

## Grants & Contracts - Transmittal Memo

**DATE:** December 13, 2019

**FROM:** Procurement, Contracts

**TO:** Tommy Crosby, Larry Sapp

**CONTRACT #:** 11462

**VENDOR:** Cenergistic LLC

**DESCRIPTION:** #11462 Cenergistic LLC Agreement to Provide a Customized Energy Conservation Program

**APPROVED BY:** Board of County Commissioners

**APPROVAL DATE:** December 10, 2019

**RECEIVED ON:** December 13, 2019

**TERM START:** December 10, 2019

**TERM END:** December 9, 2024

**AMOUNT:** \$1,000,000.00

**RFP/BID #:** 19-915

**GMW:** Yes

**POR #  
(ENCUMBERANCE):** N/A

**ACTIONS REQUIRED:** Please forward a copy to the vendor & retain a copy for your files.

## 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 1,450 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 January 1, 2020 ("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"). The Program includes, but is not limited to, the following services:

- Hiring an energy specialist who will serve on site to lead and manage implementation of the Program
- Providing recommendations as to actions the County should take based on on-site assessments of facilities and utility records
- Identifying opportunities and working with County personnel to execute implementation strategies to modify behavior linked to energy consumption
- Gathering and entering data to account for non-program variances
- Creating operational/strategic plans and operating/use schedules for County facilities
- Estimating building savings potential for all County facilities
- Auditing County facilities to ensure compliance with conservation plan and schedules
- Providing audit feedback to the County on savings opportunities
- Providing updates to the County's governing body
- Assisting with the engagement of effective media coverage, including national and local media outlets at critical junctures
- Providing monthly savings reports to the County

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 paragraph 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, building keys and alarm codes. Use of these resources is subject at all times to County policies and administrative procedures.

#### 4. **Program Implementation.**

(a) *Prompt Start.* Upon the Start Date, 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 60 days after the Start Date, the administration must adopt appropriate administrative guidelines reflecting the County's commitment to the Program. Cenergistic shall provide templates together with support and assistance for the County in its review and adoption of policy and guidelines; however, the contents of the policies and guidelines are at the discretion of the County. 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 Software. The Cenergistic proprietary software application(s) which are accessible over any browser-enabled device serves as the focal point for energy savings across your entire facilities portfolio ("**Cenergistic Software**"). 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.

(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"), to collect and analyze data for recommended changes to facilities and equipment operations. The County will grant Cenergistic personnel 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 to Cenergistic within 30 days of the Start Date and authority to make changes within 60 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 take reasonable steps to prevent any third party from interfering 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 as **Exhibit 2** 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  $\pm 5\%$  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, with agreement from the County's Manager which agreement may not be unreasonably withheld, 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. **Fees.**

(a) Intentionally omitted.

(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"). The Performance Fees will be invoiced beginning on the Start Date (with invoices sent as the data is available to calculate the Total Savings for that month), and shall continue being invoiced each succeeding month until all sixty (60) Performance Fees have been paid. 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.

(f) As a condition precedent for any payment, the Cenergistic shall submit monthly invoices, unless otherwise agreed in writing by the County, to the County requesting payment for services rendered. Cenergistic's invoice shall describe the services rendered, the date thereof, and the energy savings accrued for the month. Each invoice shall constitute the Cenergistic representation to the County that the services indicated in the invoice have been delivered, have served a public purpose, have been properly and timely performed as required herein, and that the amount requested is currently due and owing, there being no reason known to Cenergistic that payment of any portion thereof should be withheld. Submission of the Cenergistic invoice for payment shall further constitute Cenergistic representation to the County that, upon receipt by Cenergistic of the amount invoiced, all obligations of Cenergistic to others, including its energy specialist, third party contractors and consultants, incurred in connection with this contract, will be paid in full. Cenergistic shall submit invoices to the County at the following address:

Erika Aenlle  
Senior Fiscal Assistant  
Office of Management and Budget  
12 SE 1st Street, 2nd Floor  
Gainesville, Florida, 32601

In the event that the County becomes credibly informed that any representations of Cenergistic relating to payment are wholly or partially inaccurate, the County may withhold payment of disputed sums then or in the future otherwise due to Cenergistic and the Parties shall work diligently until the inaccuracy, and the cause thereof, is corrected to the County's reasonable satisfaction. Any reimbursable expenses must be agreed to in advance by both parties, otherwise they shall be disallowed by the County. All invoices for payment shall be processed and paid in accordance with the provisions of Chapter 218, Part VII Florida Statutes ("Local Government Prompt Payment Act"), and shall be remitted to:

Cenergistic LLC  
5950 Sherry Ln, #900  
Dallas, TX 75225  
ATTN: Accounts Receivable

**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. The Parties agree that: (i) the amount of loss or damages likely to be incurred by Cenergistic by reason of termination of this contract for convenience by the County is incapable or is difficult to precisely estimate, and (ii) the amounts specified in the boxes below bear a reasonable relationship to, and are not plainly or grossly disproportionate to, the probable loss likely to be incurred by Cenergistic in the event of a termination for convenience by the County, and therefore constitute liquidated damages and not penalties. 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:

YEAR 1: Contract Start Date through the end of Performance Year One: If the contract is Terminated for Convenience by the County during year 1, the total agreed liquidated damages to be paid by the County shall be the Year 1 LDs as set forth in the box immediately to the right of this box, and nothing more.	<p>YEAR 1 LDs:</p> <ul style="list-style-type: none"> <li>a. Payment for the value of Cenergistic's Intellectual Property and the 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</li> <li>b. \$700 per day, for each Cenergistic employee on-site from Start Date through the termination date to cover costs including overhead</li> </ul>
YEARS 2 thru 4: Performance Years Two through Four: If the contract is Terminated for Convenience by the County during years 2, 3 or 4, 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.	An amount equal to the preceding twelve months' Performance Fees
Year 5: Performance Year Five: If the contract is Terminated for Convenience by the County during year 5, 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). \$33,833.00 per month for the remainder of the Contract Term; 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. Cenergistic may also terminate this contract in the event that even after notice and an opportunity to remedy the County is not substantially implementing the Program. 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 in accordance with the Local Government Prompt Payment Act; (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. **Program Completion.** After the Term, the County will have the option to continue partnering with Cenergistic to continue the "Program" upon mutually agreeable terms and at a mutually agreeable fixed monthly fee. 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.

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, upon acceptance of the Terms of Services which are hereby incorporated by reference, 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 hereby agrees that Cenergistic is the owner of all right, title and interest in and to the Proprietary Information. The County agrees that nothing contained in this Contract shall be construed as granting any ownership right to the County in 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 process using, incorporating or derived from any Proprietary Information. The County shall not copy, modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in the Proprietary Information. The County agrees that an invention or work created by the County or any of its personnel based on or incorporating any of the Proprietary Information shall be owned exclusively by Cenergistic. 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 agrees not to challenge, or assist any third-party in challenging, Cenergistic's ownership rights in the Proprietary Information, and in any invention, patent, copyright, trademark, or other intellectual property right. The County agrees that the Proprietary Information, including but not limited to the patents and copyrights of Cenergistic, are valid and enforceable. The County shall not challenge the validity or enforceability of any patent, trademark or copyright owned by Cenergistic in any court, at the Patent and Trademark Office, or in any other forum or before any arbitrator. 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 and shall execute all documents reasonably necessary to vest and perfect title to the Proprietary Information in Cenergistic upon written request. The County's obligations under this paragraph survive termination of this contract. County hereby agrees that breach of this subparagraph will cause Cenergistic irreparable harm for which recovery of money damages would be inadequate, and that Cenergistic shall therefore be entitled to obtain immediate and permanent injunctive relief, without the necessity of posting bond, 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. Intentionally left blank.**

**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) The Parties agree that if any dispute, controversy or claim cannot be settled through good faith efforts outlined in the paragraph below then it shall be settled by a court with competent jurisdiction. 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.

(e) Representations. By executing this Contract, Cenergistic makes the following express representations to the County:

(i) Cenergistic is qualified to act as the contractor for energy management and conservation programs.

(ii) Cenergistic shall maintain all necessary licenses, permits or other authorizations necessary to act as contractor for the Project for the term of this Contract.

(iii) Cenergistic has become familiar with the condition of the County's facilities and energy consumption as previously disclosed to Cenergistic by the County.

(iv) Cenergistic shall prepare all deliverables required by this Contract in such a manner that they shall be in conformity with the requirements of this Contract and comply with all applicable law, codes and regulations.

(v) Cenergistic represents that the deliverables prepared by Cenergistic are adequate and sufficient to accomplish the purposes of this contract and meet the requirements of all applicable federal, state and local codes and regulations.

(vi) Cenergistic acknowledges that the County's review of the deliverables in no way diminishes Cenergistic's representations pertaining to the deliverables.

(f) Alachua County Minimum Wage:

(i) The Work performed through this Contract is considered covered services under Chapter 22, Article III, of the Alachua County Code of Ordinances ("Wage Ordinance"), which establishes a government minimum wage for certain contractors and subcontractors providing selected services to Alachua County government. "Covered Employees," as defined in Sec. 22.45 of the Wage Ordinance, are those employees directly involved in providing covered services pursuant to this Contract.

(ii) Current required Alachua County Government Minimum Wage is \$13.50 per hour when health benefits are provided at the equivalent value of \$2.10 per hour and \$15.60 when health benefits are not provided (collectively, the "Minimum Wage").

(iii) Cenergistic must provide certification, **Exhibit 3**, to the County that it pays each of its employees the Alachua County Government Minimum Wage, as well as ensuring that it will require the same of its subcontractors throughout the duration of the Contract.

(iv) The County shall prominently display a copy of the Wage Ordinance where it is easily seen by covered employees and supply to covered employees upon request. Additionally, Cenergistic is responsible to make any person submitting a bid for a subcontract for covered services aware of the requirement.

(v) Failure to comply with the provisions of the Wage Ordinance will be deemed a breach of contract and, after written notice and an opportunity to cure of not less than 30 calendar days, permit the County to withhold payment of funds in accordance with Chapter 218, Florida Statutes until there is compliance with the Wage Ordinance.

(vi) Cenergistic will include the necessary provisions in subcontracts to ensure compliance. However, the County shall not be deemed a necessary, or indispensable, party in any litigation between the contractor and subcontractor.

(g) **Notice.** Except as otherwise provided in this Contract, all notices to be provided under this Contract from either party to the other party must be by one of the following methods: (i) in writing and sent by certified mail, return receipt requested, (ii) by personal delivery with receipt, or (iii) via electronic mail provided acknowledgement of receipt is provided by the recipient. All notices shall be deemed to occur upon actual receipt by the other party. For purposes of all notices, Contractor's and County's representatives are:

County:

Tommy Crosby, Assistant County Manager  
Budget and Fiscal Services for Alachua County  
12 SE 1st Street, 2nd Floor  
Gainesville, Florida, 32601

Contractor:

Cenergistic LLC  
5950 Sherry Ln, #900  
Dallas, TX 75225  
ATTN: General Counsel



A copy of any notice, request or approval to the County must also be sent to:

J.K. "Jess" Irby, Esq.  
Clerk of the Court  
12 SE 1st Street  
Gainesville, FL 32602  
Attn: Finance and Accounting

And to

Procurement Division  
12 SE 1st Street  
Gainesville, Florida 32601  
Attn: Contracts

(h) Project Records.

(i) General Provisions:

1. Any document submitted to the County may be a public record and, if so, would be open for inspection or copying by any person or entity. "Public records" are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency per §119.011(12), Florida Statutes. Any document is subject to inspection and copying unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law.

2. In accordance with §119.0701, Florida Statutes, the Contractor, when acting on behalf of the County, as provided under 119.011(2), Florida Statutes, shall keep and maintain public records as required by law and retain them as provided by the General Record Schedule established by the Department of State. Upon request from the County's custodian of public records, Cenergistic shall provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law. Additionally, the Contractor shall provide the public records at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

3. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if Cenergistic does not transfer the records to the County.

(ii) Confidential Information:

1. During the term of this Contract, Cenergistic may claim that some or all of Contractor's information, including, but not limited to, software documentation, manuals, written methodologies and processes, pricing, discounts, or other considerations (hereafter collectively referred to as "Confidential Information"), is, or has been treated as confidential and proprietary by Contractor in accordance with §812.081, Florida Statutes, or other law, and is exempt from disclosure under the Public Record Act. Contractor shall clearly identify and mark Confidential Information as "Confidential Information" or "CI" and the County shall use reasonable efforts to maintain the confidentiality of the information properly identified by Cenergistic as "Confidential Information" or "CI."

2. The County shall promptly notify Cenergistic in writing of any request received by the County for disclosure of Cenergistic's Confidential Information and Cenergistic may assert any exemption from disclosure available under applicable law or seek a protective order against disclosure from a court of competent jurisdiction. Cenergistic shall protect, defend, indemnify, and hold the County, its officers, employees and agents free and harmless from and against any claims or judgments arising out of a request for disclosure of Confidential Information. Cenergistic shall investigate, handle, respond to, and defend, using counsel chosen by the County, at Cenergistic's sole cost and expense, any such claim, even if any such claim is groundless, false, or fraudulent. Cenergistic shall pay for all costs and expenses related to such claim, including, but not limited to, payment of attorney fees, court costs, and expert witness fees and expenses. Upon completion of this Contract or license, the provisions of this paragraph shall continue to survive. Cenergistic releases County from claims or damages related to disclosure by County.

(iii) Project Completion: Upon completion of, or in the event this Contract is terminated, Cenergistic, when acting on behalf of the County as provided under §119.011(2), Florida Statutes, upon request by the County, shall transfer, at no cost, to the County all public records in possession of Cenergistic or keep and maintain public records required by the County to perform the service. If Cenergistic transfers all public records to the County upon completion or termination of the Contract, it must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Cenergistic keeps and maintains public records upon the completion or termination of the Contract all applicable requirements for retaining public records shall be met. All records stored electronically shall be provided to the County, upon request from the Counties custodian of public records, in a format that is compatible with the information technology systems of the County.

(iv) Compliance: A contractor who fails to provide the public records to the County within a reasonable time upon request by the County, may be subject to penalties under §119.10, Florida Statutes.

1. Insurance. Cenergistic will procure and maintain insurance throughout the entire term of this Contract of the types and in the minimum amounts detailed in **Exhibit 4**. A copy of a current Certificate of Insurance (COI) will be provided to County promptly after execution of this Contract.

2. Laws & Regulations. Cenergistic will comply with all laws, ordinances, regulations, and building code requirements applicable to the work required by this Contract. Cenergistic is presumed to be familiar with all state and local laws, ordinances, code rules and regulations that may in any way affect the work outlined in this Contract. If Cenergistic is not familiar with state and local laws, ordinances, code rules and regulations, Cenergistic remains liable for any violation and all subsequent damages or fines.

(i) Criminal Justice Information Services (CJIS) Background Check:

(i) The Work required by this Contract requires Cenergistic personnel to enter the interior of buildings considered sensitive by the County, therefore all personnel requiring unescorted access to the interior of these buildings shall be able to pass a Criminal Justice Information Services (CJIS) background check administered by Florida Department of Law Enforcement (FDLE). Cenergistic shall ensure all personnel requiring unescorted entry into the interior of the building is able to pass a CJIS background check; costs to ensure this requirement shall be borne by Cenergistic. All employees requiring unescorted access into the interior of the building shall be fingerprinted at the Sheriff's office, complete CJIS training and agree to the background check a minimum of three (3) weeks prior to requiring access to the interior of the building. Cenergistic personnel who are not in the buildings on a routine or daily basis and who are accompanied by authorized County employees or by Cenergistic employees that have completed the training will not be required to have completed the screening required by this subsection.

(ii) Cenergistic shall ensure adequate staffing is available to meet the terms of this section to carry out the scope of the Contract throughout the full duration of the Contract. Cenergistic shall comply with all FBI CJIS requirements. All personnel who will be working in the interior of the building shall complete the minimal screening requirements established by the FBI CJIS Security Policy to ensure the continuity of information protection. For unescorted access, each individual shall successfully complete an online security awareness training presentation and be processed through a state and national fingerprint based record check.

(iii) As a matter of policy all individuals with a felony arrest resulting in a conviction including adjudication withheld will be disqualified. Individuals with a record of misdemeanor offense(s) will be reviewed and may be granted access, as long as it is determined the nature or severity of the misdemeanor offense does not compromise the protection of criminal justice information. An individual with access and subsequently arrested and or convicted, will have unescorted access immediately suspended pending further review.

(iv) Each individual requiring access shall complete the CJIS Security Policy Certification at **Exhibit 5**.

(j) Indemnification

(i) Cenergistic agrees to protect, defend, indemnify, and hold the County and director and their officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or directly or indirectly relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this Contract and/or the performance hereof to the extent of Cenergistic's negligence. Without limiting the generality of the foregoing, any and all such claims, etc., including but not limited to personal injury, death, damage to property (including destruction) defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule, or regulation or decree of any court, shall be included in the indemnity hereunder. Cenergistic further agrees to investigate, handle, respond to, provide defense (including payment of attorney fees, court costs, and expert witness fees and expenses up to and including any appeal) for and defend any such claim at its sole cost and expense through counsel chosen by Cenergistic and agrees to bear all other costs and expenses related thereto, even if their (claims, etc.) are groundless, false, or fraudulent. Contractor agrees that indemnification of the County shall extend to any and all work performed by Cenergistic, its sub-Professionals, employees, agents, servants or assigns. This obligation shall in no way be limited in any nature whatsoever by any limitation on the amount or type of Contractor's insurance coverage. This indemnification provision shall survive the termination of the Contract between the County and Cenergistic. Notwithstanding the foregoing, Contractor shall not be liable for losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of any kind and character arising out of or directly or indirectly relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of any kind or character in connection with or arising directly or indirectly out of conduct of County or County employees.

(ii) Nothing contained herein shall constitute a waiver by the County of sovereign immunity or the provisions or limitation of liability of §768.28, Florida Statutes.

1. Standard of Care. The services of Cenergistic shall be performed with the skill and care which would be exercised by a qualified contractor performing similar services at the time and place such services are performed. If the failure to meet these standards results in deficiencies in the substandard architectural or engineering design, Cenergistic shall furnish, at his own cost and expense, the redesign necessary to correct such

deficiencies, and shall be responsible for any and all consequential damages arising from those deficiencies.

2. Assignment of Interest. Neither party will assign or transfer any interest in this Contract without prior written consent of the other party (which consent shall not be unreasonably withheld).

3. Successors and Assigns. The County and Contractor each bind the other and their respective permitted successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this Contract.

4. Independent Contractor or Consultant. In the performance of this Contract, Cenergistic is acting in the capacity of an independent contractor or consultant and not as an agent, employee, partner, joint venture, or associate of the County. Cenergistic is solely responsible for the means, method, technique, sequence, and procedure utilized by Cenergistic in the full performance of the Contract.

5. Collusion. By signing this Contract, Cenergistic and County declare that this Contract is made without any previous understanding, contract, or connections with any persons, professionals or corporations and that this Contract is fair, and made in good faith without any outside control, collusion, or fraud.

6. Prohibition Against Contingent Fees. As required by §287.055(6), Florida Statutes, Cenergistic warrants that he or she has not employed or retained any company or person, other than a bona fide employee or independent contractor of Cenergistic to solicit or secure this Contract and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee or independent contractor of Cenergistic any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

7. Third Party Beneficiaries.

8. Severability. If any provision of this Contract is declared void by a court of law, all other provisions will remain in full force and effect

9. Non Waiver. The failure of any party to exercise any right in this Contract shall not be considered a waiver of such right.

10. Governing Law and Venue. This Contract is governed in accordance with the laws of the State of Florida. Venue shall be in Alachua County.

11. Attachments. All exhibits attached to this Contract are incorporated into and made part of this Contract by reference.

12. Amendments. The parties may amend this Contract only by mutual written agreement of the parties.

13. Captions and Section Headings. Captions and section headings used herein are for convenience only and shall not be used in construing this Contract.

a. Counterparts. This Contract may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument. Receipt via fax or email with pdf attachment by a party or its designated legal counsel of an executed counterpart of this Amendment shall constitute valid and sufficient delivery in order to complete execution and delivery of this Amendment and bind the parties to the terms hereof.

b. Construction. This Contract shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the parties. It is recognized that both parties have substantially contributed to the preparation of this Contract.

c. Entire Agreement. This Contract constitutes the entire Agreement and supersedes all prior written or oral agreements, understandings, or representations.

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

Alachua County Government

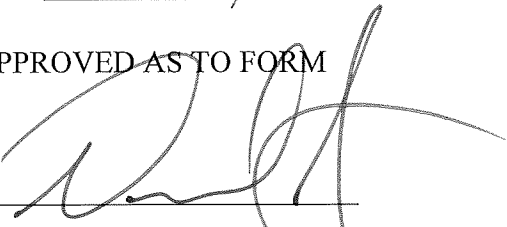
By: 

Name: ~~Charles Chestnut~~ Robert Hutchinson


Title: Chair, Board of County Commissioners

Date: 12-10-19

APPROVED AS TO FORM

  
Alachua County Attorney's Office

ATTEST:

  
J.K. "Jess" Irby, Esq., Clerk  
(SEAL)

Alachua County Government, FL - K12 TK CONTRACT v.8 112119

CENERGISTIC LLC

By: 

Name: John Bernard

Title: SVP, Client Development

Date: December 4, 2019

WITNESS

By: 

Print: Rebecca Uhr

Title: General Counsel

Date: December 4, 2019

## Exhibit 1: Intentionally Left Blank

## Exhibit 2: 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, sub-metered 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, sub-meters 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

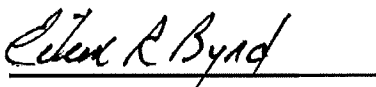
adjusted to reporting period conditions, reporting period actual, and calculated cost avoidance (adjusted baseline minus reporting period actual).

**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)**

### Exhibit 3: Certification of Meeting Alachua County Wage Ordinance

The undersigned certifies that all employees, contracted and subcontracted, completing services as part of this Contract are paid, and will continue to be paid, in accordance with Chapter 22, Article III of the Alachua County Code of Ordinance ("Wage Ordinance").

Cenergistic LLC

5950 Sherry Lane, Suite 900

Dallas, TX 75225

(214) 346-5950

Point of Contact: Jason Parker, Vice President, Human Resources

Project Description:

RFP #19-915: Professional Services Agreement to Deliver Turnkey Comprehensive Behavioral Energy Management Services for Alachua County

Cenergistic

By: 

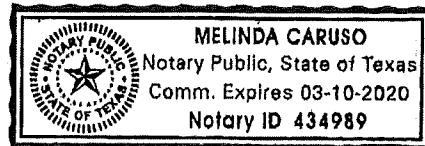
Print: John Bernard

Title: Senior Vice President, Client Development

Date: December 4, 2019

State of Texas

County of Dallas



This instrument was acknowledged before me this 4<sup>th</sup> day of December, 2019, by John Bernard.

Witnessed by:  , Notary Public, State of Texas.

My Commission expires 3-10-2020.

## **Exhibit 4: Insurance Requirements**

### **TYPE "A" INSURANCE REQUIREMENTS**

#### **"ARTISAN CONTRACTORS / SERVICE CONTACTS"**

**The Contractor shall procure and maintain for the duration of this contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the contractor/vendor, his agents, representatives, employees or subcontractors.**

#### **COMMERCIAL GENERAL LIABILITY**

Coverage must be afforded under a per occurrence form policy for limits not less than \$1,000,000 General Aggregate, \$1,000,000 Products / Completed Operations Aggregate, \$1,000,000 Personal and Advertising Injury Liability, \$1,000,000 each Occurrence, \$50,000 Fire Damage Liability and \$5,000 Medical Expense.

#### **AUTOMOBILE LIABILITY**

Coverage must be afforded including coverage for all Owned vehicles, Hired and Non-Owned vehicles for Bodily Injury and Property Damage of not less than \$1,000,000 combined single limit each accident.

#### **WORKERS COMPENSATION AND EMPLOYER'S LIABILITY**

Coverage to apply for all employees at STATUTORY Limits in compliance with applicable state and federal laws; if any operations are to be undertaken on or about navigable waters, coverage must be included for the USA Longshoremen & Harbor Workers Act.

Employer's Liability limits for not less than \$100,000 each accident; \$500,000 disease policy limit and \$100,000 disease each employee must be included.

#### **BUILDER'S RISK / INSTALLATION FLOATERS (when applicable)**

When this contract or agreement includes the construction of and/or the addition to a permanent structure or building; including the installation of machinery and/or equipment, the following insurance coverage must be afforded:

Coverage Form: Completed Value, All Risk in an amount equal to 100% of the value upon completion or value of equipment to be installed.

When applicable: Waiver of Occupancy Clause or Cessation of Insurance clause. Flood Insurance as available under the National Flood Insurance Program.

## **EMPLOYEE FIDELITY COVERAGE (only applicable to vendors whose employees handle funds)**

Employee Dishonesty coverage must be afforded for not less than \$500,000 Blanket all employees ISO Form

## **OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain, the following provisions:

### **I Commercial General Liability and Automobile Liability Coverages**

a. The Alachua County Board of County Commissioners, its officials, employees and volunteers are to be covered as an Additional Insured as respects: Liability arising out of activities performed by or on behalf of the Contractor/Vendor; to include Products and/or Completed Operations of the Contractor/Vendor; Automobiles owned, leased, hired or borrowed by the Contractor.

b. The Contractor's insurance coverage shall be considered primary insurance as respects the County, its officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officials, employees or volunteers shall be excess of Contractor/Vendor's insurance and shall be non-contributory.

### **II All Coverages**

The Contractor/Vendor shall provide a Certificate of Insurance to the County with a notice of cancellation. The certificate shall indicate if cover is provided under a "claims made" or "per occurrence" form. If any cover is provided under claims made from the certificate will show a retroactive date, which should be the same date of the contract (original if contract is renewed) or prior.

## **SUBCONTRACTORS**

The Contractor/Vendor shall be responsible for all subcontractors working on their behalf as a condition of this Contract. All subcontractors of the Contractor/Vendor shall be subject to the same coverage requirements stated herein.

**CERTIFICATE HOLDER: Alachua County Board of County Commissioners**

**MAIL, EMAIL or FAX CERTIFICATES**

**The Certificate of Insurance must contain the following:**

Department Contact: **Tommy Crosby, Assistant County Manager, Finance**

Department: **Budget and Fiscal Services**

Dept. Contact Phone: **352.374.5262**

Dept. Contact Email: **[tcrosby@alachuacounty.us](mailto:tcrosby@alachuacounty.us)**

Bid: **19-915: Behavioral Energy Savings Program**



## Exhibit 5: CJIS Security Policy Certification

### CERTIFICATION

I hereby certify that I am familiar with the contents of (1) the Security Addendum, including its legal authority and purpose; (2) the NCIC Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20, and agree to be bound by their provisions.

I recognize that criminal history record information and related data, by its very nature, is sensitive and has potential for great harm if misused. I acknowledge that access to criminal history record information and related data is therefore limited to the purpose(s) for which a government agency has entered into the contract incorporating this Security Addendum. I understand that misuse of the system by, among other things: accessing it without authorization; accessing it by exceeding authorization; accessing it for an improper purpose; using, disseminating or re-disseminating information received as a result of this contract for a purpose other than that envisioned by the contract, may subject me to administrative and criminal penalties. I understand that accessing the system for an appropriate purpose and then using, disseminating or re-disseminating the information received for another purpose other than execution of the contract also constitutes misuse. I further understand that the occurrence of misuse does not depend upon whether or not I receive additional compensation for such authorized activity. Such exposure for misuse includes, but is not limited to, suspension or loss of employment and prosecution for state and federal crimes.

\_\_\_\_\_  
Printed Name/Signature of Contractor Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name/Signature of Contractor Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Organization and Title of Contractor Representative

\_\_\_\_\_  
Date



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/25/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Stephens Insurance, LLC PO Box 3507  Little Rock AR 72203-3507		<b>CONTACT</b> NAME: Felecia Prince PHONE (A/C, No, Ext): (800) 852-5053 FAX (A/C, No): (501) 377-2470 E-MAIL ADDRESS: felecia.prince@stephens.com	
<b>INSURED</b> Cenergistic, LLC 5950 Sherry Lane Suite 900 Dallas TX 75225		<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Hanover Insurance Company 22292 INSURER B: ACE American Insurance Company 22667 INSURER C: Arch Insurance Company of America 11150 INSURER D: INSURER E: INSURER F:	

## COVERAGES

CERTIFICATE NUMBER: 2019-2020 Master

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

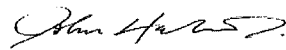
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS												
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X	Y	ZLT-D511655	1/1/2019	1/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employee Benefits Liability Each Cl \$ 1,000,000												
	A						<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	Y	AWT-D481175	1/1/2019	1/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Hired Car Physical Damage Comp \$ 50,000						
							A						<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	X	Y	UHTD511662	1/1/2019	1/1/2020	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000
													A						WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below
B	Prof. Liab A/I-Required Contract	MPBG21674370012	1/1/2019	1/1/2020	Limit/Agg 5,000,000														
	C				Crime Coverage	PCD9303037-02	1/1/2019	1/1/2020	Limit/Agg 1,000,000										

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The Alachua County Board of County Commissioners, its officials, employees and volunteers are Additional Insured's under the General Liability (on a Primary & Non-Contributory Basis), Auto Liability & Excess Liability Policies as required by written contract for both ongoing & completed operations. A Waiver of Subrogation in their favor applies to the General, Auto, Umbrella & Workers Compensation where allowed by law.

## CERTIFICATE HOLDER

## CANCELLATION

tcrosby@alachuacounty.us  Alachua County Board of County Commissioners, Tommy Crosby, Asst. County Mgr. Finance Budget & Fiscal Services for 12 SE 1st Street, 2nd Floor Gainesville, FL 32601	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE John Harbour/PRFE 

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**CENERGISTIC LLC**  
**CORPORATE RESOLUTION GRANTING SIGNING AUTHORITY**  
**AND AUTHORITY TO CONDUCT BUSINESS**

The Board of Directors ("Directors") of Cenergistic LLC, a Delaware limited liability company (the "Corporation"), by unanimous written consent, did hereby consent to, adopt, ratify, confirm and approve the following recitals and resolutions:

**WHEREAS**, the Corporation is a duly formed, validly existing limited liability company in good standing under the laws of the State of Delaware and is authorized to do business in the State of Florida; and

**WHEREAS**, the Corporation desires to grant certain persons the authority to execute and enter into contracts and conduct business on behalf of the Corporation.

**NOW, THEREFORE, BE IT RESOLVED**, that any of the following officers and employees of the Corporation listed below are hereby authorized and empowered, acting alone, to sign, execute and deliver any and all contracts and documents on behalf of the Corporation, and to do and take such other actions, including but not limited to the approval and execution of contracts, purchase orders, amendments, change orders, invoices, and applications for payment, as in his or her judgment may be necessary, appropriate or desirable, in connection with or related to any bids, proposals, or contracts to, for or with to Alachua County, a charter

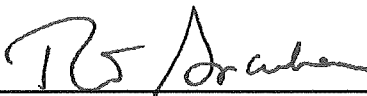
county and political subdivision of the State of Florida:

<u>NAME</u>	<u>TITLE</u>
<u>Dr. William Spears</u>	<u>CEO, Chairman - Founder</u>
<u>Dr. Randy Hoff</u>	<u>Vice Chairman</u>
<u>John Bernard</u>	<u>Senior Vice President, Client Development</u>

**BE IT RESOLVED THAT**, these resolutions shall continue in full force and effect, and may be relied upon by Alachua County, until express written notice of their rescission or modification has been received by the Purchasing Manager of Alachua County. Any revocation, modification or replacement of these resolutions must be accompanied by documentation satisfactory to the Purchasing Manager of Alachua County, establishing the authority for the changes.

**IN WITNESS WHEREOF**, I have executed my name as Secretary and have hereunto affixed the corporate seal of the above-named Corporation this 25th day of November, 2019 and do hereby certify that the foregoing is a true record of a resolution duly adopted by unanimous written consent of the Board of Directors of the Corporation and that the resolution is now in full force and effect without modification or rescission.

**Secretary of the Corporation**

By:   
Roy Sparkman

**Agenda Item Name:**

RFP 19-915 Behavioral Energy Savings

**Presenter:**

Tommy Crosby, 337.6205/Larry Sapp, 374.5202

**Description:**

Ranking, solicitation award and contract for RFP 19-915 Behavioral Energy Savings.

**Recommended Action:**

Approve the ranking for RFP 19-915 Behavioral Energy Savings as follows:

1. Cenergistic

Approve the solicitation award and contract for RFP 19-915 Behavioral Energy Savings to: Cenergistic and authorize the chair to execute the awarded contract.

**Prior Board Motions:**

N/A

**Fiscal Consideration:**

The services will be paid from program savings. The County will pay 50% of the Gross savings for 5 years. Estimates are Gross Savings of \$3 Million with a net payment to Cenergistic of \$1.5 Million. One specific point to consider is a requirement of the contract for the Board to adopt a policy created in conjunction with Cenergistic and for the Manager to adopt Administrative Guidelines by March 1, 2020. There is another 60 day cure period, but in general this impacts substantial implementation of the program. If we do substantially implement the program we will have to pay the vendor \$65,700 - \$110,000. A sample of an acceptable Board Policy is included with the Board packet, as well as, an acceptable School Sample of Administrative Guidelines. Management believes this concern to be a low risk issue, but it needs to be noted for the Board's consideration. The cost for terminating the contract early, including for lack of substantial implementation are on Page 9 of the contract, in Section 8.

**Background:**

The professional shall provide comprehensive behavior energy conservation and management services that utilize energy specialist, engineers and other energy experts to supply on-site and remote services. The services provided may include, but are not limited to, organizational behavior change, staff training and technology to optimize existing systems, change the energy culture and substantially reduce energy consumption without requiring installation of new HVAC equipment, lighting energy management system (EMS) control or similar equipment. An overview of Cenergistic's plan is included with the agenda item. Representatives of the company will be available to review the program in depth and answer questions.

RFP 19-915 Behavioral Energy Savings was advertised on March 27, 2019 and April 3, 2019. The deadline for receipt of RFP 19-915 Behavioral Energy Savings was April 17, 2019; one (1) vendor responded.