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**DOCUMENT ROUTING FORM**

NAME OF DOCUMENT: **INVESTMENT GRADE ENERGY PERFORMANCE AUDIT AGREEMENT**

Approved Comm. Mtg. on: **AUG 18, 2015** CAM #: **15-0654** ITEM #: **PUR-1**

Routing Origin:  Procurement Also attached:  copy of CAM  Original Documents

1) **Procurement Division:** Delivered # 2 Originals to City Attorney's Office on 8/28/15.

2) **City Attorney's Office:** Approved as to Form # 2 Originals and Delivered to City Manager on \_\_\_\_\_

**RHONDA MONTOYA HASAN** 

3) **City Manager:** Please indicate if item is CIP Funded, sign where indicated, and forward \_\_\_\_\_ originals to City Clerk.

CIP FUNDED  YES  NO  
Capital Investment / Community Improvement Projects

**Capital Investment / Community Improvement Projects** defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, real.

4) **City Clerk:** Retains one original and forwards 1 original documents to:

**Linda Blanco, Procurement**

Original Route form to ~~Meredith Shuster, CAO~~ *Linda Blanco*

## INVESTMENT GRADE ENERGY PERFORMANCE AUDIT AGREEMENT

This Investment Grade Energy Performance Audit Agreement ("Agreement"), effective this 18<sup>th</sup> day of August, 2015, is by and between the CITY OF FORT LAUDERDALE, FLORIDA, a municipal corporation duly organized under the laws of the State of Florida (the "City") and BGA Inc., a State of Florida corporation with an office at 3101 W. Dr. Martin Luther King Jr. Blvd., Suite 110, Tampa, FL 33607 (the "Company") (each a "Party" and collectively the "Parties").

**WHEREAS**, the Company is qualified to provide "Energy Performance Contracting" services to the City as per RFQ 946-11316 and City Commission Agenda Memo #14-0694; and

**WHEREAS**, the City is responsible for the operation, management and maintenance of the Holiday Park, Mills Pond Park, Carter Park, and Osswald Park facilities identified in Attachment A to this Agreement (the "Facility(s)"); and

**WHEREAS**, a comprehensive investment grade technical energy audit (the "Energy Audit") and savings analysis (the "Report") must be performed at the Facility in order to determine the feasibility of entering into a Guaranteed Energy Savings Performance Contract ("Energy Performance Contract") to provide for the installation and implementation of energy conservation measures ("ECMs") at the Facility; and

**WHEREAS**, if the ECMs are demonstrated to be feasible, and if the amount of energy and other allowed cost savings can be reasonably ascertained and guaranteed in an amount sufficient to cover all costs associated with an energy performance contracting project at the Facility(s), the Parties intend to negotiate an Energy Performance Contract under which the Company shall design, procure, install, implement, maintain and monitor such ECMs at the Facility(s) subject to City Commission approval and the availability of funding;

Therefore, the Parties agree as follows:

### **Article 1: Scope of Energy Audit**

The Company will perform the Energy Audit and prepare the Report that specifically identifies the energy improvements and operational changes which are recommended to be installed or implemented at the Facility(s). The Report shall contain detailed projections of energy and cost savings to be obtained at the Facility(s) as a result of the installation of the recommended ECMs. The savings calculations must utilize assumptions, projections and baselines which accurately represent the true value of future energy or operational savings for the Facility(s) (i.e., accurate marginal cost for each unit of savings at the time the audit is performed; documented material and operational costs actually avoided; adjustments to the baseline to reflect current conditions at the Facility(s) compared to the historic base period; calculations which account for the interactive effects of the recommended ECMs; etc.). The Report shall clearly describe how utility tariffs were used to calculate savings for all ECMs. The Report shall describe the Company's plan for installing or implementing the ECMs in the Facility(s), including all

anticipated costs associated with such installation and implementation. The primary purpose of the Report is to provide an engineering and economic basis for negotiating an Energy Performance Contract between the City and the Company; however, the City shall be under no obligation to negotiate such a contract.

The Company shall perform the following tasks in performing the Energy Audit and preparing the Report:

A. Collect General Facility(s) Information

The Company shall collect general Facility(s) information such as: size, age, construction type, condition and general use of the Facility(s). The Company shall also collect and summarize Facility(s) utility cost and consumption data for the most recent 24-36 month period. The Company shall evaluate the impact on utility cost and consumption of any energy initiatives currently being installed or currently planned to be installed by the City in the Facility(s) which will remain separate from the Energy Performance Contract throughout the duration of that agreement.

The City shall make available (or cause its energy suppliers to make available) all available records and data concerning energy and water usage, and plant operational costs, if appropriate, for the Facility(s) for the most current 24-36 month period, if available, including: Utility records; occupancy information; descriptions of any changes in the structure of the Facility(s) or its heating, cooling, lighting or other systems or energy requirements; descriptions of all major energy and water consuming or energy and water saving equipment used in the Facility(s); any comfort problems, code deficiencies and description of energy management procedures presently utilized. The City shall also make available a record of any energy related improvements or modifications that have been installed during the past three years, or are currently being installed or are currently planned to be installed by the City in the Facility(s) separate from the energy service agreement throughout the duration of that agreement. The City shall also make available copies of drawings, equipment logs and maintenance work orders to the Company.

B. Analyze Existing Systems and Equipment

The Company shall compile an analysis based on a physical inspection of the major electrical and mechanical systems at the Facility(s), including, as appropriate, but not limited to:

1. Cooling systems and related equipment
2. Heating and heat distribution systems
3. Automatic temperature control systems and equipment
4. Air distribution systems and equipment
5. Outdoor ventilation systems and equipment
6. Kitchen and associated dining room equipment, if applicable
7. Exhaust systems and equipment
8. Hot water systems

9. Electric motors 5 HP and above, transmission and drive systems
10. Interior and exterior lighting
11. Laundry equipment, if applicable
12. Building Envelope
13. Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.
14. Streetlights, if applicable
15. Water distribution and treatment systems, if applicable.
16. Plant operational savings, such as disposal costs, if applicable.
16. Other major energy using systems, if applicable.

The analysis shall address the following considerations, as appropriate:

1. the loads, efficiencies or hours of operation for each system (where Facility(s) operating or climatic conditions necessitate, engineering estimates may be used, but for large fluctuating loads with high potential savings appropriate measurements are required unless waived by the City); and
2. Current operating condition for each system.
3. Remaining useful life of each system.
4. Feasible replacement systems.
5. Hazardous materials and other environmental concerns, if discovered during the course of performing the audit

The Company shall conduct interviews with Facility(s) operation and maintenance staff regarding the Facility(s)'s mechanical systems operation, occupancy patterns and problems with comfort levels or equipment reliability.

C. Establish Base Year Consumption and Reconcile with End Use Consumption Estimates

The Company may, upon recommendation by the City, analyze loading, usage and/or hours of operation for all major end uses representing more than 5% of total Facility(s) consumption including, but not limited to:

1. Lighting
2. Heating
3. Cooling
4. HVAC motors (fans and pumps)
5. Plug load
6. Kitchen equipment
7. Water treatment and distribution equipment
8. Other equipment
9. Street lights
10. Process
11. Miscellaneous

Where loading and/or usage are highly uncertain, the Company shall employ spot measurement and/or short term monitoring at its discretion, or at the request of the City.

Reasonable applications of measurement typically include variable loads that are likely candidates for conservation measures, such as cooling equipment. The Company shall consult with Facility(s) staff and account for any unusual or anomalous utility bills which may skew Base Year consumption from a reasonable representation.

Baseline Development: The Company shall develop the City's Baseline model as part of the Audit. The Company and the City shall mutually agree on the Baseline model prior to final contract approval by the City. The Baseline model shall represent pre-existing energy consumption for all end uses and, if applicable, operating costs for all process related end uses within the facility(s), not just those end uses affected by the Company's proposed Conservation Measures.

The Baseline model shall be developed with a whole-building simulation approach, as applicable, using one of the following commercially-available energy simulation software packages:

- Carrier HAP
- Trane TRACE
- Elite (EZDOE)
- DOE-2 and variations (requires prior City approval)

The City may waive the whole building simulation modeling requirement if it is not appropriate for the facilities and/or operations being considered. Examples of projects that would likely not require whole building simulation modeling include, but are not limited to, assessments of water utilities operations and of exterior lighting and equipment. In such cases, the Company will utilize alternative methods to create a baseline model subject to the approval of the City.

The Company shall use the same methodology to develop the projected energy cost savings that was used to develop the Baseline. Projected energy consumption must be modeled using the same weather data and operating conditions as the established Baseline model.

The Baseline model shall reflect all energy-related effects of the current design features of the building(s) such as, but not limited to, quantity and type of glass, building orientation with respect to the physical site, overall wall and roof thermal resistance values, ventilation air requirements, humidity level, occupancy, and actual operating schedules. The Baseline model shall incorporate the energy-related effects of all renovations and/or modifications to the building envelope, internal spaces, and energy-consuming systems subsequent to the date of original construction.

The Baseline model shall be developed in accordance with recommendations and methods promulgated by professional societies and governmental organizations such as:

- *International Performance Measurement and Verification Protocol (IPMVP)*
- *The Federal Energy Management Program's M&V Guidelines: Measurement and Verification for Federal Energy Management Projects v.3.0*

- *The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE)*

**Baseline Calibration:** The Baseline model shall be developed and calibrated with the assistance of utility bill data and, as appropriate, process parameters, for no less than the immediately preceding 24-month period in order to develop a baseline model that is suitable for City consideration. A detailed description of all existing Baseline conditions, development methods, calibration procedures, adjustments, and assumptions for each facility must be provided.

D. Develop List of Potential Energy Conservation Measures (ECMs)

The Company shall:

1. Identify and propose potential ECMs for installation or implementation at the Facility(s), including water conservation measures;
2. Estimate the cost, savings and life expectancy of each proposed ECM; specify Facility(s) operations and maintenance procedures which will be affected by the installation/implementation of the proposed ECMs;
3. Provide analysis methodology, supporting calculations and assumptions used to estimate savings, which shall be based on the life cycle cost calculations described in section 255.255 of the Florida Statutes. City may reduce financing amount by grants, rebates, or capital funding. However, pursuant to Florida Statute 489.145 (4)(j), grants, rebates, or capital funding shall not be applied to life cycle cost calculations;
4. Provide a life cycle cost analysis of at least three (3) alternate system/equipment schemes for potential ECMs that involve replacing major energy-consuming equipment in accordance with the *Florida Energy Modeling Program (FEMP)* available from DMS;
5. Calculate projected energy cost savings as the difference between Baseline energy costs and the costs that are expected to result from the proposed ECMs;
6. Provide access to the computer simulation program and all inputs and assumptions used, if requested by the City, as allowed by any software license required for such computer simulation program;
7. Provide a preliminary commissioning plan for the proposed ECMs;
8. Provide detailed calculations for any rate savings proposals;
9. Provide detailed supporting calculations for any proposed maintenance or other operational savings;
10. Estimate any environmental costs or benefits of the proposed ECMs (e.g., disposal costs, avoided emissions, water conservation, etc.);
11. Comply with all applicable state, federal and local codes and regulations in effect at the time of this analysis for all proposed ECMs; and

12. Prior to selection of the final recommended ECMs and completion of the final report, the Company shall provide the City with the preliminary list of potential ECMs, the cost associated with each ECM, the corresponding savings, and simple payback to allow the City to identify any potential ECMs that may not be feasible or in the best interest of the City. Additional information on ECMs will be provided if requested by the City.

E. Select Final Recommended ECMs

The Company shall, in consultation with the City, recommend specific ECMs from its preliminary compilation for installation and implementation at the Facility(s). For the list of final recommended ECMs, the duration of the proposed Energy Performance Contract shall not exceed 12 years unless approved by the City and the total guaranteed savings generated by the project shall exceed the total cost to the City of the project over the period of the Energy Performance Contract.

F. Establish Measurement & Verification Methods

Measurement & Verification of cost savings shall be performed using a methodology from *The Federal Energy Management Program's M&V Guidelines: Measurement and Verification for Federal Energy Management Projects v.3.0* or the *International Performance Measurement and Verification Protocol (IPMVP)* and account for actual savings as required in § 489.145(3)(d)(2) Florida Statutes. Actual savings are to be measured against the Baseline in the Company's Annual Reconciliation. The Company shall state which of the following Measurement & Verification methods will be used in the Company's Annual Reconciliation:

- Method A: Stipulated savings from maintenance or outside contracts shall show the origin and signed agreement of acceptance by the City.
- Methods B, C, and D: Only verifiable data will be accepted. Degree Day and related data sources shall be identified and agreed to in the audit document.
- Auditor: The auditor is the party responsible for performing the agreed upon Measurement & Verification methods and for reporting the results of the Audits as specified in the subsequent Energy Performance Contract.
- All Measurement & Verification Methods: The Company and City shall agree to the exact Measurement & Verification method for each audit on an individual ECM basis and stipulate it in the subsequent Energy Performance Contract.
- Each Audit: Each audit shall include the names of the Auditor, City, and review person(s) as well as the phone number, email address, and credentials of each team member.

G. Provide Cost and Fee Estimates

The Company shall provide detailed estimates of all costs and fees associated with the installation and implementation of the ECMs including:

1. Engineering/design costs for individual ECMs

2. Contractor/vendor estimates for individual ECM material and labor unit costs
3. Company construction management fees for the project
4. Overhead and profit
5. Commissioning costs for individual ECMs
6. Contingency costs
7. Initial training costs
8. Annual service fees including:
  - Measurement and verification
  - Maintenance
  - Performance monitoring
  - Ongoing training services
9. Other costs/fee (specify)

In addition, the Company shall prepare a detailed Project Cash Flow Analysis containing all project costs, savings and increased revenues for the proposed contract term. The Company shall also specify any costs attributed to the Investment Grade Audit.

#### H. Develop Savings Estimates

The City has endeavored to provide the Company with sufficient general and specific guidance in this Article 1 to develop the savings estimates for the Report. In the event that questions arise as to the calculation of savings or whether certain items will be allowed as savings, the Company shall seek written guidance from the City. City's rejection of certain calculations of savings or rejection of certain items as allowable savings in the Report shall be at the risk of the Company.

The following items will be allowed as savings or in the development of savings:<sup>1</sup>

- City material/commodity cost
- Outside maintenance labor cost (if applicable)
- Agreed escalation rates for natural gas
- Agreed escalation rates for electricity
- Agreed escalation rates for water
- Agreed escalation rates for material/commodity cost savings
- Agreed escalation rates for allowable labor savings

The following items will not be allowed as savings or in the development of savings without prior City approval:

- City in-house labor cost
- City deferred maintenance cost
- Offset of future City capital cost

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<sup>1</sup> Unless otherwise agreed in writing, projected escalation rates shall tie to the Consumer Price Index. The value of fuel and water unit savings shall be escalated using actual rate increases as they occur over the term of the contract. The base rate value for each fuel and water unit shall not devalue in the event of any rate decrease.



In any subsequent agreement, the City will have the option of purchasing materials directly to avoid sales tax expenditures.

I. Deliver the Report

The Company shall complete and deliver a two-volume report to the City by 180 days from the effective date of this Agreement, in the following format:

Each volume should be submitted using 8½ " x 11" sheets of recycled-content paper and a font size no smaller than 10 point. The pages in each volume should be numbered sequentially, include a Table of Contents and tabbed with the visible titles of corresponding Schedules (Volume 1) or Sections (Volume 2).

Volume 1 of 2 shall include the presentation of information in the following Schedules required for the Energy Performance Contract to the extent the information has been developed during the course of performing the audit. Preliminary information and incomplete schedules will be finalized during audit negotiations, prior to execution of the ESA.

**SCHEDULES**

Schedule A	Conservation Measures to Be Installed by Company & Description of Facilities
Schedule B	Pre-existing Equipment Inventory
Schedule C	Savings Guarantee
Schedule D	Compensation to Company and Deliverables
Schedule E	Compensation and Deliverables Required in Other Related Contracts
Schedule F	Savings Calculation Formula
Schedule G	Construction and Installation Schedule
Schedule H	Baseline
Schedule I	Standards of Comfort
Schedule J	City's Maintenance Responsibilities
Schedule K	Company's Maintenance Responsibilities and Training
Schedule L	Financing Agreement
Schedule M	Performance Bond
Schedule N	Certificate of Acceptance Investment Grade Energy Audit
Schedule O	Projected Cash Flow
Schedule P	City Certificate of Acceptance of Completed ECMs
Schedule Q	Equipment Warranties
Schedule R	Unconditional Corporate Guarantee
Schedule S	Specification of a Benchmark Cost of Capital, Minimum Rate of Return
Schedule T	Document Supporting Recurring Funds Requirement
Schedule U	Approval by City Commission
Schedule V	Measurement & Verification Plan to Monitor Cost Savings

**APPENDICES;**

- Appendix A Investment Grade Energy Audit  
[The following Appendices are attached to the Proposal but part of the Contract]
- Appendix B Documentation of Quotes from Three or More Lenders (if applicable)
- Appendix C Other contracts with entities other than Company

Volume 2 of 2 shall include all of the Sections below, and presented in the following format:

1. **Executive Summary:** Provide an executive summary which describes the Facilities, measures evaluated analysis methodology, results and a summary table presenting the cost and savings estimates for each recommended measure. Include a summary of the recommended measures and costs using the table format provided below.

	ECM	TOTAL COST	ENERGY COST SAVINGS	SIMPLE PAYBACK
1.				
2.				
3.				
<b>TOTALS</b>				

2. **Measures Not Evaluated:** Include a discussion of measures not evaluated in detail and the explanation of why a detailed analysis was not performed.
3. **Baselines:** Provide a summary of all utility bills, consumption baselines and how they were established, and end use reconciliation with respect to the baselines including a discussion of any unusual characteristics and findings.
4. **ECM Summaries:** Provide detailed descriptions for each ECM including analysis method, supporting calculations (may be submitted in appendices), results, proposed equipment and implementation issues. Provide a financial analysis for each proposed ECM (See Section G).
5. **Cost and Savings Estimates:** Conclusions, observations and caveats regarding cost and savings estimates.
6. **Appendices:** Provide thorough appendices which document the data relied upon to prepare the analysis and how that data was collected.

Acceptance of the Report by the City.

The City shall conduct and complete a technical review within sixty (60) days of its receipt of the Report, unless otherwise stated in Attachment A. The City shall accept the Report if the recommended ECMs are feasible and the projected energy cost savings are equal to or greater than the total projected costs of the design and installation of the recommended ECMs. If the City determines that one or more of the recommended ECMs is not feasible or is not beneficial to the City, the City shall give the Company written notice of any and all said objections, in

detail, upon completion of its technical review of the Report. The Company shall correct the Report and submit a revised draft within twenty-one (21) days of said notification. The City shall have thirty (30) days from receipt of the revised Report to notify the Company if any objections have not been corrected. This re-submission process shall continue until both Parties are in agreement as to the final recommended ECMs and the Report is accepted. If the Parties cannot come to agreement on the recommended ECMs, negotiation of an Energy Performance Contract will not proceed.

#### **Article 2: Energy Performance Contract**

Nothing in this Agreement should be construed as an obligation on any of the Parties to execute an Energy Performance Contract. The terms and provisions of such an Energy Performance Contract shall be set forth in a separate agreement. This Agreement shall automatically terminate upon the Parties' execution of an Energy Performance Contract relating to the Facility(s).

#### **Article 3: Payment**

The Parties understand and intend that the Company's costs for services performed under this Agreement (1) shall be included and set forth separately in the total project cost, (2) shall not be paid for under this Agreement, and (3) shall be paid for only under the Energy Performance Contract, if any, from savings generated by implemented ECMs. The Company is undertaking work under this Agreement completely at risk for payment and in consideration of the City's good faith intention to negotiate the potential Energy Performance Contract with the Company. The Company understands and agrees that its only source for payment for this Energy Audit is as part of the potential Energy Performance Contract and is contingent upon realization of energy cost savings being equal to or greater than the total cost of the design and installation of the Company's recommended ECMs. The Company further understands that the City may implement all or part of a recommended ECM without liability to the Company (or its subcontractors or suppliers) if there are extenuating circumstances (e.g., a sudden or imminent equipment failure) and the City would have taken similar measures regardless of the Company's recommendation. In any subsequent Energy Performance Contract, all costs for services under this IGA agreement shall not exceed Thirty-Four Thousand Dollars (\$34,000.00).

#### **Article 4: Termination**

##### **A. By Company:**

The Company may terminate this Agreement prior to the completion of the Energy Audit and Report or subsequent to the completion of the Energy Audit and Report if:

- (i) It determines that it cannot guarantee a minimum amount of energy and cost savings through the implementation of an energy performance contracting project at the Facility(s); or
- (ii) It determines that even though it can guarantee a minimum amount of energy and cost savings in energy costs, that amount would be insufficient to cover the costs associated with performing this analysis, installing ECMs and related maintenance and monitoring services.

Termination under this section shall be effective upon the City's receipt of written notification from the Company stating the reason for the termination and all supporting

documents. The Company shall provide the City with any preliminary notes, reports or analysis which have been produced or prepared prior to the effective date of the termination, as well as records and data provided by the City.

**B. By City:**

The City may terminate this Agreement:

- (i) If the Company fails to complete the Energy Audit and deliver the Report to the City within the time established in Article 1, above; or fails to obtain a written extension of that time from the City. Termination under this subsection B (i) shall be effective upon the Company's receipt of written notification from the City that the deadline for submission of the Report has passed. The Company shall provide the City with any preliminary notes, reports or analysis which have been produced or prepared prior to the effective date of the termination.
- (ii) If, prior or subsequent to the completion of the Energy Audit, the Company notifies the City in writing that it is unable to guarantee a sufficient level of savings pursuant to subsection 4 A (i) or (ii) above. Termination under this subsection B (ii) shall be effective upon the Company's receipt of written notification from the City. The Company shall provide the City with any preliminary notes, reports or analysis which have been produced or prepared prior to the effective date of the termination.
- (iii) The City may also terminate the Agreement for convenience in writing upon 15 days written notice to Company, at which time neither Party shall have any obligations to the other Party.

**Article 5: Miscellaneous Terms and Conditions**

**Section 1. Subcontractor Disclosure**

As of the execution date of this Agreement, the following subcontractors are expected to perform material work (i.e., greater than 5% of the total work) pursuant to this Agreement:

1. Sustainable Performance Solutions – 2929 E. Commercial Blvd. Suite 608 Fort Lauderdale, FL 33308
2. Advanced Electrical Solutions – 4051 SW 47th Avenue Suite 101 Fort Lauderdale, FL 33314

If, during the term of this Agreement, the Company retains subcontractors to perform material work pursuant to this Agreement who were not disclosed, the Company shall so notify the City in writing.

**Section 2. Patent and Copyright Responsibility**

The Company agrees that any material or design specified by the Company or supplied by the Company pursuant to this Agreement shall not knowingly infringe any patent or copyright, and the Company shall be solely responsible for securing any necessary licenses required for

patented or copyrighted material utilized by the Company in the performance of the Energy Audit and preparation of the Report.

### Section 3. Release and Indemnity

The Company agrees to indemnify, defend, save, and hold harmless the City, its officers, agents, and employees from all damages, liabilities, losses, claims fines and fees and from any and all suits and actions that may be brought against the City, its officers, and its employees on account of any claims, fees, royalties, or costs for any invention or patent and/or the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

### Section 4. Governing Law

This Agreement shall be governed by the laws of the State of Florida. Both Parties agree that the courts of the State of Florida shall have jurisdiction of any claim arising in connection with this Agreement. Venue for any claim, objective or dispute arising out of this Agreement shall be in any state or federal court in Broward County, Florida. By entering into this Agreement, the Parties hereby expressly waive any rights either Party may have to a trial by jury of any civil litigation related to, or arising out of the Agreement. Company shall specifically bind all subcontractors to the provisions of this Agreement.

### Section 5. Personnel

All Company employees, subcontractors, or agents performing work under this Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, the Company shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Agreement must comply with all security and administrative requirements of the City. The City may conduct, and the Company shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Company. The City may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the City's security or other requirements. Such approval shall not relieve the Company of its obligation to perform all work in compliance with the Agreement. The City may reject and bar from any facility for cause any of the Company's employees, subcontractors, or agents.

The Company, together with its agents, subcontractors, officers and employees, shall have and always retain under the Agreement the legal status of an independent contractor, and in no manner shall they be deemed employees of the City or deemed to be entitled to any benefits associated with such employment. During the term of the Agreement, the Company shall maintain at its sole expense those benefits to which its employees would otherwise be entitled to by law, including health benefits, and all necessary insurance for its employees, including workers' compensation, disability, and unemployment insurance, and provide the City with certification of such insurance upon request. The Company remains responsible for all applicable federal, state, and local taxes, and all FICA contributions.

### Section 6. Compliance with Applicable Law

In performing this Agreement, the Company shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287 of the Florida Statutes and Chapter 60A-1 of the Florida Administrative Code govern the Agreement. By way of further non-exhaustive example, the Company shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for Agreement termination. The City may cancel the Agreement if the Company refuses to allow public access to all records made or received by the Company in conjunction with the Agreement, unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1) of the Florida Statutes.

#### Section 7. Assignment

Company shall not assign or transfer this Agreement or its rights, title or interests. The obligations undertaken by the Company pursuant to this Agreement shall not be delegated or assigned to any other person or firm; provided, however, that the Company may delegate or assign its obligations to subcontractors who are performing less than five percent (5%) of the work under this Agreement, or are listed in Section 1 of Article 5.

#### Section 8. Confidential Information

Each Party may have access to confidential information made available by the other Party (see particularly, but not exclusively, subsection 119.07(ee) and section 119.071 of the Florida Statutes). Each Party shall protect such confidential information in the same manner as it protects its own confidential information of like kind. Disclosure of any confidential information received by the City will be governed by the Public Records Act, chapter 119 of the Florida Statutes.

#### Section 9. Notices

Whenever either party desires to give note unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice, to wit:

CITY:

Glen Hadwen  
City of Fort Lauderdale  
Sustainability Manager  
101 NE 3<sup>rd</sup> Ave, Suite 1400  
Fort Lauderdale, FL 33301  
(954)828-6138

With a copy to: City Manager

City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301  
(954)828-5364

City Attorney  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301  
(954)828-5037

**COMPANY:**

Director, Operations  
BGA, Inc.  
3101 W. Dr. MLK Jr. Blvd., Suite 110  
Tampa, FL 33607  
(813)375-3469

Manager, Legal & Contract Services  
3101 W. Dr. MLK Jr. Blvd., Suite 110  
Tampa, FL 33607  
(813)375-3447

**Section 10. Modification of Terms**

No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written Amendment prepared with the same formality as this Agreement and executed by the City and the Company.

**Section 11. Severability**

Should any part, term or provisions of this Agreement be decided by the courts to be invalid, illegal or in conflict with any state or federal law, the validity of the remaining portions or provision shall not be affected.

**Section 12: Public Entity Crimes**

Company represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity for the construction or repair of a public building or public work; may

not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of any monies paid hereto, and may result in debarment from the City's competitive procurement activities.

In addition to the foregoing, Company further represents that there has been no determination, based on audit, that it committed any act defined by Section 287.133, Florida Statutes, as a "public entity crime" regardless of the amount of money involved or whether company has been placed on the convicted vendor list.

### Section 13. Environmental and Sustainability Management Systems

The City of Fort Lauderdale operates an Environmental & Sustainability Management System (ESMS) that meets the requirements of the International Organization of Standards (ISO) 14001 at various City locations. An important part of the ESMS relates to the control of contractors, subcontractors and persons working for or on behalf of the City of Fort Lauderdale who are required to comply with relevant environmental policies and procedures. The nature of these activities is such that contractor's and subcontractor's personnel have significant potential to affect environmental performance and regulatory compliance within the City of Fort Lauderdale. Therefore, Company's personnel and City's personnel must work together to achieve the goals of the environmental policy, objectives and targets and the protection of the environment. The Company must be aware of the importance of compliance with relevant environmental legislation and regulations, and of the consequences of non-compliance. Conformance with the environmental policy and all requirements is expected of all contractors, subcontractors, suppliers and their employees while working on or within a site regulated by the City's ESMS. Failure to follow these requirements may be grounds for termination for cause of any contract resulting from this competitive solicitation, and any other legal remedies available to the City or other regulatory entity.

All proposed costs, including subcontractors costs, shall include any and all means and methods required to perform the work and provide all goods and services under the performance of any contract resulting from this competitive solicitation that are in absolute compliance with the City's ESMS. No claim of ignorance or misunderstanding shall alleviate the successful respondent from their obligations under any contract resulting from this competitive solicitation that are in absolute compliance with the City's ESMS and at the agreed upon prices.

The City's ESMS environmental policy, objectives and targets that each contractor shall be required to comply with can be found at the following link: [www.fortlauderdale.gov/ESMS](http://www.fortlauderdale.gov/ESMS). Questions related the City's ESMS should be addressed to Mary Ann Johnston, ESMS Coordinator (954) 828-5301 / [mjohnston@fortlauderdale.gov](mailto:mjohnston@fortlauderdale.gov).

### **Article 6. Indemnification**



### Section 1 Disclaimer of Liability

The City shall not at any time be liable for injury or damage occurring to any person or property from any cause, whatsoever, arising out of this Agreement.

### Section 2 Indemnification

For other, additional good valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

Company, shall, at its sole cost and expense, indemnify and hold harmless the City, its representatives, employees and elected and appointed officials from or on account of all claims, damages, losses, liabilities and expenses directly incurred by the City, its representatives, employees and elected and appointed officials. Indemnification shall specifically include but not be limited to claims, damages, losses, liabilities and expenses arising out of or from (a) this Agreement; (b) any act, omission or default of the Company, its subcontractors, agents, servants or employees; (c) and all bodily injuries, sickness, disease or death; (d) injury to or destruction of tangible property, including any resulting loss of use; (e) other such damages, liabilities, or losses received or sustained by any person or persons during or on account of any operations connected with the execution of this Agreement; (f) the violation of any federal, state, county or city laws, ordinances or regulations by the Company, its subcontractors, agents, servants, independent contractors or employees; (g) the breach or alleged breach by Company of any term of the Agreement, including the breach or alleged breach of any warranty or guarantee.

Company shall pay all claims, loses, liens, settlements or judgments of any nature in connection with the foregoing indemnifications including but not limited to reasonable attorney's fees and costs for trials and appeals.

### **Article 7 – Limitation of Liability**

Section 1. The City desires to enter into this agreement only if in so doing the City can place a limit on the City's liability for any cause of action arising out of this agreement, so that the City's liability for any breach never exceeds the sum of \$1,000. For other good and valuable consideration, the reception and sufficiency of which is hereby acknowledged, the Company expresses its willingness to enter into this Agreement with knowledge that the Company's recovery from the City to any action of claim arising from the agreement is limited to a maximum amount of \$1,000, which amount shall be reduced by the amount actually paid by the City to the Company pursuant to this Agreement, for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability beyond the limits established in said Section 768.28; and no claim or award against the City shall include attorney's fees, investigative costs, expert fees, suit costs or pre-judgment interest.

### Section 2. Limitation of Liability

The City acknowledges that the Energy Audit and Report, as well as preliminary notes, reports or analyses, is not a complete specification for any potential ECMs, and that the Company has prepared the Report (which may be the final report, or preliminary notes, reports or analyses) on the basis of the information available and in anticipation of the Company being responsible for

completing the specifications and implementing the ECMs. As a result, the Company is not liable for the implementation or performance of any of the work described in the Report, notes or analyses, if installed by the City or a third party.

## **Article 8: Insurance**

### **Section 1: General**

The Company shall furnish proof of insurance requirements as indicated below. The coverage is to remain in force at all times during the contract period. The following minimum insurance coverage is required. The City is to be added as an "additional insured" with relation to General Liability Insurance. This MUST be written in the description section of the insurance certificate, even if you have a check-off box on your insurance certificate. Any costs for adding the City as "additional insured" will be at the Company's expense.

The City of Fort Lauderdale shall be given notice 10 days prior to cancellation or modification of any stipulated insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Company to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Department.

The Company's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by the Company that precludes coverage for work contemplated in this Agreement shall be deemed unacceptable, and shall be considered breach of contract.

**Section 2: Workers' Compensation and Employers' Liability Insurance**

Limits: Workers' Compensation – Per Florida Statute 440  
Employers' Liability - \$500,000

Any firm performing work on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions can only be made if they are in accordance with Florida Statute. For additional information contact the Department of Financial Services, Workers' Compensation Division at (850) 413-1601 or on the web at [www.fldfs.com](http://www.fldfs.com).

**Section 3: Commercial General Liability Insurance**

Covering premises-operations, products-completed operations, independent contractors and contractual liability.

Limits: Combined single limit bodily injury/property damage \$1,000,000.

This coverage must include, but not limited to:

- a. Coverage for the liability assumed by the Company under the indemnity provision of the contract.
- b. Coverage for Premises/Operations
- c. Products/Completed Operations
- d. Broad Form Contractual Liability
- e. Independent Contractors

**Section 4: Automobile Liability Insurance**

Covering all owned, hired and non-owned automobile equipment.

Limits:

Bodily injury	\$250,000 each person, \$500,000 each occurrence
Property	\$100,000 each occurrence
Combined Single Limit	\$1,000,000 per occurrence

**Section 5: Professional Liability (Errors & Omissions) Insurance**

Limits: \$1,000,000 per claim with defense costs in addition to limits

The Company will provide a Certificate of Insurance naming the City as an "additional insured" for General Liability.

**Certificate holder should be addressed as follows:**

City of Fort Lauderdale

Procurement Services Department  
100 N. Andrews Avenue, Room 619  
Fort Lauderdale, FL 33301

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above.

CITY

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida.

*[Handwritten signature of Lee R. Feldman]*

By: LEE R. FELDMAN, City Manager

ATTEST:

*[Handwritten signature of City Clerk]*

City Clerk

Approved as to form:

*[Handwritten signature of Rhonda Montoya Hasan]*

RHONDA MONTOYA HASAN  
Assistant City Attorney

(CORPORATE SEAL)

COMPANY

WITNESSES:

*[Handwritten number 2]*

*[Handwritten signature of Sonia Torres]*

(Witness print name)

*[Handwritten signature of Rachel Alvarez]*

Rachel Alvarez  
(Witness print name)

(CORPORATE SEAL)

BGA Inc.

By *[Handwritten signature of Michael W. Gibson]*

Name: Michael W. Gibson

Title: President

ATTEST:

By *[Handwritten signature of Paul F. Magelli]*  
Secretary

STATE OF: *New York*  
COUNTY OF: *Westchester*

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of August, 2015, by Michael W. Gibson and Paul F. Mapelli as President and Secretary respectively, of BGA, Inc.. They are  personally known to me or  have produced \_\_\_\_\_ as identification.

(SEAL)

Doniyell L. Curtis  
Notary Public, State of New York  
(Signature of Notary taking Acknowledgement)

Doniyell L. Curtis  
Name of Notary Typed, Printed or Stamped

My Commission Expires:

April 29, 2018  
Commission Number

**DONIVELL L. CURTIS**  
Notary Public, State of New York  
No. 01CU6073950  
Qualified in Queens County  
Certificate Filed in New York County  
Commission Expires April 29, 2018

**Attachment A**  
**To Energy Audit Agreement**

<b>Facilities to be included in Investment Grade Audit</b>		
<b>Facility Name</b>	<b>Address</b>	<b>Associated FPL Accounts*</b>
Holiday Park	1150 G. Harold Martin Drive	5888049284 5873049299 5891041260 5409147252 484115464
Mills Pond Park	2201 NW 9 <sup>th</sup> Avenue	6529827195 9253748264 5403822173
Carter Park	1450 W Sunrise Drive	2282295001 3042946388 3043942303 1076943339 9338591242 3041948351
Osswald Park	2220 NW 21 <sup>st</sup> Ave	6168689435 6491094543
<p>* Note that listed FPL accounts may not include all FPL accounts for the specified facilities and in some cases the listed accounts may serve areas outside the scope of the IGA in part or whole.</p>		