

# FINANCING AGREEMENT

## SCHEDULE L

*By and between  
[Agency]  
and  
[Lender]*

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**SCHEDULE L**  
**FINANCING AGREEMENT**

This Financing Agreement (“Agreement”), which is made and entered into as of the date last executed, between \_\_\_\_\_ (“Lender”), a \_\_\_\_\_ duly formed and existing under the laws of the State of \_\_\_\_\_, and \_\_\_\_\_ (“Agency”), an Agency of the State of Florida.

WHEREAS, Agency owns and operates the Facilities, and is in need of energy saving equipment and service designed to save energy and associated energy costs at said Premises and has entered into a contract for the purchase, delivery and/or installation of the Equipment (“Energy Savings Contract”) by and between \_\_\_\_\_ and \_\_\_\_\_ dated effective \_\_\_\_\_, which contract is required to contain the following:

-A written energy guarantee by the qualified provider that the energy or operating cost savings will meet or exceed the cost of energy conservation measures.

-A statement that at least one twentieth of the price must be paid within two years from the date of complete installation and acceptance by the state, that the remaining costs are to be paid at least quarterly, not to exceed a 20 year term, based on life cycle cost calculations and that the savings are guaranteed to the extent necessary to make payments for the systems.

-Provide a bond in compliance with Section 255.05, Florida Statutes.

-A statement that the term of any contract expires at the end of each Fiscal Year, but may be automatically renewed, subject to the Agency making sufficient annual appropriations, and paid with realized savings.

-A statement that the contract does not constitute a debt, liability, or obligation of the state; and

WHEREAS, pursuant to The Guaranteed Energy Performance Savings Contracting Act, Section 489.145, Florida Statutes (the “Act”), this Agreement may not grant the lender rights or privileges that exceed the rights and privileges available to the Company; and

WHEREAS, Agency desires to obtain financing from Lender and to compensate Lender for its services; and Lender desires to provide financing to Agency; and

WHEREAS, Agency is authorized under the Constitution and the laws of the State of Florida to enter into this Contract for the purposes set forth herein.

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

**1. Definitions and Exhibits**

The following terms have the meanings specified below unless the context clearly requires otherwise. Terms with the initial letter capitalized will have the same meaning as defined in the Energy Savings Contract, unless otherwise defined in this Agreement.

a) Agency: "Agency" means the Agency which is the State of Florida, a municipality, or political subdivision thereof, which has entered into this Agreement, or any governmental entity succeeding to the powers and duties of any of the foregoing pursuant to law or governmental reorganization.

b) Company: The guaranteed energy performance savings contractor from whom Agency has ordered or with whom Agency has contracted for the commodities and services regarding the Equipment pursuant to the Energy Savings Contract. Also known as the Guarantor, which is the guarantor under the Energy Savings Contract.

c) Commencement Date: The date on which the Agency’s payments begin and the Lender makes payment to the Company(s) for the purchase price of the Equipment.

d) Equipment: All items of property described in the Equipment Schedule (Exhibit B) as to each Equipment Group and any other items of property pursuant to Section 489.145, Florida Statutes.

- e) Effective Date: the date last executed by the Lender and Agency
- f) Fiscal Year: The 12-month fiscal period of Agency which commences in every year on July 1 and ends in every year on June 30 or, if different, the fiscal period used by Agency for its financial accounting and budgeting purposes.
- g) Legally Available Funds: funds that the governing body of Agency obtains by Legislative appropriation or are otherwise legally available for the purpose of making Payments under this Agreement
- h) Non-Appropriation: The failure of the governing body of Agency or Legislature to appropriate money for any Fiscal Year of Agency sufficient for the continued performance by Agency of all of Agency's obligations under this Agreement as evidenced by the passage of a final budget which does not include funding sufficient to pay all Payments due under this Agreement for a designated Fiscal Year.
- i) Payment Date: The date upon which any Payment is due and payable as provided in Exhibit A.
- j) Principal Balance: With respect to any Equipment Group as of the Payment Dates specified in the Exhibit A, plus any other amounts of principal and/or interest accrued and unpaid on the applicable Payment Date.
- k) Payment: With respect to the Equipment Group, the payment due from Agency to Lender on each Payment Date during the Term as shown in the Exhibit A completed for such Equipment Group.
- l) Specifications: The procurement specifications and/or purchase order pursuant to which Agency has ordered any Equipment from a Company.
- m) State Agency: each state department, departmental unit described in Sec. 20.04, Florida Statutes, commission, regional planning agency, board, district, and authority.
- n) Exhibit A: Form of the Payment Schedule as to each Equipment Group for which a Certificate of Acceptance, Exhibit II (ii) to the Energy Savings Contract, has been received.
- o) Exhibit B: Form of the final Schedule of Equipment and Equipment List for each Equipment Group.
- p) Exhibit C: Form of Sworn Statement Pursuant to Section 287.133(3)(a), Florida Statutes on Public Entity Crimes.
- q) Exhibit D: Form of Certificate of Acceptance.
- r) Exhibit E: Form of Opinion of Agency Counsel.

2. Term

- a) The initial term of this Agreement ("Initial Term") shall commence as of the execution of this Agreement (as specified in the initial Exhibit A to this Agreement) and expire on the last day of the Fiscal Year. Beginning at the expiration of the Initial Term, the term of this Agreement shall automatically be extended upon the successive appropriation by Agency's governing body of amounts sufficient to pay Payments during the next succeeding Fiscal Year (hereinafter "Renewal Term") for the number of Renewal Terms, each coextensive with each successive Fiscal Year, as are necessary for all payments identified in Exhibit A to this Agreement to be paid in full, unless this Agreement is terminated as provided in Section 5 hereof or otherwise expressly provided in this Section 2.
- b) The term of this Agreement will expire upon the first to occur of (a) the expiration of the Initial Term or any Renewal Term during which an Event of Non-Appropriation occurs, (b) the day after all Payments due under this Agreement have been paid in full, (c) the day after the prepayment is paid in full, except as otherwise provided in this Agreement, or (d) an Event of Default (as defined in Section 20 hereof) under this Agreement and Lender's termination of Agency's rights hereunder as provided in Section 21 hereof. Agency hereby agrees to pay Payments under this Agreement, but only from Legally Available Funds, in the amounts and on the dates specified in Exhibit A to this Agreement.

c) Extension of the term for any period beyond the initial period shall not operate to change in any manner the method by which interest rates are established for this Agreement.

### 3. Representations and Warranties

a) Each party warrants and represents to the other that:

i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;

ii) its execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, its organic instruments, and this Agreement has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

iii) its execution, delivery, and performance of this Agreement will not breach or violate, or constitute a default under any Agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or

iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

b) Representations of Agency. Agency hereby represents and warrants that:

i) All financial statements and other information submitted to Lender by Agency were true, correct and complete in all material respects on the date submitted and, as of the date of this Agreement, there has been no material adverse change in any matter stated in such financial statements and other information.

ii) The execution, delivery and performance of this Agreement have been duly authorized by a duly adopted resolution of Agency's governing body, or by other appropriate official action, and such action is in compliance with all public bidding and other state and federal laws applicable to this agreement and the acquisition and financing of the Equipment by Agency.

iii) All requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement.

iv) Agency has made sufficient appropriations or has other Legally Available Funds to make all Payments due during the Initial Term.

v) Agency is not subject to any legal or contractual limitation or provision of any nature whatsoever that in any way limits, restricts or prevents Agency from entering into this Agreement or performing any of its obligations under this Agreement, except to the extent that such performance may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

vi) Agency has entered into this Agreement for the purpose of purchasing, acquiring or leasing the Equipment identified in Exhibit B hereto and not for the purpose of refinancing any outstanding obligation of Agency more than 90 days in advance of its Payment or prepayment date. The Purchase Price for the Equipment will be paid directly by Lender (or its assigns), at the direction of Agency and upon presentation of proper documentation, to the manufacturer, seller or supplier thereof, and no portion of the Purchase Price for the Equipment under this Agreement will be paid to Agency as reimbursement for any expenditure paid by Agency more than 60 days prior to the execution and delivery of this Agreement. If the alternative escrow procedure in Section 5(i) is utilized, the foregoing will be confirmed with respect to each portion of the Equipment Group being financed, provided, however, that if the alternative escrow procedure is utilized, the interest rate shall be determined as of date of this Agreement.

vii) Agency has entered into a legal, valid, binding and enforceable Energy Savings Contract with Company for the installation of the Equipment on terms and conditions acceptable to Agency.

#### 4. Title.

During the Term, legal title to and ownership of all Equipment and any and all repairs, replacements, substitutions and modifications thereto shall be in Agency, and Agency shall take all actions necessary to vest such title and ownership in Agency. Agency, at its expense, will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes of Agency's creditors and other persons. In the event that the installation of any component of any item of Equipment could be deemed to require a performance and payment bond under Section 255.05, Florida Statutes, or be deemed subject to the mechanic's lien provisions of Chapter 713, Florida Statutes, or any successor statute to each, as same may be amended from time to time, Agency shall require such bonds, post such notices and do all other things provided for under such laws in order to keep the Equipment free of and exempt from all liens.

#### 5. Payments

a) The Lender hereby finances the Equipment to the Agency, and the Agency hereby agrees to the financing of such Equipment from the Lender under the terms of this Agreement and as set forth herein. On Commencement Date Lender shall pay the Company and provide the Agency with the final form of Exhibit A for this Agreement, which shall include the Commencement Date and serve as the invoice for the periodic Payments due under this Agreement.

b) As Payment for Lender's Equipment financing described herein, Agency agrees to pay lender or its assigns at the mailing address set forth in Section 23 (or at such other address as may be designated from time to time pursuant to Section 23 hereof) the Payments on the dates and in the amounts set forth in Exhibit A to this Agreement; provided, however, that Agency is required to make such Payment only from Legally Available Funds. Agency represents that it reasonably believes that funds can be obtained that are sufficient to make all Payments to become due during the term of this Agreement and agrees that it will do all things legally within its power to obtain and maintain funding from which such payments may be made, including making provisions for such Payments to the extent necessary in each biennial or annual budget submitted for the purpose of obtaining appropriations.

c) Agency's obligation to make Payments hereunder constitutes a current obligation payable exclusively from Legally Available Funds and shall not be construed to be an indebtedness within the meaning of any applicable constitutional or statutory limitation or requirement. Agency has not pledged its full faith and credit or its taxing power to make any Payments under this Agreement.

d) Interest shall accrue under this Agreement from and after the Commencement Date and Agency shall make Payments in accordance with this Section, all in consideration of Lender's entering into this Agreement, and agreeing to provide the financing contemplated hereby.

e) Late Charges. The Lender must pay the purchase price of each item of Equipment within \_\_\_\_ days after Lender has received the Certificate of Acceptance, Exhibit II (ii) to the Energy Savings Contract (Commencement Date). If the Lender does not make the Payment due the Company within the time limits established in Section 215.422, Florida Statutes, then the Lender shall pay from its own funds any interest assessed for untimely payment. If the Agency does not make the Payment due the Lender within the time limits established in Section 215.422, Florida Statutes, then the Agency shall pay any interest assessed for untimely payment. The interest rate will be the rate set pursuant to Section 55.03, Florida Statutes.

#### f) Prepayment Option.

(i) Agency shall have the option to prepay its obligations in whole or in part under this Agreement on any Payment Date, without penalty, for the then applicable Prepayment Price set forth in Exhibit A relating thereto in the manner provided in this Section.

(ii) Agency shall give notice to Lender of its intention to exercise its prepayment option with respect to this Agreement not less than thirty (30) days prior to the date on which the option will be exercised and shall deposit with Lender on the date of exercise an amount equal to the applicable Principal Component balance set forth in the related Exhibit A. Lender shall furnish a statement of the prepayment amount annually, and upon prepayment, refund any unearned portion of the interest charged to Agency.

g) Notwithstanding anything to the contrary in this Agreement, to the extent the Energy Cost Savings are less

than the guaranteed level reflected in the Energy Savings Guarantee in the Energy Savings Contract, Agency is required to pay Lender only up to the actual level of Legally Available Funds.

h) ~~[Delete this clause if interest rate is set at time of execution]~~ [The interest rate shall be rate of interest for a particular Equipment Group shall be the lesser of the maximum rate allowed by law or a \_\_\_\_\_ basis point deviation from the interest rate index from the Federal Reserve Board's Fed.H15:Ten Year Constant Maturity Statistical Release as of the date of the Certificate of Acceptance with respect to the initial portion of the Equipment Group to be acquired.]

i) Alternative Procedure; Escrow Agreement. Notwithstanding any other provisions herein, as to any Equipment Group, Lender and Agency may enter into an escrow agreement establishing an account from which the Equipment Group cost is to be paid in separate increments (the "Escrow Account"). In the event it is determined that an Escrow Account shall be established, (i) Lender and Agency shall immediately complete and execute an Exhibit A relating to the entire Equipment Group; (ii) Agency shall, if Lender so requests, execute a tax certificate in substantially the form acceptable to Lender's counsel as may be required to assure compliance with federal income tax laws and regulations; (iii) the Lender shall deposit into such Escrow Account the amount of the cost of such Equipment Group; (iv) the amount deposited by Lender into the Escrow Account shall be repaid by the Payments due under the related Exhibit A; and (v) the Payments relating to the Equipment Group shall have an aggregate Principal Component equal to the amount of Lender's deposit into the Escrow Account and shall be due and payable as provided in the related Exhibit A, commencing upon the deposit of funds by Lender into the Escrow Account. Agency acknowledges and agrees that no disbursements shall be made from an Escrow Account except for portions of the Equipment Group which are operationally complete and functionally independent and which may be utilized by Agency without regard to whether the balance of the Equipment Group is delivered and accepted.

#### 6. Unconditional Obligation.

Except as provided in Section 8, the obligation of Agency to make Payments from appropriated Legally Available Funds required hereunder and under each Agency Loan shall be absolute and unconditional in all events. Notwithstanding any dispute between Agency and Lender, Agency and Company or any other person, and except as expressly provided by law, e.g., Section 213.67(9), Florida Statutes, Agency shall make all Payments required hereunder when due and shall not withhold any Payment pending final resolution of such dispute nor shall Agency assert any right of set-off or counterclaim against its obligation to make Payments required hereunder. Agency's obligation to make Payments shall not be abated through accident, unforeseen circumstances, failure of the Equipment to perform, as desired, damage or destruction to the Equipment, loss of possession of the Equipment or obsolescence of the Equipment.

#### 7. No Waiver of Sovereign Immunity.

Nothing herein shall be construed as waiving the sovereign immunity of the State of Florida or any agency or instrumentality thereof.

#### 8. Termination.

##### a) Termination.

i) In the event of Non-Appropriation, this Agreement and each Equipment Schedule thereunder with respect to which such Non-Appropriation has occurred, shall terminate, and, at the option of Lender, provided in writing to Agency by Lender, may terminate, in whole, but not in part, as to all Equipment listed thereon, effective upon the last day of the Fiscal Year for which funds were appropriated, in the manner and subject to the terms specified in this Section. Lender may effect such termination by giving the other party a written notice of termination at which time Agency shall pay to Lender any Payments and other amounts which are due and have not been paid at or before the end of its then current Fiscal Year with respect to this Agreement. Agency shall endeavor to give reasonable notice of such termination prior to the end of the Fiscal Year for which appropriations were made, and shall notify Lender of any anticipated termination upon its determination thereof. In the event of termination of this Agreement as provided in this Section, Agency shall comply with Section 21.

ii) This Agreement is subject to termination upon the occurrence of an event of default, as provided in Section 21 hereof.

iii) No Equipment Schedule shall be executed after any Non-Appropriation or Event of Default with respect to a defaulting Agency or an Agency as to which a Non-Appropriation has occurred.

b) Intent To Continue Term; Appropriations.

i) Agency intends to continue the Agreement hereunder for its entire Term and to pay all Payments relating thereto. The Agency agrees to direct the person within such Agency in charge of preparing the Agency's budget to include in the budget request for each Fiscal Year the Payments becoming due in such Fiscal Year. The parties acknowledge that appropriation for Payment is a governmental function that the Agency cannot contractually commit the governing body of Agency to perform and this Agreement does not constitute such a commitment. However, the Agency reasonably believes that money in an amount sufficient to make all Payments can and will lawfully be appropriated and made available to permit continued utilization of the Equipment in the performance of its essential functions during the applicable Terms.

ii) Agency is an agency of the State and Agency's performance and obligation to pay under this Agreement is contingent upon an annual appropriation. Agency, as an agency of the State, is subject to the appropriation of funds by the governing body of the Agency in an amount sufficient to allow continuation of its performance in accordance with the terms and conditions of this Agreement for each and every Fiscal Year following the Fiscal Year in which the Agreement is in effect. Agency shall, upon receipt of notice that sufficient funds are not available to continue its full and faithful performance under this Agreement, provide prompt written notice to Lender of such event and upon the expiration of the period of time for which funds were appropriated be thereafter released of all further obligations in any way related to such Equipment except, as noted above, to comply with Section 21. Each Agency agrees to include in its appropriation request each year of the Agreement a request for an appropriation to fund the Agreement and any applicable Equipment Schedule.

iii) In the event that the appropriations has not been adopted by the governing body of the Agency prior to the expiration of a Fiscal Year, and no declaration of an intent not to appropriate has been made by the Agency, the Term of this Agreement will be deemed renewed pending the enactment of such appropriations act. If any Payments are due under this Agreement during such period, such Terms will be so extended only if: (a) an interim or emergency budget implemented by the governing body of the Agency pending enactment of a final budget makes available to the Agency money that may legally be used to make Payments during such period; or (b) sums are otherwise available to make such Payments.

c) Effect of Termination for Non-Appropriation. Upon termination of this Agreement for Non-Appropriation as provided in this Section, Agency shall not be responsible for the payment of any additional Payments coming due in succeeding Fiscal Years, but if Agency has not complied with the instructions received from Lender in accordance with Section 21(b), the termination shall nevertheless be effective, and Agency shall pay, on demand to Lender, from Legally Available Funds, the unpaid balance of the Agreement which is stipulated to be the aggregate of the Principal Balances as shown on Exhibit B as of the last day of the Fiscal Year for which funds were appropriated.

9. Tax Covenants.

a) Agency will take no action that would cause the Interest portion of the Payments to become includable in gross income of the recipient for federal income tax purposes under the Code and the Regulations, and Agency will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the Interest portion of the Payments does not become includable in gross income of the recipient for federal income tax purposes under the Code and Regulations; all as amended from time to time.

b) Agency is a state or a political subdivision thereof within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code").

c) The payment of the Payments or any portion thereof under this Agreement is not (under the terms of this Agreement or any underlying arrangement) directly or indirectly:

i) secured by any interest in property, used or to be used in any activity carried on by any person other than a state or local governmental unit or payment in respect of such property; or

ii) on a present value basis, derived from payments (whether or not to Agency) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. No Equipment under this Agreement will be used, directly or indirectly, in any activity carried on by any person

other than a state or local governmental unit. No portion of the Purchase Price for the Equipment under this Agreement will be used, directly or indirectly, to make or finance loans to any person other than Agency. Agency has not entered into any management or other service contract with respect to the use and operation of the Equipment, except an Energy Savings Contract with Company to provide certain customary maintenance services for the Equipment.

#### 10. Taxes.

a) The Agency shall pay any sales, property use, license or other taxes from which the Agency is not exempt, respecting the Equipment, imposed, assessed, levied or becoming due and payable on or after the Commencement Date, together with any penalties, fines or interest thereon. Any tax statement received by the Lender for taxes payable by the Agency shall be promptly forwarded by the Lender to the Agency for payment.

b) Agency shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or other similar tax payable by Lender, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of Agency under this Section.

#### 11. Insurance.

a) At its own expense, Agency will cause the Equipment to be enrolled in the State Risk Management Trust Fund pursuant to Chapter 284, Part I, Florida Statutes, which is the State self-insurance fund covering the contents of buildings owned, leased, or rented by the State from loss due to fire, lightning, sinkhole, and hazards customarily insured by extended coverage, as well as loss from the removal of personal property from such buildings when endangered by covered perils.

If Agency is self-insured with respect to equipment such as the Equipment, Agency shall maintain during the term of this Agreement an actuarially sound self insurance program.

b) If for any reason any of the Equipment is not eligible for enrollment in the State self-insurance fund, the Agency agrees to procure and maintain insurance coverage for the Equipment with a carrier authorized to do business in the State. Procurement of such insurance by the Agency shall be subject to the provisions of Chapter 287, Florida Statutes. Agency agrees to provide to Lender and its assigns certificates of insurance or copies of the policies and evidence of each renewal of each such policy.

#### 12. Risk of Loss.

Damage to or Destruction of Equipment. Agency shall provide a complete written report to Lender immediately upon any loss, theft, damage or destruction of any Equipment and of any accident involving any Equipment. If all or any part of the Equipment is lost, stolen, destroyed or damaged beyond repair ("Damaged Equipment"), Agency shall as soon as practicable after such event either: (a) replace the same at Agency's sole cost and expense with equipment having substantially similar Specifications and of equal or greater value to the Damaged Equipment immediately prior to the time of the loss occurrence, such replacement equipment to be subject to Lender's approval, whereupon such replacement equipment shall be substituted in the this Agreement and the other related documents by appropriate endorsement or amendment; or (b) pay the applicable Principal Balance of the Damaged Equipment as set forth in the related Exhibit B. Agency shall notify Lender of which course of action it will take within fifteen (15) days after the loss occurrence. If, within forty-five (45) days of the loss occurrence, (a) Agency fails to notify Lender; (b) Agency and Lender fail to execute an amendment to the applicable Equipment Schedule to delete the Damaged Equipment and add the replacement equipment or (c) Agency has failed to pay the applicable Principal Balance, then Lender may, at its sole discretion, declare the applicable Principal Balance of the Damaged Equipment, to be immediately due and payable, and Agency is required to pay the same from Legally Available Funds.

#### 13. Installation of Equipment.

The Equipment shall be delivered and installed at the Equipment Location set forth in Exhibit B to this Agreement, pursuant to the Energy Savings Contract. Notwithstanding anything in this Agreement to the contrary, upon payment by Agency or all amounts due hereunder, Agency shall be entitled to all right, title and interest in and to the Equipment, free and clear of any interest of Lender or its assigns.

**14. Acceptance.**

As soon as practicable after the receipt of Equipment, Agency shall furnish to Lender and its assigns an acceptance certificate with respect to such Equipment in the form attached as Exhibit II (i) and (ii) to the Energy Savings Contract. Execution of each such acceptance certificate by an employee, official or agent of Agency having authority in the premises or having managerial, supervisory or procurement duties with respect to equipment of the same general type as such Equipment shall constitute acceptance of such Equipment on behalf of Agency.

**15. Disclaimer of Warranties.**

NEITHER ANY ASSIGNEE OF THIS AGREEMENT NOR LENDER MAKES ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY AGENCY OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT. IN NO EVENT SHALL LENDER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EQUIPMENT OR AGENCY'S USE OF THE EQUIPMENT.

**16. Use and Maintenance.**

During the Term, Agency shall peaceably and quietly have and hold and enjoy the Equipment, except as expressly set forth in this Agreement. Agency agrees that Lender and its agents shall have the right at all reasonable times to examine and inspect the Equipment, and Lender and its agents shall have such rights of access to the Equipment as may be reasonably necessary to cause the proper maintenance of the Equipment in the event of failure by Agency to perform its obligations hereunder. Notwithstanding its designation as Lender, Lender does not own the Equipment and by this Agreement is merely financing the acquisition thereof for Agency. Lender has not been in the chain of title of the Equipment, does not operate, control or have possession of the Equipment and has no control over the Agency or Agency's operation, use, storage or maintenance of the Equipment. Agency agrees to either (1) enter into a maintenance agreement with Company, which will allow Company, at Agency's expense, to maintain, preserve and keep the Equipment in good repair, working order and condition; or (2) maintain the Equipment on its own behalf; or (3) enter into a maintenance agreement with a provider acceptable to Lender.

**17. Alterations.**

Agency shall not make any alterations, modifications or additions to the Equipment unless they are approved by Lender, whereupon such altered, modified or additional equipment shall be substituted in this Agreement and the other related documents by appropriate endorsement or amendment. However, Agency shall comply with all State and Federal Laws applicable to the installation, use, possession and operation of the Equipment, and if compliance with any such State and Federal Law requires changes or additions to be made to the Equipment, such changes or additions shall be made by Agency at its expense.

**18. Assignment.**

a) Assignment by Lender. Lender's right, title and/or interest in and to this Agreement or in one or more Equipment Schedules hereunder, including, but not limited to, the Payments and other amounts payable by Agency, Lender's interest in the Equipment, its rights upon Non-Appropriation and Events of Default and its other rights, may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lender at any time, without the consent of Agency. Upon any such assignment by Lender, Lender's assignee shall have all rights of Lender in and to the assigned Agreement and/or Equipment Schedules. No such assignment (except an assignment to an affiliate of Lender if Lender continues to bill and collect Payments) shall be effective as against Agency unless and until written notice of the assignment is provided to Agency. If requested, Agency will acknowledge in writing receipt of such notice. Agency shall keep a record of all such assignments and make the same available upon any Lender's request. Notwithstanding the foregoing, no such assignment shall be permitted as to any Equipment Schedule or the rights relating thereto until after the date on which all amounts that will (or conditionally may) be advanced by Lender under any executed Exhibit A corresponding to such Equipment Schedule (including any escrow advances) have been funded by Lender and delivered to, or to the designee of, Agency.

b) Assignment and Subleasing by Agency. Agency may transfer or assign this Agreement and its rights and obligations herein to a successor agency or purchaser of the buildings or an interest therein that is an agency of the State of Florida provided that no assignment or sublease shall be made which would impair the exclusion from gross

income of interest on the loan and provided further that no such assignment of this Agreement shall be permitted without the prior written consent of the Florida Chief Financial Officer (CFO), which consent shall not be unreasonably withheld or delayed. If the CFO agrees to such assignment in writing then the liability associated with the loan will transfer to the assignee agency. Otherwise, neither this Agreement nor any Equipment may be sold, assigned, subleased, transferred, pledged or mortgaged by Agency to any person without the prior written consent of each of the Lender and the CFO, which respective consents shall not be unreasonably withheld or delayed.

c) All terms and provisions of this Agreement shall be binding upon and inure for the benefit of the parties hereto, and their successors and assigns and legal representatives. Notwithstanding anything in paragraphs a) and b) of this Section 18, assignments in connection with a public offering of securities are prohibited.

d) The attached Exhibit C entitled "Sworn Statement Pursuant to Section 287.133(3)(a), Florida Statutes on Public Entity Crimes" is hereby incorporated and made a part of this Agreement. Lender and any assignee of Lender must execute the attached Exhibit C.

#### 19. Right of Inspection.

Subject to Agency's normal security provisions, Lender and its assigns shall have the right, upon reasonable prior notice to Agency and during Agency's regular business hours, to enter the premises where the Equipment is located to respect the Equipment and to observe its use and operation. Neither Lender nor its assigns shall be required to sign a waiver of liability or to agree to other restrictions as a condition of exercising this right.

#### 20. Events of Default.

The following are Events of Default under this Agreement:

a) Failure by Agency to pay any Payment or other payment required to be paid when due and the continuation of said failure for a period of ten (10) days after such due date (other than by reason of Non-Appropriation).

b) Failure by Agency to maintain insurance as required by Section 11 so as to include such Equipment.

c) Either party initiates a proceeding in any court, seeking liquidation, reorganization, debt arrangement, dissolution, winding up, appointment of trustee, receiver, custodian, or the like for substantially all of its assets, and such case or proceeding shall continue undismissed, unstayed and in effect for a period of 60 consecutive days; or an order for relief shall be entered in an involuntary case under the federal bankruptcy laws or other similar laws now or hereafter in effect.

#### 21. Remedies.

Whenever any Event of Default defined in Section 20 hereof shall have occurred, the party not in default shall have the right, at its option and without any further demand, to take one or any combination of the following remedial steps:

a) Lender, with or without terminating this Agreement, may declare all Payments due or to become due with respect to such defaulted Agreement during the Fiscal Year in effect when the default occurs to be immediately due and payable by Agency, whereupon such Payments shall be immediately due and payable. In the event Lender makes such declaration it shall be pursuant to a writing delivered to Agency and, if Agency is a State Agency, also to the Chief Financial Officer (CFO).

b) Lender, with or without terminating this Agreement, may by written notice to Agency, and, if Agency is a State Agency, also to the Chief Financial Officer (CFO), request that Agency, within thirty (30) days of such written notice, cause all Equipment subject to the defaulted Agreement the Equipment (together with all documents necessary to transfer legal and beneficial title thereto to Lender) to be delivered to Lender or Lender's designee at a place in the State designated by Lender in accordance with this Section 21(b). If Agency fails or refuses to voluntarily transfer such Equipment to Lender as herein provided, to the extent permitted by law, Lender shall have the right to obtain a judgment against Agency from Legally Available Funds for compensatory damages in the amount of the then applicable Prepayment Price as shown on the applicable Exhibit B. If the Equipment or any portion of it has been destroyed or damaged beyond repair, Agency shall pay the applicable Prepayment Price of the damaged or destroyed Equipment as set forth in the Payment Schedule relating thereto to Lender only to the extent not paid to Lender by insurance obtained

by Agency in accordance with Section 11 hereof.

c) If Lender terminates this Agreement and, in its discretion, takes possession and disposes of the Equipment or any portion thereof, Lender shall apply the proceeds of any such disposition to pay the following items in the following order: (i) reasonable costs (including, but not limited to, reasonable and necessary attorneys' fees) incurred in securing possession of the Equipment; (ii) reasonable expenses incurred in completing the disposition; (iii) any sales or transfer taxes; (iv) the balance of any Payments owed by Agency on such defaulted Agreement during the Fiscal Year then in effect and (v) the applicable Principal Balances of the Equipment. Any disposition proceeds remaining after the requirements of Clauses (i), (ii), (iii), (iv) and (v) have been met shall be paid into the Treasury of the governing body of the Agency.

d) Following an Event of Default hereunder and upon failure of Agency to voluntarily comply with Section 21 (b), Lender shall have whatever rights and remedies are available at law, if any, against Agency's Legally Available Funds. Lender and Agency agree that there is no intention to create under this Agreement a right in Lender to dispossess Agency involuntarily of the legal title to or the use of the Equipment. Lender hereby irrevocably waives any right to specific performance of Agency's covenant to transfer legal title to and return possession of the Equipment to Lender.

e) If the proceeds of sale of the items of returned Equipment are not sufficient to pay the balance of any Payments owed by Agency on this Agreement which Lender has declared to be in default during the Fiscal Year then in effect, Lender may pursue such other remedies as are available at law or in equity to collect the balance of such Payments from Agency's Legally Available Funds.

f) Following an Event of Default of Lender, Agency shall have the right to exercise and any all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages;

## 22. Facility Closures.

The Agency shall use commercially reasonable efforts to give six months notice to Lender of Agency's closure or sale of an Agency-owned building that contains Equipment subject to the Agreement. This Financing Agreement shall terminate as to all Equipment Groups for Equipment in the Facility upon closure or sale. The Agency shall pay within 60 days thereafter, the remaining Principal and interest as to such Equipment Groups unless Lender agrees to an assignment of such Financing Agreement.

## 22. Public Record.

The Agency shall have the right to terminate this Agreement upon Lender's refusal to allow public access to all documents, papers, letters or other materials subject to the State Public Records Law, Chapter 119, Florida Statutes, and made or received by the Lender in conjunction herewith.

## 23. Notices.

All notices, certificates, legal opinions or other communications hereunder shall be sufficiently given and shall be deemed given when delivered by receipted courier, or deposited in the United States mail in registered form with postage fully prepaid to the addresses specified on the execution page hereof; provided that Lender and Agency, by notice given hereunder, may designate different addresses to which subsequent notices, certificates, legal opinions or other communications will be sent. The Contract Manager for this project will serve as liaison for the ongoing administration of this Agreement and the resolution of any problems related thereto. Any notice, demand or other communication required or permitted to be given under this Agreement shall be in writing and delivered or sent to the intended recipient at its address as follows:

If to Lender, to:

City  
State ZIP  
Phone  
Fax

If to Company, to:

City  
State ZIP  
Phone  
Fax

If to the Agency, to:

Contract Manager  
City  
State ZIP  
Phone  
Fax

If to the Chief Financial Officer (CFO) (where applicable ref State Agencies):

Attn.: Michael Crowley, Bureau of Accounting  
Department of Financial Services  
200 E. Gaines St.  
Tallahassee, FL 32399-0354

24. Entire Agreement, Changes and Modifications.

This Agreement (including the attachments hereto) constitute the entire agreement between Lender and Agency with respect to the Equipment and the subject matter hereof. Additions, deletions and modifications to this Agreement may be made upon the mutual written agreement signed by both Lender and Agency, and, subject to the agreement of Agency, such additions may include proposals from Company for additional project development agreement schedules, equipment and services. In the event of conflict between the terms and conditions of the various documents, the terms and conditions of this Agreement shall prevail over the provisions of the attachments.

25. Additional Terms.

a) Agency's Performance. Any failure of Lender to require strict performance by Agency, or any waiver by Lender of any requirement under this Agreement, does not consent to or waive any subsequent failure or breach by Agency.

b) Severability. If any provision of this Agreement is or becomes invalid under any applicable law, that provision shall not apply, but the remaining provisions shall apply as written.

c) Captions. The captions and titles in this Agreement are for convenience only and shall not affect the interpretation or meaning of this Agreement.

d) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Florida.

e) Survival. The party's obligations and liabilities provided for in under this Agreement, which by their nature would continue beyond the expiration or termination of this agreement shall continue in full force and effect notwithstanding the expiration or termination of this Agreement.

f) Further Assurances and Corrective Instruments. Lender and Agency agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Equipment or for otherwise carrying out the expressed intention of this Agreement, including, without limitation, Agency certificates of acceptance and/or legal opinion substantially in the form of Exhibits D and E hereto.

g) **Financial Information.** Agency will provide Lender with current financial statements, budgets, proof of appropriation for the ensuing Fiscal Year and such other financial information relating to the ability of Agency to continue this Agreement as may be reasonably requested by Lender.

h) **Interest; Usury.** The Interest component of the Payments shall not, as of the Commencement Date, exceed the rate computed by adding [150] basis points to The Bond Buyer "20 Bond Index" published immediately preceding the first day of the calendar month in which the Agreement is submitted to the Chief Financial Officer (CFO) for pre-audit review and approval, in accordance with the provisions of Sections 287.063 or 489.145, Florida Statutes, as applicable from time to time. It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary herein or in any Exhibit A or B, in no event shall this Agreement hereunder require the payment or permit the collection of Interest or any amount in the nature of Interest or fees in excess of the maximum amount permitted by applicable law. Any such excess Interest or fees shall first be applied to reduce Principal, and when no Principal remains, refunded to Agency.

i) **Statutory Notices.** The Agency shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this Agreement. An entity or affiliate who has been placed on the public entity crimes list or the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids 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 pursuant to limitations under Chapter 287, Florida Statutes.

The Lender warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the Lender 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 working solely for the Lender any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, the Agency shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

j) **Counterparts.** This Agreement may be executed in several counterparts, each or which when executed shall be deemed to be an original, but all together shall constitute but one and the same instrument; provided, however, that only one counterpart shall constitute the original for purposes of the sale or transfer of this Agreement.

k) **Statutory rights.** Notwithstanding anything herein to the contrary, in accordance with the provisions of Section 489.145, Florida Statutes, Lender is not granted rights or privileges that exceed the rights and privileges available to the guaranteed energy performance savings contractor.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers as of the date last executed.

Agency: \_\_\_\_\_

Lender: \_\_\_\_\_

By: \_\_\_\_\_  
[Signature]

By : \_\_\_\_\_  
[Signature]

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

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

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

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

Address:  
Telephone:

Address:  
Telephone:

Comprehensive Energy Strategy – Financing Agreement  
Model 1.0 (07/2/03)

## CHECKLIST

1. Equipment Description: The Equipment to be financed by Lender under this Agreement is described in Exhibit B.
2. Equipment Location: The location where the Equipment is to be located or installed is described in Exhibit B.
3. Commencement Date (from which interest begins to accrue): \_\_\_\_\_
4. Fiscal Year: Agency's current Fiscal Year extends from \_\_\_\_\_
5. Essential Used Source of Funding: Agency's present intention is to make the Payments for the Initial Term and all Renewal Terms as long as it has Legally Available Funds. In that regard, Agency represents that (a) the use and operation of the Equipment is essential to its proper, efficient and economic governmental operation and the intended use of the Equipment is to maintain an acceptable building: \_\_\_\_\_. Agency does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last Payment (including Payments due during all Renewal Terms) scheduled to be paid under this Schedule. Agency's source of funds for the Payments hereunder is \_\_\_\_\_
6. Effective Date: \_\_\_\_\_
7. Purchase Price: \$ \_\_\_\_\_
8. Payments: As payment for the Equipment described in the Schedule to which this Attachment is attached. Agency agrees to pay Lender or its assigns, beginning on \_\_\_\_\_ and on the same day of each period indicated below during the term, the Payments as set forth below:

EXHIBIT A  
PROPOSED PAYMENT SCHEDULE

Commencement Date: \_\_\_\_\_, \_\_\_\_\_

The Agency acknowledges that all documents required under the Agreement must be submitted by the final acceptance date, which is \_\_\_\_\_, and if all documents are not submitted by such date, the interest rate shall be determined as of the date they are finally submitted.

Payment Number	Payment Date	Total Payment	Principal Component	Interest Component	Prepayment Component	Price*
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.						
14.						
15.						
16.						
17.						
18.						
19.						
20.		_____	_____	_____	_____	_____

\* Including Payment due on such date, plus any other amounts accrued and unpaid on such date.

EXHIBIT B

Schedule of Equipment

EQUIPMENT LOCATION

The Equipment will be located at one or more of the following addresses:

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Part 1

EXHIBIT B

EQUIPMENT LIST

<u>DESCRIPTION</u>	<u>MODEL/SERIAL NUMBER</u>	<u>QUANTITY</u>	<u>COST PER UNIT</u>	<u>EXTENDED PRICE</u>
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TOTAL Principal Balance  
\$ \_\_\_\_\_

Less Reductions:  
    Discounts           \$ \_\_\_\_\_  
    Trade In            \$ \_\_\_\_\_  
    Initial Pmt.        \$ \_\_\_\_\_

Total Reductions                   \$ \_\_\_\_\_  
AMOUNT FINANCED                   \$ \_\_\_\_\_

Part 2

EXHIBIT C  
"Sworn Statement Pursuant to Section 287.133(3)(a), Florida Statutes on Public Entity Crimes"  
[see Sec. 18]

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to \_\_\_\_\_  
[print name of the public entity]  
by \_\_\_\_\_  
[print individual's name and title]  
for \_\_\_\_\_  
[print name or entity submitting sworn statement]

whose business address is

\_\_\_\_\_  
\_\_\_\_\_

and (if applicable) its Federal Employer Identification Number(FEIN) is \_\_\_\_\_

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement:  
\_\_\_\_\_.)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a Jury Verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

- a. A predecessor or successor of a person convicted of a public entity crime; or
- b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those

officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. [Indicate which statement applies.]

\_\_\_\_\_ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. [Attach a copy of the final order.]

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH I (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

\_\_\_\_\_  
[signature]

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Personally known \_\_\_\_\_

OR Produced identification \_\_\_\_\_

\_\_\_\_\_  
(type of identification)

Notary Public - State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
(Printed, typed or stamped  
commissioned name of notary  
public)

EXHIBIT D  
Certificate Of Acceptance

I, the undersigned, hereby certify that I am the duly qualified and acting official of the Agency identified below and, with respect to the Schedule of Equipment dated \_\_\_\_\_, 20\_\_, to the Third Party Financing Agreement (together with such Equipment Schedule, the "Agreement"), dated \_\_\_\_\_, 20\_\_, between \_\_\_\_\_ ("Lender"), and \_\_\_\_\_ ("Agency") that:

1. The energy conservation equipment described in the above-referenced Schedule of Equipment has been delivered and installed in accordance with the Specifications, is in good working order and fully operational and has been fully and finally accepted by the Agency on or before the date indicated below.
2. Payments are due and payable by Agency to Lender in accordance with the Exhibit A (Payment Schedule) completed for the Equipment listed on the above-referenced Schedule of Equipment.

Agency: \_\_\_\_\_

By: \_\_\_\_\_ [Signature]

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

Date: \_\_\_\_\_, 20\_\_

EXHIBIT E  
Form of Opinion of Agency Counsel

\_\_\_\_\_, 20\_\_\_, [date on or after Agency's execution of all documents]

[Lender's name and address]

Re: Third Party Financing Agreement, dated \_\_\_\_\_, between \_\_\_\_\_ ("Lender") and \_\_\_\_\_ ("Agency") and Schedule of Equipment thereto dated \_\_\_\_\_.

Ladies and Gentlemen:

I have acted as counsel to the Agency with respect to the above-referenced Third Party Financing Agreement and Schedule of Equipment (together, the "Agreement") and various related matters, and in this capacity have reviewed a duplicate original or certified copy of the Agreement. Terms capitalized herein but not defined herein have the meaning ascribed to them in the Agreement. Based upon the examination of these and such other documents as I deem relevant, it is my opinion that:

1. Agency is an agency of the State of Florida (the "State"), duly organized, existing and operating under the Constitution and laws of the State.
2. Agency is authorized and has power under applicable law to enter into the Agreement, and to carry out its obligations thereunder and the transactions contemplated thereby.
3. The Agreement have been duly authorized, approved, executed and delivered by and on behalf of Agency, and are legal, valid and binding contracts of Agency enforceable in accordance with their terms, except to the extent limited by State and Federal laws affecting remedies and by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights. The Agreement is third party financing of the Energy Savings Contract and both are in compliance with the requirements of the Act.
4. The authorization, approval and execution of the Agreement and all other proceedings of Agency relating to the transactions contemplated thereby have been performed in accordance with the Act and all open meeting, public records, public bidding and other applicable laws, rules and regulations.
5. The execution of the Agreement and the appropriation of moneys to pay the Payments coming due thereunder do not and will not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Agency.
6. There is no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body that challenges the organization or existence of Agency; the authority of Agency or its officers or its employees to enter into the Agreement; the proper authorization, approval and/or execution of the Agreement and other documents contemplated thereby; the appropriation of moneys to make Payments under the Agreement for the current fiscal year of Agency; or the ability of Agency otherwise to perform its obligations under the Agreement and the transactions contemplated thereby and, to the best of my knowledge, no such litigation or actions are threatened.
7. The equipment financed by the Agreement is personal property, and when used by the Agency will not be or become fixtures under the laws of the State of Florida.
8. Resolution No. \_\_\_\_\_ [authorization for this agreement] of the governing body of Agency was duly and validly adopted by such governing body on \_\_\_\_\_, 20\_\_\_, has not been amended, supplemented or repealed and remains in full force and effect.
9. This opinion may be relied upon by assignees of Lender.

Very truly yours,

[signature, name and title]

Form PUR 7068 (Rev. 06/11/92)  
Comprehensive Energy Strategy – Financing Agreement  
Model 1.0 (07/2/03)