

Emailed to BS 4/29/24
Barie

FOLLOW ALL PROCEDURES ON BACK OF THIS FORM

Contract # 240167
Number Assigned by Purchasing Dept.



CONTRACT REVIEW

BOARD MEETING DATE:
June 6, 2024
WHEN BOARD APPROVAL IS REQUIRED DO
NOT PLACE ITEM ON AGENDA UNTIL
REVIEW IS COMPLETED
 Must Have Board Approval over \$100,000.00

Date Submitted: 4/26/2024

Name of Contract Initiator: Bryce Ellis Telephone #: _____

School/Dept Submitting Contract: Operations Cost Center # 9021

Vendor Name: Cenergistie

Contract Title: Energy Savings Contract Amendment #2

Contract Type: New Renewal Amendment Extension Previous Year Contract # 210087

Contract Term: 36 months 6/ 0/2027 Renewal Option(s): Auto-Renew annually until Terminated

Contract Cost: \$23900/month or \$860,400 (14% Discount from current rate)

BUDGETED FUNDS – SEND CONTRACT PACKAGE DIRECTLY TO PURCHASING DEPT
 Funding Source: Budget Line # _____
 Funding Source: Budget Line # _____

NO COST MASTER (COUNTY WIDE) CONTRACT - SEND CONTRACT PACKAGE DIRECTLY TO PURCHASING DEPT

INTERNAL ACCOUNT - IF FUNDED FROM SCHOOL IA FUNDS – SEND CONTRACT PACKAGE DIRECTLY TO SBAO

REQUIRED DOCUMENTS FOR CONTRACT REVIEW PACKAGE (when applicable):

RECEIVED
By Elaine at 9:47 am, Apr 30, 2024

- ____ Completed Contract Review Form
- ____ SBAO Template Contract or other Contract (NOT SIGNED by District / School)
- ____ SIGNED Addendum A (if not an SBAO Template Contract) - When using the Addendum A, this Statement **MUST BE** included in the body of the Contract:
 "The terms and conditions of Addendum A are hereby incorporated into this Agreement and the same shall govern and prevail over any conflicting terms and/or conditions herein stated."
- ____ Certificate of Insurance (COI) for General Liability & Workers' Compensation that meet these requirements:
 COI must list the School Board of Clay County, Florida as an Additional Insured and Certificate Holder. Insurer must be rated as A- or better.
 General Liability = \$1,000,000 Each Occurrence & \$2,000,000 General Aggregate.
 Auto Liability = \$1,000,000 Combined Single Limit (\$5,000,000 for Charter Buses).
 Workers' Compensation = \$100,000 Minimum
 [If exempt from Workers' Compensation Insurance, vendor/contractor must sign a Release and Hold Harmless Form. If not exempt, vendor/contractor must provide Workers' Compensation coverage].
- ____ State of Florida Workers Comp Exemption (<https://apps.fldfs.com/bocexempt/>) (If Applicable)
- ____ Release and Hold Harmless (If Applicable)

****AREA BELOW FOR DISTRICT PERSONNEL ONLY ****

CONTRACT REVIEWED BY:	COMMENTS BELOW BY REVIEWING DEPARTMENT
Purchasing Department	<u>Energy Savings Contract - Extend Term</u>
Review Date REVIEWED By Bertha Staefe at 3:45 pm, Apr 30, 2024	_____
School Board Attorney JPS	<u>Renewal with no change to substantive language. Approved</u>
Review Date 5/9/24	_____
Other Dept. as Necessary	_____
Review Date	_____
PENDING STATUS: <input type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, HIGHLIGHTED COMMENTS ABOVE MUST BE CORRECTED BY INITIATOR

APPROVED
By Elaine at 1:42 pm, May 10, 2024

CONTRACT REVIEW PROCESS FOR "ALL" CONTRACTS

A contract is defined as an agreement between two or more parties that is intended to have legal effect. This may include MOUs, Interlocal Agreements, Service Agreements and Contracts. Contracts document the mutual understanding between the parties as to the terms and conditions of their agreement, contain mutual obligations, and clearly state the agreement's consideration. The term consideration includes the cost of the services and/or products to be provided by second party (vendor or service provider) and any non-monetary performance. No school, department, or other organizational unit has authority to contract in its own name. All Board contracts must be made in the legal name of the Board, "The School Board of Clay County, Florida". The School or Department may extend this name to include the school or department as follows, "The School Board of Clay County, Florida o/b/o _____ (insert the school or department name)" where o/b/o means "on behalf of".

All contracts shall be reviewed and approved by the School Board Attorney and/or the Supervisor of Purchasing to ensure legality, compliance with Board policy, and to ensure the Board interests are protected before the authorized signatory may execute the contract.

All contracts having a value of \$100,000 or more shall be authorized by the Board at a regular or special meeting and signed by the Board Chairman. All approved contracts having a value of less than \$100,000 may be executed by the Superintendent or appropriate District administrator based on the value of the contract.

1. All approved contracts having a value of \$50,000 or more, but less than \$100,000 shall be signed by the Superintendent, or the person who has been designated, in writing by the Superintendent, as the Superintendent's Designee at the time of the contract signing. All contracts executed pursuant to this subparagraph shall be reported to the School Board in a separate entry as part of the monthly financial report.
2. All approved contracts having a value of \$25,000 or more, but less than \$50,000, shall be signed by the Superintendent, or the Assistant Superintendent for Business Affairs.
3. All approved contracts having a value of less than \$25,000 and contracts of any value described in Board Authorized Contracts above that are exempt from the requirement for Board approval, may be signed by the Superintendent, or the Assistant Superintendent for their Division, or Chief Officers, or Directors, or Principals.
4. The Superintendent is authorized to approve contract amendments or change orders for the purchase of commodities and services up to the amount of ten (10) percent or \$50,000, whichever is less, of the original contract amount that was previously approved by the Board.

Employees who enter into agreements without authority may be personally liable for such agreements, whether oral or written.

Step 1: Contract Initiator and Vendor prepare draft contract
(School Board Attorney Office (SBAO) Template Contracts available on SBAO webpage are strongly encouraged)

Step 2: Complete Contract Review Form, attach Required Documents to include the UNSIGNED Contract by the District / School.

For Contracts using Budgeted Funds or For No Cost / Master (County Wide) Contracts:
Initiator submits Contract Review Package to Purchasing Department - See Step 3

For Contracts using Internal Funds Individual to each School:
Initiator submits Contract Review Package direct to SBAO - See Step 4

IMPORTANT

Step 3: If Funded by Budgeted Funds, submit the Contract Review Package to the Purchasing Department. Purchasing will begin the contract review process and submit the contract to the SBAO for review. SBAO may reach out to Initiator and/or other Departments (Risk, IT,) with questions or concerns and will assist with contract revisions. SBAO will send the Contract Review Package back to the Purchasing Department for final processing and the return to Initiator.

Purchasing will log "District" Contracts (Cost/No Cost) on Contract Review Log and save copy of the Contract Review Package PLUS the Final Signed Contract you've return to Purchasing in the Contract Review Team Drive.

Step 4: If Funded by Internal Account (IA), submit the Contract Review Package directly to SBAO.
Email: contractreview@myoneclay.net
The SBAO will begin the contract review process and return it directly to Initiator

Step 5: The Initiator is responsible for finalizing the Contract which includes:
Addressing Comments/Revisions, Obtaining Required Signatures, Send District Final Signed Contract to Purchasing OR Retain Internal Accounts Final Signed Contract at School per School Board Record Policy.
If there is a Cost associated with Contract, the Initiator must work with their Bookkeeper to finalize the Purchasing Process.
Budgeted Funds require a District Purchase Order. Internal Accounts require an IA Purchase Order.

For assistance with legal-related matters, please visit the [School Board Attorney's Office \("SBAO"\) webpage](#) or call 904-336-6507
For assistance with insurance-related matters, please visit the [Business Affairs - Risk Management webpage](#) or call 904-336-6745
For assistance with District Purchasing, please visit the [Business Affairs - Purchasing webpage](#) or call 904-336-6736

Energy Savings Contract Amendment #2

This Energy Savings Contract Amendment #2 ("**Amendment #2**") is entered into on June 6, 2024 ("**Effective Date**"), by and between School Board of Clay County ("**Board**") and Cenergistic LLC ("**Cenergistic**"), to amend that certain Energy Savings Contract by and between the Board and Cenergistic with a Start Date of January 1, 2016, as amended by Energy Savings Contract Amendment #1 dated July 1, 2021 (as amended, "**Contract**").

WHEREAS, the Contract terminates pursuant to its terms on June 30, 2024 and whereas the Contract may be modified by a writing signed by the parties pursuant to Section 12(a) of the Contract; and

WHEREAS, the parties desire to (1) extend the term beyond June 30, 2024, (2) articulate the process to change the energy accounting software used to measure Savings, (3) change the Performance Fee (as defined in the Contract) for services delivered during the Second Extended Term, and (4) amend certain other provisions of the Contract.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree, and the Contract hereby is ratified and amended as follows:

1. Definitions. All capitalized terms used herein but not defined herein shall have the meanings assigned to them in the Contract.

2. Amendment to Section 3(b). The last sentence of Section 3(b) is amended and restated in its entirety as follows:

"The energy specialist will use an energy accounting software ("**Energy Accounting Software**") to maintain energy consumption and other information concerning Board energy consumption."

3. Amendment to Section 4(c). Section 4(c) is amended and restated in its entirety as follows:

"c. 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 an Energy Accounting Software, with which Cenergistic's energy consultants are knowledgeable and trained to provide support to the Board. No later than 90 days after the Start Date, the Board must license the Energy Accounting Software program (and pay the licensing fees) from EnergyCAP, Inc, 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 Board access to review all data entry."

4. New Section 4(h). A new subsection (h) is added to the end of Section 4 in the Contract as follows:

"(h) The primary focal points of ongoing services during the Second Extended Term shall include:

- Dedicated assignment of Cenergistic Energy Specialist to Board
- On site and remote support from Cenergistic experts and engineers
- Enhanced sustainability driven by Cenergistic Optimize®
- Assistance with Program promotion and public relations opportunities
- Student engagement through Cenergistic Community®

- Healthy Building assessments and periodic CO₂ monitoring”

5. Amendment to Section 6. The following language is added to the end of Section 6 in the Contract as follows:

“At the end of the Extended Term, the Contract is extended for an additional thirty-six (36) month period (“**Second Extended Term**”) such that the Contract shall terminate on June 30, 2027. Notwithstanding anything in the Contract to the contrary, each twelve (12) month period during the Second Extended Term shall be a Performance Year, with the first twelve (12) month period being the “Ninth Year” and so on. The Contract shall include at least eleven (11) Performance Years. Further, at the expiration of the Second Extended Term (and any additional terms thereafter as a result of auto-renewal), the Contract shall automatically renew for an additional one (1) year period unless ninety (90) days prior written notice of non-renewal of the Contract is provided by a Party to the other Party. Provided such ninety (90) days prior written notice is given, termination at the end of the Second Extended Term or at the end of any auto-renewal will not trigger a Work Fee obligation.”

6. Amendment to Section 7(b). The following language is added as a new paragraph at the end of Section 7(b); all existing language in Section 7(b) remains:

“Performance Fee During Second Extended Term. For each month of the thirty-six (36) months during the Second Extended Term, the Board shall pay Cenergistic the amount of Twenty-Three Thousand Nine Hundred Dollars (\$23,900) (“**Second Extended Fee**”). This Second Extended Fee will be included in the definition of a Performance Fee as used in the Contract and will be the “Performance Fee” during the Second Extended Term. Cenergistic shall submit a billing statement to the Board for each month during the Second Extended Term, and payment is due no later than 30 days after the Board receives the billing statement. 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. A valid request or need for an adjustment to a billing statement shall not be good cause for failure to pay a given billing statement; any appropriate adjustments shall be made to subsequent billing statements. The Board acknowledges and agrees that the Second Extended Fee amount is a discounted fee amount based on the Board’s agreement to enter into this Amendment #2 for the entire Second Extended Term and that the amount of the Second Extended Fee would be higher if the Board had not agreed to the length of the Second Extended Term. Therefore, the Board agrees to pay the Work Fee to compensate Cenergistic for the work performed by Cenergistic and for the benefits received by the Board (and not as a penalty) in the event a Work Fee payment obligation is triggered.”

8. Amendment to Section 8(a). The following is added as additional rows 6 and 7 to the Table in Section 8(a):

Performance Years Nine through Eleven	The lesser of (a) the remaining Second Extended Fees for the Second Extended Term or (b) an amount equal to six (6) Second Extended Fees
Subsequent Performance Years Due to Auto-Renewal	An amount equal to three (3) Second Extended Fees

9. Certain References in the Contract.

a. References to Term and/or Extended Term: The following references to “Term and/or Extended Term” in the Contract are hereby amended to read “Term, Extended Term and/or Second Extended Term”: (1) last sentence of Section 4(d), (2) the last sentence of Section 5(d)(iv), (3) second sentence of Section

7(e), (4) first sentence of Section 8(a), (5) first sentence of Section 8(b), (6) last sentence of Section 8(c), and (7) first sentence of Section 12(d).

b. References to EnergyCAP: (1) The three references to "EnergyCAP workshop" in Section 4(d) are replaced with "Energy Accounting Software workshop"; (2) the one reference to "EnergyCAP, Inc." in Section 4(d) is replaced with "Cenergistic"; (3) the two references to "EnergyCAP" in each of Section 5(d)(iii) and Section 7 of the M&V Plan are replaced with "Energy Accounting Software".

c. References to Software: All references to "Software" are replaced with "Energy Accounting Software".

10. Special Provisions Relating to Energy Accounting Software. In the event that the Board determines that it will not renew/extend its software license agreement with EnergyCAP, Inc. for the EnergyCAP® energy accounting software program (originally defined in the Contract as the "**Software**" but referenced in this Section 10, for clarity, as the "**ECAP Software**") at any renewal event for such ECAP Software, then the Parties agree as follows:

a. Amendment to Section 5 and M&V Plan. Effective upon the first day of a calendar month for which the ECAP Software is not actively licensed by the Board for the entire calendar month ("**Transition Date**"), Section 5 of the Contract is amended and restated in its entirety as follows, and the M&V Plan (referenced in Section 5 and attached to the Contract) is amended and restated as set forth in Exhibit A, attached hereto and incorporated by reference herein.

"5. **Measurement of Savings and Total Savings.** The value of the reduced energy consumption resulting from the Program ("**Savings**") will be measured following the Measurement and Verification Plan ("**M&V Plan**") attached as Exhibit A, and "**Total Savings**" will be as defined in the M&V Plan. Each reporting period will be a 12 month period ("**Performance Year**"). The "**First Performance Year**" or "**First Year**" shall mean the 12 month period beginning July 1, 2016 through the last day of June, 2017, with each succeeding Performance Year following the one before. Using the Energy Accounting Software, Savings and Total Savings shall be calculated for each Performance Year in comparison to the baseline, which is also referred to as the Base Year."

b. Export and Deliver Information. At least sixty (60) days prior to the Transition Date (and again upon expiration of the license for the ECAP Software, but only for the stub period), the Board shall require the Program Liaison to export from the ECAP Software and deliver to Cenergistic, in CSV or such other format specified by Cenergistic, the following data and information: (1) cost and consumption data from the first day of the Base Year through and including the most recent date for which such data and information is available, (2) all special adjustments that have been applied from the first day of the Base Year through and including the most recent date for which such data and information is available, and (3) such other information as Cenergistic may reasonably request.

c. License of Cenergistic Measure®. On or before the Transition Date, license Cenergistic Measure® from Cenergistic, which, on and after the Transition Date, shall be the Energy Accounting Software. On and after the Transition Date, the Energy Accounting Software (which on and after the Transition Date will refer to Cenergistic Measure®) will be used to calculate Savings and Total Savings.

d. No Recalculation of Savings. Except as set forth in the last sentence of this subsection, the Parties agree that the Savings and Total Savings calculated by the ECAP Software for Performance Years and partial Performance Years (if any) prior to the Transition Date will not be recalculated in the

Energy Accounting Software, and that the Energy Accounting Software will only be used to calculate Savings and Total Savings on and after the Transition Date. However, Savings and Total Savings for Performance Years and partial Performance Years (if any) prior to the Transition Date will be displayed in the Energy Accounting Software. Notwithstanding anything to the contrary herein, for up to three (3) months prior to the Transition Date for which data is materially incomplete in the ECAP Software as of the Transition Date, Savings and Total Savings may be calculated in the Energy Accounting Software using the amended Section 5 (set forth above) and the M&V Plan attached hereto as Exhibit A.

e. No Further Requirement to License EnergyCAP Software. After the Transition Date, the Board will no longer be required to maintain an active license for the ECAP Software.

12. Ratification of Contract. All other terms and conditions contained in the Contract, as modified by this Amendment #2, shall remain in full force and effect and are hereby ratified by the parties.

The Parties have executed this Amendment #2 effective as of the Effective Date.

SCHOOL BOARD OF CLAY COUNTY

CENERGISTIC LLC

By: _____

By: _____

Name: Ashley Gilhousen

Name: John Bernard

Title: Board Chair

Title: President and Chief of Staff

Date: _____

Date: _____

EXHIBIT A

MEASUREMENT AND VERIFICATION PLAN

This M&V Plan establishes the guidelines for measurement of electricity, coal, fuel oil, propane, natural gas, water, sewer, or other utilities purchased by the Client ("**Energy**") and the cost savings achieved through the Program.

1. **Scope**: All Energy in all facilities and infrastructure owned or leased by Client. A whole building (facility) approach will be used. All utility meters are included except meters for which (i) energy consumption is immaterial and/or (ii) the Program will not have a material impact on consumption.
2. **Meter Specifications**: Utility-grade meters used for billing are used except for (1) bulk fuel stored in tanks (where manual measurements may be used) or (2) master-metered campus situations (where submeters or usage data provided by the Client for internal billing may be used).
3. **Calibrated Simulations**: If metering equipment is determined to be unreliable, unavailable, or not accurately measure the effectiveness of the Program, Whole Building Calibrated Simulation, a process that uses a computer simulation tool to create a mathematical model of the building, will be used.
4. **Baseline**: Except for new construction (which shall be determined by Whole Building Calibrated Simulation), shall be established for each meter consisting of 12 consecutive months from the 24 month period preceding the Start Date and shall include Energy consumption, demand data, and other independent and relevant variable factors (for example, occupancy type, building information such as square footage, etc.).
5. **Adjustments**: Adjustments will be made by Cenergistic (supervised by licensed Professional Engineers, Certified Measurement and Verification Professionals, or Certified Energy Managers) for material changes in conditions that are independent of the Program and by the Energy Accounting Software for material changes, as follows:
 - 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
 - Weather, provided the Energy Accounting Software contains such a function
6. **Energy Value**: The value of each unit of Energy use avoided is the all-in rate per meter for that unit of Energy. The all-in rate is determined monthly by dividing the total expense by the total consumption for that meter for the prior rolling 12 months as reported by the utility company or as set forth below for solar ("Energy Value"). If the expense or consumption is materially distorted due to an anomaly (e.g., a water leak), then such expense and/or consumption may be modified to correct for such anomaly. Solar shall be valued at the Energy Value of the utility company supplied meter for the site or by calculating the Energy Value using the solar power purchase agreement's annual adjusted cost and solar production from the solar system. Net metering or spin back energy that was produced by onsite generation and not consumed by the buildings on-site will be excluded from both the measured utility consumption and cost to the buildings.
7. **Savings**: Energy savings are determined by comparing measured utility use before and after the Start Date for the similar time (i.e., baseline January is compared to performance year January) with adjustments and multiplying by the applicable Energy Value ("**Savings**"). "**Total Savings**" are Savings plus other measures unrelated to consumption reduction but that reduce the Client's out of pocket utility costs.

FOLLOW ALL PROCEDURES ON BACK OF THIS FORM

Contract ends 6/30/2024 per termination letter attached

Contract # 210087

Number Assigned by Purchasing Dept.



CONTRACT REVIEW

BOARD MEETING DATE:

June 3, 2021 at the latest

WHEN BOARD APPROVAL IS REQUIRED DO NOT PLACE ITEM ON AGENDA UNTIL REVIEW IS COMPLETED

Must Have Board Approval over \$100,00.00

Date Submitted: 2/17/2021

Name of Contract Initiator: Phil Hans

Telephone #: 336-6827

School/Dept Submitting Contract: Maintenance Department

Cost Center # 9021

Vendor Name: Cenergistic

Contract Title: Energy Savings Contract Amendment #1 to Prev Contract (Attached)

Contract Type: New Renewal Amendment Extension Previous Year Contract # Board Apprvd 11/17/2015

Contract Term: Extend from 6/30/2021 - 6/30/2024 (36 months) Renewal Option(s): Auto Renew Annually (90 day notice)

Contract Cost: \$997,200.00 (36 months @ \$27,700.00) PLUS: annual \$5,383 fee to EnergyCap

BUDGETED FUNDS – SEND CONTRACT PACKAGE DIRECTLY TO PURCHASING DEPT

Funding Source: Budget Line # _____

Funding Source: Budget Line # _____

NO COST MASTER (COUNTY WIDE) CONTRACT - SEND CONTRACT PACKAGE DIRECTLY TO PURCHASING DEPT

INTERNAL ACCOUNT - IF FUNDED FROM SCHOOL IA FUNDS – SEND CONTRACT PACKAGE DIRECTLY TO SBAO

REQUIRED DOCUMENTS FOR CONTRACT REVIEW PACKAGE (when applicable):

- Completed Contract Review Form
- SBAO Template Contract or other Contract (NOT SIGNED by District / School)
- SIGNED Addendum A (if not an SBAO Template Contract)*

***This Statement MUST BE included in the body of the Contract:**

"The terms and conditions of Addendum A are hereby incorporated into this Agreement and the same shall govern and prevail over any conflicting terms and/or conditions herein stated."

- Certificate of Insurance (COI) for General Liability & Workers' Compensation that meet these requirements:
 COI must list the School Board of Clay County, Florida as an Additional Insured and Certificate Holder. Insurer must be rated as A- or better.
 General Liability = \$1,000,000 Each Occurrence & \$2,000,000 General Aggregate.
 Auto Liability = \$1,000,000 Combined Single Limit (\$5,000,000 for Charter Buses).
 Workers' Compensation = \$100,000 Minimum
 [If exempt from Workers' Compensation Insurance, vendor/contractor must sign a Release and Hold Harmless Form. If not exempt, vendor/contractor must provide Workers' Compensation coverage].

State of Florida Workers Comp Exemption (<https://apps.fldfs.com/bocexempt/>) (If Applicable)

COVID-19 Waiver (If Applicable)

Release and Hold Harmless (If Applicable)

RECEIVED
3/01/2021
SBAO

****AREA BELOW FOR DISTRICT PERSONNEL ONLY ****

CONTRACT REVIEWED BY:	COMMENTS BELOW BY REVIEWING DEPARTMENT
Purchasing Department BY: <i>B78</i>	Terms emphasized with Green mark on Amendment & Red are Questions below: What's the cost of EnergyCAP Software per Amendment Section 2 - Original Section 4c? What's the monthly Fee for auto-renewal per Amendment Section 4 / Section 5? <i>(\$27,700)</i>
School Board Attorney <i>ab</i>	<i>\$997,200.00 over 3 years! To turn off the lights?</i> Department needs to make the call to move forward with Contract as is 5/2/2021 - B78
Other Dept. as Necessary	
Review Date <i>4/28/21</i>	
PENDING STATUS: <input type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, HIGHLIGHTED COMMENTS ABOVE MUST BE CORRECTED BY INITIATOR
FINAL STATUS	<input checked="" type="checkbox"/> APPROVED DATE: <i>5/12/2021</i>

Department 9021
 Understands terms
 \$5,383 a year
 paid to EnergyCap

Cenergistic[®]

March 20, 2024

VIA HAND DELIVERY

School Board of Clay County
925 Center Street
Green Cove Springs, FL 32043
Attn: Bryce Ellis, Assistant Superintendent of Operations

Subject: Non-renewal of Energy Savings Contract, as amended ("Contract")

Dear Ms. Ellis:

As you know, we have had conversations about amending and extending our current business relationship, the terms of which are beneficial to both parties. We continue to look forward to entering into a contract under those new proposed terms and understand that you do not want to approach your Board on the new arrangement until we get closer to the end of the current contract, which expires June 30, 2024.

In the interim, the Contract has an automatic one-year renewal provision, unless one party gives notice to the other party at least 90 days prior to the termination date. **As neither of us intend to renew for one year under the current terms, please accept this letter as written notice of non-renewal as contemplated by Section 6 of the Contract.**

See
Amendment
240167
6/2024 Board

We look forward to entering into a new agreement under the proposed terms. Please reach out to me if you have any questions or concerns, or if I can ever support your efforts in Clay County in any way.

Respectfully,



Joseph Coburn, Ph.D.

Vice President of Client Management

(512)818-3042

[jacoburn@cenergistic.com](mailto:jcoburn@cenergistic.com)

Energy Savings Contract Amendment #1

This Energy Savings Contract Amendment #1 ("**Amendment #1**") is entered into on _____, 2020 ("**Effective Date**"), by and between the School Board of Clay County (the "**Board**") and Cenergistic LLC, ("**Cenergistic**"), to amend that certain Energy Savings Contract by and between the Board and Cenergistic with a Start Date of January 1, 2016 ("**Contract**").

WHEREAS, the Contract terminates pursuant to its terms on June 30, 2021 and whereas the Contract may be modified by a writing signed by the parties pursuant to Section 12(a) of the Contract; and

WHEREAS, the parties desire to (1) extend the term beyond June 30, 2021, (2) provide for additional services, (3) change the Performance Fee (as defined in the Contract) and (4) amend certain other provisions of the Contract.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree, and the Contract hereby is ratified and amended as follows:

1. Definitions. All terms used herein but not defined herein shall have the meanings assigned to them in the Contract.

2. Amendment to Section 4(c). The following sentence is added to the end of Section 4(c) of the Contract:

"Notwithstanding anything contained herein to the contrary, effective the first day of the Extended Term, the Board's costs for the Software will be determined by the Board and Software provider, and Cenergistic makes no representations related to the Software, including but not limited to representations regarding the cost of such Software after the end of the Term and during the Extended Term."

3. New Section 4(g). A new subsection (g) is added to the end of Section 4 in the Contract as follows:

"(g) The primary focal points of services during the Extended Term shall include:

- Dedicated assignment of Cenergistic Energy Specialist to Board
- On site and remote support from Cenergistic experts and engineers
- Promote savings success
- Access by Board personnel to Cenergistic virtual training conferences
- Updated Energy Management Action Plan (EMAP) supported by Cenergistic proprietary software suite"

4. Amendment to Section 6. The following language is added to the end of Section 6 in the Contract as follows:

"At the end of the Term, the Contract is extended for an additional thirty-six (36) month period (the "**Extended Term**") such that the Contract shall terminate on June 30, 2024. Notwithstanding

anything in the Contract to the contrary, each twelve (12) month period during the Extended Term shall be a Performance Year, with the first twelve (12) month period being the "Sixth Year" and so on through the "Eighth Year". The Contract shall include eight (8) Performance Years. Further, at the expiration of the Extended Term (and any additional terms thereafter as a result of auto-renewal), the Contract shall automatically renew for an additional one (1) year period unless ninety (90) days prior written notice of non-renewal of the Contract is provided by a Party to the other Party."

5. Amendment to Section 7(b). The following language is added to the end of Section 7(b) as a new paragraph in the Contract as follows:

"Performance Fee During Extended Term. For each month of the thirty-six (36) months during the Extended Term, the Board shall pay Cenergistic the amount of Twenty-Seven Thousand Seven Hundred Dollars (\$27,700) ("**Extended Fee**"). This Extended Fee will be included in the definition of a Performance Fee as used in the Contract and will be the "Performance Fee" during the Extended Term. Cenergistic shall submit an Extended Fee billing statement to the Board for each month during the Extended Term. Payment is due no later than 30 days after the Board receives the billing statement. 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. A valid request or need for an adjustment to a billing statement shall not be good cause for failure to pay a given billing statement; any appropriate adjustments shall be made to subsequent billing statements. The Board acknowledges and agrees that the Extended Fee amount is a discounted fee amount based on the Board's agreement to enter into this Amendment #1 for the entire Extended Term and that the amount of the Extended Fee would be higher if the Board had not agreed to the length of the Extended Term. Therefore, the Board agrees to pay the Work Fee to compensate Cenergistic for the work performed by Cenergistic and for the benefits received by the Board (and not as a penalty) in the event a Work Fee payment obligation is triggered."

6. Amendment to Section 8(a). The following is added as additional rows 4 and 5 to the Table in Section 8(a):

Performance Years Six through Seven	An amount equal to six (6) Extended Fees
Performance Year Eight	The lesser of (a) the remaining Extended Fees for the Extended Term or (b) an amount equal to four Extended Fees

7. References to Term in the Contract. The following references to "Term" in the Contract are hereby amended to read "Term and/or Extended Term": (1) last sentence of Section 4(d), (2) last sentence of Section 5(d)(iv), (3) second sentence of Section 7(e), (4) first sentence of Section 8(a), (5) first sentence of Section 8(b), (6) last sentence of Section 8(c), and (7) first sentence of Section 12(d).

8. Sections 9 and 10. Effective on the first day of the Extended Term, Sections 9 and 10 of the Contract are hereby amended and restated in their entirety as follows:

"9. Termination Event. Upon termination of this Contract the Board shall promptly: (a) return to Cenergistic all materials and Proprietary Information previously furnished by

Cenergistic or accumulated by the Board 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 Board 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.

10. Proprietary Program and Information. (a) Proprietary Information. The Board may have access to and use of any or all of the following: (1) Cenergistic's energy management program, (2) materials that are copyrighted, patented, protected by trade secrets and other information that is proprietary to Cenergistic and (3) Cenergistic software, including both browser based and mobile versions, upon acceptance of the terms of services associated with such Cenergistic software, 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 Software are collectively referred to as "Proprietary Information".

(b) Limitations on Use; Confidentiality. The Board hereby agrees that Cenergistic is the owner of all right, title and interest in and to the Proprietary Information. The Board agrees that nothing contained in this Agreement shall be construed as granting any ownership right to the Board in any Proprietary Information, or to any invention or any patent, copyright, trademark, or other intellectual property right. The Board shall not make, have made, use or sell for any purpose, any product or process using, incorporating or derived from any Proprietary Information. The Board shall not copy, modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in the Proprietary Information. The Board agrees that an invention or work created by the Board or any of its personnel based on or incorporating any of the Proprietary Information shall be owned exclusively by Cenergistic. The Board 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 Board 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 Board agrees that the Proprietary Information, including but not limited to the patents and copyrights of Cenergistic, are valid and enforceable. The Board 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 Board shall give Cenergistic written notice and an opportunity to respond if the Board receives a third-party request for Proprietary Information. The Board shall not disclose the Proprietary Information to any unauthorized person or use it outside of the Board or this Contract. The Board 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. The Board's obligations under this paragraph survive termination of this Contract. Board 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 Board will not solicit, hire or retain any Cenergistic employees or contractors for employment or other work at or for the Board."

9. Deletion of Section 11. Effective the first day of the Extended Term, Section 11 is deleted.

10. Ratification of Contract. All other terms and conditions contained in the Contract, as modified by this Amendment #1, shall remain in full force and effect and are hereby ratified by the parties.

The Parties have executed this Amendment #1 effective as of the Effective Date.

SCHOOL BOARD OF CLAY COUNTY

CENERGISTIC LLC

By: Mary S. Bella

By: John Bernard

Name: Mary S. Bella

Name: John Bernard

Title: Board Chair

Title: President, Area Sales

Date: 6/24/21

Date: June 15, 2021



**School District of Clay County
Green Cove Springs, Florida**

**Teacher Inservice Center - Fleming Island High School
2233 Village Square Parkway Hearings for Special
Actions regarding Students - 4:00 p.m. Regular
Meeting - 7:00 p.m.
November 17, 2015 - Regular Meeting
Agenda Item #44**

Item Title

D-6 Review of Cenergistic Energy Conservation Program

Issue/Rationale

Energy costs comprise a large portion of the District's budget and are an area where small efficiencies in operations may provide significant payback. However, to be effective over the long term, this requires making adjustments to equipment as well as behavior, monitoring the effects of those adjustments, and then making further adjustments, as required. This is an iterative process that requires constant attention and monitoring to yield consistent, and continuing, results. At this point in time, the School District of Clay County does not have the personnel on staff with the experience, or the time, to be dedicated to this single function. Partnering with Cenergistic will provide the Board with three (3) dedicated Energy Specialists with the extensive backup and support network required to be effective on a continuing basis.

Recommended Action

Approve contract with Cenergistic

Financial Impact

There are no upfront costs to the District. Cenergistic will only be paid after a reduction in energy usage compared to the established base year has been verified. Cenergistic will receive one half of the verified savings on a month to month basis.

Submitted By

John Merrill, Assistant Superintendent for Support Services

- Attachment: [Cenergistic Proposal Part 1.pdf](#)
- Attachment: [Cenergistic Proposal Part 2.pdf](#)
- Attachment: [Cenergistic Proposal Part 3.pdf](#)
- Attachment: [Cenergistic Proposal Part 4.pdf](#)
- Attachment: [Cenergistic Proposal Part 5.pdf](#)
- Attachment: [Cenergistic Proposed Contract.pdf](#)
- Attachment: [2015 Nov 17 - Cenergistic 2.pdf](#)

Energy Savings Contract

This energy savings contract is between the School Board of Clay County (the "Board") and Cenergistic LLC ("Cenergistic"). This contract is subject to all applicable state and federal laws.

Cenergistic® delivers customized, comprehensive people-driven energy conservation programs that focus on changing human behavior to help school districts, churches and higher education clients reduce their consumption of energy and water without any equipment upgrades. Implementation of these programs is guided by Cenergistic's team of energy consultants - together representing several hundred years of public school energy conservation experience. Cenergistic's clients can invest the financial savings that result in the lives of the people they serve, rather than in utility companies. Cenergistic guarantees the success of these programs as set out in paragraph 7 below. To date Cenergistic has served more than 1,360 clients in 48 states.

The Board is committed to its mission: "Our mission is to work collaboratively with all stakeholders to provide a public education experience that is motivating, challenging, and rewarding for all children. We will increase student achievement by providing students with learning opportunities that are rigorous, relevant and transcend beyond the boundaries of the school walls. We will ensure a working and learning environment built upon honesty, integrity and respect. Through these values, we will maximize student potential and promote individual responsibility." The Board uses electricity, gas, heating oil, water and sewer (collectively "energy") to fulfill its mission. The Board serves more than 36,000 children at its 42 campuses.

Cenergistic has offered to build and provide a customized energy conservation program that is focused on organizational and behavioral change and is designed with the following goals:

- Save dollars that the Board can reinvest in the people it serves;
- Preserve a quality learning environment for the Board's children;
- Conserve energy for a positive impact on the environment; and,
- Increase awareness to empower energy users to be energy savers.

Cenergistic will help the Board pursue these goals through implementation of its energy conservation program. Central to the success of this program is the recognition of shared responsibility between Cenergistic and the Board as the program is initiated and implemented. Cenergistic provides extensive resources, education and onsite training, action planning, and other conservation-related services, while the Board works cooperatively to implement Cenergistic's program.

Shared responsibility also extends into the way Cenergistic is compensated for its services. With this in mind, Cenergistic is providing three energy specialists who will serve on-site to lead and manage implementation of the energy conservation program and is offering a "performance fee" billing arrangement. This approach means the Board will not have to spend any amounts for on-site management of the program and 100% of Cenergistic's compensation is paid from the savings realized by the Board. Cenergistic's fee is contingent on the successful implementation of Cenergistic's conservation program.

As a part of this shared responsibility, Cenergistic offers a *QuickStart* during the early months. During the *QuickStart* the Board does not pay any fees to Cenergistic; at the same time Cenergistic delivers focus on priority elements of its Cenergistic energy management program for a quick start. The *QuickStart* accelerates net savings for the Board.

The parties therefore agree as follows:

1. **Program.** On January 1, 2016 ("Start Date") Cenergistic shall begin its work on this contract to provide the Board with a people-driven energy management program that is customized to enable the Board to reduce consumption of energy ("Program").

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

- Through Cenergistic's on-site and ongoing assessments of the Board'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 Board's environment.
- Cenergistic's energy consultants shall guide and assist the Board's Program implementation following Cenergistic's proven methodology, the Cenergistic energy management program.

3. **Energy Specialists.** (a) *Onsite Assignment.* Program implementation requires a daily focused effort in the Board's facilities and areas. This effort will initially be led by three energy specialists who can make conservation a priority while positively engaging people to conserve energy. Cenergistic may adjust the number of energy specialists depending upon the needs of the Program. Cenergistic shall take immediate actions to identify three persons to serve as energy specialists for the Board. The salary or contract expense for the energy specialist will be paid by Cenergistic. In the event the Program is suspended for reasons set out in paragraphs 7(b) or 8(c) below, the Board 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 Board that is unacceptable to the Board (which acceptance shall not be unreasonably withheld).

(b) *Duties.* The energy specialists' primary duties will be to spend time in the Board's facilities to identify savings opportunities and to work closely with the Board'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 specialists will work to maintain energy consumption and other information related to energy use in the Board's facilities and areas. The energy specialists will use the EnergyCAP® energy accounting software program from EnergyCAP, Inc. ("Software").

(c) *Local Resources.* Within 30 days after the selection of the energy specialists, the Board will provide the energy specialists 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 Board policies and procedures. If requested due to safety or security concerns, the Board will provide a commissioned security officer to accompany the energy specialists while performing facilities assessments outside of normal business hours.

4. **Program Implementation.** (a) *Prompt Start.* Once Cenergistic has assigned energy specialists to work on-site, the Board will promptly begin and then continue to implement the Program.

(b) **Commitment and Communication.** In Cenergistic's experience, the success of the Board'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 the administration must adopt appropriate administrative guidelines reflecting the Board's commitment to the Program. The Board 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. The Board will make its utility records available for review and copying on request of the energy specialist, Program Liaison or Cenergistic.

(c) **Software Tool.** The effective management of energy information is a first step to achieving positive results through accountability. Energy consumption will be accounted for by using a third party software program, EnergyCAP®, with which Cenergistic's energy consultants are knowledgeable and trained to provide support to the Board. No later than 90 days after the Start Date, the Board must license the EnergyCAP® energy accounting software program from EnergyCAP, Inc., or, if later recommended by Cenergistic to its clients (e.g. because EnergyCAP® ceased to be available), an alternative software program ("Software"). The Board's cost for the Software is \$13,800 per year for the first three years and \$5,382 per year thereafter. 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 Board access to review all data entry.

(d) **Program Liaison.** Within thirty (30) days after the Start Date, Cenergistic and the Board will discuss and collaborate on identifying one of the Board's senior-level business officials to serve as the liaison and primary point of contact for the Board on the Program ("Program Liaison"). The Program Liaison should be accessible and responsive to Cenergistic for communication and meetings and may not be someone 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 EnergyCAP workshop provided by EnergyCAP Inc. in Dallas, TX. The Program Liaison may bring other Board representatives to the EnergyCAP workshop, at Board expense. In the event there is a replacement Program Liaison, after designation for that position, that person shall attend the next offered EnergyCAP 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.** The energy specialists need to have access to the Board's systems controls, including the energy management systems ("EMS"), and the authority (in communication and coordination with other Board personnel) to make changes so that facilities are not operated outside of the established policy and guidelines. The energy specialists need 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 specialists will not have authority to make

any changes that violate Board established policy and guidelines and the Board retains the right to suspend the energy specialists' access at any time. In the event of such a suspension the Board will immediately inform Cenergistic of the suspension and the basis. The Board shall provide such access and authority to the energy specialists within 30 days of the energy specialists' first day of on-site work. This contract does not alter the Board'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 Board shall not allow any third party to interfere with the Board'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. The simple formulaic expression is:

Avoided Energy Use (or Savings) = Adjusted-Baseline Energy – Reporting-Period Energy ± Non-Routine Adjustments of baseline energy to reporting-period conditions

The energy specialists shall use the Software to calculate the Board's savings by subtracting the energy actually used (i.e. consumption: kWh, BTUs, gallons, etc.) in each Performance Year (as defined below) from the use in the Base Year (as defined below), plus or minus any Adjustment Variables (as defined below), and applying the price (based on the blended rate to the Board for each type of energy purchased by the Board for all sources of energy except for solar which shall be valued as set out in paragraph 5(d)(iii) below) ("Savings"). The "Total Savings" means the Savings and any additional verifiable cost containment or avoidances resulting from the Program (e.g. utility refunds received as a result of a Program billing audit), in accordance with current industry-accepted valuation methodology. 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 five business days of receipt. Cenergistic's projections of Total Savings when using the Program are based upon energy consumption and other data furnished by the Board.

(b) **Baseline Period.** A 12 month baseline period will be established as set out in the attached M & V Plan by Cenergistic and the energy specialists, in consultation with the Program Liaison. The Software will be used to establish a baseline period consisting of 12 consecutive months that precede the Start Date ("Base Year"). The Board represents that the historical utility usage data 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 accurate utility usage of ± 5% or more or, 2) changes in the 12 months preceding the Start Date would cause those 12 months to not accurately reflect actual pre-program usage by the Board ("variation"), Cenergistic may select as the Base Year an alternate 12-month period from the 36 months preceding the Start Date. For new construction, the energy specialists and Cenergistic, in consultation with the Program Liaison, will use detailed, calibrated simulation analysis to compile the Base Year.

(c) **Reporting Period.** Each reporting period will be a 12 month period ("Performance Year"). The first Performance Year will begin after the energy specialists start work and the *QuickStart* (as defined below) ends ("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. Using the Software, Savings shall be calculated for each Performance Year in comparison to the Base Year.

(d) **Appropriate Adjustments.** (i) Adjustments to the baseline shall be made in accordance with the M & V Plan to recognize that the operating environment changes in ways that impact energy use but are independent of the Program (e.g. the weather) and function simply to bring energy use in the two time periods to an equivalent set of conditions.

(ii) The Software allows appropriate adjustments to the Base Year, using available data to account for the following factors occurring during the Performance Year that affect the energy used in facilities ("Adjustment Variables"): outside temperature; floor space; occupancy type or schedule; amount, type or use of equipment; number of days in the billing period; energy rates; and reasonably estimated energy loads added or reduced after Program implementation.

(iii) The Software also allows other appropriate adjustments for a more accurate Savings calculation. If the Board has experienced abnormal temperatures during the Base Year, a total of 36 months of billing information will be used to create a more accurate statistical model for the Board. The Board shall communicate the Board's energy conservation guidelines to its construction contractors and on-site management service providers, if any. Savings will be determined using either calibrated simulation or by making appropriate adjustments, as mutually agreed by the parties, in the event of any of the following: (a) the guidelines are not substantially followed by third party construction contractors or on-site management service providers; (b) the Board chooses not to substantially implement Cenergistic's water conservation recommendations; or, (c) there are equipment malfunctions that negatively impact program savings. Agreement concerning the calibrated simulation or appropriate adjustments will not be unreasonably withheld by either party. In the event solar electricity is implemented by the Board, the parties agree to a process that recognizes net metered electric generation to exclude any solar production from the reported EnergyCAP use and cost avoidance. Solar energy produced (that was consumed by the building) is tracked in EnergyCAP 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 average unit cost (as "average unit cost" is defined in this contract and Measurement and Verification Plan).

(iv) The data will continue to be reviewed for accuracy during the term of the Contract. In the event there are inaccuracies in the data or there are data entry errors (i.e. information not known at the time, incorrect meter reading or data entered into the 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.

6. **Term.** This contract shall be for a term beginning on the Start Date and ending on the due date for the Performance Fee payment for the last month of the Fifth Year ("Term").

7. **QuickStart and Fees.** (a) **QuickStart.** The Board shall not pay any Performance Fees to Cenergistic during the *QuickStart* period, beginning on the Start Date and ending six months after the Start Date, or on such later date as determined by Cenergistic ("QuickStart").

(b) **Performance Fee.** Cenergistic's Performance Fees are based on the Total Savings the Program achieves during the first five Performance Years ("Fee Period"). For each month during the Fee Period, the Board shall pay Cenergistic a fee in an amount equal to 50% multiplied by the Total

Savings for that month ("Performance Fees"). Cenergistic shall submit a Performance Fees billing statement to the Board for each month during the Fee Period. Payment is due no later than 30 days after the Board receives the billing statement. 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. A valid request or need for an adjustment to a billing statement shall not be good cause for failure to pay a given billing statement; any appropriate adjustments shall be made to subsequent billing statements.

(c) **Billing Audit Contingent Fees.** As indicated above, the Board shall not pay any Performance Fees during the *QuickStart*. However, the Board shall pay Cenergistic a fee in an amount equal to 50% multiplied by the amount of any refund or credit that the Board receives during the *QuickStart* from a third party provider of energy as a result of a Program billing audit ("Billing Audit Contingent Fees"). Any such credit or refund received during the Fee Period shall be payable according to paragraph 7(b). Cenergistic shall submit a Billing Audit Contingent Fees billing statement at the start of the Fee Period. Payment is due no later than 30 days after the Board receives the billing statement.

(d) **Additional Districts.** In the event the Board 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 one of the energy specialists to provide energy management support, the Board agrees to not share, utilize, or include the Program (including the use or services of the energy specialists 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.

(e) **Savings Guarantee.** Cenergistic's commitment to the quality of the Program is evidenced by Cenergistic's Savings Guarantee (as defined below). Cenergistic shall reimburse the Board for the difference if the Board'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 paid or reimbursed for a prior Performance Year. To be eligible for the Savings Guarantee the Board must have substantially implemented the Program. The "Board's Costs" means the total amounts paid for initial and renewal costs of the Software, and the Performance Fees. Cenergistic shall pay the Board a required reimbursement no later than 90 days after the results for the prior Performance Year have been finalized by Cenergistic and the energy specialist. If Cenergistic fails to make a required reimbursement, the Board may terminate this contract without payment of a Work Fee and recover the amount of the required reimbursement from Cenergistic.

8. Board Termination for Convenience or Lack of Substantial Implementation. (a) As provided in this contract Cenergistic anticipates a long-term relationship and remains committed to the Board through the Term and beyond. However, the Board may terminate this contract for any reason and without cause as provided in this paragraph. Also, Cenergistic may terminate this contract in the event that even after notice and an opportunity to remedy the Board is not substantially implementing the Program (as defined below). In either instance, the Board must pay a Work Fee to compensate Cenergistic for its Intellectual Property, the work performed by Cenergistic and for the benefits received by the Board (and not as a penalty) ("Work Fee"), with the calculation based upon the date of termination, as follows:

Quick Start through the end of Performance Year One	<p>a. Payment for the value of Cenergistic's Intellectual Property and the continuing benefits of the program after termination: in the amount of \$227,400 which represents 15% of Projected Performance Year One Total Gross Savings per the Cenergistic matrix; plus</p> <p>b. \$700 per day, for each Cenergistic employee on-site from Start Date through the termination date to cover costs including overhead</p>
Performance Years Two through Four	An amount equal to the preceding twelve months' Performance Fees
Performance Year Five	The lesser of: (a). the remaining projected fees for Performance Year 5 per the Cenergistic matrix; or, (b). an amount equal to the preceding four months Performance Fees

(b) To validly exercise its right to terminate during the Term 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"), the Board shall provide Cenergistic with at least 60 days prior written notice and shall promptly pay Cenergistic (1) a Work Fee, plus (2) an amount equal to the unpaid Monthly Performance Fees and Billing Audit Contingent Fees, if any, but only through the termination effective date. The Board's right to terminate for convenience does not limit the rights and remedies of the Board. More specifically, if Cenergistic fails to perform its material obligations under this contract, the Board's legal rights and remedies are not limited by the terms of this paragraph. If the Board contends Cenergistic has committed a material breach of the contract, the Board 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 Board may terminate this contract without any obligation to pay a Work Fee.

(c) **Substantial Implementation.** If Cenergistic reasonably determines that the Board is not substantially implementing the Program, Cenergistic shall give the Board written notice of its determination (including specific details supporting Cenergistic's determination and specific recommendations for appropriate Board action) and, at Cenergistic's discretion, the Performance Year and payment of the Performance Fees shall be suspended until the Board is substantially implementing the Program. The Board 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 Board is substantially implementing the Program, the parties agree to meet to resolve the differences as set out in paragraph 12(c) below. "Substantial implementation of the Program" does not require the Board 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; or, (ii) if the Board 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. For purposes of determining savings, savings shall continue to accrue through any suspension period. If Cenergistic reasonably determines the Board continues to fail or refuse to substantially implement the Program following such notice and opportunity to remedy, (including the opportunity to follow the dispute resolution process set forth in Paragraph 12(c) below), then Cenergistic may exercise this right to terminate during the Term on written notice and the Board shall promptly pay Cenergistic: (1) a Work Fee as calculated according to this paragraph 8 above, plus (2) an amount equal to the unpaid Performance Fees and Billing Audit Contingent Fees, if any, but only through the termination effective date.

9. **Termination Event.** Upon termination of this contract the Board shall promptly: (a) return to Cenergistic all materials and Proprietary Information previously furnished by Cenergistic or accumulated by the Board in connection with the Program, including all copies thereof; (b) cease using the Proprietary Information and implementing the Program; and (c) discontinue the employment of any Board energy specialists trained by Cenergistic in that position.

10. **Proprietary Program and Information.** (a) The Board will have access to and use of Cenergistic's energy management program as well as materials that are copyrighted, trade secrets and other information that is proprietary to Cenergistic (collectively "Proprietary Information"). Furthermore, the Proprietary Information also includes all database files created using the Software.

(b) The Board 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 Board shall give Cenergistic written notice and an opportunity to respond if the Board receives a third party request for Proprietary Information. The Board shall not disclose the Proprietary Information to any unauthorized person or use it outside of the Board or this contract. The Board shall assist Cenergistic in the protection of the Proprietary Information. The Board's obligations under this paragraph survive termination of this contract.

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

11. **Program Continuation.** (a) **No More Fees.** Once the Board has paid all fee amounts owed to Cenergistic for the Fee Period and so long as: (i) the parties mutually agree to the continuation details as set out in 11(b) below, and (ii) the Board continues to substantially implement the Program, (which shall include maintaining current performance data in the Software), the Program shall continue with no additional fee payments to Cenergistic. During this Program Continuation period the Board may continue to implement and utilize the Program but always subject to the Board's continuing obligations in this contract regarding the Proprietary Information (as defined and set out above).

(b) **Transition at end of Term.** To allow for a smooth transition from the contract term to the sustainability phase, no later than six (6) months prior to the end of the Term the parties will meet to mutually agree upon the following transition and continuation details: (i) all issues concerning the energy specialist during the Program Continuation phase including, but without limitation, the process of

selection, compensation, training and employment, and (ii) any optional value added services to be provided by Cenergistic. In the event the parties are unable to mutually agree upon the necessary details for Program Continuation prior to the end of the Term, the Program will terminate at the end of the Term.

12. **Miscellaneous.** (a) This contract constitutes the entire agreement of the parties with respect to the subject matter of this contract. 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) 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 Board 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) **Insurance.** During the Term, Cenergistic will maintain insurance and upon request after the Start Date, Cenergistic will furnish certificates of insurance for the following coverage amounts: (1) Worker's Compensation – Statutory requirements and benefits; (2) Automobile Liability - \$2,000,000.00 per accident, bodily injury and property damage combined; (3) Commercial General Liability - \$1,000,000.00 per occurrence and general aggregate, to include contractual liability, premises operation liability, independent contractor's liability, explosion, collapse and underground property damage, personal liability and products liability. The Board shall be named as an additional named insured on the general liability and automobile insurance coverage. On request of the Board, Cenergistic will produce a certified copy of any insurance policy.

(e) **Indemnification.** Cenergistic agrees to indemnify and hold harmless the Board and the Board's Indemnitees (defined below) from and against any and all losses (defined below) and to defend the Board and the Board's indemnitees from and against any and all claims (defined below), arising out of Cenergistic's actual omission, act or negligence in the performance or failure to perform its obligations under this contract, and Cenergistic's activities hereunder, including the activities of the energy specialist, or other persons employed or authorized by Cenergistic in the performance of the contract, but excepting liabilities due to the negligence, gross negligence or willful misconduct of the Board. The "Board's Indemnitees" means its respective Board members, agents, volunteers, officers, administrators, trustees and other employees. The "losses" means all bodily injury, property damage, personal injury, penalties or fines, and other liabilities and damages, including reasonable attorneys' fees and costs. The "claims" means all third-party claims, allegations, demands, lawsuits or other proceedings initiated by third parties. Without waiving the foregoing, Cenergistic specifically agrees to indemnify the Board from any losses to Board property arising out of Cenergistic's actual omission, act or negligence in the performance or failure to perform its obligations, under this contract. Notwithstanding any contrary

contractual language, nothing in this contract shall be construed or interpreted to increase the scope or dollar limit of the Board's liability beyond that which is set forth in 768.28 FL. Statutes. This indemnification provision shall survive the termination of the contract.

(f) **Governing Laws.** This contract shall be governed by, construed, and enforced in accordance with the laws of the State of Florida. Jurisdiction and venue for all disputes hereunder shall be in the state courts located in Clay County, Florida, or in the federal district court with jurisdiction over Clay County, Florida.

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

School Board of Clay County

CENERGISTIC LLC

By: Johnna McKinnon

By: John Bernard

Name: Johnna McKinnon

Name: John Bernard

Title: Chairperson

Title: President

Date: 11-18-15

Date: November 11, 2015

School Board of Clay County, FL - K12 TK MES 5yr CONTRACT v.4 111115

MEASUREMENT AND VERIFICATION PLAN

This Measurement & Verification Plan ("M&V Plan") is prepared for School Board of Clay County (the "Organization") by Cenergistic and is agreed to by the parties as the M&V plan in accordance with the protocols of the International Performance Measurement and Verification Protocol ("IPMVP") for the energy program delivered by Cenergistic pursuant to the contract with a Start Date of January 1, 2016.

This M&V Plan is prepared in accordance with Section 7 of IPMVP Core Concepts (EVO 10000-1:2014).

The IPMVP guideline, developed and maintained by the nonprofit Efficiency Valuation Organization (see www.EVO-World.org), is the most current and widely-recognized guideline promulgated by a non-profit and impartial source. The IPMVP is the product of an international consortium of volunteers working together to promote standardized methods for the correct valuation of energy efficiencies.

IPMVP includes guidance for many types of energy management initiatives and circumstances; not all guidance is applicable in all cases. The purpose of this M&V Plan is to document how the M&V guidance contained within IPMVP will be specifically applied to this contract. In cases of variance between specific provisions of IPMVP and this M&V Plan, this Plan takes precedence.

- 1. ECM Intent** The energy conservation measures ("ECMs") reduce electricity, gas, water and other energy usage and cost, depending on the specific facility. Many varied ECMs will be used to achieve the savings. ECMs will be operational in nature (not equipment, facility or hardware retrofits) and are generally categorized as 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. Space conditions, during both occupied and unoccupied periods, will change as necessary to comply with the organization's published energy policy and administration guidelines.
- 2. Selected IPMVP Option and Measurement Boundary** IPMVP Option C (Whole Facility) will be used for savings determination because it is the most appropriate M&V method for total facility energy reduction when all energy-using systems are affected and ECMs cannot be isolated, submetered or simulated by computer model. Option C was also chosen because many ECMs will be involved, and some of them cannot be directly measured. Utility meters for electricity, gas, heating oil, water and sewer will be included in the savings M&V for the organization. Together, these meters will account for all energy use by each facility. The total savings is the sum of savings for each facility. The measurement boundary includes all facilities and infrastructure owned and leased by the Organization. In the event metering equipment is determined to be unreliable, Option D, Calibrated Simulation, will be used.
- 3. Baseline: Period, Energy and Conditions** Using the Software (as defined in the contract, hereinafter "Software"), a baseline period shall be established for each meter consisting of 12 consecutive months that precede the energy program Start Date. Normally this will be the 12 months immediately prior to start date, but under circumstances described in the contract, an alternate 12-month period may be chosen.

The baseline data for each meter will be defined and available in the M&V Software upon import and preparation of the data for each meter & facility. The Software also includes static factors such as weather and building size. Included in the baseline data will be an identification of the baseline period, baseline energy consumption and demand data, other independent and relevant variable data, and other static factors (i.e. occupancy type, building information such as square footage, etc.). Other

baseline data may be included and/or supplemented as agreed by the parties. Local weather data will be obtained from a nationally-recognized service.

4. 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.

5. Basis for Adjustment Energy savings are determined by comparing measured use before and after the start of Program implementation, after making appropriate adjustments for changes in conditions that are independent of the Program. Since savings are to be reported as "cost avoidance", under reporting period conditions, the IPMVP equation for reporting period savings 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, considers routine and non-routine adjustments and is expressed as:

Avoided Energy Use (or Savings) = Adjusted-Baseline Energy – Reporting-Period Energy ± Non-Routine Adjustments of baseline energy to reporting-period conditions

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

6. Analysis Procedure The Software performs the cost avoidance analysis procedure. The Software allows appropriate routine and non-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: number of days in the billing period, energy unit cost, and reasonably estimated energy loads added or reduced after Program implementation due to such factors as outside temperature; floor space; occupancy type or schedule; amount, type or use of equipment; facility construction/renovation; and energy management hardware retrofits installed under unrelated projects. Specific cost avoidance analysis algorithms used by the Software are extensively documented and can be furnished upon request.

The Software also allows other appropriate adjustments for a more accurate Savings calculation. 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 baseline. Savings will be determined using either calibrated simulation or by making appropriate adjustments, as mutually agreed by the parties, in the event of any of the following: (a) the organization's energy conservation guidelines are not substantially followed by its construction contractors or on-site management service providers, if any, (b) the Board chooses not to substantially implement Cenergistic's water conservation recommendations; or, (c) there are equipment malfunctions that can negatively impact program savings.

The Software adheres to the IPMVP guidelines. IPMVP is not exhaustive in its guidance; in some situations engineering judgment must be used. Calculations are supervised by licensed Professional Engineers, Certified Measurement and Verification Professionals and Certified Energy Managers.

7. Energy Prices Reporting of cost avoidance will value the energy use avoided at the then-current unit cost for each meter, each period. Prices will be calculated by the Software for each month. The price applied for each utility (except solar) is the realized price, based on 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. In the event solar electricity is implemented by the Board, the parties agree to a process that recognizes net metered electric generation to exclude any solar production from the reported EnergyCAP use and cost avoidance. Solar energy produced (that was consumed by the building) is tracked in EnergyCAP 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 average unit cost (as "average unit cost" is defined in this contract and Measurement and Verification Plan).

- 8. Meter Specifications** Utility company meters used for billing are the only meters used. Exception: For heating oil stored in tanks, dip 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.
- 9. Monitoring responsibilities** Energy data from utility bills will be recorded in the Software as set out in the contract. The 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 Software. Responsibility for collection, entry, calculation and accuracy of the data in the Software is the responsibility of the Energy Specialist(s) under the supervision of Cenergistic.
- 10. Expected Accuracy** The accuracy of data capture of the utility billing data and entry of that data into the Software is expected to be verified 100% ($\pm 2\%$) via reports that reconcile data with utility bill accounts payable to ensure the quality of the data entered, to ensure consistency with previous billing, elimination of gaps or duplicate entries, and reasonable protection against user errors in data entry. Statistical accuracy of the Software's routine weather adjustment process uses industry-standard linear regression techniques and is evaluated on a meter-by-meter basis. Data analysis does not involve sampling since the actual data, as entered into the Software, is used for any savings calculations. The accuracy of the Software's calculations has been validated empirically against the Department of Energy's ENERGY STAR program, which benchmarks buildings' performance. The calculations of the Software are consistent with ENERGY STAR results in determining increase in building energy utilization index (EUI – Energy usage per square foot per year).
- 11. Budget** The cost of M&V includes the Software cost, as defined in the contract, plus a portion of the Energy Specialist's time. The Software cost is defined in the contract. 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 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 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.
- 12. Report Format** Cost avoidance will be calculated on a monthly basis as set out in the contract. Cost avoidance reports will be prepared and provided at least semi-annually to the organization. Cost avoidance calculations will commence with a formal data release occurring approximately five months after the Energy Specialist is in place. Cost avoidance reports will include results from the Software and show energy as well as expenditure savings versus the baseline. 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).

13. Quality Assurance The primary risks in this M&V process are listed below with specific quality assurance steps that will be used to address each.

- 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.
- Undetected changes happen to buildings, their operation, or use and those undetected changes may not be reflected in the reported savings. The procedures described in Section 9 minimize the chance of any such impact and ensure that any unimplemented baseline change has minimal effect.
- Data entry by the Energy Specialist may put incorrect data into the Software. Cenergistic along with the Energy Specialist together review this data regularly to find such errors, and complete routine error-checking procedures within the Software to find and fix them.

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 School Board of Clay County by the following qualified professional.

CENERGISTIC LLC



EILEEN BYRD

SENIOR VICE PRESIDENT – DATA QUALITY

CERTIFIED PUBLIC ACCOUNTANT (Texas State Board of Public Accountants)

CERTIFIED INTERNAL AUDITOR (Institute of Internal Auditors)

CERTIFIED QUALITY ENGINEER (American Society of Quality)

CERTIFIED MEASUREMENT AND VERIFICATION PROFESSIONAL (Association of Energy Engineers)

CERTIFIED ENERGY MANAGER (Association of Energy Engineers)