

Introduced July 6, 2009
Public Hearing July 20, 2009
Council Action July 30, 2009
Executive Action August 3, 2009
Effective Date August 5, 2009

County Council Of Howard County, Maryland

2009 Legislative Session

Legislative Day No. 8

Bill No. 37 -2009

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

AN ACT pursuant to Section 612 of the Howard County Charter, approving an amendment and equipment schedule to the Master Lease Agreement between Howard County, Maryland and Capital One Public Funding, LLC, Assignee to Grant Capital Management, Inc., to finance additional energy saving capital improvements.

Introduced and read first time July 6, 2009. Ordered posted and hearing scheduled.

By order Stephen M. LeGendre
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 July 20, 2009.

By order Stephen M. LeGendre
Stephen M. LeGendre, Administrator

This Bill was read the third time on July 30, 2009 and Passed ☒ Passed with amendments _____, Failed _____.

By order Stephen M. LeGendre
Stephen M. LeGendre, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 31ST day of July, 2009 at 10:00 a.m./p.m.

By order Stephen M. LeGendre
Stephen M. LeGendre, Administrator

Approved/Vetoed by the County Executive August 3, 2009

Karl Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL 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") has determined where energy
2 cost savings may be realized in County facilities and the County desires to install, construct,
3 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") where ESG will
7 perform the design, construction and installation of equipment that will result in energy cost
8 savings; 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 the
12 County and Grant Capital Management (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 Management has assigned all of its rights, title and interests
18 under the Master Lease to Capital One Public Funding, LLC; and
19

20 **WHEREAS**, the work to be performed by ESG has been divided into phases and Phase II
21 was fully funded with the adoption of the budget for Fiscal Year 2010; and
22

23 **WHEREAS**, the County wishes to amend the Master Lease by entering into the First
24 Amendment to 2009 Energy Performance Contract Master Lease-Purchase Agreement (the "First
25 Amendment"), the form of which is attached as Exhibit A, to include additional financing for
26 equipment purchased for Phase II; and
27

28 **WHEREAS**, in order to incorporate Phase II into the Master Lease, Equipment Schedule
29 No. 02, the form of which is attached as Exhibit B, needs to be added to the Master Lease; and

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

7
8 **NOW, THEREFORE,**

9
10 *Section 1. Be It Enacted by the County Council of Howard County, Maryland that in*
11 *accordance with Section 612 of the Howard County Charter, it approves the terms of a First*
12 *Amendment to 2009 Energy Performance Contract Master Lease-Purchase Agreement between*
13 *Howard County and Capital One Public Funding, LLC, which shall be in substantially the same*
14 *form as Exhibit A attached to this Act.*

15
16 *Section 2. And Be It Further Enacted by the County Council of Howard County, Maryland that*
17 *in accordance with Section 612 of the Howard County Charter, it approves the Equipment*
18 *Schedule No. 02, which shall be in substantially the same form as Exhibit B attached to this Act.*

19
20 *Section 3. And Be It Further Enacted by the County Council of Howard County, Maryland that*
21 *the County Executive is hereby authorized to execute and deliver the Agreement for such term in*
22 *the name of and on behalf of the County.*

23
24 *Section 4. And Be It Further Enacted by the County Council of Howard County, Maryland that*
25 *this Act shall be effective immediately upon its enactment.*

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

This **FIRST AMENDMENT TO 2009 ENERGY PERFORMANCE MASTER LEASE-PURCHASE AGREEMENT** (the "First Amendment"), dated as of July __, 2009, is made and entered into by and between Capital One Public Funding, LLC ("Lessor") and Howard County, Maryland ("Lessee").

WHEREAS, Grant Capital Management, Inc. ("Grant") and Lessee have entered into that certain 2009 Energy Performance Contract Master Lease-Purchase Agreement dated as of April 1, 2009 (the "Master Lease"); and

WHEREAS, Grant has previously assigned to Lessor all of its right, title and interest in, to and under the Master Lease; and

WHEREAS, the parties hereto desire to amend the Master Lease in order to increase the principal amount of Equipment (as defined in the Master Lease) that may be lease-financed thereunder; and

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 the dollar figure "\$4,300,000" in the first sentence of Section 2(b) thereof and inserting in lieu thereof the dollar figure "\$5,300,000."

2. The Master Lease, as amended by this First Amendment, remains in full force and effect.

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

CAPITAL ONE PUBLIC FUNDING, LLC

By: _____
Name: _____
Title: _____

WITNESS:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

By: _____
Ken Ulman
County Executive

APPROVED For Legal Sufficiency this
____ day of July, 2009.

APPROVED for Sufficiency of Funds this
____ day of July, 2009.

Margaret Ann Nolan
County Solicitor

Sharon Griesz
Director of Finance

EQUIPMENT SCHEDULE NO. 02
TO
2009 ENERGY PERFORMANCE CONTRACT
MASTER LEASE-PURCHASE AGREEMENT

THIS EQUIPMENT SCHEDULE NO. 02, dated as of July __, 2009 (the "Equipment Schedule"), is executed by and between CAPITAL ONE PUBLIC FUNDING, LLC ("Lessor"), as assignee of Grant Capital Management, Inc. ("Grant"), and HOWARD COUNTY, MARYLAND ("Lessee"),

WITNESSETH:

WHEREAS, Grant and Lessee have previously entered into that certain 2009 Energy Performance Contract Master Lease-Purchase Agreement dated as of April 1, 2009 (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, Grant and Lessee have previously entered into Equipment Schedule No. 01, dated as of April 13, 2009 ("Schedule No. 01"), under the Master Lease;

WHEREAS, Grant has previously assigned to Lessor all of its right, title and interest in, to and under the Master Lease, Schedule No. 01 and the Equipment described in Schedule No. 01; and

WHEREAS, Lessor desires to lease with an option to purchase to Lessee, and Lessee desires to lease with an option to purchase from Lessor, the items of Equipment herein described on the terms and conditions of the Master Lease and as herein provided.

NOW, THEREFORE, in consideration of the premises, Lessor and Lessee hereby agree as follows:

1. **EQUIPMENT.** The items of Equipment described in Exhibit A shall be subject to the terms and conditions of the Master Lease and this Equipment Schedule (collectively, this "Lease").

2. **LOCATION OF EQUIPMENT.** The Equipment shall be kept at the Equipment Location (herein so called) set forth on Exhibit A.

3. **LEASE TERM.** The Lease Term (herein so called) with respect to the Equipment described herein shall commence on the date of hereof and shall continue for a term ending on _____, 20__.

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 Lease prior to the expiration of the term thereof and hereof, Lessee agrees to pay to Lessor the applicable principal balances as shown on Exhibit B for the lease and purchase of the Equipment.

(c) Should Lessee elect its option to prepay this Lease prior to the expiration of the term hereof on any lease payment date, it shall provide Lessor at least fifteen (15) days' prior written notice of such election. Lessee's exercise of this purchase option shall be at the following percentage of the principal balance then

outstanding after deduction of the Lease Payment made on the date of prepayment (the principal balance plus prepayment amount derived from the applicable percentage that follows is reflected in Exhibit B as the "Concluding Payment"):

Prepayment Date

Percentage

During Term of Lease

See Payment Schedule

(d) In the event of a termination or nonrenewal of the Lease Term pursuant to Section 5 or Section 20 of the Master Lease, moneys remaining in any Escrow Account established hereunder or recovered by Lessor through its exercise of remedies shall be applied first to the payment of all obligations of Lessee then due and owing hereunder, and then to the payment of the principal balance or Concluding Payment amount as set forth in Exhibit B applicable at the time of such termination or nonrenewal.

(e) The principal components of the Lease Payments bear interest at the total interest cost of 5.5% per annum but in no event shall such interest exceed 6.25%.

5. REPRESENTATIONS AND WARRANTIES. By execution and delivery of this Equipment Schedule, 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, 2010; and, (ii) the use of the 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.

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 improvements and Equipment described on Exhibit A shall not exceed \$1,095,227 of which the Equipment Cost (herein so called) of \$1,095,227 is financed hereunder.

8. COVENANTS, DELIVERY, AND ACCEPTANCE. (a) Lessee agrees to use its best efforts to, and as of the date hereof, reasonably expects to acquire the Equipment on or before July 13, 2010.

(b) Lessee will cause the Equipment to be delivered at the Equipment Location. Lessee will pay all transportation and other costs, if any, incurred in connection with the delivery of the Equipment. Lessee will accept the Equipment as soon as it has been delivered and is operational, or in the event that the manufacturer or vendor allows a pre-acceptance test period, as soon as the test period has expired.

9. FINAL ACCEPTANCE. Immediately following acceptance, Lessee will execute and deliver to Lessor an Acceptance Certificate and an Equipment Use Certificate as set forth in Exhibits C and D, respectively.

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

ATTEST:

**CAPITAL ONE PUBLIC FUNDING, LLC,
LESSOR:**

By: _____
Name: _____
Title: _____

WITNESS:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

By: _____
Ken Ulman
County Executive

APPROVED For Legal Sufficiency this
____ day of July, 2009.

APPROVED for Sufficiency of Funds this
____ day of July, 2009.

Margaret Ann Nolan
County Solicitor

Sharon Griesz
Director of Finance

**EXHIBIT A TO
EQUIPMENT SCHEDULE NO. 02 TO
2009 ENERGY PERFORMANCE CONTRACT MASTER LEASE-PURCHASE AGREEMENT**

DESCRIPTION OF EQUIPMENT

**HOWARD COUNTY
PHASE II**

Green Initiatives II \$ 140,769
Provide Green Roof II \$ 49,009
Solar Thermal & PV Applications II \$ 43,181
Daylight Harvesting II \$ 48,579
Cooling System Upgrades II \$ 755,543
Chiller replace/repair II \$ 645,431
Condenser Water Temperature Relief - NR II \$ -
Cooling Tower VSD Drives II \$ 57,416
Chilled Water valves II \$ 28,212
Chilled water pump VSD II \$ 24,484
Heat Recovery Chiller installation - NR II \$ -
Upgrade Building Envelope II \$148,800
Subtotal \$ 1,043,111
ESG PM CM Admin Costs \$43,592
Design and Engineering \$0
Phase I Study Cost \$0
Payment and Performance Bond \$8,524

TOTAL ESG COST \$ 1,095,227

**EXHIBIT B TO
EQUIPMENT SCHEDULE NO. 02 TO
2009 ENERGY PERFORMANCE CONTRACT MASTER LEASE-PURCHASE AGREEMENT**

PAYMENT SCHEDULE

| Interest Rate: | | 5.50% | | | | | |
|----------------|--------------|-----------------------|--------------------|---------------------|-------------------|-----------------------|--------------------|
| Payment No. | Payment Date | Lease Payment | Interest Component | Principal Component | Principal Balance | Prepayment Price | Concluding Payment |
| 1 | 04/13/10 | 49,567.97 | 41,329.61 | 8,238.36 | 1,086,988.64 | 105.50% | 1,146,773.02 |
| 2 | 10/13/10 | 49,567.97 | 29,892.19 | 19,675.78 | 1,067,312.86 | 105.25% | 1,123,346.79 |
| 3 | 04/13/11 | 51,054.96 | 29,351.10 | 21,703.86 | 1,045,609.00 | 105.00% | 1,097,889.45 |
| 4 | 10/13/11 | 51,054.96 | 28,754.24 | 22,300.72 | 1,023,308.28 | 104.75% | 1,071,915.42 |
| 5 | 04/13/12 | 52,588.98 | 28,140.98 | 24,448.00 | 998,860.28 | 104.50% | 1,043,808.99 |
| 6 | 10/13/12 | 52,588.98 | 27,468.66 | 25,120.32 | 973,739.96 | 104.25% | 1,015,123.91 |
| 7 | 04/13/13 | 54,164.18 | 26,777.85 | 27,386.33 | 946,353.63 | 104.00% | 984,207.78 |
| 8 | 10/13/13 | 54,164.18 | 26,024.72 | 28,139.46 | 918,214.17 | 103.75% | 952,647.20 |
| 9 | 04/13/14 | 55,789.54 | 25,250.89 | 30,538.65 | 887,675.52 | 103.50% | 918,744.16 |
| 10 | 10/13/14 | 55,789.54 | 24,411.08 | 31,378.46 | 856,297.06 | 103.25% | 884,126.71 |
| 11 | 04/13/15 | 57,462.81 | 23,548.17 | 33,914.64 | 822,382.42 | 103.00% | 847,053.89 |
| 12 | 10/13/15 | 57,462.81 | 22,615.52 | 34,847.29 | 787,535.13 | 102.75% | 809,192.35 |
| 13 | 04/13/16 | 59,186.67 | 21,657.22 | 37,529.45 | 750,005.68 | 102.50% | 768,755.82 |
| 14 | 10/13/16 | 59,186.67 | 20,625.16 | 38,561.51 | 711,444.17 | 102.25% | 727,451.66 |
| 15 | 04/13/17 | 60,962.47 | 19,564.72 | 41,397.75 | 670,046.42 | 102.00% | 683,447.35 |
| 16 | 10/13/17 | 60,962.47 | 18,426.28 | 42,536.19 | 627,510.23 | 101.75% | 638,491.66 |
| 17 | 04/13/18 | 62,791.55 | 17,256.53 | 45,535.02 | 581,975.21 | 101.50% | 590,704.84 |
| 18 | 10/13/18 | 62,791.55 | 16,004.32 | 46,787.23 | 535,187.98 | 101.25% | 541,877.83 |
| 19 | 04/13/19 | 64,675.26 | 14,717.67 | 49,957.59 | 485,230.39 | 101.00% | 490,082.69 |
| 20 | 10/13/19 | 64,675.26 | 13,343.83 | 51,331.43 | 433,898.96 | 100.75% | 437,153.20 |
| 21 | 04/13/20 | 66,615.39 | 11,932.22 | 54,683.17 | 379,215.79 | 100.50% | 381,111.87 |
| 22 | 10/13/20 | 66,615.39 | 10,428.43 | 56,186.96 | 323,028.83 | 100.25% | 323,836.40 |
| 23 | 04/13/21 | 68,613.72 | 8,883.29 | 59,730.43 | 263,298.40 | 100.00% | 263,298.40 |
| 24 | 10/13/21 | 68,613.72 | 7,240.70 | 61,373.02 | 201,925.38 | 100.00% | 201,925.38 |
| 25 | 04/13/22 | 70,672.06 | 5,552.95 | 65,119.11 | 136,806.27 | 100.00% | 136,806.27 |
| 26 | 10/13/22 | 70,672.06 | 3,762.17 | 66,909.89 | 69,896.38 | 100.00% | 69,896.38 |
| 27 | 04/13/23 | 36,396.32 | 1,922.15 | 34,474.17 | 35,422.21 | 100.00% | 35,422.21 |
| 28 | 10/13/23 | 36,396.32 | 974.11 | | 35,422.21 | 0.00 | - |
| TOTALS | | \$1,621,083.76 | | \$525,856.76 | | \$1,095,227.00 | |

SIGNATURE PAGE FOLLOWS

**EXHIBIT C TO
EQUIPMENT SCHEDULE NO. 02 TO
2009 ENERGY PERFORMANCE CONTRACT MASTER LEASE-PURCHASE AGREEMENT**

ACCEPTANCE CERTIFICATE

In accordance with the terms of the Equipment Schedule, Lessee hereby certifies and represents to, and agrees with, Lessor as follows:

A. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the work reflected on the attached invoice effective the date hereof.

B. The Equipment described in Exhibit A is essential to the proper, efficient, and economic operations of the Lessee. The Equipment will be used by Lessee for the purpose of performing one or more of Lessee's governmental functions consistent with the permissible scope of Lessee's authority.

HOWARD COUNTY, MARYLAND

By: _____
Name: _____
Title: _____
Phone: _____
Date: _____

**EXHIBIT D TO
EQUIPMENT SCHEDULE NO. 02 TO
2009 ENERGY PERFORMANCE CONTRACT MASTER LEASE-PURCHASE AGREEMENT**

EQUIPMENT USE CERTIFICATE

1. Will all proceeds of this financing of the County's Equipment be used to make payment to the vendor(s) of that Equipment?

Yes _____ No _____

If your answer to Question 1 is "no", please complete parts (a) and (b); if your answer to Question 1 is "yes", please complete part (c) and then go to Question 2.

1.(a) What is the amount of proceeds of this financing that will not be used to make payment to the Equipment vendor(s)? \$ _____

1.(b) What is the intended use of financing proceeds that will not be paid to the Equipment vendor(s)? _____

(Total amount must equal amount identified in response to Question 1(a)).

1.(c) Please describe in reasonable detail the nature of the facilities of the County where the Equipment will be installed or located and the type of activities and programs that will be conducted in such facilities (attach a separate sheet if necessary): _____

2. Will any item(s) of Equipment to be financed or any of the facilities in which the Equipment will be installed or located be used by any person or organization other than the County? (For purposes of this question, property should be considered "used by any person or organization" if such person or organization owns, leases, occupies, manages, or in any other way uses or receives benefits from the Equipment).

Yes _____ No _____

If your answer to Question 2 is "yes", please complete parts (a) through (f); if your answer to Question 2 is "no", please go to Question 3.

2.(a) Please indicate the items(s) of Equipment (and cost thereof) and the facilities in which the Equipment will be located that will be used by any person or organization other than the County: _____

2.(b) Please describe the use: _____

2.(c) Will the person or organization use the item(s) of Equipment or such facilities on an equal basis with the general public? (For purposes of this question, "general public" would include the County's clients,

students, and other similar user classes that are granted use of the Equipment on a nondiscriminatory basis such as first-come-first-served, lottery, etc.)

Yes _____ No _____

2.(d) If "yes" to Question 2.(c), please describe:

(i) The user class: _____

(ii) The basis for user selection: _____

2.(e) Will there be any direct or indirect payments by any person or organization (other than the County) back to the County, any of its agencies, or any other governmental unit with respect to the use of any item(s) of Equipment to be financed? (Direct or indirect payments may take the form of loan repayments, rental payments for the use of the Equipment, commissions, profit sharing, etc.).

Yes _____ No _____

2.(f) If yes to Question 2.(e), please describe the payments: _____

3. Will any proceeds of this financing be used to provide temporary financing in anticipation of the receipt of other moneys (for example, a federal grant) that are expected to be received for the lease or purchase of item(s) of Equipment to be financed by this financing?

Yes _____ No _____

3.(a) If yes to Question 3., please describe the other funds that are anticipated, including the expected amount and date of their receipt: _____

4. Will any of the proceeds of this Equipment financing be used to pay the principal of, or interest on, any prior issue of governmental obligations such as bonds, equipment leases, installment sales agreements, or the like?

Yes _____ No _____

4. (a) If yes to Question 4, please describe the prior issue(s) governmental obligations: _____

I HEREBY CERTIFY that I am responsible for approving or authorizing payments for the items to be financed by this Equipment Schedule.

HOWARD COUNTY, MARYLAND

By: _____

Name: _____

Title: _____

Phone: _____

Date: July __, 2009

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on August 3, 2009.

Stephen M. LeGendre
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on _____, 2009.

Stephen M. LeGendre
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on _____, 2009.

Stephen M. LeGendre
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on _____, 2009.

Stephen M. LeGendre
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on _____, 2009.

Stephen M. LeGendre
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on _____, 2009.

Stephen M. LeGendre
Stephen M. LeGendre, Administrator to the County Council