

Energy Savings Contract Addendum #1

This Energy Savings Contract Addendum #1 ("**Addendum #1**") is entered into on _____, 2024 ("**Effective Date**"), by and between the Alachua County Government (the "**County**") and Cenergistic LLC ("**Cenergistic**"), to amend that certain Energy Savings Contract by and between the County and Cenergistic with a Start Date of January 1, 2020 ("**Contract**").

WHEREAS, the Contract terminates pursuant to its terms on December 31, 2024 and whereas the Contract may be modified by a writing signed by the parties pursuant to Section 12(a) of the Contract; and

WHEREAS, the parties desire to (1) extend the term beyond December 31, 2024, (2) identify the focus of services during the Extended Term, (3) change the Performance Fee (as defined in the Contract) for services delivered during the final eleven (11) months of the Contract (i.e., beginning February 1, 2024) and for the Extended Term, and (4) amend certain other provisions of the Contract.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree, and the Contract hereby is ratified and amended as follows:

1. Definitions. All terms used herein but not defined herein shall have the meanings assigned to them in the Contract.

2. Amendment to Section 3(b). The last sentence of Section 3(b) is amended and restated in its entirety as follows:

"The energy specialist will use an energy accounting software ("**Energy Accounting Software**") to maintain energy consumption and other information concerning County energy consumption."

3. Amendment to Section 4(c)(ii). Section 4(c)(ii) of the Contract is amended and restated in its entirety as follows:

"(ii) Energy Accounting 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 Energy Accounting 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 Energy Accounting Software program (and pay the licensing fees) from EnergyCAP, Inc. or, if later recommended by Cenergistic to its clients, an alternative Energy Accounting 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."

4. New Section 4(g). A new subsection (g) is added to the end of Section 4 in the Contract as follows:

"(g) The primary focal points of services during the Extended Term shall include:

- Dedicated assignment of Cenergistic Energy Specialist
- On site and remote support from Cenergistic experts and engineers

- Enhanced sustainability driven by Cenergistic Optimize® technology
- Assistance with Program promotion and public relations opportunities
- Healthy Building assessments with periodic CO₂ monitoring”

5. Amendment to Section 6. The following language is added to the end of Section 6 in the Contract as follows:

“At the end of the Term, the Contract is extended for an additional sixty (60) month period (the “**Extended Term**”) such that the Contract shall terminate on December 31, 2029. Notwithstanding anything in the Contract to the contrary, each twelve (12) month period during the Extended Term shall be a Performance Year, with the first twelve (12) month period being the “Sixth Year” and so on through the “Tenth Year”. The Contract shall include ten (10) Performance Years. Further, at the expiration of the Extended Term (and any additional terms thereafter as a result of auto-renewal), the Contract shall automatically renew for an additional one (1) year period unless ninety (90) days prior written notice of non-renewal of the Contract is provided by a Party to the other Party.”

6. Amendment to Section 7(b). The first three (3) sentences of Section 7(b) are amended and restated in their entirety as follows while the remaining language in Section 7(b) remains unchanged (for clarity the unchanged language begins with “Savings shall continue to accrue...”):

“Performance Fee. Cenergistic’s Performance Fees during the Term and the Extended Term (collectively, the “**Fee Period**”) are as follows: (A) for each month during the first forty-nine (49) months, the County shall pay Cenergistic a fee in an amount equal to 50% multiplied by the Total Savings for that month (“**Original Fee**”) and (B) for each month of the final eleven (11) months (i.e. beginning with invoices for services rendered February 1, 2024 and after) of the Term and for each month of the sixty (60) months during the Extended Term, the County shall pay Cenergistic the amount of Twenty-six Thousand Seven Hundred Dollars (\$26,700.00) (“**Extended Fee**”; the Original Fee and the Extended Fee are also referred to as the “**Performance Fees**”). The Performance Fees will be invoiced beginning on the Start Date (as soon as the data is available to calculate the Total Savings for each month) and shall continue being invoiced each succeeding month until all one hundred twenty (120) Performance Fees have been paid. The County acknowledges and agrees that the Extended Fee amount is a discounted fee amount based on the County’s agreement to enter into this Addendum #1 for the entire Extended Term and that the amount of the Extended Fee would be higher if the County had not agreed to the length of the Extended Term. Therefore, the County agrees to pay the Work Fee to compensate Cenergistic for the work performed by Cenergistic and for the benefits received by the County (and not as a penalty) in the event a Work Fee payment obligation is triggered.”

7. Amendment to Section 8(a). The last two (2) rows of the Table in Section 8(a) are amended and restated in their entirety as follows:

YEARS 2 thru 9: Performance Years Two through Nine: If the contract is Terminated for Convenience by the County during years 2, 3, 4, 5, 6, 7, 8 or 9, the total agreed liquidated damages to be paid by the County shall be as described in	An amount equal to the preceding twelve (12) months’ Performance Fees
--	---

the box immediately to the right of this box, and nothing more.	
Year 10: Performance Year Ten: If the contract is Terminated for Convenience by the County during year 10, the total agreed liquidated damages to be paid by the County shall be as described in the box immediately to the right of this box, and nothing more.	The lesser of (a) the remaining Extended Fees for the Extended Term or (b) an amount equal to six Extended Fees

8. Certain References in the Contract.

a. References To Term: The following references to “Term” in the Contract are hereby amended to read “Term and/or Extended Term”: (1) last sentence of Section 4(d); (2) first sentence of Section 5(d)(iv); (3) second sentence of Section 7(e); (4) first sentence of Section 8(a); (5) first sentence of Section 8(b); (6) last sentence of Section 8(c); (7) first sentence of Section 8(d); (8) first sentence of Section 10(a); (9) first sentence of Section 12(e)(ii); (10) first sentence of Section 12(h)(ii)(1); (11) first sentence of Section 12(h)(iv)(1); and (12) first sentence of Section 14 of the M&V.

b. References to EnergyCAP: (1) The three references to “EnergyCAP workshop” in Section 4(d) are replaced with “Energy Accounting Software workshop”; (2) the one reference to “EnergyCAP, Inc.” in Section 4(d) is replaced with “Cenergistic”; and (3) the two references to “EnergyCAP” in Section 8 of the M&V Plan are replaced with “Energy Accounting Software”.

c. References to Third Party Software: All references to “Third Party Software” are replaced with “Energy Accounting Software”.

d. General References to Fees Tied to Savings: All general references to Cenergistic’s fees being tied to, or contingent upon, Savings or Total Savings are amended to account for the fixed fee structure of this Addendum #1 without the necessity of calling out each reference.

9. Amendment to Section 9. The first sentence of Section 9 of the Contract is deleted; the remainder of Section 9 remains.

10. Amendment to Section 11. Section 11 shall be amended and restated in its entirety as follows:

“11. EUI Guarantee. For each Performance Year during the Extended Term, the Parties agree that the County’s energy use intensity (“**EUI**”) will be calculated at the end of each Performance Year and compared to an EUI of eighty (80) kBtu per square foot (“**Base EUI**”). Provided that the County is substantially implementing the Program, if the County’s EUI, as calculated at the end of each Performance Year beginning on the first day of the Extended Term through the end of such Performance Year is greater than the Base EUI, Cenergistic shall pay County an amount equal to the product of (i) the percentage by which the current EUI exceeds the Base EUI multiplied by (ii) the Extended Fee multiplied by (iii) twelve (12), within thirty (30) days after such calculation is made at the end of each Performance Year (“**EUI Guarantee**”). Failure by the County (after written notice by Cenergistic and a thirty (30) day opportunity to cure by the County) to substantially implement the Program will void the EUI Guarantee. Cenergistic shall not make EUI Guarantee payments for amounts that Cenergistic has already paid for a prior Performance Year and EUI Guarantee amounts previously paid by Cenergistic to the County will be

refunded pro rata by the County if a future calculation during the Extended Term yields a lower EUI than the EUI calculation resulting in an EUI Guarantee payment. Further, Cenergistic shall not pay a Savings Guarantee and an EUI Guarantee for the same Performance Year; Cenergistic shall pay the greater of the two, but not both.”

11. Amendment to Section 12(h). The following language is added as a new paragraph immediately after the numbered paragraph 3 in Section 12(h)(i):


“IF CENERGISTIC HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO IT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COUNTY’S PUBLIC RECORDS CUSTODIAN AT publicrecordsrequest@alachuacounty.us OR (352) 264-6906 OR 12 SE 1ST STREET, GAINESVILLE, FL 32601.”

12. Ratification of Contract. All other terms and conditions contained in the Contract, as modified by this Addendum #1, shall remain in full force and effect and are hereby ratified by the parties. The Parties have executed this Addendum #1 effective as of the Effective Date.

ALACHUA COUNTY GOVERNMENT

CENERGISTIC LLC

By: _____
Name: _____
Title: _____
Date: _____

By:  _____
Name: John Bernard
Title: President & Chief of Staff
Date: February 14, 2024

APPROVED AS TO FORM

Alachua County Attorney’s Office

ATTEST:

Clerk of Court