

# Energy Savings Contract

This energy savings contract is entered into between the School Board of Sarasota County, Florida (the "School Board" or "District") and Cenergistic LLC ("Cenergistic") on this \_\_\_\_ day of November, 2021. The District and Cenergistic shall be collectively referred to as the "Parties" each being a "Party." This contract is subject to all applicable state and federal laws.

WHEREAS, the District published RFP No. 22-0323 for an energy savings program (the "RFP"); and

WHEREAS, Cenergistic timely submitted a response to the RFP through which Cenergistic has offered to build and provide a customized energy conservation program that is focused on organizational and behavioral change that, if substantially implemented, is intended to assist the District with its goal to save a net sum in excess of \$5,000,000 over the next five years; and

WHEREAS, the District wishes to enter into a contract with Cenergistic to develop and implement an energy savings program that will help the District pursue its goals as stated in the RFP.

NOW THEREFORE, based on the exchange of promises set forth herein and other good and valuable consideration, the Parties agree as follows:

1. Program. On \_\_\_\_\_ ("Start Date") Cenergistic shall begin its work on this contract to provide the District with a people-driven energy management program that is customized to enable the District to reduce consumption of energy ("Program"). The Program includes, but is not limited to, the following services:

- Hiring an energy specialist who will serve on site to lead and manage implementation of the Program
- Providing recommendations as to actions the District should take based on on-site assessments of facilities and utility records
- Identifying opportunities and working with District personnel to execute implementation strategies to modify behavior linked to energy consumption
- Gathering and entering data to account for non-program variances
- Creating operational/strategic plans and operating/use schedules for District facilities
- Estimating building savings potential for all District facilities
- Auditing District facilities to ensure compliance with conservation plan and schedules
- Providing audit feedback to the District on savings opportunities
- Providing updates to the District's Board
- Assisting with the engagement of effective media coverage, including national, local, and on-campus media outlets at critical junctures
- Providing monthly savings reports to the District

2. Energy Consultants. A Cenergistic team of energy consultants shall deliver the Program to the District as follows:

- Through Cenergistic's on-site and ongoing assessments of the District's facilities and

based on Cenergistic's experience in having assessed thousands of client facilities, Cenergistic's energy consultants shall deliver hundreds of recommendations that are specific to the District's environment.

- Cenergistic's energy consultants shall guide and assist the District's Program implementation following Cenergistic's proven methodology, the Cenergistic energy management program.

3. Energy Specialist. (a) Onsite Assignment. Program implementation requires a daily focused effort in the District's facilities and areas. One or more Cenergistic employed energy specialists ("energy specialist"), and the use of technology will be used to assist the District with making conservation a priority while positively engaging people to conserve energy. Cenergistic will adequately staff the Program for optimal success through a combination of an energy specialist, onsite engineer and energy expert visits, use of monitoring technology and remote support through our EMS and engineering group in Dallas. Cenergistic shall take immediate actions to identify and employ the energy specialist for the District. The salary or contract expense for the energy specialist will be paid by Cenergistic. The District Human Resources Department will participate in the Welcome Call to be conducted at a mutually agreeable time following the signing of this contract and will assist and cooperate with Cenergistic in making information concerning employment information and options as an energy specialist available to District employees. The District Human Resources Department will also assist with internally publicizing, posting, distributing information and coordinating Job Information Sessions and interviews by Cenergistic for a prospective energy specialist. In the event the Program is suspended for reasons set out in paragraphs 7(a) or 8(a) below, the District shall reimburse Cenergistic for the compensation of the energy specialist during the period of Program suspension. Cenergistic will not assign an energy specialist to the District that is unacceptable to the District (which acceptance shall not be unreasonably withheld).

(b) Duties. The primary duties of the energy specialist will be to spend time in the District's facilities to identify savings opportunities and to work closely with the District's people to execute proven implementation strategies to change behavior linked to energy consumption. The effective management of energy information is also important for achieving positive results through accountability. For this the energy specialist will work to maintain energy consumption and other information related to energy use in the District's facilities and areas utilizing an energy accounting software ("Energy Accounting Software").

(c) Local Resources. Within 30 days after the Start Date, the District will provide Cenergistic personnel with office space, an office phone, internet access, email address, on-campus parking, building keys and alarm codes. Use of these resources is subject at all times to District policies and procedures. If requested due to safety or security concerns, the District will provide a commissioned security officer to accompany the energy specialist while performing facilities assessments outside of normal business hours.

4. Program Implementation. (a) Prompt Start. Upon the Start Date, the District will promptly begin and then continue to implement the Program.

(b) Commitment and Communication. In Cenergistic's experience, the success of the District's Program implementation will be a function of the demonstrated commitment of the school board, superintendent and other administrators, e.g. through timely communication of high level support for the Program. More specifically, no later than 60 days after the Start Date, the school board must adopt an appropriate policy and, no later than 30 days after the Start Date, the administration must adopt appropriate administrative guidelines reflecting the District's commitment to the Program. Notwithstanding the foregoing, the District has shared its' existing Board policy with respect to energy

conservation to Cenergistic, and Cenergistic agrees that such policy meets the requirements of this paragraph. Further, Cenergistic shall provide templates and collaborate with the District in drafting the guidelines; however, the contents of the guidelines are at the discretion of the District. The District shall communicate these guidelines to its people, construction contractors and on-site management service providers, if any. Cenergistic will facilitate semi-annual progress reports for the school board, and District will facilitate annual presentations by Cenergistic to the school board on the Program. The District will make its utility records available for review and copying on request of the energy specialist, ProgramLiaison or Cenergistic.

(c) Software. (i) Cenergistic Software. The Cenergistic GreenX® Software mobile and desktop application which is accessible over any browser-enabled device serves as the focal point for energy savings across your entire facilities portfolio. Our machine-learning anomaly detection algorithms provide transparency into the energy consumption profiles of your buildings and provides alerts and potential resolutions by combining building, equipment and sensor data with historical energy use, weather and other seasonal data. The Cenergistic GreenX® Software, along with other proprietary software developed or enhanced by Cenergistic from time to time, is collectively referred to as the “Cenergistic Software”.

(ii) Energy Accounting Software. The effective management of energy information is a first step to achieving positive results through accountability. Energy consumption will be accounted for by using the Energy Accounting Software, with which Cenergistic’s energy consultants are knowledgeable and trained to provide support to the District. No later than 30 days after the Start Date, the District must license the Energy Accounting Software program (and pay the licensing fees) from EnergyCAP, Inc. (which Cenergistic understands the District currently uses) or, if later recommended by Cenergistic to its clients, an alternative Energy Accounting Software program. Data input and maintenance will be managed and controlled, at Cenergistic’s option, either by the Energy Specialist or at Cenergistic’s corporate office, with District access to review all data entry.

(d) Program Liaison. Within thirty (30) days after the Start Date, Cenergistic and the District will discuss and collaborate on identifying one of the District’s cabinet level officials to serve as the liaison and primary point of contact for the District on the Program (“Program Liaison”). The Program Liaison should be accessible and responsive to Cenergistic for communication and meetings and may not be someone (including any Successor Program Liaison) who is unacceptable to Cenergistic. Cenergistic will offer education and training for the Program Liaison (and any replacement Program Liaison) to effectively serve in the role, with an emphasis that will promote the Program Liaison’s role in reviewing all savings determinations. To assist in the education and training, at the next scheduled session after the Start Date, the Program Liaison shall attend, at Cenergistic’s expense, the Energy Accounting Software training workshop hosted by Cenergistic in Dallas, TX. The Program Liaison may bring other District representatives to the workshop, at District expense. In the event there is a replacement Program Liaison, after designation for that position, that person shall attend the next offered Energy Accounting Software training workshop, at Cenergistic’s expense, in Dallas, TX. The Program Liaison position shall not be vacant for more than thirty (30) consecutive days during the Term of the contract.

(e) Access, Authority and Control. Cenergistic personnel shall have access to the District’s systems controls, including the energy management systems (“EMS”), and the authority (in communication and coordination with other District personnel) to make changes so that facilities are not operated outside of the established policy and guidelines. The energy specialist needs the authority to:

(1) program the EMS including changes in the temperature settings and run times of EMS controlled

equipment (e.g. HVAC, water, heating and lighting systems), and (2) change settings and run times for each facility's equipment and systems (e.g. lighting, sewer and water systems, time clocks and thermostats) that are not controlled by the EMS. The energy specialist will not have authority to make any changes that violate District established policy and guidelines and the District retains the right to suspend access of the energy specialist to the energy management systems ("EMS") at any time. In the event of such a suspension the District will immediately inform Cenergistic of the suspension and the basis. The District shall provide such access and authority to Cenergistic within 30 days of the Start Date. In order to evaluate and track occupant comfort, within 30 days of the Start Date, the District will set up or expand its internal procedure to ensure that all comfort feedback is immediately routed to the energy specialist. This contract does not alter the District's exclusive right of control over its people and facilities and its pre-existing responsibility, if any, to provide reasonable premises safety.

(f) **No Third Party Interference.** The District shall take reasonable steps to prevent any third party from interfering with the District's Program implementation.

5. **Savings Determination.** (a) **General.** Energy savings are determined in accordance with the Measurement and Verification Plan ("**M&V Plan**") attached hereto by comparing measured use before and after the start of Program implementation, with appropriate adjustments for changes in conditions that are independent of the Program. Cenergistic and the energy specialist shall use the Energy Accounting Software to calculate the District's savings as set forth in the M&V Plan ("**Savings**"). The "**Total Savings**" means the Savings and any additional initiatives set forth in Section 6 of the M&V Plan. Savings reports shall be delivered to the Program Liaison for review and verification. The Program Liaison will work diligently to review reported Savings and will present any questions about the savings reports within thirty days of receipt. Cenergistic's projections of Total Savings when using the Program are based upon energy consumption and other data furnished by the District.

(b) **Base Year.** A baseline period will be established as set out in the attached M&V Plan by Cenergistic, in consultation with the Program Liaison ("**Base Year**").

(c) **Performance Year.** Each performance year will be a 12 month period ("**Performance Year**"). The first Performance Year will begin on the Start Date ("**First Year**") and each Performance Year is consecutively named. The "**Second Year**" means the 12 month reporting period following the end of the First Year, the "**Third Year**" follows the Second Year, and so on. If the energy specialist position is vacant or the energy specialist is off-the-job for more than 30 days, or if the District fails to substantially implement the program as determined by Cenergistic in its reasonable discretion, the Performance Year can be suspended until an energy specialist is on-the-job and the District is substantially implementing the program. If a Performance Year is suspended, it will consist of twelve non-consecutive months; however, for purposes of determining savings, savings, if any, during the suspended period shall continue to accrue.

6. **Term.** This contract shall be for a term beginning on the Start Date and ending on the last day of the Third Year; provided however, the contract shall automatically renew for two (2) additional one (1) year periods ("**Initial Term**") and provided further that the parties will have an option to renew for five (5) additional one (1) year periods (beginning at the end of the Initial Term) by agreement, within budgetary limitations, at the same terms (and at the Average Monthly Fee) and conditions as the Initial Term (together with the Initial Term, the "**Term**").

7. **Monthly Fee.** (a) **Monthly Fee.** The District shall pay Cenergistic a fee of \$59,633.33 for each month during the First Year, \$70,233.33 for each month during the Second Year, \$75,583.33 for each month during the Third Year, \$80,850.00 for each month during the Fourth Year, and \$86,200.00 for each month during the Fifth Year ("**Monthly Fee**") for a total of 60 months ("**Fee Period**"). The average

monthly fee is \$74,500.00 ("**Average Monthly Fee**"). Cenergistic will bill the District on or near the last day of each month for each Monthly Fee, with payment due no later than thirty (30) days after receipt of such billing statement by District. Failure to pay the billing statement within 60 days after it is due, at Cenergistic's option, shall result in the Program being suspended (including, without limitation, the suspension of consultant and energy specialist participation in the Program). Savings shall continue to accrue during any suspension for failure to pay the billing statement. In the event the Performance Year is suspended, the Monthly Fees for the suspended period shall be deferred and the term shall be extended until 60 monthly fee payments have been made.

(b) Additional Districts. In the event the District acquires, contracts with, or otherwise becomes responsible for educational services for another district ("acquired district"), or is requested by another district ("requesting district") to allow the energy specialist to provide energy management support, the District agrees to not share, utilize, or include the Program (including the use or services of the energy specialist trained by Cenergistic) to any extent, in any facilities in the acquired or requesting district without Cenergistic's express written consent and payment of additional fees as mutually agreed.

8. **Savings Guarantee.** (a) Cenergistic's commitment to the quality of the Program is evidenced by Cenergistic's Savings Guarantee (as defined below). Cenergistic shall reimburse the District for the difference if the District's Costs (as defined below) exceed its Total Savings, computed from the Start Date to the end of any Performance Year during the Term ("**Savings Guarantee**"). Due to the cumulative nature of the Savings Guarantee it is necessary to specify that Cenergistic shall not make reimbursement for amounts that Cenergistic has already reimbursed for a prior Performance Year. To be eligible for the Savings Guarantee the District must have substantially implemented the Program. If Cenergistic reasonably determines that the District is not substantially implementing the Program, Cenergistic shall give the District written notice of its determination (including specific details supporting Cenergistic's determination and specific recommendations for appropriate District action) and, at Cenergistic's election, the Performance Year and payment of the Monthly Fees shall be suspended for a period of up to four months as time to remedy. The District shall act within a reasonable time to cure such failure, with curative steps being taken within sixty (60) days after receipt of the written notice referenced above. If the parties are unable to agree on whether the District is substantially implementing the Program, the parties agree to meet to resolve the differences as set out in paragraph 13(c) below. "Substantial implementation of the Program" does not require the District to have implemented the Program in every detail. To "substantially implement" the Program means that the process of implementation is material to the extent that the program functions as intended. It requires that the Program has been implemented in its material elements, or almost fully implemented. Without limiting the foregoing, the following shall be a lack of substantial implementation for purposes of this paragraph: (i) failure to pay a billing statement within 90 days from the due date; (ii) failure to approve the administrative guidelines within 60 days of the start date; or, (iii) if the District directs Cenergistic to stop work for reasons other than a material breach of this contract and such notice is not withdrawn within sixty (60) days after initial delivery to Cenergistic. The "**District's Costs**" means the total amounts paid for the initial and renewal costs of the Energy Accounting Software, and the Monthly Fees. Cenergistic shall pay the District a required reimbursement no later than 120 days after the end of a Performance Year. If Cenergistic fails to make a required reimbursement, the District may terminate this contract without a payment of a Work Fee and recover the amount of the required reimbursement from Cenergistic.

(b) The District shall refund prior reimbursements on the Savings Guarantee to Cenergistic if (1) the Total Savings exceed the District's Costs, computed from the Start Date to the end of a later month during the Term, or (2) the District exercises its right of Termination for Convenience (as

defined below). The District shall pay Cenergistic a required refund: (1) no later than 90 days after the results for such later month have been finalized by Cenergistic and the energy specialist, or (2) on the effective date of a Termination for Convenience.

9. Termination for Convenience. (a) Termination for Convenience by District. As provided in this contract Cenergistic anticipates a long-term relationship and remains committed to the District through the Term and beyond. However, the District may terminate this contract for any reason and without cause as provided in this paragraph. To validly exercise this right to terminate for any reason and without cause (including if there is no appropriation of funding or for any other termination that is not based on Cenergistic's failure to perform its material obligations under this contract) (a "Termination for Convenience"), (1) if the Termination for Convenience occurs during the first three (3) Performance Years, the District shall provide Cenergistic with at least 60 days prior written notice and shall pay Cenergistic a Work Fee to compensate Cenergistic for its Intellectual Property, the work performed by Cenergistic and for the benefits received by the District (and not as a penalty) ("Work Fee"), with the calculation based upon the date of termination, per the table below, and (2) if the Termination for Convenience occurs after the first three (3) Performance Years (i.e., Performance Year Four or later), the District shall provide Cenergistic with at least 120 days prior written notice but will not owe a Work Fee:

Contract Start Date through the end of Performance Year One	Reimbursement of Direct Costs (as defined below) incurred for Energy Specialists and onsite and remote Cenergistic personnel through the date of termination, plus 15% of those Direct Costs as corporate overhead.
Performance Year Two	An amount equal to twelve (12) multiplied by the Average Monthly Fee
Performance Year Three	An amount equal to nine (9) multiplied by the Average Monthly Fee

**"Direct Costs"** is defined as the sum of (i) for consultants providing services to District hereunder, the documented daily equivalent of compensation and benefits incurred by such consultants (calculated as follows: base salary times 1.3 divided by 243) times the number of days spent onsite or remote at the District plus reasonable travel costs associated with travel to/from the District and (ii) for Energy Specialists, the total salary and benefits for the Energy Specialists paid from hire date through the date of termination.

Upon a Termination for Convenience, the District shall pay the unpaid Monthly Fees but only through the termination effective date (including any months which were deferred because of a suspension of the Performance Year as set out above) in addition to the Work Fee, if any. A Termination for Convenience voids the Savings Guarantee. This termination right does not limit the rights and remedies of the District.

More specifically, if Cenergistic fails to perform its material obligations under this contract, the District's legal rights and remedies are not limited by the terms of this paragraph. If the District contends Cenergistic has committed a material breach of the contract, the District will provide written notice to Cenergistic specifically describing the breach and giving Cenergistic a reasonable opportunity and time (not less than 30 days) to cure the claimed breach before taking other action. If the material breach is not remedied by Cenergistic following the notice as set out above, the District may terminate this contract without any obligation to pay a Work Fee.

(b) Termination for Convenience by Cenergistic. In the event Cenergistic determines there are unanticipated factors or changes that occur during the Term that make continuation of the Program unsustainable, upon giving the District sixty (60) days prior written notice, Cenergistic shall have the right to terminate this contract without any payment or other obligation. In such event, the District will be entitled to retain all residual savings after the date of termination from the Program without payment of Monthly Fees for such period and shall not be required to pay a Work Fee. Unanticipated factors or changes shall include, without limitation, the following: unusual building or operational conditions, equipment defects, inability to hire and/or retain a qualified energy specialist, or other factors not in Cenergistic's control that would materially and negatively impact savings or savings potential.

10. Termination Event. Upon termination of this contract or discontinuation of the Program at the end of the Fee Period the District shall promptly: (a) return to Cenergistic all materials and Proprietary Information previously furnished by Cenergistic or accumulated by the District in connection with the Program, including all copies thereof; (b) return or allow the removal by Cenergistic of any monitoring or sensor devices installed by Cenergistic or at any time upon Cenergistic request; and (c) cease using the Proprietary Information and implementing the Program. Notwithstanding the foregoing, the District is not prohibited from: (i) using energy conservation information that is in the public domain or is obtained from sources other than Cenergistic, or (ii) hiring a person (other than an energy specialist trained by Cenergistic) to assist with monitoring energy use or consumption.

11. Proprietary Program and Information. (a) Proprietary Information. The District will have access to and use of (1) Cenergistic's energy management program, (2) materials that are copyrighted, trade secrets and other information that is proprietary to Cenergistic, and (3) the Cenergistic Software, including both browser based and mobile versions, upon acceptance of the Terms of Services which are hereby incorporated by reference, as the same may be developed and released by Cenergistic from time to time during the term of this Contract pursuant to a nonexclusive, nontransferable license to use Cenergistic Software. Items (1) through (3) along with all database files created using the Energy Accounting Software are collectively referred to as "Proprietary Information".

(b) Limitations on Use; Confidentiality. The District hereby agrees that Cenergistic is the owner of all right, title and interest in and to the Proprietary Information. The District agrees that nothing contained in this Agreement shall be construed as granting any ownership right to the District in any Proprietary Information, or to any invention or any patent, copyright, trademark, or other intellectual property right. The District shall not make, have made, use or sell for any purpose, any product or process using, incorporating or derived from any Proprietary Information. The District shall not copy, modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in the Proprietary Information. The District agrees that an invention or work created by the District or any of its personnel based on or incorporating any of the Proprietary Information shall be owned exclusively by Cenergistic. The District agrees that the Proprietary Information (including all copies) continues to be Cenergistic's property and should be kept confidential to the full extent permitted by law. The District

agrees not to challenge, or assist any third-party in challenging, Cenergistic's ownership rights in the Proprietary Information, and in any invention, patent, copyright, trademark, or other intellectual property right. The District agrees that the Proprietary Information, including but not limited to the patents and copyrights of Cenergistic, are valid and enforceable. The District shall not challenge the validity or enforceability of any patent, trademark or copyright owned by Cenergistic in any court, at the Patent and Trademark Office, or in any other forum or before any arbitrator. The District shall give Cenergistic written notice and an opportunity to respond if the District receives a third party request for Proprietary Information. The District shall not disclose the Proprietary Information to any unauthorized person or use it outside of the District or this contract. The District shall assist Cenergistic in the protection of the Proprietary Information and shall execute all documents reasonably necessary to vest and perfect title to the Proprietary Information in Cenergistic upon written request. However, the School Board shall have no obligation to initiate or otherwise pay for litigation expenses relating to the protection of such Proprietary Information. If the School Board is sued for withholding the Proprietary Information as a trade secret of Cenergistic, Cenergistic shall defend and indemnify the School Board from and against all reasonable costs, expenses, damages and attorneys fees arising therefrom or relating thereto provided the District provides Cenergistic with prompt written notice of such lawsuit and Cenergistic agrees to pursue such litigation. The District's obligations under this paragraph survive termination of this contract. District hereby agrees that breach of this subparagraph will cause Cenergistic irreparable harm for which recovery of money damages would be inadequate, and that Cenergistic shall therefore be entitled to obtain immediate and permanent injunctive relief, without the necessity of posting bond, as well as such further relief as may be granted by a court of competent jurisdiction.

(c) Non-Solicitation. While under contract with Cenergistic and for a period of two years following the termination of this contract, the District will not solicit, hire or retain any Cenergistic employees or contractors for employment or other work at or for the District.

12. **Program Transition/Continuity.** In order to ensure either (1) a smooth transition at the end of the Term of the Contract, or (2) a continuity of savings through an extension of the Program beyond the end of the Term, the District and Cenergistic will commence transition/continuity conversations no less than six (6) months prior to the end of the Term, with a goal of reaching a mutual understanding no fewer than sixty (60) days prior to the end of the Term. If the District intends to discontinue the Program at the end of the Term, it will provide at least sixty (60) days written notice to Cenergistic prior to the end of the Term.

13. **Background Screening.** Cenergistic will ensure that the District timely receives consents and information necessary to enable the District to perform background screening on all covered persons in compliance with Chapter 1012, Florida Statutes, including Sections 1012.32, 1012.465, 1012.467 and 1012.56, Fla. Stat. as applicable, including:

- a. At Cenergistic's expense, a Level 2 Criminal Background Check on all persons, whether an agent, employee, volunteer or otherwise (collectively referred to as "Employees") providing services under this Agreement. Employees must meet the screening standards set forth in Florida Statutes Sections 435.03 and 435.04. The screening assessment includes orientation, in-depth interview, reference checks, police background checks and fingerprinting. Cenergistic will promptly furnish to the School Board's Safety & Security Department, Fingerprint Office, a full list of Employees needing a badge and fingerprint and background checks. CENERGISTIC shall, upon the expiration or termination of this Agreement, facilitate the collection of all badges issued to its Employees.
- b. The School Board has the right to refuse entry onto its school grounds to any individual whose background check does not meet the requirements established by the School



Board pursuant to Florida law. Like other visitors to school grounds, CENERGISTIC Employees will also be subject to RAPTOR screening on school campuses. Additionally, any Employee must sign in and out of the school district's Volunteers Count! database each time they are on campus during school hours. Possession/use and/or being under the influence of any illegal mind-altering substances, such as, but not limited to alcohol and/or substances delineated in Chapter 893, Florida Statutes, by Cenergistic's employees/independent contractors or its subcontractors' employees/independent contractors shall comprise a material breach of this contract subject to cure per the following sentences. If any employee/independent contractor is found to have brought and/or used or is under the influence of any illegal mind-altering substances as described above on School Board property, said employee/independent contractor shall be removed from District property and terminated from the project by Cenergistic. If a subcontractor fails to terminate said employee/independent contractor, the contractor shall terminate its agreement with the subcontractor for the project. If Cenergistic fails to terminate said employee/independent contractor from the project or fails to terminate the agreement with the subcontractor who fails to terminate said employee/independent contractor from the project, this contract may be terminated by the School Board after written notice and an opportunity to cure of not less than thirty (30) days.

14. E-Verify. Pursuant to Florida Statute 448.095, Cenergistic shall use the U.S. Department of Homeland Security's E-Verify system, <https://www.e-verify.gov/> to verify the employment eligibility of all employees hired during the term of this Agreement. Cenergistic shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement. Subcontractors shall provide Cenergistic with an affidavit stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, as defined by Florida Statute 448.095. Cenergistic shall provide a copy of such affidavit to the School Board upon receipt and shall maintain a copy for the duration of the Agreement. Cenergistic shall provide evidence of compliance with Florida Statute 448.095 within fifteen (15) days of the School Board's request. Evidence may consist of, but is not limited to, providing notice of Cenergistic's E-Verify number. Failure to comply with this provision is a material breach of the Agreement, and the School Board may choose to terminate the Agreement at its sole discretion.

15. Non Discrimination. The Parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression, marital status, national origin, religion, sex or sexual orientation in the performance of the Parties' respective duties, responsibilities and obligations under this Agreement. Each Party shall fully comply with all federal anti-discrimination laws, to the extent applicable to it.

16. Indemnity: Cenergistic agrees to indemnify and hold harmless the School Board, its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Cenergistic and persons employed or utilized by it in the performance of its responsibilities pursuant to this contract but specifically excluding any liabilities, damages, losses and costs attributable to the negligence, recklessness, or intentional wrongful misconduct of District or any third party. It is expressly acknowledged that the Contractor is an independent contractor and, as such, has no authority to act for or on behalf of the School Board, or to bind the School Board to any contract or in any other manner.

17. Public Records. In providing services under this contract, to the extent Cenergistic is

acting on behalf of the School Board, it shall comply with Florida's Public Records Law including:

- a) Keeping and maintaining public records that ordinarily and necessarily would be required by School Board;
- b) Providing the public with access to public records on the same terms and conditions that School Board would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;
- c) Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;
- d) Meeting all requirements for maintaining public records and transferring at no cost to School Board all public records in possession of Company upon termination of the Agreement; destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to School Board in a format that is compatible with the information technology systems of School Board.

IF CENERGISTIC HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT EITHER 941-927-4009 OR VIA EMAIL AT [PUBLCRECORDREQUEST@SARASOTACOUNTYSCHOOLS.NET](mailto:PUBLCRECORDREQUEST@SARASOTACOUNTYSCHOOLS.NET), THE SCHOOL BOARD OF SARASOTA COUNTY, FLORIDA, 1960 LANDINGS BLVD., SARASOTA, FL, 34231.

18. **Miscellaneous.** (a) This contract together with the School Board's Request for Proposals No. 22-0323, as supplemented ("RFP") and Cenergistic's response to the RFP (which are incorporated herein by reference), to the extent such RFP specifications and Cenergistic's response thereto do not conflict with the terms of this contract, constitutes the entire agreement of the parties with respect to the subject matter of this contract. In the event of a conflict between the terms of the RFP, Cenergistic's response to the RFP and this contract, the terms of this contract control and take precedence. This contract supersedes the parties' prior communications, requests, responses, proposals, offers and agreements, if any. This contract may be modified only by a writing signed by the parties. Invalidity or unenforceability of one or more provisions of this contract shall not affect any other provision of this contract.

(b) The Parties agree that if any dispute, controversy or claim cannot be settled through good faith efforts outlined in the paragraph below then it shall be settled by a court with competent jurisdiction. In an action to enforce or construe this contract in a court with competent jurisdiction, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs of court.

(c) **Dispute Resolution.** Open communication and cooperation of the parties is vital to the success of the Program and to the settlement of disputes if they arise. If a dispute persists, either party may suggest an executive meeting for review and resolution. The party suggesting the meeting should identify the issues in dispute and coordinate a face-to-face meeting at the District to review the

issues and solution options. The executive officer for each party who has full authority to discuss the issues and commit to effective solutions shall attend and participate in the meeting. Also, those persons with firsthand knowledge of the issues must be available for the meeting. No dispute under this contract shall be subject to litigation proceedings prior to completing the meeting, except for an action to seek injunctive relief.

(d) Counterparts. A signed copy of this Contract delivered by facsimile, e-mail or other means of Electronic Transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contract.

(e) This Contract shall be interpreted and construed in accordance with laws of the State of Florida. In the event of any legal or equitable action arising under this Contract, the Parties agree that the jurisdiction and venue of such action shall lie exclusively within the state and federal courts of the State of Florida located in or otherwise having jurisdiction over Sarasota County, Florida, and the Parties specifically waive any other jurisdiction and venue.

(f) This Contract shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Reference in the preceding sentence to "assigns" shall not be deemed or construed to authorize, legitimize or render effective any assignment in violation of the provisions of this Agreement.

(g) Neither this Contract nor any interest herein may be assigned, transferred or encumbered by any Party without the prior written consent of the other Party (which consent may not be unreasonably withheld); provided, however, that Cenergistic may assign this Contract upon a merger or a sale of all or substantially all of its assets. There shall be no partial assignments of this Contract including, without limitation, the partial assignment of any right to receive payments.

(h) The Parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Contract has been their joint effort. The language agreed to, herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

(i) The Parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Contract and, therefore, is a material term hereof. Any Party's failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract unless the waiver is in writing and signed by the Party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

Each party is signing this contract on the date stated under that party's signature.

Sarasota County Schools

CENERGISTIC LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Name \_\_\_\_\_

Name: John Bernard

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

Title: President

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

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

Approved for Legal Content  
December 1, 2021 by  
Shumaker, Loop & Kendrick, LLP  
Attorneys for The School Board  
of Sarasota County, Florida  
Signed: MRM

Sarasota CS, FL - K12 VARIABLE FIXED FEE CONTRACT v.3 091421

## MEASUREMENT AND VERIFICATION PLAN

This Measurement & Verification Plan ("**M&V Plan**") is prepared for Sarasota County Schools (the "**Organization**") by Cenergistic and is agreed to by the parties as the document that establishes the guidelines and identifies the methods for measurement of electricity, coal, fuel oil, propane, gas, water, sewer or other utilities purchased by the Organization ("**Energy**") and cost savings achieved through Energy Conservation Measures ("**ECMs**") delivered by Cenergistic pursuant to the Contract.

- 1. Facility and Project Overview** Cenergistic ECMs focus on operational efficiencies that include multiple facilities and conservation steps. Described as a people driven program, the scope of the conservation project includes all measured Energy.
- 2. ECM Intent** The ECMs are intended to reduce Energy usage. Many varied ECMs will be used to achieve the savings. The expected savings will be an amount in excess of the cost of the program. ECMs will be operational in nature and are generally categorized as optimizing energy-using systems, turning off energy using systems when not necessary, setting back energy-using systems when possible, and improving efficiency of energy-using systems when in use. Facility use and management practices target both occupied and unoccupied periods and conform to the Organization's approved energy policy and administrative guidelines.
- 3. Selected Measurement Boundary** A whole building (facility) approach will be used for savings determination because the ECMs impact total facility Energy reduction. Many ECMs will be involved, and some of them cannot be directly measured. Utility meters for electricity, gas, water and sewer will be included in the savings calculation for the Organization. Together, these meters will account for all Energy use by each facility; provided however, that Cenergistic may exclude meters for which (i) energy consumption is immaterial and/or (ii) ECMs will not have a material impact on consumption. The total savings is the sum of savings for each facility. The measurement boundary includes all facilities and infrastructure owned or leased by the Organization.

In the event metering equipment is determined to be unreliable, unavailable, or does not accurately measure the effect of the ECM, at the option of Cenergistic, the meter can be removed from the savings calculation until a mutually agreed method to correct the issue is developed between Cenergistic and the District. This process uses a computer simulation tool to create a mathematical model of the building using pre-retrofit historic Energy consumption to project post-retrofit Energy consumption savings ("**Whole Building Calibrated Simulations**").

- 4. Baseline: Period, Energy and Conditions** Using the Energy Accounting Software, a baseline period shall be established for each meter consisting of 12 consecutive months that precede the StartDate ("**Base Year**"). Normally this will be the 12 consecutive months immediately prior to Start Date. The data collected includes identification of the baseline period, baseline Energy consumption and demand data and other independent and relevant variable factors (for example, occupancy type, building information such as square footage, etc.). Other baseline data may be included and/or supplemented. Local weather data will be supplied by the Energy Accounting Software or by a national weather data service provider.

The Organization represents that the historical Energy usage data and building information provided to Cenergistic for the purpose of savings projections is accurate. If it is later determined that either: 1) there is a variation between the data provided and the Base Year data of  $\pm 5\%$  or more or, 2) data in the 12 consecutive months immediately preceding the Start Date does not accurately reflect actual pre-program usage by the Organization and/or normal operating conditions of the Organization

("variation"), Cenergistic may select as the Base Year an alternate 12 consecutive month period from the 36 months immediately preceding the Start Date. For new construction, Cenergistic will use a Whole-Building Calibrated Simulation to compile the Base Year.

5. **Reporting Period** Each reporting period will be a 12 month period called a "Performance Year". The Performance Year begins according to the terms of the contract.
6. **Basis for Adjustment** Energy savings are determined by comparing measured use before and after the Start Date, after making appropriate adjustments for changes in conditions that are independent of the Program including floor space or square footage; occupancy type, occupancy schedule, or equipment scheduling; facility construction/renovation or hardware efficiency upgrades; alignment of the base year's consumption period to the current billing period; equipment malfunctions that impact energy usage; operational changes that are outside the Program; and weather. Since savings are to be reported as "cost avoidance" (i.e., actions taken to avoid incurring future costs) under reporting period conditions, the equation below will be used. This method quantifies how savings in a given reporting period is determined, relative to what Energy use would have been without the ECMs in place. This equation defines how baseline period Energy consumption needs to be adjusted to reporting period conditions.

The Energy Accounting Software calculates Cost Avoidance by distributing Use across days in the billing period (disaggregating).

Equation: Cost Avoidance =

Baseline Adjusted to Current Conditions (BATCC) Cost – Current Cost

where,

$$\text{BATTC Cost} = \sum \text{Number of days in current billing period (Daily BL Use} \pm \text{Daily Use Adjustments} * \text{Current All-In-Rate)}$$

In addition, savings may be accrued due to actions such as identification of utility billing errors leading to refunds, rebates, rate changes, demand-side management initiatives and other measures that do not reduce Energy usage but do reduce the Organization's out of pocket utility costs.

7. **Calculation Methodology and Analysis Procedure** The Energy Accounting Software performs the cost avoidance calculation and analysis procedure. The Energy Accounting Software allows appropriate routine adjustments to the baseline period, using available data to account for the following factors occurring during the reporting period that affect the Energy used in facilities:
  - a. Number of days in the billing period
  - b. Energy unit cost
  - c. Floor space or square footage increases / decreases. This method is used when the additional floor space has a similar Energy consumption footprint as the existing facility.
  - d. Weather differences - Reasonably estimated Energy loads are added or reduced after Start Date due to such factors as outside temperature. If the Organization has experienced abnormal temperatures during the baseline period, a total of 36 months of billing information can be used to create a more representative statistical weather model.

Specific cost avoidance calculation algorithms and processes used by the Energy Accounting Software for routine cost avoidance reporting are documented and may be requested directly from the Energy Accounting Software provider.

The Energy Accounting Software also allows for appropriate non-routine adjustments to account for client driven changes that effect the Energy profile of their facilities. Non-routine adjustments (for

which District has the right to reasonably challenge and the District and Cenergistic will work in good faith to resolve any such challenges) will be calculated using (1) Whole Building Calibrated Simulation method, (2) measurement isolation method, (3) removal of the effected meter from the reported savings (4) linear calculation methods or (5) a combination thereof. Non-routine adjustments include but are not limited to the following situations:

- Floor space or square footage. This method is used when the new square footage has a different energy consumption footprint as the existing facility
- Occupancy type, occupancy schedule or equipment scheduling
- Facility construction / renovation or hardware efficiency upgrades
- On-site management service providers that didn't follow the Organization's energy policy and guidelines
- The Organization chooses not to implement water conservation
- Equipment malfunctions that impact savings

Generally, industry guidance is not exhaustive nor is it always fully applicable; in some situations, engineering judgment must be used. Adjustment calculations are supervised by licensed Professional Engineers, Certified Measurement and Verification Professionals or Certified Energy Managers.

- 8. Energy Prices** Reporting of cost avoidance will value the Energy use avoided at the then-current all-in-rate (this is the average unit cost or the blended rate to the Organization for each type of Energy purchased by the Organization, taking into account consumption and all charges from the utility provider) for each utility meter as calculated by the Energy Accounting Software for each billing month.

Adjustments may be made to the performance month all-in-rate when such performance month all-in-rate materially deviates from the historical baseline all-in-rate (calculated over the 12-month baseline period). The District has the right to reasonably challenge such adjustments, and the District and Cenergistic will work in good faith to resolve any such challenges.

In the event solar electricity is implemented by the Organization, the parties agree to a process that recognizes net metered electric generation to exclude any solar production sold back to the grid from the reported Energy Accounting Software use and cost avoidance. Solar energy produced (that was consumed by the building) is tracked in the Energy Accounting Software to allow for the total Energy consumption comparisons. All savings reported in the cost avoidance reports shall be from Energy purchased from the grid (metered electricity) so it will be valued at the grid all-in-rate (as "all-in-rate" is defined above).

- 9. Meter Specifications** Utility grade meters used for billing are the only meters used.

Exceptions: For bulk fuel stored in tanks, manual measurements recorded by the organization or by the provider may be used.

In master-metered campus situations, submeters may be necessary for accurate identification of building by building energy usage. If submeters are not used in master-metered campus situations, usage data provided by the Organization for internal billing may be used.

- 10. Monitoring responsibilities** Energy data will be recorded in the Energy Accounting Software as set out in the contract.

*Independent Variables.* The Energy Accounting Software captures weather information necessary for calculating and applying adjustments. Changes to the baseline conditions, such as facility size,

occupancy or equipment changes, will be documented in the Energy Accounting Software. Static factors are monitored using visual, verbal and written audit techniques. Periodic inspection findings are documented in building audit reports.

Energy Specialist(s), under the supervision of Cenergistic, are responsible for monitoring Energy data, independent variables and static factors. Cenergistic is responsible for monitoring building audit findings.

- 11. Expected Accuracy** The accuracy of data capture of the utility billing data and entry of that data into the Energy Accounting Software is confirmed via reports and Energy Accounting Software audits that highlight inconsistencies with previous billing, gaps or duplicate entries, and reasonable protection against user errors in data entry. Statistical accuracy of the Energy Accounting Software's routine weather adjustment process uses industry-standard regression techniques and is evaluated on a meter-by-meter basis.

*Utility Company Estimates.* Utility companies sometimes estimate meter readings instead of actually reading the meter. Any such estimate will be self-corrected by a subsequent month "true-up" when the meter is actually read. When an estimate is detected, the Energy Specialist will attempt to validate the utility company estimate to reflect actual usage until an actual reading is made, and then adjust data to smooth out anomalies created by estimates.

*Billing Corrections.* The data will continue to be reviewed for accuracy during the term of the Contract. In the event inaccuracies in the data or data entry errors are identified (i.e. information not known at the time, incorrect meter reading or data entered into the Energy Accounting Software incorrectly), the data may be updated to correct such errors that occurred during the twelve (12) months immediately preceding the latest monthly billing statement. Data prior to the twelve (12) months immediately preceding the latest monthly billing statement will be deemed to be accurate by the parties.

- 12. Budget** The cost of measurement and verification ("**M&V**") includes amounts charged to the Organization for the Energy Accounting Software and a portion of the Energy Specialist's time. More time will be required early in the energy program by the Energy Specialist as the baselines are determined and the Energy Specialist becomes familiar with the Energy Accounting Software and the process for entering data and determining savings. Once the utility bills have been entered, the baseline has been determined and the Energy Specialist has become familiar with the Energy Accounting Software and the process, subsequently, the savings determination process and its review with operating and administrative staff is expected to require approximately 5% of an Energy Specialist's time, across all meters and facilities for the Organization.
- 13. Report Format** After the baseline has been established and the energy program is reasonably underway, cost avoidance will be calculated no less than monthly. M&V and cost avoidance reports will be prepared and provided at least semi-annually to the Organization. Cost avoidance reports are generated using the Energy Accounting Software. Cost avoidance reports have different formats for different audiences, but in general show usage and cost for: baseline actual, baseline adjusted to reporting period conditions, reporting period actual, and calculated cost avoidance (adjusted baseline minus reporting period actual). The Energy Accounting Software provides a collection of reports that can be customized and filtered for specific reporting purposes.
- 14. Quality Assurance** Cenergistic quality assurance procedures and testing principles are applied to the baseline and performance data at the beginning of each program and periodically throughout the



term of the contract. Testing includes but is not limited to a review of the baseline for compliance with contractual terms including M&V Plan, testing of baseline data for reasonableness, accuracy and completeness, substantive sampling techniques for Energy Accounting Software bill entry data correctness, Energy Accounting Software settings and standard and special adjustment appropriateness and correctness.

The parties agree this M&V plan will be modified as mutually agreed to reflect changes that occur or additional data that may be obtained.

This M&V plan has been developed for Sarasota County Schools.