

ENERGY AUDIT AGREEMENT

This Energy Audit Agreement ("Agreement"), effective the last date signed below, is by and between the City of Clearwater, a municipal corporation of the State of Florida with an office at 112 South Osceola Avenue (the "Agency") and Honeywell Building Solutions with an office at 3079 Premiere Parkway, Suite 100, Duluth, GA 30097 (the "Company") (each a "Party" and collectively the "Parties").

Whereas, the Company is party to the state term contract procured by the State of Florida, Department of Management Services, ITN No. DMS 01/2002-103, Comprehensive Energy Strategy, which enables the Company to perform work under the Guaranteed Energy Performance Savings Contract Act, codified at section 489.145 of the Florida Statutes, and under section 235.215 of the Florida Statutes; and

Whereas, the Agency is responsible for the operation, management and maintenance of the facilities identified on 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 performance savings 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 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);

Therefore, the Parties agree as follows:

Article 1: Scope of Energy Audit

The Company will perform the Energy Audit and prepare the detailed engineering and economic 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 best represent the true value of future energy or operational savings for the Facility(s), i.e., utilize: 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 measures 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 Agency and the Company; however, the Agency 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. 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 Agency in the Facility(s) which will remain separate from the Energy Performance Contract throughout the duration of that agreement.

Agency shall make available (or cause its energy suppliers to make available) all available records and data concerning energy and water usage 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 Agency 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 Agency in the Facility(s) separate from the energy service agreement throughout the duration of that agreement. The Agency shall also make available copies of drawings, equipment logs and maintenance work orders to the Company.

B. Analyze Existing Systems and Equipment

Company shall compile an analysis based on a physical inspection of the major electrical and mechanical systems at the Facility(s), including:

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. Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.
13. Other major energy using systems, if applicable

The analysis shall address the following considerations:

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 Agency);
2. current operating condition for each system;

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

Company shall examine the most recent 24-36 months of utility bills and establish Base Year consumption for electricity, fossil fuels and water by averaging; or selecting the most representative contiguous 12 months. 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.

Company shall 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 (independent devices greater than 5%)
6. kitchen equipment
7. other equipment
8. miscellaneous

Where loading and/or usage are highly uncertain Company shall employ spot measurement and/or short term monitoring at its discretion, or at the request of the Agency. Reasonable applications of measurement typically include variable loads that are likely candidates for conservation measures, such as cooling equipment.

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

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;

3. specify Facility(s) operations and maintenance procedures which will be affected by the installation/implementation of the proposed ECMs;
4. provide analysis methodology, supporting calculations and assumptions used to estimate savings, which shall be based on the life cycle cost calculations provided in section 255.255 of the Florida Statutes. Manual calculations should disclose essential data, assumptions, formulas, etc. so that a reviewer could replicate the calculations based on the data provided;
5. for savings estimates using computer simulations, Company shall provide access to the program and all inputs and assumptions used, if requested by the Agency.
6. provide a preliminary savings measurement and verification plan for each of proposed ECMs
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. For all proposed ECMs, Company shall comply with all applicable state, federal and local codes and regulations in effect at the time of this analysis.

E. Select Final Recommended ECMs

Company shall, in consultation with the Agency, recommend specific ECMs from its preliminary compilation for installation and implementation at the Facility(s).

F. Cost and Fee Estimates

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 hard costs
3. construction management fees for the project
4. commissioning costs for individual ECMs
5. initial training costs
6. annual service fees including:
 - measurement and verification
 - maintenance
 - performance monitoring
 - ongoing training services
7. other costs/fee (specify)

G. Savings Estimates

The Agency 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 Agency. Agency'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:¹

- Agency 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:

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

H. Report Format

1. An executive summary which describes the Facility(s), measures evaluated, analysis methodology, results and a summary table presenting the cost and savings estimates for each measure.
2. A discussion of measures not evaluated in detail and the explanation of why a detailed analysis was not performed.
3. A summary of all utility bills, Base Year consumption and how it was established, and end use reconciliation with respect to the Base Year including a discussion of any unusual characteristics and findings.
4. Detailed descriptions for each ECM including analysis method, supporting calculations (may be submitted in appendices), results, proposed equipment and implementation issues.
5. Conclusions, observations and caveats regarding cost and savings estimates.
6. Thorough appendices which document the data relied upon to prepare the analysis and how that data was collected.

¹ Unless otherwise agreed in writing, 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.

The Report shall be completed within ninety (90) days of the effective date of this Agreement, unless otherwise stated in Attachment A. The Agency shall conduct and complete a technical review within sixty (60) days of its receipt of the Report, unless otherwise stated in Attachment A.

I. Acceptance of the Report– If Energy Conservation Measures are Feasible.

The Agency shall accept the Report if the recommended ECMs are feasible and 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 Agency determines that one or more of the recommended ECMs is not feasible, the Agency shall give the Company written notice of any and all said objections, in detail, within fourteen (14) days after completing 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 Agency shall have fourteen (14) 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 (1) the date all material concerns are resolved and the Report is accepted, or (2) the dispute is otherwise resolved.

Article 2: Energy Performance Contract

The Parties intend to negotiate an Energy Performance Contract under which the Company shall design, install and implement ECMs and provide certain maintenance and monitoring services. However, nothing in this Agreement should be construed as an obligation on any of the Parties to execute such 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 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 in consideration of the Agency's good faith intention to negotiate the Energy Performance Contract with the Company. The Company understands and agrees that payment to it 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.

Article 4: Termination

A. By Company:

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 Agency's receipt of written notification from the Company stating the reason for the termination and all supporting documents. Company shall provide the Facility(s) with any preliminary notes, reports or analysis which have been produced or prepared prior to the effective date of the termination.

B. By Agency:

Agency may terminate this Agreement:

- (i) If the Company fails to complete the Energy Audit and deliver the Report to the Agency within the time established in Article 1, above; or fails to obtain a written extension of that time from the Agency. Termination under this subsection B (i) shall be effective upon Company's receipt of written notification from the Agency that the deadline for submission of the Report has past. Company shall provide the Facility(s) 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 Agency 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 Company's receipt of written notification from the Agency. Company shall provide the Facility(s) with any preliminary notes, reports or analysis which have been produced or prepared prior to the effective date of the termination.

C. By Either Party:

Either Party may terminate this Agreement, when the Party deems it to be in its best interest to do so, by providing the other Party thirty (30) days written notice of its intent to do so. Termination shall be effective thirty (30) days after receipt of the written notice.

Article 5: Standard Terms and Conditions

Section 1. Agreement Term

The Agreement term shall commence on the effective date of the Agreement and end 240 days from effective date, unless earlier terminated pursuant to the provisions of Article 4 hereof. Notwithstanding, Company shall adhere to the deadlines set forth in Article 1 regarding the completion and submittal of the list of ECMs and the Report.

Section 2. Appropriations

Obligations of the Agency shall cease immediately without penalty if in any fiscal year covered by the Agreement term, the Agency fails to appropriate, reappropriate or otherwise make available funds for this Agreement. Agency shall provide written notification to Company of any

impending change in the status of appropriations which may affect this Agreement of which it has notice.

Section 3. Materials, Equipment and Supplies

The Company shall provide or cause to be provided all facilities, materials, equipment and supplies necessary to perform the Energy Audit and prepare the Report.

Section 4. 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:

Company will provide any subcontractors.

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 Agency in writing.

Section 5. 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 6. Release and Indemnity

The Company agrees to assume all risk of loss and to indemnify and hold the Agency, its officers, agents and employees harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys' and witnesses' fees, and expenses incident thereto, for injuries to persons (including death) and for loss of, damage to or destruction of property (including property of the Agency) because of Company's negligent or intentional acts or omissions. In the event that any demand or claim is made or suit is commenced against the Agency, the Agency shall give prompt written notice thereof to Company and Company shall have the right to compromise or defend the same to the extent of its own interest. Company further agrees to maintain adequate insurance to protect the Agency against such risks. Company also agrees to indemnify and hold the Agency harmless should any goods or services provided by Company infringe upon the patent, copyright or trade secret of another. Notwithstanding any provision to the contrary, neither Party shall be liable to the other Party for any special, incidental, consequential, or punitive damages.

Section 7. Dispute Resolution

The Agency and the Company recognize and acknowledge that efforts should always be made to avoid or prevent disputes through effective partnering, good communications, and joint decision making; and that timely requests for clarification and for information will help ensure a better understanding of issues and problems and lead to the elimination of doubts, uncertainties, and ambiguities. Nevertheless, the Agency and the Company also recognize that disputes may develop between them and, in such event, wish to establish procedures to be followed to resolve

such disputes in the shortest possible time and at the least possible expense to the Agency and the Company.

Any conflict or dispute between the Agency and the Company shall be resolved in accordance with the procedures specified in this Agreement, which shall be the sole and exclusive procedures for the resolution of any such disputes. This Agreement establishes successive steps of conflict prevention and alternative dispute resolution prior to litigation, completion of which shall be conditions precedent to the right to commence litigation over any dispute arising out of or relating to the Agreement. The successive steps are: (1) informal negotiations between project-level management personnel; (2) formal negotiations between executive-level management, initiated by written notice and completed within thirty days, or longer as mutually agreed; and (3) mediation, initiated by written notice. Except as otherwise agreed by the Parties in a mediation contract, all mediation proceedings shall be conducted in accordance with this Agreement and, where applicable, the then-current Model Procedure for Mediation of Business Disputes published by the Center for Public Resources (CPR), 366 Madison Avenue New York, NY 10017, (212) 949-6490 (<http://www.cpradr.org>). If the Agency and the Company have not agreed within ten (10) business days of the request for mediation on the selection of a neutral mediator willing to serve, then the Parties agree that a mediator shall be selected by the Florida Conflict Resolution Consortium (FCRC), Florida State University, Tallahassee, (850) 644-6320 (<http://consensus.fsu.edu>). The appointment by FCRC of a qualified mediator shall be binding on both Parties, and both Parties shall promptly cooperate with the appointed mediator to effectuate mediation.

Any action legal or equitable action arising out of or relating to this Agreement shall be brought in the appropriate state court in Pinellas County, Florida, and not elsewhere, and shall be governed by Florida law. The threshold issue for determination shall be whether the Party bringing the action has complied with the alternative dispute resolution processes specified above.

Section 8. Personnel

All Company employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, 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 Agency. The Agency 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 Agency 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 Agency'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 Agency 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 Agency 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 Agency with certification of such insurance upon request. The Company remains responsible for all applicable federal, state, and local taxes, and all FICA contributions.

Section 9. 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 Agency 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 10. Waivers

No right of either party hereto shall be deemed to have been waived by non-exercise thereof, or otherwise, unless such waiver is reduced to writing and executed by the party entitled to exercise such right.

Section 11. Assignment

Neither Party may assign this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld.

Section 12. Capacity to Contract

Each person signing the Agreement warrants that he or she is duly authorized to do so and to bind the respective Party to the Agreement. The Company warrants that it is in good standing and legally authorized to transact business in Florida. The Company warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Company's ability to satisfy its Agreement obligations. The Company warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Company shall immediately notify the Agency in writing if its ability to perform is compromised in any manner during the term of the Agreement.

Section 13. 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 Agency will be governed by the Public Records Act, chapter 119 of the Florida Statutes.

Section 14. Convicted or Discriminatory Vendors

A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted vendor list: submitting a bid on a contract to provide any goods or services to a public entity; submitting a bid on a contract with a public entity for the construction or repair of a public building or public work; submitting bids on leases of real property to a public entity; being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and transacting business with any public entity in excess of the Category Two threshold amount (\$25,000) provided in section 287.017 of the Florida Statutes.

An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes 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, sub-contractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

Section 15. Project Management

All necessary and ordinary communications, submittals, approvals, requests and notices related to Project work shall be issued or received by:

City of Clearwater
1900 Grand Ave. Clearwater, FL 33765
Tel: 727-562-4891
Fax: 727-562-4895
Email: rick.carnley@MyClearwater.com

Honeywell Building Solutions
11214 Cedar Grove St. Windermere, FL 34786
Tel: 407-909-9344
Fax: 407-641-9740
Email: Bueno.Prades@Honeywell.com

Either Party may change its point of contact by written notice to other Party's then-current designated contact, which shall not constitute a formal amendment to this Agreement.

Section 16. Modification of Terms

The Agreement contains all the terms and conditions agreed upon by the Parties. The Agreement may only be modified or amended upon mutual written agreement of the Parties. No oral agreements or representations shall be valid or binding upon the Agency or the Company.

Section 17. Execution in Counterparts

The Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 18. Severability

If a court deems any provision of the Agreement void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable, and all other provisions shall remain in full force and effect.

Article 6: Execution

CITY OF CLEARWATER

By: William B. Horne II
William B. Horne II
City Manager

Approved as to form:

Laura Lipowski
Laura Lipowski
Assistant City Attorney

Attest:

Cynthia E. Goudeau
Cynthia E. Goudeau
City Clerk

March 7, 2007



HONEYWELL BUILDING SOLUTIONS

Witness:

Stewart Zaritsky

Print Name: STEWART ZARITSKY

Buenaventura (Bueno) F. Prades

By: Buenaventura (Bueno) F. Prades

Its: Account Executive

ATTACHMENT "A"

Long Center Recreational Facility
1501 North Belcher Ave.
Clearwater, FL

Clearwater Main Library
100 N. Osceola Ave.
Clearwater, FL