

## Energy Savings Contract

This energy savings contract is between the Alachua County Government (the "County") and Cenergistic LLC ("Cenergistic"). This contract is subject to all applicable state and federal laws.

Cenergistic® delivers customized, comprehensive people-driven energy conservation programs that focus on changing human behavior to help clients reduce their consumption of energy and water without any equipment upgrades. Implementation of these programs is guided by Cenergistic's team of energy consultants - together representing several hundred years of energy conservation experience. Cenergistic's clients can invest the financial savings that result in the lives of the people they serve, rather than in utility companies. Cenergistic guarantees the success of these programs as set out in paragraph 7 below. To date Cenergistic has served more than 1,425 clients in 48 states.

The County is committed to its mission: "Alachua County's mission is to provide responsive service to citizens and responsible stewardship of county resources for current and future generations." The County uses electricity, gas, water and sewer (collectively "energy") to fulfill its mission. The County currently uses 131 facilities.

Cenergistic has offered to build and provide a customized energy conservation program that is focused on organizational and behavioral change and is designed with the following goals:

- Save dollars that the County can reinvest in the people it serves;
- Preserve a quality operating environment for the County's facilities;
- Conserve energy for a positive impact on the environment; and,
- Increase awareness to empower energy users to be energy savers.

Cenergistic will help the County pursue these goals through implementation of its energy conservation program. Central to the success of this program is the recognition of shared responsibility between Cenergistic and the County as the program is initiated and implemented. Cenergistic provides extensive resources, education and onsite training, action planning, and other conservation-related services, while the County works cooperatively to implement Cenergistic's program.

Shared responsibility also extends into the way Cenergistic is compensated for its services. With this in mind, Cenergistic is providing one or more energy specialists who will serve on-site to lead and manage implementation of the energy conservation program and is offering a "performance fee" billing arrangement. This approach means the County will not have to spend any amounts for on-site management of the program and 100% of Cenergistic's compensation

is paid from the savings realized by the County. Cenergistic's fee is contingent on the successful implementation of Cenergistic's conservation program.

As a part of this shared responsibility, Cenergistic offers a *Fee Free Period* during the first month to allow for acceleration of savings for the County before Performance Fee payments begin.

The parties therefore agree as follows:

1. **Program.** On \_\_\_\_\_ ("Start Date") Cenergistic shall begin its work on this contract to provide the County with a people-driven energy management program that is customized to enable the County to reduce consumption of energy ("Program").

2. **Energy Consultants.** A Cenergistic team of energy consultants shall deliver the Program to the County as follows:

- Through Cenergistic's on-site and ongoing assessments of the County's facilities and based on Cenergistic's experience in having assessed thousands of client facilities, Cenergistic's energy consultants shall deliver hundreds of recommendations that are specific to the County's environment.
- Cenergistic's energy consultants shall guide and assist the County's Program implementation following Cenergistic's proven methodology, the Cenergistic energy management program.

3. **Energy Specialist.** (a) *Onsite Assignment.* Program implementation requires a daily focused effort in the County's facilities and areas. One or more Cenergistic employed energy specialists ("energy specialist"), and the use of technology will be used to assist the County with making conservation a priority while positively engaging people to conserve energy. Cenergistic will adequately staff the Program for optimal success through a combination of an energy specialist, onsite engineer and energy expert visits, use of monitoring technology and remote support through our EMS and engineering group in Dallas. Cenergistic shall take immediate actions to identify and employ the energy specialist for the County. The salary or contract expense for the energy specialist will be paid by Cenergistic. The County Human Resources Department will participate in the Welcome Call to be conducted at a mutually agreeable time following the signing of this contract and will assist and cooperate with Cenergistic in making information concerning employment information and options as an energy specialist available to County employees. The County Human Resources Department will also assist with internally publicizing, posting, distributing information and coordinating Job Information Sessions and interviews by Cenergistic for a prospective energy specialist. In the event the Program is suspended for reasons set out in paragraphs 7(b) or 8(c) below, the County shall reimburse Cenergistic for the compensation of the energy specialist during the period of Program suspension. Cenergistic will not assign an energy specialist to the County that is unacceptable to the County (which acceptance shall not be unreasonably withheld).

(b) **Duties.** The primary duties of the energy specialist will be to spend time in the County's facilities to identify savings opportunities and to work closely with the County's staff to execute proven implementation strategies to change behavior linked to energy consumption. The effective management of energy information is also important for achieving positive results through accountability. For this the energy specialist will work to maintain energy consumption and other information related to energy use in the County's facilities and areas. The energy specialist will use the EnergyCAP® energy accounting program from EnergyCAP, Inc. ("Third Party Software").

(c) **Local Resources.** Within 30 days after the Start Date, the County will provide Cenergistic personnel with office space, an office phone, internet access, email address, on-campus parking, building keys and alarm codes. Use of these resources is subject at all times to County policies and procedures. If requested due to safety or security concerns, the County will provide a commissioned security officer to accompany the energy specialist while performing facilities assessments outside of normal business hours.

4. **Program Implementation.** (a) *Prompt Start.* Upon completion of the Fee Free Period, the County will promptly begin and then continue to implement the Program.

(b) **Commitment and Communication.** In Cenergistic's experience, the success of the County's Program implementation will be a function of the demonstrated commitment of the Board of County Commissioners, County Manager and other administrators, e.g. through timely communication of high level support for the Program. More specifically, no later than 60 days after the Start Date, the Board of County Commissioners must adopt an appropriate policy and, no later than 30 days after the Start Date, the administration must adopt appropriate administrative guidelines reflecting the County's commitment to the Program. The County shall communicate these guidelines to its people, construction contractors and on-site management service providers, if any. Cenergistic will facilitate semi-annual progress reports for the Board of County Commissioners. The County will make its utility records available for review and copying on request of the energy specialist, Program Liaison or Cenergistic.

(c) **Software.** (i) **Cenergistic GreenX™ Software.** The GreenX mobile and desktop application which is accessible over any browser-enabled device serves as the focal point for energy savings across your entire facilities portfolio. Our machine-learning anomaly detection algorithms provide transparency into the energy consumption profiles of your buildings and provides alerts and potential resolutions by combining building, equipment and sensor data with historical energy use, weather and other seasonal data. ("Cenergistic Software")

(ii) **Third Party Software.** The effective management of energy information is a first step to achieving positive results through accountability. Energy consumption will be accounted for by using the Third Party Software, with which Cenergistic's energy consultants

are knowledgeable and trained to provide support to the County. No later than 30 days after the Start Date, the County must license the Third Party Software program (and pay the licensing fees) from EnergyCAP, Inc. or, if later recommended by Cenergistic to its clients (e.g. because EnergyCAP® ceased to be available), an alternative Third Party Software program. Data input and maintenance will be managed and controlled, at Cenergistic's option, either by the Energy Specialist or at Cenergistic's corporate office, with County access to review all data entry.

(d) Program Liaison. Within thirty (30) days after the Start Date, Cenergistic and the County will discuss and collaborate on identifying one of the County's senior-level business personnel to serve as the liaison and primary point of contact for the County on the Program ("Program Liaison"). The Program Liaison should be accessible and responsive to Cenergistic for communication and meetings and may not be someone (including any Successor Program Liaison) who is unacceptable to Cenergistic. Cenergistic will offer education and training for the Program Liaison (and any replacement Program Liaison) to effectively serve in the role, with an emphasis that will promote the Program Liaison's role in reviewing all savings determinations. To assist in the education and training, at the next scheduled session after the Start Date, the Program Liaison shall attend, at Cenergistic's expense, the EnergyCAP workshop provided by EnergyCAP Inc. in Dallas, TX. The Program Liaison may bring other County representatives to the EnergyCAP workshop, at County expense. In the event there is a replacement Program Liaison, after designation for that position, that person shall attend the next offered EnergyCAP workshop, at Cenergistic's expense, in Dallas, TX. The Program Liaison position shall not be vacant for more than thirty (30) consecutive days during the Term of the contract.

(e) Access, Authority and Control. Cenergistic personnel shall have access to the County's systems controls, including the energy management systems ("EMS"), and the authority (in communication and coordination with other County personnel) to make changes so that facilities are not operated outside of the established policy and guidelines. The energy specialist needs the authority to: (1) program the EMS including changes in the temperature settings and run times of EMS controlled equipment (e.g. HVAC, water, heating and lighting systems), and (2) change settings and run times for each facility's equipment and systems (e.g. lighting, sewer and water systems, time clocks and thermostats) that are not controlled by the EMS. The energy specialist will not have authority to make any changes that violate County established policy and guidelines and the County retains the right to suspend access of the energy specialist to the energy management systems ("EMS") at any time. In the event of such a suspension the County will immediately inform Cenergistic of the suspension and the basis. The County shall provide such access and authority to Cenergistic within 30 days of the Start Date. In order to evaluate and track occupant comfort, within 30 days of the Start Date, the County will set up or expand its internal procedure to ensure that all comfort feedback is immediately routed to the energy specialist. This contract does not alter the County's exclusive right of control over its people and facilities and its pre-existing responsibility, if any, to provide reasonable premises safety.

(f) No Third Party Interference. The County shall not allow any third party to interfere with the County's Program implementation.

5. **Savings Determination.** (a) *General.* Energy savings are determined in accordance with the Measurement and Verification Plan ("M&V Plan") attached hereto by comparing measured use before and after the start of Program implementation, with appropriate adjustments for changes in conditions that are independent of the Program. The simple formulaic expression is:

*Avoided Energy Use (or Savings) = Adjusted-Baseline Energy – Reporting-Period Energy ± Non-Routine Adjustments of baseline energy to reporting-period conditions*

The energy specialist shall use the Third Party Software to calculate the County's savings by subtracting the energy actually used (i.e. consumption: kWh, BTUs, gallons, etc.) in each Performance Year (as defined below) from the use in the Base Year (as defined below), plus or minus any Adjustment Variables (as defined below), and applying the price (based on the blended rate to the County for each type of energy purchased by the County for all sources of energy except for solar which shall be valued as set out in paragraph 5(d)(iii) below) ("Savings"). The "Total Savings" means the Savings and any additional verifiable cost containment or avoidances resulting from the Program (e.g. utility refunds received as a result of a Program billing audit), in accordance with current industry-accepted valuation methodology. Savings reports shall be delivered to the Program Liaison for review and verification. The Program Liaison will work diligently to review reported Savings and will present any questions about the savings reports within five business days of receipt. Cenergistic's projections of Total Savings when using the Program are based upon energy consumption and other data furnished by the County.

(b) Baseline Period. A baseline period will be established as set out in the attached M&V Plan by Cenergistic and the energy specialist, in consultation with the Program Liaison. Unless modified as set out below, the Third Party Software will be used to establish a baseline period consisting of 12 consecutive months that precede the Start Date ("Base Year"). The County represents that the historical utility usage data and building information provided to Cenergistic for the purpose of savings projections is accurate. If it is later determined that either: 1) there is a variation between the data provided and the Base Year data of ± 5% or more or, 2) changes in the 12 months preceding the Start Date would cause those 12 months to not accurately reflect actual pre-program usage by the County ("variation"), Cenergistic may select as the Base Year an alternate 12-month period from the 36 months preceding the Start Date. For new construction, the energy specialist and Cenergistic, in consultation with the Program Liaison, will use detailed, calibrated simulation analysis to compile the Base Year.

(c) Reporting Period. Each reporting period will be a 12 month period ("Performance Year"). The first Performance Year will begin after the *Fee Free Period* (as defined below) ends ("First Year") and each Performance Year is consecutively named. The "Second

Year” means the 12 month reporting period following the end of the First Year, the “Third Year” follows the Second Year, and so on. Using the Third Party Software, Savings shall be calculated for each Performance Year in comparison to the Base Year.

(d) Appropriate Adjustments. (i) Adjustments to the baseline shall be made in accordance with the M&V Plan to recognize that the operating environment changes in ways that impact energy use but are independent of the Program (e.g. the weather) and function simply to bring energy use for the two time periods to an equivalent set of conditions.

(ii) The Third Party Software allows appropriate adjustments to the Base Year, using available data to account for the following factors occurring during the Performance Year that affect the energy used in facilities (“Adjustment Variables”): outside temperature; floor space; occupancy type or schedule; amount, type or use of equipment; number of days in the billing period; energy rates; and reasonably estimated energy loads added or reduced after Program implementation.

(iii) The Third Party Software also allows other appropriate adjustments for a more accurate Savings calculation. If the County has experienced abnormal temperatures during the Base Year, a total of 36 months of billing information will be used to create a more accurate statistical model for the County. The County shall communicate the County’s energy conservation guidelines to its construction contractors and on-site management service providers, if any. Savings will be determined using either calibrated simulation or by making appropriate adjustments, as mutually agreed by the parties, in the event of any of the following: (a) the guidelines are not substantially followed by third party construction contractors or on-site management service providers; (b) the County chooses not to substantially implement Cenergistic’s water conservation recommendations; or, (c) there are equipment malfunctions that negatively impact program savings. Agreement concerning the calibrated simulation or appropriate adjustments will not be unreasonably withheld by either party. In the event solar electricity is implemented by the County, the parties agree to a process that recognizes net metered electric generation to exclude any solar production from the reported Third Party Software use and cost avoidance. Solar energy produced (that was consumed by the building) is tracked in the Third Party Software to allow for the total energy consumption comparisons. All savings reported in the cost avoidance reports shall be from energy purchased from the grid (metered electricity) so it will be valued at the grid average unit cost (as “average unit cost” is defined in this contract and Measurement and Verification Plan).

(iv) The data will continue to be reviewed for accuracy during the term of the Contract. In the event there are inaccuracies in the data or there are data entry errors (i.e. information not known at the time, incorrect meter reading or data entered into the Third Party Software incorrectly), the data may be updated to correct such errors that occurred during the twelve (12) months immediately preceding the latest monthly billing statement. Data prior to the

twelve (12) months immediately preceding the latest monthly billing statement will be deemed to be accurate by the parties.

(e) Third Party Contractor. The parties agree that Cenergistic may utilize the services of a third party contractor to (1) automatically retrieve utility bill data from both online and offline sources by, among other things, accessing utility vendor websites, OCR of scanned copies of bills or reading from machine readable files, (2) import the data into the Third Party Software and (3) utilize the service of other third party contractors. The County (1) consents to allowing access to utility bills by such third party contractor and (2) agrees to reasonably cooperate with such third party contractor, with assistance as necessary from Cenergistic, to enable the third party contractor to have and maintain access to (including online) to the County's utility bills.

6. **Term**. This contract shall be for a term beginning on the Start Date and ending on the due date for the Performance Fee payment for the last month of the Fifth Year ("Term").

7. **Fee Free Period and Fees**. (a) **Fee Free Period**. The *Fee Free Period* shall begin on the Start Date and end one month after the Start Date, or on such later date as determined by Cenergistic ("Fee Free Period").

(b) **Performance Fee**. Cenergistic's Performance Fees are based on the Total Savings the Program achieves during the first five Performance Years (for a total of sixty Performance Fee payments, hereinafter, "Fee Period"). For each month during the Fee Period, the County shall pay Cenergistic a fee in an amount equal to 50% multiplied by the Total Savings for that month ("Performance Fees"). For internal accounting purposes, Cenergistic will allocate 25% of the Performance Fees as the value of the Cenergistic Software. The Performance Fees will be invoiced beginning the 1<sup>st</sup> day of the month following the Fee Free Period (or as soon thereafter as the data is available to calculate the Total Savings for that month), and shall continue being invoiced on the 1<sup>st</sup> day of each succeeding month until all sixty (60) Performance Fees have been paid. Cenergistic shall submit a Performance Fees billing statement to the County for each month during the Fee Period. Payment is due no later than 30 days after the County receives the billing statement. Failure to pay the billing statement within 60 days after it is due, at Cenergistic's option, shall result in the Program being suspended (including, without limitation, the suspension of consultant and energy specialist participation in the Program). Savings shall continue to accrue during any suspension for failure to pay the billing statement. A valid request or need for an adjustment to a billing statement shall not be good cause for failure to pay a given billing statement; any appropriate adjustments shall be made to subsequent billing statements.

(c) **Billing Audit Contingent Fees**. In addition to any Performance Fees, the County shall pay Cenergistic a fee in an amount equal to 50% multiplied by the amount of any refund or credit that the County receives from a third party provider of energy as a result of a

Program billing audit ("Billing Audit Contingent Fees"). Any such credit or refund received during the Fee Period shall be payable according to paragraph 7(b).

(d) Additional Facilities. In the event the County builds, acquires, contracts with, or otherwise becomes responsible for additional facilities ("additional facilities"), such additional facilities will be included and become part of the Program pursuant to this Contract for all purposes (specifically including the payment of fees as set out in this Contract). If the County is requested by another county ("requesting county") to allow the energy specialist to provide energy management support, the County agrees to not share, utilize, or include the Program (including the use or services of the energy specialist trained by Cenergistic) to any extent, in any facilities in the requesting county without Cenergistic's express written consent and payment of additional fees as mutually agreed.

(e) Savings Guarantee. Cenergistic's commitment to the quality of the Program is evidenced by Cenergistic's Savings Guarantee (as defined below). Cenergistic shall reimburse the County for the difference if the County's Costs (as defined below) exceed its Total Savings, computed from the Start Date to the end of any Performance Year during the Term ("Savings Guarantee"). Due to the cumulative nature of the Savings Guarantee it is necessary to specify that Cenergistic shall not make reimbursement for amounts that Cenergistic has already paid or reimbursed for a prior Performance Year. To be eligible for the Savings Guarantee the County must have substantially implemented the Program. The "County's Costs" means the total amounts paid for initial and renewal costs of the Third Party Software, and the Performance Fees. Cenergistic shall pay the County a required reimbursement no later than 90 days after the results for the prior Performance Year have been finalized by Cenergistic and the energy specialist. If Cenergistic fails to make a required reimbursement, the County may terminate this contract without payment of a Work Fee and recover the amount of the required reimbursement from Cenergistic.

8. **Termination for Convenience or Lack of Substantial Implementation.** (a) Termination for Convenience by County. As provided in this contract Cenergistic anticipates a long-term relationship and remains committed to the County through the Term and beyond. However, the County may terminate this contract for any reason and without cause as provided in this paragraph. Also, Cenergistic may terminate this contract in the event that even after notice and an opportunity to remedy the County is not substantially implementing the Program (as defined below). In either instance, the County must pay a Work Fee to compensate Cenergistic for its Intellectual Property, the work performed by Cenergistic and for the benefits received by the County (and not as a penalty) ("Work Fee"), with the calculation based upon the date of termination, as follows:

Contract Start Date through the end of Performance Year One	a. Payment for the value of Cenergistic's Intellectual Property and the
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	<p>continuing benefits of the program after termination: in the amount of \$65,700 which represents 15% of Projected Performance Year One Total Gross Savings per the Cenergistic matrix; plus</p> <p>b. \$700 per day, for each Cenergistic employee on-site from Start Date through the termination date to cover costs including overhead</p>
Performance Years Two through Four	An amount equal to the preceding twelve months' Performance Fees
Performance Year Five	The lesser of: (a). the remaining projected fees for Performance Year 5 per the Cenergistic matrix; or, (b). an amount equal to the preceding four months Performance Fees

(b) To validly exercise its right to terminate during the Term for any reason and without cause (including if there is no appropriation of funding or for any other termination that is not based on Cenergistic's failure to perform its material obligations under this contract) (a "Termination for Convenience"), the County shall provide Cenergistic with at least 60 days prior written notice and shall promptly pay Cenergistic (1) a Work Fee, plus (2) an amount equal to the unpaid Monthly Performance Fees and Billing Audit Contingent Fees, if any, but only through the termination effective date. The County's right to terminate for convenience does not limit the rights and remedies of the County. More specifically, if Cenergistic fails to perform its material obligations under this contract, the County's legal rights and remedies are not limited by the terms of this paragraph. If the County contends Cenergistic has committed a material breach of the contract, the County will provide written notice to Cenergistic specifically describing the breach and giving Cenergistic a reasonable opportunity and time (not less than 30 days) to cure the claimed breach before taking other action. If the material breach is not remedied by Cenergistic following the notice as set out above, the County may terminate this contract without any obligation to pay a Work Fee.

(c) Substantial Implementation. If Cenergistic reasonably determines that the County is not substantially implementing the Program, Cenergistic shall give the County written notice of its determination (including specific details supporting Cenergistic's determination and specific recommendations for appropriate County action) and, at Cenergistic's discretion, the Performance Year and payment of the Performance Fees shall be suspended until the County is substantially implementing the Program. The County shall act within a reasonable time to cure

such failure, with curative steps being taken within sixty (60) days after receipt of the written notice referenced above. If the parties are unable to agree on whether the County is substantially implementing the Program, the parties agree to meet to resolve the differences as set out in paragraph 12(c) below. "Substantial implementation of the Program" does not require the County to have implemented the Program in every detail. To "substantially implement" the Program means that the process of implementation is material to the extent that the program functions as intended. It requires that the Program has been implemented in its material elements, or almost fully implemented. Without limiting the foregoing, the following shall be a lack of substantial implementation for purposes of this paragraph: (i) failure to pay a billing statement within 90 days from the due date; (ii) failure to approve the administrative guidelines within 60 days of the start date; or, (iii) if the County directs Cenergistic to stop work for reasons other than a material breach of this contract and such notice is not withdrawn within sixty (60) days after initial delivery to Cenergistic. For purposes of determining savings, savings shall continue to accrue through any suspension period. If Cenergistic reasonably determines the County continues to fail or refuse to substantially implement the Program following such notice and opportunity to remedy, (including the opportunity to follow the dispute resolution process set forth in Paragraph 12(c) below), then Cenergistic may exercise this right to terminate during the Term on written notice and the County shall promptly pay Cenergistic: (1) a Work Fee as calculated according to this paragraph 8 above, plus (2) an amount equal to the unpaid Performance Fees and Billing Audit Contingent Fees, if any, but only through the termination effective date.

(d) Termination for Convenience by Cenergistic. In the event Cenergistic determines there are unanticipated factors or changes that occur during the Term that make continuation of the Program unsustainable, upon giving the County sixty (60) days prior written notice, Cenergistic shall have the right to terminate this contract without any payment or other obligation. In such event, the County will be entitled to retain all residual savings after the date of termination from the Program without payment of Performance Fees for such period and shall not be required to pay a Work Fee. Unanticipated factors or changes shall include, without limitation, the following: unusual building or operational conditions, equipment defects, inability to hire and/or retain a qualified energy specialist, or other factors not in Cenergistic's control that would materially and negatively impact savings or savings potential.

9. **Termination Event.** Upon termination of this contract or discontinuation of the Program at the end of the Fee Period the County shall promptly: (a) return to Cenergistic all materials and Proprietary Information previously furnished by Cenergistic or accumulated by the County in connection with the Program, including all copies thereof; (b) return or allow the removal by Cenergistic of any monitoring or sensor devices installed by Cenergistic or at any time upon Cenergistic request; and (c) cease using the Proprietary Information and implementing the Program. Notwithstanding the foregoing, the County is not prohibited from: (i) using energy conservation information that is in the public domain or is obtained from sources

other than Cenergistic, or (ii) hiring a person (other than an energy specialist trained by Cenergistic) to assist with monitoring energy use or consumption.

10. **Proprietary Program and Information.** (a) **Proprietary Information.** The County will have access to and use of (1) Cenergistic's energy management program, (2) materials that are copyrighted, trade secrets and other information that is proprietary to Cenergistic, and (3) the Cenergistic Software, including both browser based and mobile versions, as the same may be developed and released by Cenergistic from time to time during the term of this Contract pursuant to a nonexclusive, nontransferable license to use Cenergistic Software. Items (1) through (3) along with all database files created using the Third Party Software are collectively referred to as "Proprietary Information".

(b) Limitations on Use; Confidentiality. The County agrees that nothing contained in this Agreement shall be construed as granting any ownership rights to any Proprietary Information, or to any invention or any patent, copyright, trademark, or other intellectual property right. The County shall not make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Proprietary Information. The County will not modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in the Proprietary Information. The County agrees that the Proprietary Information (including all copies) continues to be Cenergistic's property and should be kept confidential to the full extent permitted by law. The County shall give Cenergistic written notice and an opportunity to respond if the County receives a third-party request for Proprietary Information. The County shall not disclose the Proprietary Information to any unauthorized person or use it outside of the County or this contract. The County shall assist Cenergistic in the protection of the Proprietary Information. The County's obligations under this paragraph survive termination of this contract. County hereby agrees that breach of this subparagraph will cause Cenergistic irreparable damage for which recovery of damages would be inadequate, and that Cenergistic shall therefore be entitled to obtain timely injunctive relief, as well as such further relief as may be granted by a court of competent jurisdiction.

(c) Non-Solicitation. While under contract with Cenergistic and for a period of two years following the termination of this contract, the County will not solicit, hire or retain any Cenergistic employees or contractors for employment or other work at or for the County.

11. **Program Continuation Phase.** After the Term, the County will have the option to continue partnering with Cenergistic upon the same terms as set out in this Contract to sustain and grow energy program savings. No action will be required by either party to continue the Program beyond the Term, but if the County chooses not to continue the Program beyond the Term or to terminate at any time after the Program has been continued beyond the Term, it will provide sixty (60) days written notice to Cenergistic. There shall be no Work Fee in the event of cancellation after the end of the Term.

12. **Miscellaneous.** (a) This contract constitutes the entire agreement of the parties with respect to the subject matter of this contract. This contract supersedes the parties' prior communications, requests, responses, proposals, offers and agreements, if any. This contract may be modified only by a writing signed by the parties. Invalidity or unenforceability of one or more provisions of this contract shall not affect any other provision of this contract.

(b) In an action to enforce or construe this contract in a court with competent jurisdiction, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs of court.

(c) **Dispute Resolution.** Open communication and cooperation of the parties is vital to the success of the Program and to the settlement of disputes if they arise. If a dispute persists, either party may suggest an executive meeting for review and resolution. The party suggesting the meeting should identify the issues in dispute and coordinate a face-to-face meeting at the County to review the issues and solution options. The executive officer for each party who has full authority to discuss the issues and commit to effective solutions shall attend and participate in the meeting. Also, those persons with firsthand knowledge of the issues must be available for the meeting. No dispute under this contract shall be subject to litigation proceedings prior to completing the meeting, except for an action to seek injunctive relief.

(d) **Counterparts.** A signed copy of this Contract delivered by facsimile, e-mail or other means of Electronic Transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contract.

Each party is signing this contract on the date stated under that party's signature.

Alachua County Government

CENERGISTIC LLC

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

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

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

Name: Luis Pajares

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

Title: Executive Vice President

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

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

Alachua County Government, FL - K12 TK CONTRACT v.1 012419

## MEASUREMENT AND VERIFICATION PLAN

This Measurement & Verification Plan ("M&V Plan") is prepared for Alachua County Government (the "Organization") by Cenergistic and is agreed to by the parties as the M&V plan in accordance with the protocols of the International Performance Measurement and Verification Protocol ("IPMVP") for the energy program delivered by Cenergistic pursuant to the contract with a Start Date of \_\_\_\_\_.

This M&V Plan is prepared in accordance with Section 7 of IPMVP Core Concepts (EVO 10000-1:2016).

The IPMVP guideline, developed and maintained by the nonprofit Efficiency Valuation Organization (see [www.EVO-World.org](http://www.EVO-World.org)), is the most current and widely-recognized guideline promulgated by a non-profit and impartial source. The IPMVP is the product of an international consortium of volunteers working together to promote standardized methods for the correct valuation of energy efficiencies.

IPMVP includes guidance for many types of energy management initiatives and circumstances; not all guidance is applicable in all cases. The purpose of this M&V Plan is to document how the M&V guidance contained within IPMVP will be specifically applied to this contract. In cases of variance between specific provisions of IPMVP and this M&V Plan, this Plan takes precedence.

- 1. Facility and Project Overview** Cenergistic energy programs are people driven programs that include multiple facilities and conservation steps. The program scope and list of measures are described within the contract.
- 2. ECM Intent** The energy conservation measures ("ECMs") reduce electricity, gas, water and other energy usage and cost, depending on the specific facility. Many varied ECMs will be used to achieve the savings. The expected savings will be an amount in excess of the cost of the program in accordance with the Savings Guarantee. ECMs will be operational in nature (not equipment, facility or hardware retrofits) and are generally categorized as turning off energy-using systems when not necessary, setting back energy-using systems when possible, and improving efficiency of energy-using systems when in use. Space conditions, during both occupied and unoccupied periods, will change as necessary to comply with the organization's published energy policy and administration guidelines.
- 3. Selected IPMVP Option and Measurement Boundary** IPMVP Option C (Whole Facility) will be used for savings determination because it is the most appropriate M&V method for total facility energy reduction when all energy-using systems are affected and ECMs cannot be isolated, submetered or simulated by computer model. Option C was also chosen because many ECMs will be involved, and some of them cannot be directly measured. Utility meters for electricity, gas, water and sewer will be included in the savings M&V for the organization. Together, these meters will account for all energy use by each facility. The total savings is the sum of savings for each facility. The measurement boundary includes all facilities and

infrastructure owned and leased by the Organization. In the event metering equipment is determined to be unreliable, unavailable, or does not measure the effect of the ECM, Option A (Retrofit-isolation: Key Parameter Measurement), Option B (Retrofit Isolation: All Parameter Measurement) or Option D (Calibrated Simulation), will be used.

- 4. Baseline: Period, Energy and Conditions** Using the Third Party Software (as defined in the contract, hereinafter "Third Party Software"), a baseline period shall be established for each meter consisting of 12 consecutive months (or 24 consecutive months when conditions warrant an expanded baseline) that precede the energy program Start Date. Normally this will be the 12 months immediately prior to start date, but under circumstances described in the contract, an alternate period (up to 24 months) may be chosen.

The baseline data for each meter will be defined and available in the M&V Third Party Software upon import and preparation of the data for each meter & facility. The Third Party Software also includes static factors such as weather and building size. Included in the baseline data will be an identification of the baseline period, baseline energy consumption and demand data, other independent and relevant variable data, and other static factors (i.e. occupancy type, building information such as square footage, etc.). Other baseline data may be included and/or supplemented as agreed by the parties. Local weather data will be obtained from a nationally-recognized service.

- 5. Reporting Period** Each reporting period will be a 12 month period called a "Performance Year". The Performance Year begins according to the terms of the contract.
- 6. Basis for Adjustment** Energy savings are determined by comparing measured use before and after the start of Program implementation, after making appropriate adjustments for changes in conditions that are independent of the Program. Since savings are to be reported as "cost avoidance", under reporting period conditions, the IPMVP equation for reporting period savings will be used. This method quantifies how savings in a given reporting period is determined, relative to what energy use would have been without the ECMs in place, consider routine and non-routine adjustments and is expressed as:

$$\text{Avoided Energy Use (or Savings)} =$$

$$\frac{\text{Adjusted-Baseline Energy} - \text{Reporting-Period Energy} \pm \text{Non-Routine Adjustments of baseline energy to reporting-period conditions}}{\text{Reporting-Period Energy}}$$

In addition, savings may be accrued due to one-time actions such as identification of utility billing errors leading to refunds, rebates, rate changes, and other measures that do not reduce energy usage but do reduce Organization's out of pocket utility costs.

- 7. Calculation Methodology and Analysis Procedure** The Third Party Software performs the cost avoidance calculation and analysis procedure. The Third Party Software allows appropriate routine and non-routine adjustments to the baseline period, using available data

to account for the following factors occurring during the reporting period that affect the energy used in facilities: number of days in the billing period, energy unit cost, and reasonably estimated energy loads added or reduced after Program implementation due to such factors as outside temperature; floor space; occupancy type or schedule; amount, type or use of equipment; facility construction/renovation; and energy management hardware retrofits installed under unrelated projects. Specific cost avoidance analysis algorithms used by the Third Party Software are extensively documented and can be furnished upon request.

The Third Party Software also allows other appropriate adjustments for a more accurate Savings calculation. If the organization has experienced abnormal temperatures during the baseline period, a total of 36 months of billing information can be used to create a more representative statistical weather model. Savings will be determined using either calibrated simulation or by making appropriate adjustments, as mutually agreed by the parties, in the event of any of the following: (a) the organization's energy conservation guidelines are not substantially followed by its construction contractors or on-site management service providers, if any, (b) the County chooses not to substantially implement Cenergistic's water conservation recommendations; or, (c) there are equipment malfunctions that can negatively impact program savings.

The Third Party Software adheres to the IPMVP guidelines. IPMVP is not exhaustive in its guidance; in some situations engineering judgment must be used. Calculations are supervised by licensed Professional Engineers, Certified Measurement and Verification Professionals and Certified Energy Managers.

- 8. Energy Prices** Reporting of cost avoidance will value the energy use avoided at the then-current unit cost for each meter, each period. Prices will be calculated by the Third Party Software for each month. The price applied for each utility (except solar) is the realized price, based on the blended rate to the Organization for each type of energy purchased by the organization, taking into account consumption and all charges from the utility provider. In the event solar electricity is implemented by the Organization, the parties agree to a process that recognizes net metered electric generation to exclude any solar production sold back to the grid from the reported EnergyCAP use and cost avoidance. Solar energy produced (that was consumed by the building) is tracked in EnergyCAP to allow for the total energy consumption comparisons. All savings reported in the cost avoidance reports shall be from energy purchased from the grid (metered electricity) so it will be valued at the grid average unit cost (as "average unit cost" is defined in this contract and Measurement and Verification Plan).
- 9. Meter Specifications** Utility grade meters used for billing are the only meters used. Exception: For bulk fuel stored in tanks, manual measurements recorded by the organization or by the provider may be used. In master-metered campus situations, submeters may be necessary for accurate identification of building by building energy usage.

- 10. Monitoring responsibilities** Energy data from utility bills will be recorded in the Third Party Software as set out in the contract. The Third Party Software captures weather information necessary for calculating and applying adjustments. Changes to the baseline conditions, such as facility size, occupancy or equipment changes, will be documented in the Third Party Software. Responsibility for collection, entry, calculation and accuracy of the data in the Third Party Software is the responsibility of the Energy Specialist(s) under the supervision of Cenergistic.
- 11. Expected Accuracy** The accuracy of data capture of the utility billing data and entry of that data into the Third Party Software is expected to be verified 100% ( $\pm 2\%$ ) via reports that reconcile data with utility bill accounts payable to ensure the quality of the data entered, to ensure consistency with previous billing, elimination of gaps or duplicate entries, and reasonable protection against user errors in data entry. Statistical accuracy of the Third Party Software's routine weather adjustment process uses industry-standard linear regression techniques and is evaluated on a meter-by-meter basis. Data analysis does not involve sampling since the actual data, as entered into the Third Party Software, is used for any savings calculations. The accuracy of the Third Party Software's calculations has been validated empirically against the Department of Energy's ENERGY STAR program, which benchmarks buildings' performance. The calculations of the Third Party Software are consistent with ENERGY STAR results in determining increase in building energy utilization index (EUI – Energy usage per square foot per year).
- 12. Budget** The cost of M&V includes the Third Party Software cost, as defined in the contract, plus a portion of the Energy Specialist's time. The Third Party Software cost is defined in the contract. More time will be required early in the energy program by the Energy Specialist as the baselines are determined and the Energy Specialist becomes familiar with the Third Party Software and the process for entering data and determining savings. Once the utility bills have been entered, the baseline has been determined and the Energy Specialist has become familiar with the Third Party Software and the process, subsequently, the savings determination process and its review with operating and administrative staff is expected to require approximately 5% of an Energy Specialist's time, across all meters and facilities for the organization.
- 13. Report Format** Cost avoidance will be calculated on a monthly basis as set out in the contract. M&V and cost avoidance reports will be prepared and provided at least semi-annually to the organization. Cost avoidance calculations will commence with a formal data release occurring approximately five months after the Energy Specialist is in place. Cost avoidance reports will include results from the Third Party Software and show energy as well as expenditure savings versus the baseline. Cost avoidance reports have different formats for different audiences, but in general show usage and cost for: baseline actual, baseline



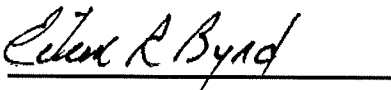
adjusted to reporting period conditions, reporting period actual, and calculated cost avoidance (adjusted baseline minus reporting period actual).

**14. Quality Assurance** Cenergistic quality assurance procedures and testing principles are applied to the baseline and performance data at the beginning of each program and periodically throughout the term of the contract. Testing includes, but is not limited to a review of the baseline for compliance with contractual terms including M&V Plan, testing of baseline data for reasonableness, accuracy and completeness, substantive sampling techniques for Third Party Software bill entry data correctness, Third Party Software settings and standard and special adjustments appropriateness and correctness.

The parties agree this M&V plan will be modified as mutually agreed to reflect changes that occur or additional data that may be obtained.

This M&V plan has been developed for Alachua County Government by the following qualified professional.

**CENERGISTIC LLC**



**Eileen Byrd**

**SENIOR VICE PRESIDENT – QUALITY ASSURANCE**

**CERTIFIED PUBLIC ACCOUNTANT (Texas State Board of Public Accountants)**

**CERTIFIED INTERNAL AUDITOR (Institute of Internal Auditors)**

**CERTIFIED QUALITY ENGINEER (American Society of Quality)**

**CERTIFIED MEASUREMENT AND VERIFICATION PROFESSIONAL (Association of Energy Engineers)**

**CERTIFIED ENERGY MANAGER (Association of Energy Engineers)**