECI
22	Develop ECA and WASH Interface	5 days	Tue 12/06/11	Tue 12/06/11		ECI
23	Develop ECA and WASH Interface	5 days	Wed 12/07/11	Wed 12/07/11		ECI
24	Develop ECA and WASH Interface	5 days	Thu 12/08/11	Thu 12/08/11		ECI
25	Develop ECA and WASH Interface	5 days	Fri 12/09/11	Fri 12/09/11		ECI
26	Develop ECA and WASH Interface	5 days	Mon 12/12/11	Mon 12/12/11		ECI
27	Develop ECA and WASH Interface	5 days	Tue 12/13/11	Tue 12/13/11		ECI
28	Develop ECA and WASH Interface	5 days	Wed 12/14/11	Wed 12/14/11		ECI
29	Develop ECA and WASH Interface	5 days	Thu 12/15/11	Thu 12/15/11		ECI
30	Develop ECA and WASH Interface	5 days	Fri 12/16/11	Fri 12/16/11		ECI
31	Develop ECA and WASH Interface	5 days	Mon 12/19/11	Mon 12/19/11		ECI
32	Develop ECA and WASH Interface	5 days	Tue 12/20/11	Tue 12/20/11		ECI
33	Develop ECA and WASH Interface	5 days	Wed 12/21/11	Wed 12/21/11		ECI
34	Develop ECA and WASH Interface	5 days	Thu 12/22/11	Thu 12/22/11		ECI
35	Develop ECA and WASH Interface	5 days	Fri 12/23/11	Fri 12/23/11		ECI
36	Develop ECA and WASH Interface	5 days	Mon 12/26/11	Mon 12/26/11		ECI
37	Develop ECA and WASH Interface	5 days	Tue 12/27/11	Tue 12/27/11		ECI
38	Develop ECA and WASH Interface	5 days	Wed 12/28/11	Wed 12/28/11		ECI
39	Develop ECA and WASH Interface	5 days	Thu 12/29/11	Thu 12/29/11		ECI
40	Develop ECA and WASH Interface	5 days	Fri 12/30/11	Fri 12/30/11		ECI
41	Develop ECA and WASH Interface	5 days	Mon 1/02/12	Mon 1/02/12		ECI
42	Develop ECA and WASH Interface	5 days	Tue 1/03/12	Tue 1/03/12		ECI
43	Develop ECA and WASH Interface	5 days	Wed 1/04/12	Wed 1/04/12		ECI
44	Develop ECA and WASH Interface	5 days	Thu 1/05/12	Thu 1/05/12		ECI
45	Develop ECA and WASH Interface	5 days	Fri 1/06/12	Fri 1/06/12		ECI
46	Develop ECA and WASH Interface	5 days	Mon 1/09/12	Mon 1/09/12		ECI
47	Develop ECA and WASH Interface	5 days	Tue 1/10/12	Tue 1/10/12		ECI
48	Develop ECA and WASH Interface	5 days	Wed 1/11/12	Wed 1/11/12		ECI
49	Develop ECA and WASH Interface	5 days	Thu 1/12/12	Thu 1/12/12		ECI
50	Develop ECA and WASH Interface	5 days	Fri 1/13/12	Fri 1/13/12		ECI
51	Develop ECA and WASH Interface	5 days	Mon 1/16/12	Mon 1/16/12		ECI
52	Develop ECA and WASH Interface	5 days	Tue 1/17/12	Tue 1/17/12		ECI
53	Develop ECA and WASH Interface	5 days	Wed 1/18/12	Wed 1/18/12		ECI
54	Develop ECA and WASH Interface	5 days	Thu 1/19/12	Thu 1/19/12		ECI
55	Develop ECA and WASH Interface	5 days	Fri 1/20/12	Fri 1/20/12		ECI
56	Develop ECA and WASH Interface	5 days	Mon 1/23/12	Mon 1/23/12		ECI
57	Develop ECA and WASH Interface	5 days	Tue 1/24/12	Tue 1/24/12		ECI
58	Develop ECA and WASH Interface	5 days	Wed 1/25/12	Wed 1/25/12		ECI
59	Develop ECA and WASH Interface	5 days	Thu 1/26/12	Thu 1/26/12		ECI
60	Develop ECA and WASH Interface	5 days	Fri 1/27/12	Fri 1/27/12		ECI
61	Develop ECA and WASH Interface	5 days	Mon 1/30/12	Mon 1/30/12		ECI
62	Develop ECA and WASH Interface	5 days	Tue 1/31/12	Tue 1/31/12		ECI
63	Develop ECA and WASH Interface	5 days	Wed 2/01/12	Wed 2/01/12		ECI
64	Develop ECA and WASH Interface	5 days	Thu 2/02/12	Thu 2/02/12		ECI
65	Develop ECA and WASH Interface	5 days	Fri 2/03/12	Fri 2/03/12		ECI
66	Develop ECA and WASH Interface	5 days	Mon 2/06/12	Mon 2/06/12		ECI
67	Develop ECA and WASH Interface	5 days	Tue 2/07/12	Tue 2/07/12		ECI
68	Develop ECA and WASH Interface	5 days	Wed 2/08/12	Wed 2/08/12		ECI
69	Develop ECA and WASH Interface	5 days	Thu 2/09/12	Thu 2/09/12		ECI
70	Develop ECA and WASH Interface	5 days	Fri 2/10/12	Fri 2/10/12		ECI
71	Develop ECA and WASH Interface	5 days	Mon 2/13/12	Mon 2/13/12		ECI
72	Develop ECA and WASH Interface	5 days	Tue 2/14/12	Tue 2/14/12		ECI
73	Develop ECA and WASH Interface	5 days	Wed 2/15/12	Wed 2/15/12		ECI
74	Develop ECA and WASH Interface	5 days	Thu 2/16/12	Thu 2/16/12		ECI

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**Miami-Dade County EnergyCAP Implementation Project Schedule**

ID	Task Name	Description	Start	Finish	Predecessors	Resource Name
108	Complete Phase 3 of Milestones	3 days	Tue 8/21/12	Tue 8/21/12		
109	Training session 7	1 day	Tue 8/21/12	Tue 8/21/12	104 ECI	
110	Obtain approval to release Phase 3 remaining deliverables to end users	1 day	Tue 8/21/12	Tue 8/21/12	108 MDC	
111	Conduct Phase 3 Pre-Go-Live	4 days	Wed 8/22/12	Wed 8/22/12	110 MDC	
112						
113	Conduct Project Close-out Issues	8 days	Wed 8/22/12	Fri 8/24/12		
114	Complete and deliver Knowledge Transfer Document	3 days	Wed 8/22/12	Tue 8/27/12	113 ECI/MDC	
115	Project Administrator close-out date	3 days	Fri 8/24/12	Fri 8/30/12	114 ECI	
116	Final System Acceptance	1 day	Fri 8/31/12	Fri 8/31/12	115 MDC	
117	PHASE 3 GO-LIVE Payment Milestone 3	0 hrs	Fri 8/31/12	Fri 8/31/12	117 MDC	



**Miami-Dade County EnergyCAP Implementation Project Schedule**

- 8 Prepare detailed project schedule
- 10 The ECI and MPC Project owners will review and update the initial project schedule to identify any task assignment and task dependencies change.
  - 10 IT hardware tasks for MPC Database and Software installation
    - Test DB
    - Setup DB
    - Configure MO
    - Configure web components
- 18 Provide OPA & WARD historical data for initial upload
- 22 Identify required data, available data, and source of data for OPA and WARD.
  - 22 ECI data collection to existing DB
  - 22 The ECI conversion to the SaaS OPA is necessary due to the phase out of departments.
  - 22 Identify the data of the OPA and WARD.
  - 22 Database detailed hardware requirements for:
    - EXX GIS
    - EXX ERP
    - FAMS
    - FAMS Index code validation
    - FAMS Payment confirmation
    - FAMS ERP
    - ERP Payment confirmation
    - ERP Alerts - issue tracker tickets
- 24 PROJECT INITIATION Payment Milestone 1 - Issue Invoice #1 - 15% Cumulative 15%
  - 24 Be available for the milestones include:
    - Project Kick-off
    - PM Initiation Terms
    - IT installation for MPC Database and Software installation
    - Phase 1 implementation in production tasks
    - Data Migration Requirements for database
    - Data Conversion Training Session 1
- 36 Complete ECI upload DB
- 40 Configure ECI inputs: US, weeks, worklow, user roles, GIS, tables, custom spreadsheets, primary use tables, and templates.
- 40 Entry of OPA and WARD into data
- 40 Entry of OPA and WARD into data (Priority, location, cost center, vendors, accounts, meters)
- 46 INITIAL LOAD AND DATA SET-UP Payment Milestone 2 - Issue Invoice #2 - 15% Cumulative 30%
  - 46 Be available for the milestones include:
    - Confirmation of ECI database
    - Interface requirement specifications
    - Interface test pass
    - Move ECI existing database to MPC database
    - Upload historical utility data for OPA and WARD
    - Entry of OPA and WARD into data
    - ATP of the program is done using MPC DB
- 60 Develop system interface
- 60 Complete hardware development and configuration for:
  - Develop system interface



Miami-Dade County EnergyCAP Implementation Project Schedule	
67	<ul style="list-style-type: none"> <li>PPAL ECI 670</li> <li>PPAL ECI 697</li> <li>FAMES</li> <li>FAMES Index code validation</li> <li>FAMES Payment Configuration</li> <li>PPAL ECI 670</li> <li>ERP Payment Configuration</li> <li>With Alert - Issue tracker</li> <li>Configure device day location</li> <li>Configure ERP to Manager Interface</li> </ul>
68	Parallel processing of GSA and WASD ECI Integration Parallel processing of GSA and WASD ECI Integration process (minimum of 2 month test processing is required by PPAL)
69	INTERFACE DEVELOPMENT COMPLETED Payment Integration 3 - Issue tracker #3 - 25% (cumulative 50%)
70	Deliverables for this milestone include: <ul style="list-style-type: none"> <li>Develop system interface</li> <li>Develop System Interface and Configuration ATP</li> <li>Training Session 2</li> <li>Parallel processing of GSA and WASD ECI Integration</li> </ul>
71	Training session 3 for Phase 1 End Users Conduct Phase 1 Production roll-out tests Production roll-out tests to be done with ECI and MDO IT.
72	Entry of Asset, Support, Public Works and Connections setup data Entry of GSA and WASD setup data (hierarchy, location, cost center, vendor, account, meter)
73	Training session 4 for Phase 2 End Users Parallel processing of Asset, Support, Public Works and Connections ECI Integration
74	Parallel processing of Asset, Support, Public Works and Connections ECI Integration process (minimum of 3 month test processing is required by PPAL)
75	PHASE 1 GO-LIVE / PHASE 2 GO-LIVE / TRAINING & TESTING / PAYMENT INTEGRATION 4 - Issue tracker #4 - 15% (cumulative 70%)
76	Deliverables for this milestone include: <ul style="list-style-type: none"> <li>Complete phase 1 deliverables</li> <li>Phase 1 Rollout to Production</li> <li>Upload Phase 2 historical data</li> <li>Setup Phase 2 configuration</li> <li>Conduct Phase 2 ATP</li> <li>Conduct Phase 2 ECI Integration testing</li> </ul>
77	Training session 5
78	Training session 6 for Phase 2 End Users Conduct Phase 2 Production roll-out tests Production roll-out tests to be done with ECI and MDO IT.
79	Entry of the existing De performance setup data Entry of GSA and WASD setup data (hierarchy, location, cost center, vendor, account, meter)



**Miami-Dade County EnergyCAP Implementation Project Schedule**

- 102 Training session 6  
Training session 6 for Phase 3 End Users  
Parallel processing of Approval, Report, Credit, Notice, and Corrections ECH Integration  
Parallel processing of Approval, Report, Credit, Notice, and Corrections ECH Integration
- 105 PHASE 2 GO-LIVE / PHASE 3 SET-UP, TRAINING & TESTING Payment Migration 6 - 100% by 10/16/16 (cumulative 85%)
- 106 PHASE 2 GO-LIVE / PHASE 3 SET-UP, TRAINING & TESTING Payment Migration 6 - 100% by 10/16/16 (cumulative 85%)
- Deliverables for this mile stone include:
  - Complete Phase 3 Deliverables
  - Phase 2 Roll-out to Production
  - Upload Phase 3 historical data
  - Setup Phase 3 configuration
  - Conduct Phase 3 ATP
  - Conduct Phase 3 ECH Migration testing
- 109 Training session 7
- 111 Training session 7 for Phase 3 End Users  
Complete phase 3 production roll-out tasks  
Production roll-out tasks to be completed with ECH and MCC-IT.
- 114 Complete set of the final 6 day. Training roll-out  
To include information on installation, Process Logic of the ECH interface, and Technical Support and Troubleshooting information, so that in the case of future errors, the County will know what information to provide to ECH Technical Support.
- 117 PHASE 3 GO-LIVE Payment Migration 8 - 100% by 10/16/16 (cumulative 100%)  
PHASE 3 GO-LIVE Payment Migration 8 - 100% by 10/16/16 (cumulative 100%)  
Deliverables for this mile stone include:
  - Complete Phase 3 Deliverables
  - Phase 3 Roll-out to Production
  - Knowledge transfer tasks
  - Project close-out
  - Final Acceptance



## **Appendix D – Deliverable Acceptance Forms**



**Deliverable Acceptance Form  
Milestone 1**

In compliance with the requirements detailed in the above contract (including any modifications or amendments), the following project deliverable has been delivered, reviewed and formally accepted by Miami-Dade County and EnergyCAP, Inc. This document constitutes full acknowledgment by the County acceptance and delivery of the deliverable detailed in the table below.

It is understood that any future changes to this deliverable after this acceptance is given will require a formal change request to be submitted.

DELIVERABLE NAME: MILESTONE 1

Task Description	Duration	Resources/Staff
Project Initiation	5 Weeks	

Deliverable Date: \_\_\_\_\_  
 Accepted Unconditionally:  Yes /  No  
 Accepted Conditionally:  Yes /  No

Acceptance Conditions:	
Not Accepted:	
Reason:	
General Comments:	

**Delivered By:**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Accepted By:**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Date: \_\_\_\_\_



**Deliverable Acceptance Form  
Milestone 2**

In compliance with the requirements detailed in the above contract (including any modifications or amendments), the following project deliverable has been delivered, reviewed and formally accepted by Miami-Dade County and EnergyCAP, Inc. This document constitutes full acknowledgment by the County acceptance and delivery of the deliverable detailed in the table below.

It is understood that any future changes to this deliverable after this acceptance is given will require a formal change request to be submitted.

DELIVERABLE NAME: MILESTONE 2

Task Description	Duration	Resources/Staff
Initial Load and Data Set-up	7-8 Weeks	

Deliverable Date: \_\_\_\_\_  
 Accepted Unconditionally:  Yes /  No  
 Accepted Conditionally:  Yes /  No

Acceptance Conditions:	
Not Accepted:	
Reason:	
General Comments:	

**Delivered By:**

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

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

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

**Accepted By:**

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

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

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



**Deliverable Acceptance Form  
Milestone 3**

In compliance with the requirements detailed in the above contract (including any modifications or amendments), the following project deliverable has been delivered, reviewed and formally accepted by Miami-Dade County and EnergyCAP, Inc. This document constitutes full acknowledgment by the County acceptance and delivery of the deliverable detailed in the table below.

It is understood that any future changes to this deliverable after this acceptance is given will require a formal change request to be submitted.

DELIVERABLE NAME: MILESTONE 3

Task Description	Duration	Resources/Staff
Interface Development Completion	14 Weeks	

Deliverable Date: \_\_\_\_\_  
 Accepted Unconditionally:  Yes /  No  
 Accepted Conditionally:  Yes /  No

Acceptance Conditions:	
Not Accepted:	
Reason:	
General Comments:	

**Delivered By:**

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

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

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

**Accepted By:**

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

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

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

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**Deliverable Acceptance Form  
Milestone 4**

In compliance with the requirements detailed in the above contract (including any modifications or amendments), the following project deliverable has been delivered, reviewed and formally accepted by Miami-Dade County and EnergyCAP, Inc. This document constitutes full acknowledgment by the County acceptance and delivery of the deliverable detailed in the table below.

It is understood that any future changes to this deliverable after this acceptance is given will require a formal change request to be submitted.

DELIVERABLE NAME: MILESTONE 4

Task Description	Duration	Resources/Staff
Phase 1 Go-Live / Phase 2 Set-up, Training, and Testing	14 Weeks	

Deliverable Date: \_\_\_\_\_  
 Accepted Unconditionally:  Yes /  No  
 Accepted Conditionally:  Yes /  No

Acceptance Conditions:	
Not Accepted:	
Reason:	
General Comments:	

**Delivered By:**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Accepted By:**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Date: \_\_\_\_\_



**Deliverable Acceptance Form  
Milestone 5**

In compliance with the requirements detailed in the above contract (including any modifications or amendments), the following project deliverable has been delivered, reviewed and formally accepted by Miami-Dade County and EnergyCAP, Inc. This document constitutes full acknowledgment by the County acceptance and delivery of the deliverable detailed in the table below.

It is understood that any future changes to this deliverable after this acceptance is given will require a formal change request to be submitted.

DELIVERABLE NAME: MILESTONE 5

Task Description	Duration	Resources/Staff
Phase 2 Go-Live / Phase 3 Set-up, Training, and Testing	14-15 Weeks	

Deliverable Date: \_\_\_\_\_  
 Accepted Unconditionally:  Yes /  No  
 Accepted Conditionally:  Yes /  No

Acceptance Conditions:	
Not Accepted:	
Reason:	
General Comments:	

**Delivered By:**

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

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

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

**Accepted By:**

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

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

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



**Deliverable Acceptance Form  
Milestone 6**

In compliance with the requirements detailed in the above contract (including any modifications or amendments), the following project deliverable has been delivered, reviewed and formally accepted by Miami-Dade County and EnergyCAP, Inc. This document constitutes full acknowledgment by the County acceptance and delivery of the deliverable detailed in the table below.

It is understood that any future changes to this deliverable after this acceptance is given will require a formal change request to be submitted.

DELIVERABLE NAME: MILESTONE 6

Task Description	Duration	Resources/Staff
Phase 3 Go-Live	6 Weeks	

Deliverable Date: \_\_\_\_\_  
 Accepted Unconditionally:  Yes /  No  
 Accepted Conditionally:  Yes /  No

Acceptance Conditions:	
Not Accepted:	
Reason:	
General Comments:	

**Delivered By:**

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

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

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

**Accepted By:**

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

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

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



## **Appendix E – Escrow Agreement**



Appendix E – Escrow Agreement



IS2

Software Source Code Escrow Agreement

This Agreement is between the Depositor and InnovaSafe. Licensees are enrolled as a Beneficiary.

Use This Agreement if:

- Multiple Licensees will be added and management of single or multiple deposits are needed.
- Beneficiary specific terms and conditions may be required.
- Modifiable Agreement is required.
- Services include:
  - o Complete client service
  - o Certified Deposit Tracking
  - o Dual Vaulting – 2<sup>nd</sup> Vault Location For all Deposits
  - o SafeAccess- 24/7 Account Access
  - o FullAccess (Private Web Access 4x10)
  - o Safe-IP- 24/7 Internet Deposits
  - o Limited Deposit Verification
  - o Quarterly Account Status Reports
  - o Toll Free Telephone Support (800) 239-3989

Questions? Please call (800) 239-3989 or Live Online Support at www.innovasafe.com



This Software Source Code Escrow Agreement ("Agreement"), number 2286, effective as of the date signed by the Depositor ("Effective Date"), is made and entered into by InnoVasafe, Inc ("InnoVasafe"), a California corporation, located at 25030 Avenida Koenig, Suite 100, Valencia, California, 91355-1256 and Good Steward Software, LLC ("Depositor"), located at 111 Sowers Street, Suite 400, State College, Pennsylvania, 16801 and each additional person or entity subscribed hereto as a beneficiary in accordance with the requirements of this Agreement (each a "Beneficiary" and collectively the "Beneficiaries"). In consideration of the covenants, conditions, warranties and restrictions contained in this Agreement, the parties agree as follows:

1. DEFINITIONS

For purposes of this Agreement, the following capitalized terms shall have the meanings set forth below, unless expressly defined otherwise in this Agreement:

"Beneficiary Enrollment Form" means the form used by InnoVasafe for the addition of a beneficiary or Beneficiaries to this Agreement in accordance with the requirements of Paragraph J hereof, as such form may be modified or replaced by InnoVasafe in its sole discretion from time to time during the term of this Agreement. A copy of the current Beneficiary Enrollment Form is attached hereto as Exhibit B and incorporated herein.

"Description of Escrow Deposit" means a general description of the Software and the Escrow Deposit as set forth on Exhibit A attached hereto and incorporated herein.

"Escrow Deposit" or "Deposit" means the copies of the Source Code deposited with InnoVasafe by the Depositor, or otherwise held by InnoVasafe pursuant to the terms of this Agreement.

"License Agreement" means the agreement (including its amendments) to which Depositor licenses the Software to a Beneficiary in object code form.

"Replacement" means a Deposit relating to any complete change, modification, enhancement or alteration of the Source Code since the last Deposit which completely replaces all of the previous Deposits.

"Software" means the software that as of the date hereof is received by the Depositor to a Beneficiary pursuant to the License Agreement, and which is generally described in the Description of Escrow Deposit.

"Source Code" means the Software in source code form, including all documentation and instructions necessary to maintain, duplicate, compile, interpret and install the source code for the Software.

"Update" means any modification, update or revision of any Software that is subject of the Escrow Deposits currently being held by InnoVasafe.

2. ESCROW DEPOSIT PROCEDURES

2.1 Instructions to InnoVasafe. This Agreement shall constitute instructions to InnoVasafe as escrow agent. In addition, Depositor and each Beneficiary agree to execute, deliver and be bound by any supplemental or general policies or procedures of InnoVasafe or such other instruments as may be reasonably required by InnoVasafe in order to perform its obligations as contemplated by this Agreement. In the event of any conflict or any inconsistency between such policies or procedures and any provision of this Agreement, the provision of this Agreement shall control.

2.2 Initial, Additional, Duplicate Escrow Deposits and Link to Media: (a) Within thirty (30) days of the Effective Date of this Agreement, Depositor agrees to deposit with InnoVasafe, copies of the Source Code for the version of the Software as licensed under the License Agreement. With such delivery, Depositor agrees to provide InnoVasafe with a completed Description of Deposit (Exhibit A). (b) Depositor also agrees to deposit with InnoVasafe the Source Code for each Update or Replacement within thirty (30) days after its release, distribution, or other publication by Depositor in the ordinary course of business.



With each such delivery, Depositor agrees to provide Innovasafe with a completed Description of Deposit (Exhibit A). (c) Depositor shall deliver a duplicate Escrow Deposit (including all Updates) within five (5) days of receipt of a written request from an authorized representative of Innovasafe. Without limiting the foregoing, Depositor shall deliver a duplicate Escrow Deposit (including all Updates) to replace any previous Escrow Deposit that is impaired due to a defect or unusual degradation of the recorded medium. All duplicate Escrow Deposits may not be encrypted, except for an Update or Replacement Source Code that is transmitted to Innovasafe in accordance with Paragraph 2.3. (d) Title to and ownership of the media upon which the Deposit is stored, exclusive of the Source Code itself, shall vest with Innovasafe immediately upon the physical delivery of the Deposit to Innovasafe. Notwithstanding any other provision of this Agreement, Innovasafe shall have no obligation to return to Depositor any Escrow Deposit.

2.3 **Encrypted Electronic Deliveries:** Subject to the prior agreement of Innovasafe and Depositor regarding delivery and decryption protocols, Depositor shall have the option but not the obligation to encrypt and transmit the encrypted Escrow Deposit for each Update or Replacement Deposit over the Internet to Innovasafe's File Transfer Protocol site ("FTP Site"). Innovasafe shall not be liable to Depositor or Beneficiary for any encrypted Source Code, or any part thereof that is transmitted over the Internet to Innovasafe's FTP Site, but shall not be required to accept or for which no notification of receipt is given by Innovasafe pursuant to Paragraph 2.4 below.

2.4 **Deposit Receipt Notification and Certified Deposit Tracking:** (a) For each Deposit, Innovasafe will issue a receipt to Depositor, accompanied by a general list or description of the materials deposited. Innovasafe shall notify Depositor and Beneficiary of receipt of each Deposit by electronic mail ("email") to the email address described in Paragraph 13 of this Agreement or the Depositor Enrollment Form, as applicable, within a reasonable time following receipt by Innovasafe of the Deposit. Deposit notifications will also be promptly posted to a page at Innovasafe's web site, and Innovasafe will provide Depositor and Beneficiary with a user identification name and password in order to access the Innovasafe page upon which Deposit notifications are posted. (b) Innovasafe shall provide a written reminder notification by certified mail to Depositor semi-annually of Depositor's obligation to make update or replacement deposits. Within thirty (30) days of receipt of each such notice, Depositor shall provide written notice certifying to Innovasafe that (i) it has made the update or replacement deposits as required, or (ii) there has not been a release of a new version of the product since the last deposit. After thirty (30) days of receipt of notice, Innovasafe shall notify Beneficiary that Innovasafe has received (i) an update or replacement deposit from Depositor, (ii) a statement from Depositor advising there has not been a release of a new version of the product since the last deposit, or (iii) no response from Depositor.

2.5 **Technical Verification of Escrow Material:** Promptly following the receipt by Innovasafe of an Escrow Deposit required hereunder, Innovasafe shall perform, if and to the extent possible, the checks for technical verification of each Source Code that are included in the then published Innovasafe Limited Deposit Verification Information ("LDVI"). All charges and expenses incurred by Innovasafe in performing a Limited Deposit Verification ("LDV") are included in the standard escrow fees paid hereunder. Innovasafe shall provide an electronic copy of the LDV report to the parties to this Agreement. Any party may request that Innovasafe perform a Comprehensive Deposit Verification ("CDV") of the Escrow Deposit. Any charges and expenses incurred by Innovasafe in carrying out a CDV will be paid by the party requesting the CDV, unless otherwise agreed to in writing.

2.6 **Authorization to Copy:** Depositor authorizes Innovasafe to use and copy the Escrow Deposit as determined by Innovasafe in its sole discretion as necessary for the performance of its obligations hereunder, including but not limited to, performing any Escrow Deposit verification testing as authorized hereunder, provided, however, that the foregoing authorization does not grant, sell, assign or otherwise transfer to Innovasafe any title or ownership of any part of the Escrow Deposit or Software, or related documentation, or any other property of Licensor, except for the media upon which the Escrow Deposit is recorded, title to and ownership of which shall pass to Innovasafe as provided herein.

2.7 **Failed Deliveries:** Innovasafe will not be responsible for procuring the delivery of any Escrow Deposit, and Innovasafe shall have no obligation to determine the physical condition, accuracy,



completeness, functionality, performance or non-performance of any Escrow Deposit or whether the Escrow Deposit contains Source Code, unless otherwise required in connection with the performance by InovaSafe of an CDV or another technical verification that has been requested and agreed to by the parties in accordance with this Agreement. InovaSafe shall perform all of the duties required by this Agreement diligently and in good faith. Except as expressly set forth in Section 2 InovaSafe has no duty of care, inquiry or disclosure, whether express or implied.

### 3. BENEFICIARY ENROLLMENT PROCEDURES

3.1 Enrollment of Beneficiaries Depositor may join additional Beneficiaries to this Agreement at any time and from time to time, in its sole and absolute discretion, provided that (a) at the time of entering into this Agreement the Depositor and the proposed Beneficiary are parties to a License Agreement; (b) Depositor is not in breach of this Agreement; (c) all fees and costs have been paid to InovaSafe; and (d) the proposed Beneficiary completes, signs and delivers the Beneficiary Enrollment Form as required hereunder.

3.2 Beneficiary Enrollment Form Each Beneficiary designated by Depositor pursuant to this Agreement shall be required to agree to the terms hereof and indicate such agreement by delivering to Depositor and InovaSafe the completed Beneficiary Enrollment Form that has been signed by an authorized representative of Beneficiary. A person or entity that has not subscribed hereto as a Beneficiary in accordance with the requirements of this Agreement, including, but not limited to, any other licensee of the State, shall not have any rights hereunder and InovaSafe shall have no duties to any such person or entities.

### 4. ESCROW DEPOSIT RELEASE PROCEDURES

4.1 Conditions to Enforcement A Beneficiary shall have the right to enforce the Source Code release procedures described in this Paragraph 4 only if at the time of the requested release, (a) the License Agreement between Depositor and Beneficiary is in full force and effect, and Beneficiary is not in breach thereof; (b) the Beneficiary is not in breach of this Agreement; and (c) all fees and costs then due and owing to InovaSafe shall have been paid in full.

4.2 Release Conditions The release by InovaSafe of the Escrow Deposit to Beneficiary as further provided in this Paragraph 4, shall be subject to the occurrence of one or more of the following conditions (each a "Release Condition"): (a) Depositor requests in writing that InovaSafe release the Escrow Deposit to Beneficiary; or (b) Depositor takes any action under any state corporation or similar law that will cause both the dissolution of the corporate existence of Depositor and the liquidation by Depositor of its assets; or (c) Depositor has breached a material obligation under the License Agreement that has not been cured by Depositor as provided in the License Agreement, and that will cause Beneficiary to incur immediate and substantial injury for which money damages, or such other remedies provided by the License Agreement, would be inadequate.

4.3 Release Procedure InovaSafe shall release the Escrow Deposit to Beneficiary subject to and in accordance with each of the following conditions:

(a) Depositor may provide InovaSafe with a written release request at any time, and Beneficiary may provide InovaSafe with a written release request following the occurrence of a Release Condition; (b) Provided that InovaSafe has been paid all fees and costs then due and owing, InovaSafe shall promptly deliver a copy of the release request to Depositor or Beneficiary, as applicable (the "Notice of Release Request"); (c) If Depositor or Beneficiary objects to the requested release, then within thirty (30) days of the receipt of the Notice of Release Request, such party agrees to provide InovaSafe with written notice of such objection, and to provide a copy of such notice to the party requesting the release, stating that a Release Condition has not occurred or has been cured, and instructing InovaSafe not to release the Escrow Deposit as requested (the "Contrary Instructions"); (d) If InovaSafe does not receive Contrary Instructions within the time and in the manner required above, then InovaSafe shall deliver a copy of the Escrow Deposit to Beneficiary; (e) If InovaSafe does receive Contrary Instructions within the time and in the manner required above, then InovaSafe shall not deliver a copy of



the Escrow Deposit to the Beneficiary, but shall continue to hold the Escrow Deposit until the first to occur of the following: (i) InnovaSafe receives joint written release instructions from Depositor and Beneficiary; or (ii) InnovaSafe receives a copy of an order or judgment of a court of competent jurisdiction, or the decision of an arbitrator, if applicable, directing InnovaSafe to act with regard to disposition of the Escrow Deposit.

4.4 **Rights in Bankruptcy and Effect of Release:** (a) The parties agree that this Agreement, as it may be modified, supplemented, or replaced from time to time, is not intended and shall not be construed to constitute an election of remedies by Beneficiary, or otherwise to waive or surrender any rights to which Beneficiary otherwise would be entitled under Title 11 United States Bankruptcy Code §36(f)(1), as a licensor of intellectual property. (b) Upon receipt of the Escrow Deposit, and subject to the covenants, conditions, warranties and restrictions of this Agreement and the License Agreement, Beneficiary shall have the right and hereby agrees to use the Escrow Deposit, including copying and modification thereof, only as reasonably necessary for the sole purpose of enabling Beneficiary to use the Software for its intended purpose (unless otherwise authorized by the express terms of the License Agreement). Beneficiary shall use commercially reasonable measures to protect the integrity, security and confidentiality of the Escrow Deposit. The foregoing does not grant, sell, assign or otherwise transfer to Beneficiary any title to or ownership of all or any part of the Escrow Deposit or Software, or related documentation, or any other property of Depositor, and without limiting the foregoing, does not grant to Beneficiary any right to publish, perform, adapt, create derivative works from, or distribute the Software or any part thereof.

5. FEES AND PAYMENTS

5.1 **Fee Schedule, Payments and Suspension of Performance:** (a) The fees and charges of InnovaSafe are set forth on the fee schedule attached hereto as Exhibit 1 and incorporated herein. After the expiration of the initial term, InnovaSafe may increase its fees and costs on an annual basis by providing written notice of such increase at least sixty (60) days prior to the commencement of the next renewal term. (b) All fees, costs and any other amounts due and payable to InnovaSafe as provided hereunder, shall be paid by Depositor, or by a Beneficiary if applicable. Initial and annual fees must be paid to InnovaSafe within 30 days of the Effective Date and on each anniversary thereof. All other amounts payable to InnovaSafe shall be paid within thirty (30) days from the date of invoice to Depositor or Beneficiary, as applicable. Neither Depositor nor any Beneficiary shall be entitled to any refunds, withhold, offset, reductions in, or deductions from any payments due to InnovaSafe hereunder (c) In addition to and without limiting any other right or remedy to which InnovaSafe may be entitled, InnovaSafe shall have the right in its sole discretion, to suspend the performance of any or all of its obligations hereunder for so long as any amount due hereunder remains unpaid in whole or in part.

6. TERM AND TERMINATION

6.1 **Term:** This Agreement shall have an initial term of three (3) years from the date hereof unless earlier terminated as provided herein. At the expiration of the initial term, this Agreement shall automatically renew from year to year thereafter until this Agreement is terminated in accordance with the terms hereof.

6.2 **Termination for Cause:**

(a) Notwithstanding the foregoing, this Agreement shall terminate as to each specific Beneficiary immediately and automatically upon either the expiration of the applicable License Agreement between such Beneficiary and Depositor, or the earlier termination of the applicable License Agreement between such Beneficiary and Depositor, whichever is applicable, provided, however, that in the case of termination (as distinguished from the expiration) of the applicable License Agreement between such Beneficiary and Depositor, such termination has been effected by Depositor in accordance with the requirements of the applicable License Agreement (b) Depositor shall have the right to terminate this Agreement as to a specific Beneficiary if such Beneficiary breaches any material term of this Agreement, provided, however, that written notice of such breach is given to InnovaSafe and the breaching Beneficiary.

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and the Branching Beneficiary fails to cure such breach to the reasonable satisfaction of Depositor within thirty (30) days of delivery of the notice; (e) Each Beneficiary shall have the right to terminate this Agreement if Depositor breaches any material term of this Agreement, provided, however, that written notice of such breach is given to Depositor and InnoSafe, and Depositor fails to cure such breach to the reasonable satisfaction of the noticing Beneficiary within thirty (30) days of delivery of the notice. InnoSafe shall be obligated to provide written notice to Depositor of any notice of a material breach of this Agreement received by InnoSafe from any Beneficiary. A Beneficiary shall not be obligated to provide notice of a material breach by any other Beneficiary; (f) InnoSafe shall have the right to terminate this Agreement as to all parties or as to any Beneficiary. In the event of non-payment of any fees or other amounts due and payable to InnoSafe or its designee, or if Depositor or any Beneficiary otherwise breaches any material term of this Agreement, provided, however, that written notice of such breach is given to all applicable parties. If Depositor or the applicable Beneficiary fails to cure such breach within five (5) business days of the date such notice is delivered, then InnoSafe shall have the right to terminate this Agreement by sending written notice of termination to all parties, and further provided, however that if payment is due from a Beneficiary and not from Depositor, then InnoSafe may terminate this Agreement only as to that Beneficiary. InnoSafe shall have no obligation to perform any obligations under this Agreement as long as such breach remains uncured, including but not limited to, the receipt or release of any Escrow Deposit as required under this Agreement. Any party that cures amounts passed due, whether or not such party is obligated under this Agreement; (g) For purposes of this Agreement, a material breach of this Agreement shall occur, without limitation, if any party does any of the following: (i) ceases to conduct business in its normal course; (ii) makes an assignment for the benefit of creditors; (iii) is liquidated or otherwise dissolved; (iv) becomes insolvent or unable to pay its debts as they become due; (v) is adjudicated bankrupt; (vi) suffers the appointment of a receiver, custodian, examiner or a trustee for any of its property or assets; or (vii) engages in any conduct or activity constituting unfair competition, unfair trade practices, or criminal or tortious conduct that directly or indirectly causes harm to another party.

### 6.3 Termination Without Cause:

(a) After the expiration of the initial term of this Agreement, Depositor shall have the right to terminate this Agreement without cause, in its sole discretion, by giving each Beneficiary and InnoSafe written notice of its intent to terminate this Agreement at least forty-five (45) business days prior to the expiration of the initial term or the next renewal term, whichever is applicable; (b) Notwithstanding any other provision hereof, at any time during the term of this Agreement, InnoSafe shall have the right to terminate this Agreement without cause, in its sole discretion, by giving Depositor and each Beneficiary written notice of its intent to terminate this Agreement at least thirty (30) days prior to the date set for termination. During such 30 day period Depositor shall have the right to provide InnoSafe with written instructions authorizing InnoSafe to forward all Escrow Deposits to a source code escrow company appointed by Depositor as the successor escrow agent, and if InnoSafe does not receive such written instructions from Depositor within the foregoing 30 day period, then InnoSafe shall return any Escrow Deposit in its possession to Depositor, or if InnoSafe is not able to locate the Depositor after reasonable attempts, then InnoSafe may destroy the Escrow Deposit. InnoSafe shall continue to be entitled to payment of its then current fees and charges (notwithstanding the termination date specified in its notice) until the successor escrow agent accepts the escrow and receives the Escrow Deposits from InnoSafe, or the Escrow Deposits are destroyed; (c) A Beneficiary may not terminate this Agreement without cause; (d) This Agreement shall terminate automatically, in the event that copies of the Escrow Deposit are released to all qualified Beneficiaries as provided by this Agreement.

6.4 **Consequences of Termination:** Upon the termination of this Agreement, the following shall apply (a) all amounts then due and owing to InnoSafe hereunder shall be paid in full; and (b) if the termination is as to all Beneficiaries, then InnoSafe shall immediately return any Escrow Deposit in its possession to Depositor, or if InnoSafe is not able to locate Depositor after reasonable attempts, then InnoSafe will destroy the Escrow Deposit.

6.5 **Survival of Certain Obligations:** Upon the termination of this Agreement, all future and continuing rights and obligations established hereunder will terminate, except: (a) the obligations of each party to maintain confidentiality, as defined herein; (b) the obligations of the parties which by their terms



are intended to survive, for any claim or cause of action for breach of this Agreement, or for indemnity or contribution, existing as of the date of termination, which claim or cause of action will remain in full force and effect until such rights and obligations are fully discharged.

**7. REPRESENTATIONS AND WARRANTIES OF DEPOSITOR**

**7.1 Ownership of Source Code:** Depositor represents and warrants to each Beneficiary and to InnoVaSafe that Depositor is the sole and exclusive owner of the Source Codes for the Software and all Extras Deposited made pursuant to this Agreement, or otherwise has the right to grant to Beneficiary the rights granted hereunder and to deposit the Source Code with InnoVaSafe pursuant to the terms of this Agreement, and the grant by Depositor to Beneficiary of the rights granted hereunder and the deposits of the Source Codes with InnoVaSafe pursuant to the terms of the Agreement, do not and will not conflict with, violate or infringe upon any rights or interests of any person or entity not a party to this Agreement.

**7.2 Correspondence With Software:** Depositor represents and warrants to each Beneficiary and to InnoVaSafe that the Source Code deposited with InnoVaSafe will at all times be the source code version of the current release of the Software, as offered by Depositor to the Beneficiaries or other licensees in the ordinary course of business from time to time during the term of this Agreement.

**7.3 Usability of Source Code:** Depositor represents and warrants that: (a) the Source Code is and shall be understandable and usable by a reasonably skilled programmer or other professional to understand, maintain, and correct the Software without assistance of any other person; (b) that the Software does not involve any proprietary languages or programming components that such a skilled programmer, or other professional, could not reasonably be expected to understand, except to the extent that the Source Code contains sufficient documentation to enable such a skilled programmer or other professional to understand and use such languages or components; and (c) that the Source Code includes all the devices, programming, and documentation necessary for the maintenance of the Software by the Beneficiary upon release of the Source Code pursuant to this Agreement, except for devices, programming, and documentation commercially available to the Beneficiary on reasonable terms through readily known sources other than the Depositor.

**7.4 Compliance with Laws:** Depositor represents and warrants that it is solely and exclusively responsible for compliance with all applicable laws, rules, and regulations including but not limited to, customs laws, import, export, and re-export laws and government regulations of any country from or to which any Source Code may be delivered in accordance with the provisions of this Agreement.

**7.5 Validity of Agreement:** Depositor represents and warrants that:

(a) all consents, approvals, resolutions, authorizations, actions or orders required of Depositor for the authorization, execution and delivery of this Agreement, and for the licenses and rights granted hereunder, have been obtained; (b) the execution and delivery of this Agreement, and the performance by Depositor of its obligations hereunder, does not and will not conflict with or violate any judicial or administrative order, award, judgment or decree of any state or country applicable to Depositor, or violate or conflict with any provisions of Depositor's organizing instruments, or violate or conflict with the terms of any express or implied contract between Depositor and any other person or entity; and (c) the performance by InnoVaSafe of its obligations as required hereunder, does not and will not conflict with or violate any judicial or administrative order, award, judgment or decree of any state or country applicable to Depositor, or violate or conflict with any provisions of Depositor's organizing instruments, or violate or conflict with the terms of any express or implied contract between Depositor and any other person or entity.

**8. RECORDS, REPORTS, ADMINISTRATION**

**8.1 Records of Extra Deposits:** InnoVaSafe shall maintain written records of all Extra Deposits made by Depositor pursuant to this Agreement. InnoVaSafe shall be entitled to rely on the completeness and accuracy of all information, documents and materials provided to InnoVaSafe by Depositor, Beneficiary or any other person or entity, in connection with this Agreement. Depositor shall be



entitled at reasonable times during normal InnoVaSafe business hours and upon reasonable notice to InnoVaSafe to inspect the records of Escrow Deposits maintained by InnoVaSafe pursuant to this Agreement. Beneficiary shall be entitled at reasonable times during normal InnoVaSafe business hours and upon reasonable notice to both Depositor and InnoVaSafe, to inspect the records of Escrow Deposits maintained by InnoVaSafe pursuant to this Agreement, provided, however, the right of each Beneficiary to inspect such records of Escrow Deposit shall be limited to only those records that pertain to the requesting Beneficiary.

8.2 **Reports:** On a quarterly basis, InnoVaSafe shall prepare and submit via email a deposit reminder notification to Depositor, and an account history report to each current Beneficiary. If a report is returned non-deliverable to InnoVaSafe, InnoVaSafe shall use reasonable efforts to determine the current email address for the contact person and re-mail the report. If InnoVaSafe is not able to determine, after reasonable efforts, the current email address for the contact person, InnoVaSafe will send a report using United States Mail, First Class, to the last contact address provided by the Depositor or Beneficiary as applicable.

8.3 **Confidentiality and Storage of Escrow Deposits:** (a) InnoVaSafe shall protect the confidentiality of the Escrow Deposit and all proprietary information of Depositor incorporated therein. Except as otherwise required to carry out its duties under this Agreement, InnoVaSafe shall not permit any unauthorized person access to the Escrow Deposit. If InnoVaSafe receives any order from a court or other judicial or arbitral tribunal pertaining to the disclosure or release of the Escrow Deposit, InnoVaSafe will immediately notify the parties to this Agreement unless prohibited by law. Challenge of any such disclosure or release order shall be the sole responsibility of Depositor and Beneficiary. InnoVaSafe does not waive its rights to present its position with respect to any such order. No party has the right to require InnoVaSafe to disobey any order from a court or other judicial or arbitral tribunal. (b) InnoVaSafe shall implement measures to maintain the security of all Escrow Deposits including, but not limited to, the storage of all Escrow Deposits in secured logical facilities.

## 9. CONFLICTING DEMANDS AND INTERPLEADER

9.1 **Reliance and Suspension of Performance:** (a) InnoVaSafe shall have no responsibility for determining the genuineness or validity of any instruction, document or other item given to or deposited with it, and in the performance of its obligations under this Agreement shall be entitled to rely upon any email or written notice, instruction or request furnished to InnoVaSafe by any of the parties hereto if such instructions are believed in good faith by InnoVaSafe to have been given by an officer or another authorized representative of a party hereto. All employees of Depositor and any Beneficiary, respectively, are conclusively deemed to have proper authority to act on behalf of such party hereunder. InnoVaSafe shall have no responsibility with respect to the Escrow Deposit other than to follow such instructions as may be provided herein. (b) If any controversy exists between or among the Depositor and any of the Beneficiaries hereto, or with any other person or entity with respect to the Escrow Deposit or the subject matter of this Agreement, InnoVaSafe shall not be required to determine the issue or take any action with respect thereto, but in addition to and without limiting any other right or remedy to which InnoVaSafe may be entitled, InnoVaSafe shall have the right, in its sole discretion, to suspend the performance of any or all of its obligations hereunder for so long as any such conflict or controversy may exist hereunder.

9.2 **Interpleader:** In the event conflicting demands are made or conflicting motions are served upon InnoVaSafe with respect to this Agreement or any Escrow Deposit, including but not limited to, upon the receipt of contrary instructions from Depositor, the parties expressly agree that in addition to the right to suspend its performance as provided in Paragraph 9.1 hereunder, InnoVaSafe shall have the absolute right, in its sole discretion, to file an action in interpleader requiring the Depositor and Beneficiary to answer and litigate their several claims and rights among themselves. InnoVaSafe is hereby authorized to comply with the applicable interpleader statutes of the state of California in this regard, and Depositor on the one hand, and each Beneficiary, on the other hand, jointly and severally agree to pay all costs, expenses and reasonable attorneys' fees incurred by InnoVaSafe in connection therewith, the amount thereof to be fixed and judgment thereon to be rendered by the court in such suit. Depositor and Beneficiary agree that InnoVaSafe shall be obligated to act in accordance with an order or judgment of a court of competent

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jurisdiction directing InnoVaSafe to act with regard to disposition of the Escrow Deposit, as the final decision of an arbitrator directing InnoVaSafe to act with regard to disposition of the Escrow Deposit, and Depositor and Beneficiary hereby authorize and direct InnoVaSafe to act in accordance with such order of a court or decision of an arbitrator.

9.3 Proceedings: InnoVaSafe shall not be required or compelled to be a party to, assist in, or otherwise participate, whether as a witness or in any other capacity, in any investigation, audit, action or proceeding, whether judicial, arbitral or administrative, instituted by Depositor, Beneficiary, or any third party (collectively, a "Proceeding"), provided, however, that in the event that InnoVaSafe is made a party to or is threatened to be made a party to, or otherwise becomes involved in, any such Proceeding, then in any such case Depositor and Beneficiary each agree to pay in advance, upon receipt of written demand therefor from InnoVaSafe, any and all expenses that may be incurred by InnoVaSafe in connection therewith, which shall include, without limitation, attorneys fees, disbursements and retainers, court costs, transcript costs, fees of accountants, experts and witnesses, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, or being or preparing to be a witness or other participant in a Proceeding.

**INDEMNIFICATION OF INNOVASAFE**

Depositor, on the one hand, and each Beneficiary on the other hand, agree jointly and severally to indemnify, defend and hold harmless InnoVaSafe and its directors, officers, agents and employees (collectively, "InnoVaSafe") from and against any losses, claims, damages, judgments, assessments, costs and other liabilities (collectively, "Liabilities"), and will reimburse InnoVaSafe for all fees and expenses (including the reasonable fees and expenses of counsel) (collectively, "Expenses") as they are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation, whether or not in connection with pending or threatened litigation or arbitration and whether or not InnoVaSafe is a party (collectively, "Actions"), arising out of or in connection with the services rendered or to be rendered by InnoVaSafe pursuant to this Agreement, or any actions or inactions of InnoVaSafe in connection with any such services or this Agreement, provided that Depositor and Beneficiary will not be responsible for any Liabilities or Expenses of InnoVaSafe that are determined by a judgment of a court of competent jurisdiction which is no longer subject to appeal or further review to have resulted solely from the gross negligence or willful misconduct of InnoVaSafe in connection with any of the services, actions, or inactions referred to above.

**CLAIMS AND DISPUTE RESOLUTION**

11.1 Mediation and Arbitration. (a) In the event of any controversy, dispute or claim between InnoVaSafe and any other party hereto that arises under or otherwise relates to this Agreement, the parties agree that the dispute shall be submitted to mediation facilitated by a mediator as mutually approved by the parties, which approval shall not be unreasonably withheld or delayed by either party ("Mediator"). The parties agree to participate in good faith in the mediation conferences. Each party shall bear one-half (or its proportional share if there are more than two parties) of the costs of the mediation, including the Mediator's fees. (b) If the parties are unable to resolve the claim, controversy or dispute through mediation, then it shall be decided by arbitration in Los Angeles County, California, in front of a single retired judge through the Judicial Arbitration and Mediation Service or, in its absence, any similar organization providing the arbitration services of retired judges ("JAMS"). If for any reason within 30 days of an arbitration demand, any other party to the Agreement fails to state in writing that it will cooperate in selecting the sole arbitrator, then the remaining party shall select the arbitrator. If for any reason the sole arbitrator is not selected within 45 days of the written arbitration demand, then JAMS shall have sole authority to assign one of its retired judges as the arbitrator that has experience with intellectual property law. The parties shall be entitled to discovery to the full extent provided in civil actions pending in the Superior Court for Los Angeles County, with the arbitrator deciding any controversies arising during and with respect to discovery. The decision of the arbitrator with respect to any issues submitted for determination shall be final and binding on all of the parties to this Agreement, provided, however, that the arbitrator shall not have the power to award punitive or exemplary damages. Not less than 21 days before

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the first scheduled session of the arbitration hearing, each party shall deliver to the other: (i) a complete list of the names of the witnesses that the party will call to testify at the hearing; and (ii) a complete and accurate copy of each document the party will offer in evidence at the hearing, excluding witnesses and documents that are used for impeachment.

11.2 **Litigation of Claims and Liabilities:** (a) No action or claim against Innovasafe arising out of or in any way relating to this Agreement may be instituted more than one (1) year after the event giving rise to such action or claim. (b) Innovasafe shall not be liable for any special, incidental, punitive, exemplary, or consequential damages (including loss of information, revenue and/or lost profits) arising out of or in any way relating to this Agreement whether foreseeable or unforeseeable or even if Innovasafe has been apprised of the possibility of such damages. The total collective liability of Innovasafe to Depositor and Beneficiary, and to all of their respective affiliates, representatives, agents and contractors, arising out of or in any way relating to this Agreement, regardless of whether such liability is based in contract or in tort (including breach of warranty, negligence and strict liability in tort) shall be limited to the total amount of services fees paid by Depositor to Innovasafe pursuant to this Agreement, provided, however, that the foregoing limitation does not apply to damages (excluding damage to the Escrow Deposit media) that are determined by a judgment of a court of competent jurisdiction which is no longer subject to appeal or further review to have resulted solely from the gross negligence or willful misconduct of Innovasafe.

12. NOTICES

12.1 **Notice and Notice Address:** Except as otherwise provided herein for Escrow Deposits or notices of Updates and Replacements, all notices, requests, demands, or other communications required or permitted under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes if done by personal delivery, or electronic mail, or first class mail, or Certified Mail, or commercial overnight delivery service (DHL, FedEx, UPS), or facsimile transmission. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed affecting as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authority, messenger, or overnight delivery service. Any party may change its contact information by giving the other party notice of the change in any manner permitted by this Agreement. Any party has the option to update their contact information with Innovasafe using the "Change of Status" form on our website, <http://www.innovasafe.com/updates.html>.

DEPOSITOR ADDRESS

Contact Name:	Steven D. Helm, P.E., CFM
Title:	President
Street address:	211 January St., Ste 400
City, State, Postal Code	State College, PA, 16801
Phone:	814-237-3744
Facsimile:	801-780-8211
Email:	stvehd@innovasafesoftware.com
Purchase Order (if applicable)	NA

INNOVASAFE, INC. 25050 AVENUE KEARNY, SUITE 100 VALENCIA, CA 91355-1236  
PHONE: 800-339-3489 FACSIMILE: 661-295-5375 E-MAIL: CLIENTSERVICES@INNOVASAFE.COM

BENEFICIARY: As set forth in Exhibit "B".

13. MISCELLANEOUS PROVISIONS

13.1 **Independent Contractors:** The parties are independent contractors, and no party shall be held to be a fiduciary or trustee, or to have any fiduciary obligation, to any other party, or shall be considered, by entering into or performing any obligation under this Agreement, to assume or become liable for any special duty, or any existing or future obligations, liabilities or debts of the other party. No employee or agent of one party shall be considered to be an employee or agent of the other party.

*10/11*

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13.2 Complete Statement, Interpretation and Modification of Agreement. The parties hereto acknowledge that each has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this Agreement is the complete and exclusive statement of their agreement with respect to the subject matter hereof, and supersedes all oral or written proposals, understandings, representations, warranties, covenants, and communications between the parties relating hereto. Innovasafe is not a party to the License Agreement and no provisions of the License Agreement shall be construed to apply to Innovasafe or otherwise give rise to any obligation of Innovasafe. Each party and its counsel have participated fully in the review and approval of this Agreement. Any statute or rule of law to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by Depositor and Innovasafe, and by the Beneficiary if it affects any material right or obligation of such Beneficiary, provided hereunder. No course of performance by the parties hereunder shall be deemed to constitute an amendment of this Agreement.

13.1 Waiver: No waiver of a breach, failure of a condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the waiving party. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

13.4 Attorneys' Fees: In any litigation, arbitration or other proceeding, by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorneys' fees, together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

13.5 Entire Maturity: Except for obligations to make payment as indicated herein, no party shall be held responsible for any act, failure, event, or circumstance addressed herein if such act, failure, event, or circumstance is caused by conditions beyond such party's reasonable control.

13.6 Due Authorization, No Third Party Rights, Partial Invalidity, Headings: (a) Each party represents and warrants that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate, partnership, or limited liability company action. (b) This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted, authorized and acknowledged successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement. (c) If any provision of this Agreement is held illegal, unenforceable, or in conflict with any law of any federal, state or local government having jurisdiction over this Agreement, the validity of the remaining provisions hereof shall not be affected thereby. (d) The headings on this Agreement are included for convenience only and shall neither effect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.

13.7 Governing Law: The validity of this agreement and any of its terms or provisions, as well as the rights and duties of the parties under this agreement, shall be construed pursuant to and in accordance with the laws of the State of California, and each party to this agreement specifically agrees to submit to the jurisdiction of the courts of the State of California.

13.8 Counterparts: This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

SIGNATURES AND CAPTION FOR THE SIGNATURES: \_\_\_\_\_



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date below the signatures.

<b>DEPOSIT</b>		<b>INNOVASAFE</b>	
BY: <u>[Signature]</u>	BY: <u>[Signature]</u>	Signature	
Name: <u>Steven D. Hoive</u>	Name: <u>John J. Stulman</u>	Title: <u>President/CEO</u>	
Title: <u>Pres/Manager</u>	Date: <u>December 22, 2004</u>		
Date: <u>12/17/04</u>			



EXHIBIT A  
DESCRIPTION OF DEPOSIT  
INNOVASAFE ACCOUNT # 2256

THIS FORM MUST ACCOMPANY EACH DEPOSIT TO INNOVASAFE. PLEASE SEND ALL REPORTS TO THE INNOVASAFE CORPORATE OFFICES.

The form can also be completed online at: <http://www.innovasafe.com/eghibita.html>

DEPOSITOR CONTACT INFORMATION:

Company: _____	Contact _____
Title: _____	Email: _____
St. Address: _____	City/State: _____
Postal Code: _____	Country: _____
Tel #: _____	Fax #: _____

<b>Excess Deposit Details</b>	
Media Type (CD, DVD, DAT, etc.): _____	Indicate hardware used to create deposit: _____
Number of Media: _____	Indicate operating systems used: _____
Copies (1 or 2): _____	Indicate backup command/software used: _____
Product(s) Name: _____	Indicate software compression used: _____
Product Version: _____	Indicate whether encryption/password protection was used: _____
	What computer language was the source written: _____
	Approximate size of the data on the media: _____
	(MB/GB)

TYPE OF DEPOSIT (REQUIRED): \*Please Check Only One Box

Initial Deposit  Update Deposit  Replacement Deposit

IF THIS IS A REPLACEMENT DEPOSIT, PLEASE INDICATE WHETHER WE SHOULD RETURN OR DESTROY THE PREVIOUS DEPOSIT(S):

Return OR  Destroy (Checking this box authorizes Innovasafe to destroy the previous deposit(s) if this deposit is to be returned or destroyed. please indicate in the space below the name and version of the previous deposit(s) you would like to replace. If you would like to replace all previous deposits select "All".

All or Specific Deposits (list here): \_\_\_\_\_



**EXHIBIT B  
BENEFICIARY DESIGNATION FORM  
INNOVASEF ACCOUNT # 2256**

This form can be completed online. Go to <http://www.innovasef.com/submitB.html>

The undersigned Beneficiary hereby acknowledges, accepts, and agrees to be bound by the terms of the above-referenced Software Source Code Escrow Agreement by and between Innovasef, Inc., a California corporation, as Intellectual Property Escrow Agent and Citicard Sheward Software, LLC as Depositor, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Agreement").

**BENEFICIARY INFORMATION:**

\*This contact person will receive ALL deposit and update deposit notifications

Check here if there is an alternate contact person and list them on the back of this form.

Company:	Contact:
Title:	Email:
St. Address:	City/State:
Postal Code:	Country:
Tel #:	Fax #:

**Signature (Required):**

**DEPOSITOR INFORMATION:**

Company:	Contact:
Title:	Email:
St. Address:	City/State:
Postal Code:	Country:
Tel #:	Fax #:

**PLEASE LIST WHICH SOFTWARE PACKAGE(S) THIS BENEFICIARY IS ENTITLED TO:**

Party responsible for annual Beneficiary fee or other fees (see Exhibit "C" Fee Schedule).	Beneficiary (Amount)	Depositor (Amount)

**INTELLECTUAL CONTACT (Required):**

Contact:	St. Address:
City/State:	Postal Code:
Country:	Tel #:
Email:	Purchase Order #:

Please return this form, completed and signed to:

**INNOVASEF, INC.  
2588 AVENUE KEARNY, SUITE 108  
VALENCIA, CA 91355-1256**



**EXHIBIT C  
SCHEDULE OF FEES**

**INVOSAFE ACCOUNT #2256**

<b>Account Initialization</b> For one-time payment <i>*Fee waived with initial deposit of three (3) products</i>	<b>\$695*</b>
<b>Fees for Annual Administration</b>	
<b>Standard or Electronic Delivery</b> Per Product Deposit - 3 FREE Updates/Replacements per product per year <i>*Estimated Updates for the LIFE of the agreement for the first product.</i>	<b>\$995</b>
<b>Additional Update/Replacement Fee</b>	<b>\$125</b>
<b>(Optional) One Time Payment Per Product</b> For Unlimited Updates/Replacements for the LIFE of the agreement.	<b>\$750</b>
<b>Annual Beneficiary Fee</b>	
▪ Per Beneficiary per year	<b>\$295</b>
<b>Technical Verification Fees</b>	
▪ Limited Deposit Verification (LDV)	<b>No Fee</b>
▪ Comprehensive Deposit Verification (CDV)	<b>Quote only</b>
<b>Release Fees</b>	
▪ Per release request	<b>\$500</b>

All Fees Are Payable in US Dollars unless otherwise agreed to in writing.



**UNOFFICIAL AMENDMENT:** This Amendment (the "Amendment") is entered into by and between EnergyCAP, Inc. (successor in interest to Good Steward Software, LLC ("Depositor"), and Innovasafe, Inc. and its agents, the Innovasafe Software License Code Format Agreement (Innovasafe Account #3256 (the Agreement"), dated as of December 17, 2014 (the "Effective Date"). Except as otherwise set forth herein, capitalized terms used herein shall have the meaning set forth in the Agreement, and all references to sections refer to sections of the Agreement unless otherwise expressly indicated.

The parties agree as follows:

The original existing Depositor under the Agreement was party to a merger, consolidation or similar transaction which by operation of law resulted in EnergyCAP, Inc. succeeding to the rights and obligations of the original Depositor under the Agreement effective December 2, 2017 (the "Effective Date"). And hence, the Agreement will continue in effect and EnergyCAP, Inc. hereby acknowledges and assumes all obligations of Depositor under the Agreement as of the Effective Date. All rights and obligations of EnergyCAP, Inc. as Depositor arising under or otherwise relating to the Agreement shall continue as provided in the Agreement, and shall not in any way be deemed to have been modified, waived, released or discharged.

The Agreement is hereby amended to provide that as of the Effective Date, EnergyCAP, Inc. is Depositor under the Agreement, having all rights and obligations of Depositor in connection therewith, and all references in the Agreement to "Depositor" shall mean and refer to EnergyCAP, Inc. as of the Effective Date.

**AGREEMENT:** Except as expressly supplemental herein, the Agreement shall continue in full force and effect according to its terms and without modification hereby. Each party hereto agrees to execute such other documents and take such other actions as may be reasonably necessary or desirable to confirm or effectuate the agreement contemplated herein. A true and correct copy of this Agreement, when by any party or any other party will be deemed an original, and will have the same effect as if the original herein were actually received by the party receiving such faxed copy.

<b>DEPOSITOR:</b>	<b>INNOVASAFE:</b>
By: <i>Steven B. Neme</i>	By: <i>John J. Sturman</i>
Name: Steven B. Neme	Name: John J. Sturman
Title: CEO	Title: Pres./CEO
Date: 10/11/19	Date: 11 OCT 19

AGREEMENT 2/16



**EXHIBIT B  
BENEFICIARY ENROLLMENT FORM  
INNOVASAFE ACCOUNT # 2256**

This form can be completed online. Go to <http://www.InnovaSafe.com/ExhibitB.html>

The undersigned Beneficiary hereby acknowledges, accepts, and agrees to be bound by the terms of the above-referenced Software Source Code Escrow Agreement by and between InnovaSafe, Inc., a California corporation, as Intellectual Property Escrow Agent and EnergyCAP, Inc. as Depositor, on this \_\_\_\_\_ day of \_\_\_\_\_, 201\_ (the "Agreement").

**BENEFICIARY INFORMATION:**

\*This contact person will receive ALL deposit and update deposit notifications.

Check here if there is an alternate contact person and list them on the back of this form.

Company:	Contact:
Title:	Email:
St. Address:	City/State:
Postal Code:	Country:
Tel #:	Fax #:

Signature (Required): \_\_\_\_\_

**DEPOSITOR INFORMATION:**

Company: EnergyCAP, Inc	Contact: John C. Heinz
Title: Director of Sales	Email: sales@energycap.com
St. Address: 110 Radnor Rd, Ste 101	City/State: State College, PA
Postal Code: 16801	Country: USA
Tel #: 814-237-3744	Fax #: 719-623-0577

**PLEASE LIST WHICH SOFTWARE PACKAGE(S) THIS BENEFICIARY IS ENTITLED:**

EnergyCAP Enterprise

Party responsible for annual Beneficiary fee or other fees (see Exhibit "C" Fee Schedule).	Beneficiary (Amount)	Depositor (Amount)
	--	\$295

**Invoicing Contact :**

Contact: EnergyCAP, Inc (same as above)	St. Address:
City/State:	Postal Code:
Country:	Tel #:
Email:	Purchase Order #:

Please return this form, completed and signed to:

**INNOVASAFE, INC.  
PO BOX 800256  
VALENCIA, CA 91380-0256 USA**