

CORPORATE GUARANTY AGREEMENT

THIS CORPORATE GUARANTY AGREEMENT is made as of [_____], 2014 (the “Guaranty Date”), between Consolidated Edison Solutions, Inc., a corporation organized and existing under the laws of the State of New York (together with any permitted successors and assigns hereunder, the “Guarantor”), and the City of Fort Pierce, Florida, a municipal corporation organized and existing under the laws of the State of Florida (the “Beneficiary”).

RECITALS

WHEREAS, the Beneficiary and BGA, Inc., a corporation organized and existing under the laws of the State of Florida (together with any permitted successors and assigns hereunder, the “Obligor”), have entered into the Guaranteed Energy and Water Performance Savings Contract (the “Contract”) dated of even date herewith, to design, install, and monitor large-scale comprehensive energy- and water-conservation programs at certain Beneficiary-owned facilities (the “Project”);

WHEREAS, the Obligor has been duly qualified by the Florida Department of Management Services to conduct the Project; and

WHEREAS, the Beneficiary will enter into the Contract only if the Guarantor guarantees the payment by the Obligor of all of amounts payable under the Contract as set forth in this guaranty agreement (the “Guaranty”).

NOW, THEREFORE, this Guaranty is given and delivered by the Guarantor, to the Beneficiary with regard to the Obligor’s payment obligations under the Contract in connection with the above-referenced Project. Unless otherwise defined in this Guaranty, all capitalized terms shall have the meaning set forth above or in the Contract.

In consideration of the mutual promises by and between the Parties contained herein, and other good and valuable consideration, receipt of which is acknowledged, Guarantor agrees as follows:

1. The Guarantor hereby represents and warrants that:

(a) The Guarantor is duly organized and validly existing as a corporation under the laws of the State of New York, with full legal right, power and authority to enter into and perform its obligations under this Guaranty, and is qualified to do business in the State of Florida.

(b) The Guarantor has duly authorized the execution and delivery of this Guaranty, and this Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium or by general equity principals of reorganization and other similar laws affecting creditors’ rights generally.

(c) Neither the execution nor delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations hereunder (a) to the Guarantor's knowledge as of the Guaranty Date conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor, or (b) conflicts with, violates or results in a material breach of any term or condition of the Guarantor's organizational documents or any judgment, decree, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or (c) to the Guarantor's knowledge as of the Guaranty Date, will result in the creation or imposition of any encumbrance upon any of the assets of the Guarantor except as permitted hereby or by the Contract to be entered into concurrently by the Beneficiary in connection therewith.

(d) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required of the Guarantor for the valid execution and delivery by the Guarantor of this Guaranty, except such as shall have been duly obtained or made.

(e) There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the Guarantor's knowledge as of the Contract Date, threatened against the Guarantor which has a likelihood of an unfavorable decision, ruling or finding that would materially and adversely affect the validity or enforceability of this Guaranty. Moreover, to the Guarantor's knowledge as of the Contract Date, there are no material and adverse claims or demands based in environmental tort law, or based on breach of contract, pending or threatened against the Guarantor or Obligor with respect to any energy and water performance services to the general public designed, constructed, maintained and monitored by the Guarantor or Obligor, which has a likelihood of an unfavorable decision, ruling or finding that would materially and adversely affect the validity or enforceability of this Guaranty.

(f) The Guarantor has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty.

(g) To its knowledge, the Guarantor is not in material violation of any law, order, rule or regulation applicable to any publicly owned or operated infrastructure or utility providing services to the general public designed and constructed by the Guarantor the violation of which may subject it to any significant regulatory enforcement action.

(h) The Guarantor has reviewed and is fully aware of the terms and conditions of the Contract.

(i) This Guaranty is made by the Guarantor of the payment obligations, terms, provisions, conditions, covenants and agreements associated with the Savings Guaranty of the Obligor pursuant to the Contract (the "Obligations").

2. The Guarantor, for itself and its legal successors and assigns, subject to the terms hereof, hereby absolutely, irrevocably and unconditionally guarantees to the Beneficiary and each of its respective legal successors and assigns, if any, the full, prompt and faithful payment

of the Obligations on the part of the Obligor as provided for in the Contract as those obligations are more particularly described in Schedule C, Savings Guaranty, to the Contract. .

3. If at any time default is made by the Obligor in the payment or performance of any of the Obligations the Guarantor will pay the savings shortfall due the Beneficiary under Section 5.3(b) of the Contract. If application is made to the Guarantor for payment of such amount under the terms of this Guaranty Agreement, and Guarantor fails or refuses to make payment, then the Beneficiary shall be entitled to its costs including but not limited to attorneys' fees, costs, expenses, personnel expenses and costs of collection, that may be payable as a consequence of the non-performance of the Guarantor of its Obligations under this Guaranty Agreement.

4. It shall be an Event of Default upon which the Beneficiary may terminate the Contract in accordance with Section 7.3 of the Contract if any representation or warranty of the Guarantor under this Guaranty was false or inaccurate in any material respect when made, and the legality of this Guaranty or the ability of the Guarantor to carry out its obligations hereunder is thereby adversely affected. The failure of the Guarantor to perform any of the following also shall constitute an Event of Default, upon the occurrence of which the Beneficiary may terminate the Contract without any requirement of having given notice previously or of providing any further cure opportunity as otherwise may be required by the Contract:

- (a) the failure to pay or perform any Obligation under this Guaranty in a timely manner;
- (b) the material untruth of any representation or warranty made by the Guarantor in this Guaranty;
- (c) the insolvency of the Guarantor as determined under the Bankruptcy Code;
- (d) the filing by the Guarantor of a petition of voluntary bankruptcy under the Bankruptcy Code;
- (e) the consenting of the Guarantor to the filing or bankruptcy or reorganization petition against the Guarantor under the Bankruptcy Code;
- (f) the issuance of an order by a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Guarantor or of a major part of the Guarantor's assets;
- (g) the filing against the Guarantor of a petition to reorganize the Guarantor pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within ninety (90) days after such filing; and
- (h) the failure of the Guarantor to provide for, and maintain, this Guaranty.

5. The Guarantor covenants and agrees with the Beneficiary and its respective legal successors and assigns that: (i) waiver by the Beneficiary or any of its agents of any Obligations; (ii) any modification of the Contract; (iii) Beneficiary's assignment of the Contract; and/or (iv) the granting of indulgence or extensions of time or other similar consent or

waiver to the Obligor (or any other Party to the Contract or any agreement entered into in connection therewith), or their respective legal successors and assigns, may each be made and done without notice to the Guarantor and without in any way affecting, changing or releasing the Guarantor from its obligation given under this Guaranty, and such indulgence, consents, waivers and extensions of time may be granted, such waiver and consents may be given, and such modifications and assignments may be made without notice to or consent of the Guarantor or without impairing or diminishing the obligations of the Guaranty hereby given, provided the granting, waiver consent or assignment of such obligation shall not materially affect the liability or obligations of the Guarantor under the terms of this agreement.

6. In the event any action is taken up to and including litigation concerning this Guaranty, the Obligor shall not be entitled to recover its attorneys' fees and costs of such action and the enforcement and collection of any judgment from the Beneficiary.

7. This Guaranty shall be governed by and construed in accordance with the laws of the State of Florida and may be enforced by any federal or state court of competent jurisdiction within the State of Florida consistent with Article 13 hereof.

8. This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until the expiration of the Savings Guaranty of the Obligor pursuant to the Contract and until the Obligor has made full and final payment of any shortfalls otherwise due under the Contract.

9. In this Guaranty, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "herein," "hereunder" and any similar terms refer to this Guaranty, and the term "hereafter" means after, and the term "heretofore" means before, the date of execution and delivery of this Guaranty.

(b) Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(d) This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the Beneficiary and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

(e) This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

(f) If any clause, provision, or subsection of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provisions, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall

be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor's liability beyond that expressly set forth herein.

(g) All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

10. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it unless the successor is the Guarantor and the conditions in clause (2) below are satisfied; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets relating to the Energy Services business if the successor entity (if other than the Guarantor) (a) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State of Florida, and (b) delivers to the Beneficiary an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws. If a consolidation, merger or sale or other transfer is made as permitted by this paragraph, the provisions of this paragraph shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this paragraph. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless the successor entity has assumed responsibility for this Guaranty as provided in this paragraph and the City has expressly approved in writing both the transfer of responsibility for the Guaranty to the new entity after a period of due diligence and has released the initial Guarantor.

11. Without the prior written consent of the Beneficiary, this Guaranty may not be assigned by the Guarantor, except pursuant to the preceding section if applicable.

12. The Guarantor irrevocably: (1) agrees that any suit, action or other legal proceeding arising out of this Guaranty shall be brought in any federal or state courts within the State of Florida; (2) consents to the jurisdiction of such court in any such suit, action or proceeding; (3) waives any objection which it may have to the laying of the jurisdiction or venue of any such suit, action or proceeding in any of such courts; and (4) waives its right to a trial by jury in any suit, action or proceeding in any of such courts.

13. This Guaranty shall constitute a guaranty of payment and not collection, and the Guarantor specifically agrees that in the event of a failure by the Obligor to tender to the Beneficiary payment of any Obligations due under the Contract, the Beneficiary shall have the right to proceed first and directly against the Guarantor under this Guaranty without proceeding against the Obligor or exhausting any other remedies against the Obligor which the Beneficiary may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the Beneficiary (1) files suit or proceed to obtain a judgment against the Obligor or any other person that might be liable for any part of the Obligations, (2)

make any other effort to obtain payment of the Obligations from the Obligor other than providing the Obligor with any notice of such payment as may be required by the terms of the Contract or required to be given to the Obligor under Applicable Law, (3) foreclose against or seek to realize upon any security for the Obligations, or (4) exercise any other right or remedy to which the Beneficiary is or may be entitled in connection with the Obligations or any security therefor or any other guaranty thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Obligor or to the enforcement of remedies under the Contract. Upon any unexcused failure by the Obligor in the payment of any Obligation and the giving of such notice or demand, if any, to the Obligor and Guarantor as may be required in connection with such Obligation and this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid. Notwithstanding the Beneficiary's right to proceed directly against the Guarantor, the Beneficiary (or any successor) shall not be entitled to more than a single full payment of the Obligations in regard to any breach or non-payment.

14. Guarantor agrees that the indemnification obligation of Section 9 of the Contract applies to employees of the Guarantor.

15. The Guarantor shall furnish the Beneficiary, within sixty (60) days of the Guarantor's receipt of a request from Beneficiary with copies of the quarterly or annual financial statements of the Guarantor, including balance sheets and income statements, prepared by a certified public accountant in accordance with Generally Accepted Accounting Principles ("GAAP"). If applicable, the Guarantor shall also furnish the Beneficiary with copies of the quarterly and annual reports and other filings of the Guarantor's parent company, Consolidated Edison, Inc., filed with the Securities and Exchange Commission, which include the consolidated financials of the Guarantor.

16. This Guaranty shall inure to the benefit of the Beneficiary and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

17. In the event the Contract is duly assigned in accordance with Section 16 of the Contract, the Guarantor shall not be relieved of any of its obligations hereunder, except in accordance with the provisions of Section 10 of this Guaranty.

18. This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of the Beneficiary and of the Guarantor. The Guarantor shall provide, prior to execution of the Guaranty Agreement, a certified copy of a Secretary's Certificate or vote of the Corporation, reasonably satisfactory to the City, confirming the authorization of the Guarantor's President to execute this Guaranty.

19. Any notices or communications required or permitted hereunder shall be in writing and shall be sufficiently given if sent postage prepaid by registered or certified mail, delivered in person, or sent by overnight courier to the following addresses, or to such other addresses as any of the recipients may from time to time designate by notice given in writing.

If to the Guarantor: Consolidated Edison Solutions, Inc.
100 Summit Lake Drive
Suite 410

Valhalla, New York 10595
Attention: General Counsel

If to the Beneficiary: City Attorney
City of Fort Pierce, Florida
100 N. U.S. 1
Fort Pierce, Florida 34950

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IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed by its duly authorized officials effective on the Guaranty Date.

CONSOLIDATED EDISON SOLUTIONS,
INC., as Guarantor

By: _____
Name:
Title:

ATTEST:

By: _____
Name:
Title: