

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council Of Howard County, Maryland

2012 Legislative Session

Legislative Day No. 11

Bill No. 29 -2012

Introduced by: The Chairperson at the request of the County Executive

AN ACT pursuant to Section 612 of the Howard County Charter, approving a second amendment and new equipment schedule to 2009 Energy Performance Contract Master Lease-Purchase Agreement between Howard County, Maryland and Grant Capital Management, Inc., to refinance certain energy saving capital improvements originally financed thereunder.

Introduced and read first time _____, 2012. Ordered posted and hearing scheduled.

By order _____
Stephen M. LeGendre, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2012.

By order _____
Stephen M. LeGendre, Administrator

This Bill was read the third time on _____, 2012 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Stephen M. LeGendre, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ___ day of _____, 2012 at ___ a.m./p.m.

By order _____
Stephen M. LeGendre, Administrator

Approved/Vetoed by the County Executive _____, 2012

Ken Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN ALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment

1 **WHEREAS**, Howard County, Maryland (the “County”) previously determined that
2 energy cost savings could be realized in County facilities and the County desired to install,
3 construct, maintain and manage certain energy conservation measures; and
4

5 **WHEREAS**, by passage of Council Bill No. 15-2009, the County Council approved an
6 agreement by and between the County and Energy Systems Group (“ESG”) whereby ESG
7 designed, constructed and installed equipment from which energy cost savings could be obtained
8 (the “Contract”); and
9

10 **WHEREAS**, by passage of Council Bill No. 16-2009, the County Council approved a
11 2009 Energy Performance Contract Master Lease-Purchase Agreement by and between Grant
12 Capital Management, Inc. (“Grant Capital”) and the County (the “Master Lease”); and
13

14 **WHEREAS**, the purpose of the Master Lease is to finance the purchase of equipment
15 through energy cost savings; and
16

17 **WHEREAS**, Grant Capital assigned all of its rights, title and interests under the Master
18 Lease to Capital One Public Funding, LLC (“Capital One”); and
19

20 **WHEREAS**, the work performed by ESG under the Contract was divided into phases,
21 and second portion (“Phase II”) was fully funded with the adoption of the budget for Fiscal Year
22 2010; and
23

24 **WHEREAS**, the County amended the Master Lease by entering into the First
25 Amendment to 2009 Energy Performance Contract Master Lease-Purchase Agreement (the “First
26 Amendment”) dated August 19, 2009, to include additional financing for equipment included in
27 Phase II; and
28

29 **WHEREAS**, in order to incorporate Phase II into the Master Lease, Equipment Schedule
30 No. 02 was added to the Master Lease; and

1
2 **WHEREAS**, the First Amendment and Equipment Schedule No. 02 required the
3 payment by the County of funds from an appropriation in a later fiscal year and therefore
4 required County Council approval as a multi-year agreement pursuant to Section 612 of the
5 Howard County Charter; and

6
7 **WHEREAS**, by passage of Council Bill No. 37-2009, the County Council approved the
8 First Amendment and Equipment Schedule No. 02 to the Master Lease; and

9
10 **WHEREAS**, the County wishes to refinance the equipment originally financed under the
11 Master Lease, and in order to do so will enter into a Second Amendment to 2009 Energy
12 Performance Contract Master Lease-Purchase Agreement with Grant Capital (the “Second
13 Amendment”), the form of which is attached as Exhibit A; and

14
15 **WHEREAS**, under the amended Master Lease, the County will enter into a new
16 Equipment Schedule No. 03, the proceeds of which will be used to exercise a purchase option
17 under Equipment Schedule No. 1 and Equipment Schedule No. 2 (with respect to which, Capital
18 One will provide the County with a pre-payment acknowledgement letter), and as a result of the
19 County will pay a lower interest rate; and

20
21 **WHEREAS**, Grant Capital will assign all of its rights, title and interests under
22 Equipment Schedule No. 3 to the Master Lease to First Niagara Leasing, Inc. (“First Niagara”).

23
24 **NOW, THEREFORE,**

25
26 *Section 1. Be It Enacted by the County Council of Howard County, Maryland that in*
27 *accordance with Section 612 of the Howard County Charter, it approves the terms of a Second*
28 *Amendment to 2009 Energy Performance Contract Master Lease-Purchase Agreement between*
29 *Howard County and Grant Capital, which shall be in substantially the same form as Exhibit A*
30 *attached to this Act.*

1

2 **Section 2. And Be It Further Enacted** by the County Council of Howard County, Maryland that
3 in accordance with Section 612 of the Howard County Charter, it approves the Equipment
4 Schedule No. 03, which shall be in substantially the same form as Exhibit B attached to this Act.

5

6 **Section 3. And Be It Further Enacted** by the County Council of Howard County, Maryland that
7 the County Executive is hereby authorized to execute and deliver the Second Amendment to 2009
8 Energy Performance Contract Master Lease-Purchase Agreement and Equipment Schedule No.
9 3 for such term in the name of and on behalf of the County.

10

11 **Section 4. And Be It Further Enacted** by the County Council of Howard County, Maryland that
12 this Act shall be effective immediately upon its enactment.

**SECOND AMENDMENT TO 2009 ENERGY PERFORMANCE CONTRACT
MASTER LEASE-PURCHASE AGREEMENT**

This **SECOND AMENDMENT TO 2009 ENERGY PERFORMANCE MASTER LEASE-PURCHASE AGREEMENT** (this “Second Amendment”), dated as of _____, 2012, is made and entered into by and between Grant Capital Management, Inc. (“Lessor”) and Howard County, Maryland (“Lessee”).

WHEREAS, Lessor and Lessee have entered into that certain 2009 Energy Performance Contract Master Lease-Purchase Agreement dated as of April 1, 2009, as amended by the First Amendment to 2009 Energy Performance Contract Master Lease-Purchase Agreement dated as of August 19, 2009 (collectively, the “Master Lease”); and

WHEREAS, Lessor and Lessee have previously entered into Equipment Schedule No. 01, dated as of April 13, 2009 (“Schedule No. 01”) and Equipment Schedule No. 02, dated as of August 19, 2009 (“Schedule No. 02”), under the Master Lease (each of Schedule No. 01 and Schedule No. 02, together with the Master Lease, collectively, the “Leases”) in order to lease and acquire certain energy performance equipment (the “EPC Equipment”); and

WHEREAS, Lessor has previously assigned to Capital One Public Funding, LLC (“Assignee”) all of its right, title and interest in, to and under the Leases; and

WHEREAS, Lessee wishes to refinance the EPC Equipment financed under the Leases; and;

WHEREAS, Lessee will use the proceeds from a new Equipment Schedule No. 03 (that together with the Master Lease is the “Refunding Lease”) to be entered into with Lessor, to exercise its purchase option under the Leases and pay Assignee the Concluding Payments under the Leases (the “Refunding Transaction”); and

WHEREAS, consummation of the Refunding Transaction will result in substantial interest rate saving to Lessee in leasing and acquiring the EPC Equipment; and

WHEREAS, the parties hereto desire to amend the Master Lease in order to allow for the Refunding Transaction.

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

1. The Master Lease is hereby amended by deleting “September 30, 2010” from the first sentence of Section 2(b) and inserting in lieu thereof “October 15, 2012”.
2. The Master Lease, as amended by this Second Amendment, remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed as of the day and year first above written.

GRANT CAPITAL MANAGEMENT, INC.

By: _____
Name: _____
Title: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

WITNESS:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

By: _____
Ken Ulman
County Executive

APPROVED for Form and Legal Sufficiency this
_____ day of _____, 2012:

APPROVED for Sufficiency of Funds this
_____ day of _____, 2012:

Margaret Ann Nolan
County Solicitor

Stanley J. Milesky
Director of Finance

EQUIPMENT SCHEDULE NO. 03
TO
2009 ENERGY PERFORMANCE CONTRACT
MASTER LEASE-PURCHASE AGREEMENT

THIS EQUIPMENT SCHEDULE NO. 03, dated as of _____, 2012, (the "Equipment Schedule"), is executed by and between GRANT CAPITAL MANAGEMENT, INC. ("Lessor"), and HOWARD COUNTY, MARYLAND ("Lessee"),

WITNESSETH:

WHEREAS, Lessor and Lessee have previously entered into that certain 2009 Energy Performance Contract Master Lease-Purchase Agreement dated as of April 1, 2009, as amended by the First Amendment to 2009 Energy Performance Contract Master Lease-Purchase Agreement dated as of August 19, 2009 (collectively, the "Master Lease") (unless otherwise defined herein all terms having a defined meaning in the Master Lease shall have the same meaning when used herein), which Master Lease provides for the execution and delivery of one or more Equipment Schedules for the purpose of identifying the Equipment to be leased and purchased pursuant to the Master Lease and specifying certain terms and conditions applicable to the lease and purchase of such Equipment;

WHEREAS, Lessor and Lessee have previously entered into Equipment Schedule No. 01 to the Master Lease, dated as of April 13, 2009 ("Schedule No. 01") and Equipment Schedule No. 02 to the Master Lease, dated as of August 19, 2009 ("Schedule No. 02," and together with Schedule No. 02 and Master Lease, collectively, the "Leases") under which Lessee leased certain Equipment with an option to purchase (the "EPC Equipment");

WHEREAS, Grant previously assigned the Leases to Capital One Public Funding, LLC ("Capital One");

WHEREAS, Lessee had the option to purchase the EPC Equipment leased under the Leases by making Concluding Payments, will make such Concluding Payments to Capital One and Capital One will provide Lessee with a Concluding Payment acknowledgement letter dated _____, 2012;

WHEREAS, in order to provide Lessee with funds necessary to make the Concluding Payments, Lessor and Lessee desire to enter into a new Equipment Schedule under the Master Lease with respect to the EPC Equipment ("Schedule No. 3," together with the Master Lease being, the "Refunding Lease") the Payment Schedule for which is attached hereto as Exhibit B;

WHEREAS, each of Lessor and Lessee desires to enter into the Refunding Lease on the terms and conditions of the Master Lease and as herein provided; and

NOW, THEREFORE, in consideration of the premises (and such recitals constituting a substantive portion of this Schedule No. 3), Lessor and Lessee hereby agree as follows:

1. EQUIPMENT. The EPC Equipment (described in Exhibit A to Equipment Schedule No. 1 and Exhibit A to Equipment Schedule No. 2) shall be subject to the terms and conditions of the Refunding Lease, and are incorporated herein by reference.

2. LOCATION OF EQUIPMENT. The EPC Equipment shall be kept at the Equipment Location (herein so called) set forth in Exhibit A to Equipment Schedule No. 1 and Exhibit A to Equipment Schedule No. 2 of the Leases and such terms shall be incorporated by reference in this Refunding Lease.

3. LEASE TERM. The Lease Term (herein so called) with respect to the EPC Equipment shall commence on the date of hereof and shall continue for a term ending on October 13, 2023.

4. LEASE PAYMENTS.

(a) Lessee hereby agrees to make the Lease Payments (herein so called) to Lessor in such amounts and at such times as set forth on Exhibit B.

(b) Upon the exercise by Lessee of any option granted under the Master Lease to terminate this Refunding Lease prior to the expiration of the term thereof and hereof, Lessee agrees to pay to Lessor the Concluding Payment as shown on Exhibit B for the lease and purchase of the EPC Equipment.

(c) The principal components of the Lease Payments bear interest at the total interest cost of 2.08% per annum, but in no event shall such interest exceed 3.25%.

5. REPRESENTATIONS AND WARRANTIES. By execution and delivery of this Refunding Lease, Lessee confirms that all representations and warranties contained in the Master Lease are true and correct as of the date hereof. Further, Lessee represents and warrants as of the date hereof that: (i) Lessee reasonably has sufficient appropriations or other funds legally available to pay all Lease Payments and other amounts due hereunder for the fiscal period ending on June 30, 2013; and, (ii) the use of the EPC Equipment by Lessee is essential to the Lessee's proper, efficient, and economic operation and will be used for the purposes set forth on Exhibits C and D of Schedules No. 01 and No. 02.

6. LIMITATIONS ON WARRANTIES. Lessee represents, warrants, acknowledges, and agrees that the Equipment is of a size, design, and capability selected by Lessee; that Lessee is satisfied that the Equipment is suitable for its purpose; that Lessor is neither a manufacturer nor a vendor of the Equipment; and that LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN, OPERATION, FITNESS FOR USE, OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT WHATSOEVER OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE, OR ANY OTHER REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO, AND LESSOR SHALL NOT BE OBLIGATED OR LIABLE FOR ACTUAL, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF OR TO LESSEE OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE EQUIPMENT AND THE MAINTENANCE THEREOF.

7. EQUIPMENT COST. The cost of the EPC Equipment financed hereunder (the Equipment Cost, herein so called) is \$4,822,024.77.

IN WITNESS WHEREOF, Lessee and Lessor have executed this Equipment Schedule as of the date and year first above written.

GRANT CAPITAL MANAGEMENT, INC.

ATTEST:

LESSOR:

By: _____

Name: _____

Title: _____

WITNESS:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

By: _____

Ken Ulman
County Executive

APPROVED for Form and Legal Sufficiency this
_____ day of _____, 2012:

APPROVED for Sufficiency of Funds this
_____ day of _____, 2012:

Margaret Ann Nolan
County Solicitor

Stanley J. Milesky
Director of Finance

EXHIBIT A TO
EQUIPMENT SCHEDULE NO. 03 TO
2009 ENERGY PERFORMANCE CONTRACT MASTER LEASE-PURCHASE AGREEMENT

DESCRIPTION OF EQUIPMENT

[As set forth on Exhibit A to Equipment Schedule No. 01 and Exhibit A to Equipment Schedule No. 2,
which are incorporated by reference herein]

**EXHIBIT B TO
EQUIPMENT SCHEDULE NO. 01 TO
2009 ENERGY PERFORMANCE CONTRACT MASTER LEASE-PURCHASE AGREEMENT**

PAYMENT SCHEDULE

Interest Rate: 2.08%

Payment No.	Payment Date	Lease Payment	Interest Component	Principal Component	Principal Balance	Prepayment Price	Concluding Payment
1	4/13/2013	57,000.00	50,149.06	6,850.94	4,815,173.78	102.00%	4,911,477.26
2	10/13/2013	57,000.00	50,077.81	6,922.19	4,808,251.59	102.00%	4,904,416.62
3	4/13/2014	57,000.00	50,005.82	6,994.18	4,801,257.41	102.00%	4,897,282.56
4	10/13/2014	69,520.67	49,933.08	19,587.59	4,781,669.82	102.00%	4,877,303.22
5	4/13/2015	252,238.51	49,729.37	202,509.14	4,579,160.68	102.00%	4,670,743.89
6	10/13/2015	264,392.81	47,623.27	216,769.54	4,362,391.14	102.00%	4,449,638.96
7	4/13/2016	272,324.67	45,368.87	226,955.80	4,135,435.34	102.00%	4,218,144.05
8	10/13/2016	272,324.67	43,008.53	229,316.14	3,906,119.20	102.00%	3,984,241.58
9	4/13/2017	280,494.47	40,623.64	239,870.83	3,666,248.37	102.00%	3,739,573.34
10	10/13/2017	280,494.47	38,128.98	242,365.49	3,423,882.88	102.00%	3,492,360.54
11	4/13/2018	288,909.55	35,608.38	253,301.17	3,170,581.71	102.00%	3,233,993.34
12	10/13/2018	288,909.55	32,974.05	255,935.50	2,914,646.21	102.00%	2,972,939.13
13	4/13/2019	297,577.26	30,312.32	267,264.94	2,647,381.27	102.00%	2,700,328.90
14	10/13/2019	297,577.26	27,532.77	270,044.49	2,377,336.78	102.00%	2,424,883.52
15	4/13/2020	306,504.39	24,724.30	281,780.09	2,095,556.69	102.00%	2,137,467.82
16	10/13/2020	306,504.39	21,793.79	284,710.60	1,810,846.09	102.00%	1,847,063.01
17	4/13/2021	316,419.72	18,832.80	297,586.92	1,513,259.17	102.00%	1,543,524.35
18	10/13/2021	316,419.72	15,737.90	300,681.82	1,212,577.35	102.00%	1,236,828.90
19	4/13/2022	325,170.06	12,610.80	312,559.26	900,018.09	102.00%	918,018.45
20	10/13/2022	325,170.06	9,360.19	315,809.87	584,208.22	102.00%	595,892.38
21	4/13/2023	301,055.32	6,075.77	294,979.55	289,228.67	102.00%	295,013.24
22	10/13/2023	292,236.62	3,007.95	289,228.67	-		-
TOTALS		\$ 5,525,244.17	\$ 703,219.45	\$ 4,822,024.72			

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

By: _____ (SEAL)
Ken Ulman
County Executive

APPROVED FOR SUFFICIENCY OF FUNDS:

APPROVED as to Form and Legal Sufficiency
this ___ day of _____, 2012:

Stanley J. Milesky, Director
Department of Finance

Margaret Ann Nolan
County Solicitor