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REMINDER

CITY COUNCIL

Joe Frank
President
Sara Continenza
Chanell Elston
Jane Goodman
Ruth Gray
Susan Hardy
Justin Tisdale

NOTICE OF MEETING

MEETING OF:	COMMITTEE OF THE WHOLE
CALLED BY:	JOE FRANK, CHAIR
DATE:	OCTOBER 26, 2020
LOCATION:	WEBEX VIRTUAL MEETING (see info above)
TIME:	7:00 P.M.
RE:	- MONTHLY FINANCE/BUDGET REVIEW & DISCUSSION - LEOPARDO ENERGY LEGISLATION: RESOLUTIONS 49-20, 50-20 & 51-20: FACILITIES IMPROVEMENTS

COMMITTEE MEMBERS:

CHANELL ELSTON
RUTH GRAY
SUSAN HARDY
MARTY GELFAND
JANE GOODMAN
JUSTIN TISDALE

ADMINISTRATION

BRENDA WENDT, FINANCE DIRECTOR
JIM ANDERSON, SERVICE DIRECTOR
MIKE LOVE, ECONOMIC DEVELOPMENT DIRECTOR
KEITH BENJAMIN, COMMUNITY SERVICES DIRECTOR

CITY OF SOUTH EUCLID
2019/2020 RECEIPT AND DISBURSEMENT COMPARISON

RECEIPTS				YTD	
2019					
january	1,558,215	9.03%	1,558,215	9.03%	
february	2,351,729	13.62%	3,909,944	22.65%	
march	1,236,495	7.16%	5,146,440	29.81%	
april	1,312,976	7.61%	6,459,415	37.42%	
may	1,877,396	10.88%	8,336,812	48.29%	
june	1,365,883	7.91%	9,702,695	56.21%	
july	2,180,500	12.63%	11,883,195	68.84%	
august	1,823,078	10.56%	13,706,273	79.40%	
september	921,481	5.34%	14,627,753	84.74%	
october	1,586,962	9.19%	16,214,715	93.93%	
november	1,269,193	7.35%	17,483,908	101.28%	
december	1,043,405	6.04%	18,527,313	107.32%	
projected	18,527,313				
	17,262,839			107.32%	of projected total

RECEIPTS				YTD	
2020					
january	1,573,303	7.85%	1,573,303	7.85%	8.33%
february	2,692,382	13.43%	4,265,685	21.29%	16.67%
march	1,401,028	6.99%	5,666,713	28.28%	25.00%
april	1,362,278	6.80%	7,028,991	35.07%	33.33%
may	1,802,592	8.99%	8,831,583	44.07%	41.67%
june	994,876	4.96%	9,826,459	49.03%	50.00%
july	1,325,237	6.61%	11,151,696	55.65%	58.33%
august	2,610,553	13.03%	13,762,249	68.67%	66.67%
september	1,700,876	8.49%	15,463,125	77.16%	75.00%
october		0.00%	15,463,125	77.16%	83.33%
november		0.00%	15,463,125	77.16%	91.67%
december		0.00%	15,463,125	77.16%	100.00%
projected	15,463,125				
	20,040,452			77.16%	of projected total

DISBURSEMENTS				YTD	
2019					
january	1,709,791	8.36%	1,709,791	8.36%	
february	1,107,818	5.41%	2,817,609	13.77%	
march	4,882,529	23.86%	7,700,138	37.64%	
april	1,812,884	8.86%	9,513,023	46.50%	
may	1,213,637	5.93%	10,726,659	52.43%	
june	806,818	3.94%	11,533,478	56.37%	
july	292,192	1.43%	11,825,670	57.80%	
august	1,903,360	9.30%	13,729,030	67.10%	
september	1,430,723	6.99%	15,159,753	74.10%	
october	910,262	4.45%	16,070,015	78.55%	
november	1,305,904	6.38%	17,375,919	84.93%	
december	1,294,196	6.33%	18,670,115	91.26%	
projected	18,670,115				
	20,459,084			91.26%	of projected total

DISBURSEMENTS				YTD	
2020					
january	1,996,906	9.32%	1,996,906	9.32%	8.33%
february	3,448,149	16.09%	5,445,055	25.41%	16.67%
march	1,839,369	8.58%	7,284,424	33.99%	25.00%
april	1,255,960	5.86%	8,540,384	39.85%	33.33%
may	1,471,789	6.87%	10,012,173	46.72%	41.67%
june	1,825,066	8.52%	11,837,239	55.24%	50.00%
july	731,578	3.41%	12,568,817	58.65%	58.33%
august	1,020,107	4.76%	13,588,924	63.41%	66.67%
september	405,902	1.89%	13,994,826	65.30%	75.00%
october		0.00%	13,994,826	65.30%	83.33%
november		0.00%	13,994,826	65.30%	91.67%
december		0.00%	13,994,826	65.30%	100.00%
projected	13,994,826				
	21,430,060			65.30%	of projected total

General Fund			
Balance	2019	2020	Difference
january	3,107,536	2,826,238	-281,298
february	4,430,436	2,082,260	-2,348,176
march	1,057,769	1,944,991	887,222
april	934,715	2,135,633	1,200,918
may	1,230,800	2,636,734	1,405,934
june	2,197,367	1,822,597	-374,770
july	4,275,086	2,561,139	-1,713,947
august	3,900,570	4,149,598	249,029
september	3,685,049	5,154,157	1,469,107
october	4,646,947		-4,646,947
november	4,314,680		-4,314,680
december	4,365,601		-4,365,601

CITY OF SOUTH EUCLID
RITA tax collections 2020

Date of Report	YTD % COLLECTED			YTD Collected	PRIOR	Withholder YTD	PRIOR	Individual YTD	PRIOR	Net Profit YTD	PRIOR
	+/- \$ vs 2019	+/- % vs 2019	VS BUDGET		YTD COLLECTED		YTD		YTD		YTD
1/14/2020	175,792	21.96%	7.85%	976,435	800,643	503,501	410,952	347,613	288,069	58,509	37,312
1/31/2020	407,947	26.78%	15.52%	1,931,188	1,523,242	864,982		808,580		134,230	
2/13/2020	386,375	22.51%	16.90%	2,102,823	1,716,448	1,001,941	817,830	827,376	701,109	145,450	58,002
2/28/2020	541,045	23.70%	22.70%	2,823,548	2,282,504	1,350,916		1,131,312		153,049	
3/12/2020	550,253	22.25%	24.30%	3,023,314	2,473,061	1,491,038	1,201,837	1,178,032	937,227	155,971	140,993
3/31/2020	827,638	26.21%	32.03%	3,985,081	3,157,443	1,864,974		1,598,693		286,834	
4/13/2020	731,573	21.87%	32.77%	4,076,652	3,345,079	1,872,748	1,556,873	1,668,743	1,301,295	297,733	236,329
4/30/2020	575,609	12.72%	40.99%	5,099,674	4,524,065	2,276,470		2,216,898		338,570	
5/13/2020	437,013	9.19%	41.73%	5,192,034	4,755,022	2,304,607	1,984,754	2,270,187	2,174,169	346,052	293,419
5/29/2020	310,402	5.60%	47.07%	5,855,864	5,545,462	2,605,052		2,592,832		364,338	
6/11/2020	234,347	4.07%	48.12%	5,986,928	5,752,581	2,694,296	2,362,456	2,626,670	2,554,882	370,369	492,503
6/30/2020	261,840	3.95%	55.40%	6,892,621	6,630,781	3,062,906		3,074,505		419,214	
7/14/2020	160,029	2.35%	56.13%	6,983,135	6,823,106	3,105,044	2,783,030	3,118,090	3,072,943	421,430	594,389
7/31/2020	927,510	12.51%	67.07%	8,344,234	7,416,724	3,408,283		4,112,589		434,636	
8/13/2020	1,114,821	14.86%	69.25%	8,615,450	7,500,628	3,483,910	3,163,748	4,249,610	3,299,457	488,552	613,024
8/31/2020	1,352,446	16.88%	75.28%	9,365,877	8,013,432	3,803,992		4,567,410		557,283	
9/14/2020	1,259,600	15.30%	76.32%	9,494,886	8,235,286	3,879,688	3,572,931	4,613,967	3,584,954	555,669	611,484
9/30/2020	1,354,924	14.85%	84.26%	10,482,020	9,127,096	4,039,864		5,228,620		707,519	
10/14/2020	1,395,514	14.95%	86.27%	10,733,116	9,337,602	4,256,675	4,003,958	5,247,632	4,033,912	718,156	795,632
				\$12,440,676	\$0	\$0		\$0		\$0	

* Note: YTD Collected does not equal (Withholder YTD+Individual YTD+Net Profit YTD) due to penalties and interest charged to delinquent accounts.

CITY OF SOUTH EUCLID, OHIO

RESOLUTION NO.: 49-20
INTRODUCED BY: Frank
REQUESTED BY: Mayor, Frank & Gray

October 12, 2020

A RESOLUTION

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN ENERGY SAVINGS PERFORMANCE CONTRACT WITH LEOPARDO, AND DECLARING AN EMERGENCY

WHEREAS, the City of South Euclid desires to implement energy conservation measures pursuant to Section 717.02 of the Ohio Revised Code and adopted legislation which selected Leopardo as the vendor to prepare an energy conservation report in accordance with Section 717.02(B); and

WHEREAS, Leopardo has presented their energy conservation report (the Report) to the City; and

WHEREAS, City Council desires to enter into a contact with Leopardo to implement those energy conservation measures that are most likely to result in the greatest energy savings considering the costs of the project and the City's ability to pay for the improvements with current revenues or by financing (energy Conservation Measures).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF THE CITY OF SOUTH EUCLID, COUNTY OF CUYAHOGA AND STATE OF OHIO, THAT:

Section 1: Council hereby finds that the amount of money spent on the Energy Conservation Measures is not likely to exceed the amount of money the City would save in energy, operating, maintenance, and avoided capital costs over the average system life of the Energy Conservation Measures as specified in the Report. Based upon this finding, Council hereby authorizes the Mayor to enter into a contract with Leopardo, in an amount not to exceed \$_____, to implement the Energy Conservation Measures in accordance with Ohio Revised Code 717.02 (C)(2)(b) and pursuant to terms and conditions approved by the Director of Law and substantially in the form on files in the office of the Director of Law and the Clerk of Council, with such changes as shall not be materially adverse to the City and as approved by the Director of Law, all of which shall be conclusively evidenced by the execution thereof.

Section 2: This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 3: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4: Wherefore, this Resolution shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2020.

Joseph Frank, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

RESOLUTION NO.: 50-20
INTRODUCED BY: Frank
REQUESTED BY: Mayor, Frank & Gray

October 12, 2020

A RESOLUTION

A RESOLUTION APPROVING AND AUTHORIZING A GROUND LEASE AND LEASE-PURCHASE AGREEMENT AND RELATED DOCUMENTS PROVIDING FOR CONSTRUCTING AND INSTALLING A CITY-WIDE ENERGY CONSERVATION PROJECT, INCLUDING ALL NECESSARY APPURTENANCES THERETO, AUTHORIZING AND APPROVING RELATED MATTERS, AND DECLARING AN EMERGENCY

WHEREAS, The City of South Euclid desire to implement energy conservation measures pursuant to Section 717.02 of the Ohio Revised Code and adopted Resolution 08-20 which selected Leopardo as the vendor to prepare an energy conservation report in accordance with Section 717.02(B); and

WHEREAS, Leopardo has presented their energy conservation report (the Report) to the City; and

WHEREAS Resolution 49-20 authorized the Mayor to enter into a contract with Leopardo, in an amount not to exceed \$_____, to implement the energy conservation measures in accordance with Ohio Revised Code 717.02 (C)(2)(b); and

WHEREAS, This Council has determined to provide for financing to pay costs of constructing and installing a City-wide energy conservation project, including all necessary appurtenance thereto (the "Improvements"); and

WHEREAS, It may be necessary for the City to enter into one or more ground leases, lease-purchase agreements, and other agreements in order to finance the cost of the Improvements; and

WHEREAS, In order to implement the financing arrangements with respect to the Improvements, it may be necessary for the City to take actions in Section 1 of this legislation.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF THE CITY OF SOUTH EUCLID, COUNTY OF CUYAHOGA AND STATE OF OHIO, THAT:

Section 1: Council hereby finds that the most advantageous way to finance the Improvements is through a ground lease and lease-purchase agreement and related documents (the "Agreements"). Based on this finding, Council hereby authorized the Mayor or Finance Director or other authorized officer to enter into the Agreements, in an amount not to exceed \$_____, to finance the Improvements and pursuant to terms and conditions approved by the Director of Law and substantially in the form on file in the office of the Director of Law and the Clerk of Council, with such changes as shall not be materially adverse to the City and as approved by the Director of Law, all of which shall be conclusively evidenced by the execution thereof.

Section 2: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: Wherefore, this Resolution shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2020.

Joseph Frank, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

RESOLUTION NO.: 51-20
INTRODUCED BY: Frank
REQUESTED BY: Mayor, Frank & Gray

October 12, 2020

A RESOLUTION

AN RESOLUTION APPROVING AND AUTHORIZING A GROUND LEASE AND LEASE-PURCHASE AGREEMENT AND RELATED DOCUMENTS PROVIDING FOR CONSTRUCTING AND INSTALLING A CITY-WIDE ENERGY CONSERVATION PROJECT, INCLUDING ALL NECESSARY APPURTENANCES THERETO, AUTHORIZING AND APPROVING RELATED MATTERS, AND DECLARING AN EMERGENCY

WHEREAS, This Council has determined to provide for financing to pay costs of constructing and installing a City-wide energy conservation project, including all necessary appurtenance thereto (the "Improvements"); and

WHEREAS, It may be necessary for the City to enter into one or more ground leases, lease-purchase agreements and other agreements in order to finance the cost of the Improvements; and

WHEREAS, In order to implement the financing arrangements with respect to the Improvements, it may be necessary for the City to take the following actions:

A. Sign and deliver a ground lease (the "Ground Lease") under which the City will convey to an entity as determined by an authorized officer of the City (which may include the Mayor or Finance Director or other appropriate City official, and each such officer herein referred to as an "Authorized Officer") to be appropriate and in the best interest of the City to serve in that role (the "Lessor"), a leasehold interest in the real property and improvements thereon (the "Project Site") for a term of not more than five years longer than the term of the related Facilities Lease described below;

B. Sign and deliver a lease-purchase agreement (the "Facilities Lease") under which the City (a) will sublease the Project Site and lease the Improvements located on the Project Site (collectively, with the Project Site, the "Leased Property") from the Lessor for an Initial Term and for Renewal Terms (each a "Lease Term"), as defined in the Facilities Lease, upon appropriations being made by this Council of funds sufficient to enable the City to pay the Base Rent, as defined in the Facilities Lease, during the Renewal Terms and (b) will have an obligation, which will constitute a "public obligation" as defined in Section 133.01 of the Revised Code, to pay Base Rent during each Lease Term subject to such appropriations;

C. Approve, if necessary, an assignment of leases (the "Assignment") between the Lessor and the Trustee, pursuant to which the Lessor shall assign its interests in a Ground Lease and the related Facilities Lease to the Trustee;

D. Approve, if necessary, a trust agreement (the "Trust Agreement") between the Lessor and a bank or trust company determined by an Authorized Officer to be in the best interest and financial advantages of the City to act in such capacity (the "Trustee"), pursuant to which a) the Lessor will direct the Trustee to and the Trustee will issue and sell Certificates of Participation (the "Certificates") in the payments of Base Rent to be made by the City under a Facilities Lease, which Certificates will constitute "fractionalized interests in public obligations", as defined in Section 133.01 of the Revised Code, and (b) proceeds of the sale of the Certificates will be used to pay the costs of Improvements;

E. Sign, if necessary, a certificate purchase agreement (the "Purchase Agreement") among the original purchaser of the Certificates (the "Original Purchaser"), the City, and the Trustee setting forth the purchase price and other terms upon which the Original Purchaser will purchase the Certificates from the Trustee; and

F. Sign, if necessary, a placement agent agreement (the "Placement Agreement") between the City and an investment bank or other company determined by an Authorized Officer to be in the best interest and financial advantages of the City to act in such capacity (the "Placement Agent").

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SOUTH EUCLID

CUYAHOGA COUNTY, OHIO, THAT:

Section 1: The Authorized Officers identified in Recital A above are each authorized to sign and deliver the Ground Lease and the Facilities Lease and to signify approval of the Assignment and the Trust Agreement in form and substance not inconsistent with this Ordinance and deemed advisable by such Authorized Officers such to be conclusively evidenced and determined by the execution thereof. The Ground Lease, the Facilities Lease, the Assignment and the Trust Agreement are hereby approved in form and substance not inconsistent with this Ordinance and deemed advisable the Authorized Officer or Officers executing them as shall be conclusively evidenced and determined by the execution thereof.

Section 2: This Council hereby determines that the Leased Properties are essential to the City including but not limited to its proper, efficient and economic operation and the public welfare.

Section 3: Any Authorized Officer is hereby authorized to determine, having due regard for the best interest of and financial advantages to the City, (i) the buildings to be leased pursuant to the Ground Lease and Facilities Lease, (ii) the Lease Term for the Facilities Lease, the final Renewal Term for which shall end not more than 30 years after the Commencement Date (as defined in the Facilities Lease) of the Initial Term, (iii) the term for the Ground Lease, which shall be five years longer than the Lease Term for the related Facilities Lease, (iv) the prepayment terms for the Facilities Lease, provided that any prepayment premium shall not exceed 2% of the principal component of the amount prepaid, and (v) the Base Rent (as defined in the Facilities Leases) for the Facilities Lease, provided, that: the aggregate principal components of the Base Rent for the Initial Term and all Renewal Terms for the Facilities Lease shall not exceed \$ _____; and the weighted average of the aggregate interest components of the Base Rent for the Initial Term and all Renewal Terms for the Facilities Lease shall not exceed 5.0% per year.

The City acknowledges that the principal component of the Facilities Lease shall be equal to the principal amount of the Certificates (net of any original issue discount) if issued under a related Trust Agreement and that the principal component of the Facilities Lease shall be that amount that, together with other funds to be made available for the purpose, shall be sufficient to pay the cost of the Improvements, including without limitation, the cost of providing any reserves that the Authorized Officer determines are necessary and appropriate for the Certificates to be issued on the terms most favorable to the City as the payor on the public obligations in which the Certificates constitute fractionalized interests (which determination shall be confirmed by the Authorized Officer by the signing of the Purchase Agreement and/or Placement Agreement), and the costs of issuance of the Certificates, and which the Authorized Officer determines are necessary and reasonable in light of the character Certificates (which determination shall be confirmed by the Authorized Officer by the signing of the Purchase Agreement and/or the Placement Agreement).

The City further acknowledges that the payment schedules for any Certificates shall include interest components on the principal amount thereof that shall be based upon the interest components of the Base Rent payable under the related Facilities Lease. The Certificates, if any, issued under the Trust Agreement may be issued in one or more series that may differ as to interest rate components, credit enhancement, priority of payment and other terms. The Base Rent to be payable under and in accordance with the

Facilities Lease during the Initial Term of that Facilities Lease and any Renewal Terms, shall be an amount sufficient to cover the amount of principal component and interest component of the outstanding related Certificates of any series that are due and payable during that Initial Term or Renewal Term, and such Base Rent shall be specified or determined in an exhibit to the related Facilities Lease; provided, however, that the City's payment of Base Rent under the Facilities Lease is subject to appropriation and certification as provided in the Facilities Lease and nothing in the Facilities Lease, the related Certificates (if any) or the related Trust Agreement constitutes a debt of the Lessee or a pledge by the Lessee, or an obligation of the Lessee, of any taxes or other money to the payments due thereunder.

Any Authorized Officer is authorized to sign and deliver, ²in the name and on behalf of the City, a Purchase Agreement and/or a Placement Agreement, if necessary, in form and substance consistent with this Ordinance, setting forth, with respect to the Facilities Lease, the schedule of Base Rent and the principal components and interest components thereof, and the costs of issuance of the Certificates and any reserves for the Certificates. The Purchase Agreement and Placement Agreement are approved in such forms that are not inconsistent with this Ordinance and not substantially adverse to the City and as approved by the Authorized Officer signing on behalf of the City, all of which shall be conclusively evidenced by the signing thereof or amendments thereto.

Section 4: The proceeds from the sale of any Certificates or proceeds from the Facilities Lease, except any premium and accrued interest, shall be paid into the proper fund or funds and those proceeds are appropriated and shall be used for the purpose for which the Certificates are being issued or Facilities Lease executed. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

The Authorized Officers are each hereby authorized to take any and all other actions and to sign and deliver any and all other instruments, agreements, certificates and documents as may in their judgment be necessary, desirable, advisable or appropriate in connection with the signing and delivery of the Ground Lease and the

Facilities Lease, the signing and delivery of the Certificates by the Trustee and the purchase of the Certificates by the Original Purchaser in order to give effect to the transactions contemplated to be performed on the part of the City under the Ground Lease, the Facilities Lease and the Placement Agreement and Purchase Agreement, if any.

The expenditure of the amounts necessary to pay the financing costs (as defined in Section 133.01 of the Revised Code) in connection with the Certificates and the Facilities Lease, to the extent not paid by in accordance with the Purchase Agreement or Placement Agreement, is authorized and approved, and each Authorized Officer is authorized to provide for the payment of any such amounts and costs from the proceeds of the Certificates or Facilities Lease, to the extent available, and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

Section 5: Any Authorized Officer having responsibility for signing the Facilities Lease, is, alone or in conjunction with any of the foregoing or with any other officer or employee of the City, authorized to cooperate with the original purchaser and the Trustee (if any) by making, on behalf of the City, such covenants and representations in the Facilities Lease as are appropriate and necessary so that (a) the Facilities Lease and any related Certificates will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the "Code") or (ii) be treated other than as obligations to which Section 103 of the Code applies, (b) the interest components of Base Rent payable under the Facilities Lease and interest on any related Certificates will not be treated as an item of tax preference for purposes of the federal alternative minimum tax imposed on certain individuals and corporation, (c) the City will take or cause to be taken such actions that may be required of it for the interest components of Base Rent payable under the Facilities Lease and interest on any related Certificates to be and to remain excluded from gross income for federal income tax purposes, (d) the City will not take or authorize to be taken any actions that would adversely affect that exclusion, and (e) the City, or persons acting for it, will, among other acts of compliance, (i) apply or cause the application of the proceeds of the Certificates or Facilities Lease to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

Any Authorized Officer of the City having responsibility for signing of the Facilities Lease is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Facilities Lease and the related Certificates as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Facilities Lease and any Certificates or the interest components thereof or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the Base Rent payable under the exclusion of interest from gross income and the intended tax status of the interest components of the Facilities Lease and interest on any related Certificates, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript for the Certificates or Facilities Lease, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds from the Facilities Lease or sale of the Certificates, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest component of Base Rent payable under the Facilities Lease and the tax status of any related Certificates.

Section 6: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 7: Wherefore, this Resolution shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2020.

Joseph Frank, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

Standard Form of Guaranteed Energy Savings Contract Agreement Between Owner and Contractor

This **GUARANTEED ENERGY SAVINGS CONTRACT AGREEMENT** is made in accordance with the Ohio Revised Code § 717.02 as of _____, 2020 (the “Effective Date”).

BETWEEN _____, the “Owner”

Michael Love
Economic Development Director
City of South Euclid
1349 South Green Road
South Euclid, OH 44121
(216) 691-4205
mlove@seuclid.com

Attn: Michael Love
Telephone: (216) 691-4205
Email: mlove@seuclid.com

And collectively the Contractor:

Leopardo Energy LLC, an Illinois limited liability company, and
Leopardo Companies, Inc., a corporation duly organized the laws of the state of Illinois

Leopardo Energy, LLC.
5200 Prairie Stone Parkway
Hoffman Estates, Illinois 60192
Attn: Joe Frankini
Telephone: (847) 783-3902
Email: JFFrankini@leopardoenergy.com

for the following Project:

Guaranteed Energy Savings Performance Contract

The Owner and Contractor agree as follows.

TABLE OF ARTICLES

- 1 THE WORK OF THIS CONTRACT**
- 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- 3 CONTRACT SUM**
- 4 PAYMENT**
- 5 Intentionally Deleted**
- 6 ENUMERATION OF CONTRACT DOCUMENTS**

7	GENERAL PROVISIONS
8	OWNER
9	CONTRACTOR
10	PUBLIC WORKS PROVISIONS
11	SUBCONTRACTORS
12	WORK BY OWNER OR BY SEPARATE CONTRACTORS
13	CHANGES IN THE WORK
14	TIME
15	PAYMENTS AND COMPLETION
16	PROTECTION OF PERSONS AND PROPERTY
17	INSURANCE AND BONDS
18	CORRECTION OF WORK
19	MISCELLANEOUS PROVISIONS
20	TERMINATION OF THE CONTRACT
21	CLAIMS AND DISPUTES
22	179D TAX DEDUCTION AND ENVIRONMENTAL BENEFITS
23	ADDITIONAL SAVINGS MEASURES / FUTURE PHASES

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work as defined at Section 7.3 of this Agreement and as further described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

§ 1.1 ENERGY MANAGEMENT PLAN. Owner shall furnish (or cause Owner's energy supplier to furnish) to Contractor all of Owner's records and complete data concerning energy usage and energy-related maintenance for the Owner's properties (the "Premises"), for the most current twelve (12) month period, including utility records, occupancy information, occupancy schedules, descriptions of any changes in building structures or the heating, cooling, lighting or other systems or energy requirements, descriptions of all energy-consuming or energy-saving equipment on the Premises, bills and records relating to maintenance of the energy-related equipment, fleet operating data, and a description of energy management procedures Owner presently utilizes and details of all performance deficiencies in existing systems ("Owner's Information"). Owner acknowledges that Contractor relied, or will rely, upon Owner's Information in developing, or will develop, the Facility Energy Audit and the savings calculations described in this Agreement based on Owner's Information and accordingly, represents Owner's Information is accurate.

§ 1.2 Contractor has made an assessment of the energy consumption characteristics of the Premises and prepared the complete Investment Grade Audit Proposal and delivered to the Owner on September 2, 2020 . Owner has approved and accepted the Investment Grade Audit Proposal including all Energy Conservation Measures (ECM's) agreed upon by the Parties.

§ 1.3 Owner is authorized under Ohio Revised Code §717.02 to enter into this Contract for the purpose set forth in this Contract.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be a date set forth in a notice to proceed issued by the Owner which shall be effective only after sixty (60) days after the last of receipt by Contractor of (a) written confirmation that project financing is in place sufficient to ensure payment of the entire Contract Sum timely and in full accordance with the payment terms of this Agreement to the reasonable satisfaction of Contractor; (b) receipt by Contractor of (i) Owner’s Initial Payment as defined by Section 15.2.1 of this Agreement; (ii) copies of the insurance policy(ies) required to be purchased by Owner under Exhibit A, Insurance and Bonds; and (iii) an original of this Agreement and the other Contract Documents executed by Owner. In the event Contractor commences Work in advance of any of the foregoing conditions, Contractor shall be entitled to an extension of time in accordance with this Agreement if such condition’s failure causes delay.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work not later than «three hundred ninety» (« 390») calendar days from the date of commencement of the Work.

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
TBD	TBD per construction schedule

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be the Stipulated Sum, in accordance with Section 3.2 below.

§ 3.2 The Stipulated Sum shall be «six million five hundred seventy-seven thousand seven hundred seventy dollars » (\$ «6,577,770.00 »), subject to additions and deductions as provided in the Contract Documents but that Stipulated Sum expires if Owner has not confirmed financing to Contractor within ninety (90) days of the Effective Date.

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 All Applications for Payment shall be submitted by the Principal Contractor, Leopardo Energy LLC, to the Owner, in accordance with the template in Exhibit C. All payments, including the Initial Payment, Progress Payments, and Final Payment shall be paid by the Owner to the Principal Contractor. For all payments after the Initial Payment of Section 15.2.1 of this Agreement, based upon Applications for Payment submitted to the Owner by the Principal Contractor, the Owner shall make progress payments on account of the Contract Sum to the Principal Contractor.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 4.1.3 Provided that an Application for Payment is received by Owner not later than the 30th day of a month, the Owner shall make payment of the approved amount to the Principal Contractor not later than the 30th day of the following month. If an Application for Payment is received by the Owner after the date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.

§ 4.1.4 Payments due and unpaid under the Contract shall bear interest from the date payment is due, at the legal rate prevailing from time to time at the place where the Project is located.

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment.

§ 4.2.2 The Owner's final payment to the Principal Contractor shall be made no later than thirty (30) days after Principal Contractor's submission of final Application for Payment.

ARTICLE 5

Intentionally deleted

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below in this Article 6.

§ 6.1.1 This Agreement.

§ 6.1.2 Additional documents forming part of the Contract Documents:

- .1 Attachment 1, Scope of Work
- .2 Attachment 2, Performance Guarantee
- .3 Attachment 3, Measurement and Verification Plan
- .4 Exhibit A, Insurance and Bonds
- .5 **Exhibit A.1 Project Specific Certificate of Insurance**
- .5 Exhibit B, Contractor's Schedule
- .6 **Exhibit C, Pay Application Template**
- .7 Other documents, if any, listed below: Not Applicable.

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement and other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, or (2) a Change Order. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents.

§ 7.1.1 In the event of any conflict between the Investment Grade Audit Proposal and the provisions of this Agreement and the Contract Documents, this Agreement and the other Contract Documents shall govern the Investment Grade Audit Proposal.

§ 7.2 The Contract

The Contract Documents form the Guaranteed Energy Savings Contract. The Contract represents the entire and integrated agreement between the Parties and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3 The Work

The term "Work" means the design, engineering, supervision, materials, equipment, construction and other services as described in Attachment 1 – Scope of Work required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work constitutes a part of the Project and excludes work to be performed by Owner or Owner's Separate Contractors. All Work will be subject to the Performance Guarantee set forth in Attachment 2 – Performance Guarantee and the terms and conditions of this Agreement.

§ 7.3.1 If, and where applicable, all fleet leasing, fleet fuel conversion or information technology equipment purchases recommended by this Agreement are not part of the Work and shall be contracted separately by Owner.

§ 7.3.2 This Work does not include the design of existing systems, or responsibility for existing system obsolescence, vandalism, misuse or abuse, negligence, repair or replacement necessitated by freezing weather, electrical power failure, low voltage, burned-out main or branch fuses, low water pressure, or other causes beyond the control of Contractor.

§ 7.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Contractor and the Contractor's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Contractor shall be deemed the author and owner of Contractor's and Contractor's Subconsultants' and Subcontractors' respective Instruments of Service, including Attachment 1 and all Submittals, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Contractor's reserved rights.

§ 7.5.2 Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Contractor.

§ 7.6 Digital Data Use and Transmission

Contractor may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 7.7 Confidential Software and Confidential Information. Contractor may include and utilize software and other specialty tools such as: Metrix, Perfectware Facility Management Software, and other proprietary energy and savings calculation tools (the "Contractor's Software"). These items are the property of the Contractor and, along with Contractor's technical and pricing data, are Confidential Information providing Contractor with a competitive advantage in the marketplace. Hence, any unauthorized disclosure of the Software or the Confidential Information to any third party will cause irreparable harm to Contractor and no remedy at law will be adequate to compensate for this harm to Contractor. Owner agrees Contractor may obtain a temporary restraining order and preliminary and permanent injunctive relief against Owner, without the requirement of posting a bond, to prevent the disclosure of the Software or the Confidential Information to any third party. Owner shall pay Contractor all court costs and reasonable attorneys' fees incurred by Contractor in pursuing such equitable relief.

§ 7.7.1 In the event there is any public records request for the Confidential Information (a "Public Records Request"), Owner immediately shall notify Contractor and Owner shall raise all proprietary, trade secret and other applicable exceptions under the Freedom of Information Act to the Public Records Request and abide by any Orders of Court of appropriate jurisdiction adjudicating such exception.

§ 7.7.2 Systems and software purchased by Owner such as direct digital control, metering and monitoring systems and associated software that are included as part of this Agreement become the Owner's property upon Final Completion. Future software updates, upgrades, renewal and maintenance fees are the responsibility of the Owner unless specifically defined as part of Contractor's obligation under this Agreement.

§ 7.8 Severability

The invalidity or illegality of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable and the Contract shall not be deemed void or voidable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 7.9 Notice

§ 7.9.1 Where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 Prior to commencement of the Work, the Owner shall furnish to the Contractor reasonable evidence, which is satisfactory to Contractor, that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

§ 8.1.2 In addition to the requirements of Section 1.1, the Owner shall furnish all necessary surveys of all sites of the Work where any Work is to be erected.

§ 8.1.3 The Contractor shall be entitled to rely on the accuracy of Owner's Information but shall exercise proper precautions relating to the safe performance of the Work. Contractor is not responsible for undisclosed, pre-existing system deficiencies or problems. Such examples include but are not limited to existing leaking valves, leaking or under-sized piping, leaking or under-sized ductwork, under-sized equipment, insufficient outside air, etc.

§ 8.1.4 Except for securing permits and paying fees that are the responsibility of the Contractor under the Contract Documents, if any, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities. Owner shall furnish water, electricity and other utilities utilized by the Contractor and Subcontractors in connection with their performance of the Work which shall be paid for by Owner.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Field Conditions by Contractor

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local and only readily visible conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 9.1.2 Notwithstanding anything to the contrary contained in the Contract Documents, the Contractor shall not be liable for failing to discover unforeseen, differing subsurface or concealed conditions. Contractor shall be entitled to rely upon information, "as-built" documents, surveys, energy information provided under Section 1.1 and test results furnished by the Owner, the Owner's Consultants, or the Owner's agents.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 9.3 Labor and Materials

§ 9.3.1 The Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for proper execution and completion of the Work but Owner shall provide and pay for all water, heat and utilities.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, and in accordance with a Modification.

§ 9.4 Warranty

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All manufacturers' warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

§ 9.4.1 Limitations on Warranty.

§ 9.4.1.1 Except for the specific express warranty provided by Section 9.4 of this Agreement, Contractor makes no other warranties by this Agreement and disclaims any and all implied warranties including, but not limited to, any warranties that the Project or its components are merchantable, habitable, or fit for the purposes intended by Owner.

§ 9.4.1.2 Notwithstanding anything to the contrary contained in this Section 9.4 or the Contract Documents, Contractor's warranty under Section 9.4 shall not apply to any system or equipment which is separately warranted by written warranty to the Owner by a manufacturer, supplier or Subcontractor of any tier. Owner understands and agrees that Owner's remedy for any shortfall of Guaranteed Savings attributable to a system or equipment separately warranted by that manufacturer or supplier of Subcontractor is solely against that warrantor and not against Contractor regardless of whether such warrantor actually reimburses Owner.

§ 9.4.1.3 Retro-commissioning is the process of refurbishing select equipment and systems to extend the useful life and improve performance including cleaning, calibrating, minor repairs, parts replacement and general tune up of the individual components and systems ("RCx"). Because RCx applies to existing used equipment, the warranty shall be limited to the manufacturer's supplied warranty, if any, on replacement parts only, and no other warranty of parts, components or labor is included.

§ 9.4.1.4 Contractor's warranty does not include routine maintenance, including, without limitation, equipment cleaning, mechanical parts lubrication, testing, belt adjustment, or similar items. Owner may purchase those maintenance services from Contractor by separate contract. Contractor's warranty does not include damage caused by voltage fluctuations, blown fuses, misuse, refrigerants loss, lightning or other acts of nature. Work performed by anyone other than the Contractor or Contractor's representative voids any warranty coverage.

§ 9.4.2 Guaranteed Savings

Subject to Contractor's right to correct under Sections 18.2 and 18.2.2 of this Contract (as limited by Sections 9.4.1 and 18.2.1), Owner's sole remedy against Contractor for shortfall in the Guaranteed Savings shall be the applicable annual payment under Attachment 2.

§ 9.5 Taxes

Owner warrants that the Contract is exempt from all sales, consumer, use, and other similar taxes.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 If required, the Contractor shall secure and pay for any permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work as part of the Contract Sum.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 9.7 Intentionally omitted.

§ 9.8 Contractor's Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's information a Contractor's Schedule for the Work which shall become Exhibit B to this Contract. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the

conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner. Contractor shall not be obligated to meet interim or milestone dates set forth in Contractor's schedules other than those specifically required by Section 2.3.2 of this Contract, if any ("Mandatory Milestones") and may be liable only for Contractor's failure, as a result of Contractor-caused delays, to meet the agreed date of Substantial Completion and Mandatory Milestones, if any, each as modified pursuant to the Contract Documents.

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Owner the Drawings and Submittals required by Attachment 1. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of Attachment 1. The Work shall be in accordance with submittals approved by Contractor's engineer.

§ 9.9.2 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering except to the extent Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. Where professional design services or certifications by a design professional are specifically required, the Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Contractor will cause a licensed engineer to review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Contractor's engineer's review of Drawings and Submittals shall be for the limited purpose of checking for conformance with information given and the concept expressed in Attachment 1. In performing such review, the Contractor's engineer will approve, or take other appropriate action upon, the Contractor's Drawings and Submittals.

§ 9.10 Use of Sites

The Contractor shall confine operations at the sites to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the sites with materials or equipment.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 Cleaning Up

The Contractor shall keep the Premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project.

§ 9.13 Access to Work

The Contractor shall provide the Owner with access to the Work in preparation and progress wherever located.

§ 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by Owner or where the copyright violations are contained in information supplied by, or documents prepared, by the Owner.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and Owner's agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of

the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, but not to the extent such claim, damage, loss, or expense is caused by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10 PUBLIC WORKS PROVISIONS

§ 10.1 Contractor acknowledges that this is a public works project governed by the Ohio Prevailing Wage Act. Contractor shall pay its laborers if any and Subcontractors shall pay their laborers not less than the established prevailing rate of wages, as provided in Ohio Revised Code § 4115.01, *et seq.* Contractor shall comply with all reporting requirements of the Ohio Prevailing Wage Act. Similarly, the Contractor shall assure that all Subcontractors and sub-tier subcontractors comply with the reporting requirements of the Ohio Prevailing Wage Act.

§ 10.2 Contractor represents that it does not discriminate in its hiring practices based upon race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service. Contractor shall assure the Owner that Trade Contractors shall not discriminate as set forth in this paragraph. Ohio Revised Code § 4112.01, *et seq.*

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Contractor, as soon as practicable after award of the Contract, shall notify the Owner of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner has made reasonable written objection within seven days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. It shall be considered reasonable for the Contractor to reject a Subcontractor who fails or refuses to sign a form of Contractor's standard subcontract.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean Owner's own forces or other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with those Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to indemnity, insurance (including, without limitation, naming Contractor as an Additional Insured with Contractor's insurance being excess and non-contributory to Owner's Separate Contractor's Insurance) and waiver of subrogation.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities.

§ 12.3 The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner or Contractor, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, but only if the Contract Sum and Contract Time and, where relevant, annual energy savings and operational savings as detailed in Attachment 2 have been adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner and Contractor. Upon issuance of the Change Order, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a change or Claim, the Contractor will prepare a Change Order.

§ 13.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in Owner's Information, or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted by Change Order as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner promptly and before conditions are disturbed.

ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Substantial Completion is the earlier of the date upon which the Work or designated portion thereof is usable or the date upon which the Owner first uses the Work or designated portion thereof.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work, or by delays in the approval of changes in the Work, or by the encountering of hazardous substances, or by concealed, unforeseen or subsurface conditions, adverse weather, actions, inactions of governing authorities, or by delay or failure to act of utility services (telephone, cable, electrical, gas, etc.); (2) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes not caused by Contractor, then the Contract Time shall be extended by Change Order by the amount of the delay to the date of Substantial Completion and the Contract Sum shall be increased by the additional expense and fee markup to Contractor caused by the delay, subject to the provisions of Article 21.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Progress Payments

§ 15.1.1 After the Initial Payment of Section 15.2.1, the Principal Contractor shall submit to the Owner monthly Applications for Payment, allocating the entire Stipulated Sum to the various portions of the Work.

§ 15.2 Initial Payment

§ 15.2.1 The Principal Contractor's initial Application for Payment may include, and Owner shall pay twenty percent (20%) of the Stipulated Sum of Section 3.2 because of initial expense toward Contractor's engineering, Contractor's General Conditions, Contractor's Insurance, Contractor's Bond, permits, mobilization and procurement down payments and other items incurred or to be incurred by Contractor within thirty (30) days of the date of the Payment Application (the "Initial Payment").

§ 15.3 Applications for Payment

§ 15.3.1 At least five (5) days before the date established for each progress payment, the Principal Contractor shall submit to the Owner an Application for Payment.

§ 15.3.2 Within the Initial Payment and subsequent payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing or

where a material or equipment supplier requires pre-payment in whole or in part before manufacture is commenced or completed or prior to delivery.

§ 15.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that, after the Initial Payment, upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 15.4 Certificates for Payment

§ 15.4.1 Other than the Initial Payment, Owner may withhold payment of an Application for Payment in whole or in part, to the extent reasonably necessary to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1** defective Work not remedied;
- .2** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .3** damage to the Owner or a Separate Contractor;
- .4** reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover damages for the anticipated delay; or
- .5** repeated failure materially to carry out the Work in accordance with the Contract Documents.

§ 15.4.4 When Contractor disputes the Owner's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, Contractor may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall not be responsible to pay a Subcontractor unless and until the condition precedent has been satisfied that Contractor has received payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work and then in the time required by the Ohio Prompt Pay Act, Ohio Revised Code § 4113.61 _____. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

§ 15.5.2 The Owner shall have no obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 A progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 15.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor.

§ 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Substantial Completion shall not be dependent on governmental inspection or certificate where the failure to receive a prompt inspection or a certification is caused other than by the fault of the Contractor.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, the Owner will make a single inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item which is not complete in accordance with the Contract Documents, but the Owner nevertheless can occupy or utilize the Work or, where the Owner has requested partial occupancy or use, that designated portion, for its intended use, then the Work, or designated portion thereof if that is what Owner has requested be completed, shall be considered to have achieved Substantial Completion and Contractor shall complete such listed incomplete items as soon as practicable thereafter.

When the Work or designated portion thereof is substantially complete, the Contractor shall prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the manufacturers' or suppliers' warranties.

§ 15.6.4 Contractor shall submit the Certificate of Substantial Completion to the Owner for written acceptance of responsibilities assigned to Owner in the Certificate. Owner may withhold from payment one hundred percent (100%) of the estimated cost of the Work that is incomplete or not in accordance with the requirements of the Contract Documents until complete and correct.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, Owner will promptly make such inspection and, when the Owner reasonably finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will approve a final Application for Payment.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees, unless Contractor is proceeding diligently and in good faith to contest such lien and has furnished to Owner a bond or undertaking to reasonably protect Owner against such lien.

§ 15.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property only to the extent caused by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or any of Owner's Separate Contractors or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances Contractor brings to the Premises and legal disposal of those Contractor removes from the Premises. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos, polychlorinated biphenyl (PCB), lead-based paint, oil and petroleum products and their constituents, or any materials containing any of the foregoing (“Hazardous Substance”) encountered on the Premises by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner of the condition. When the material or substance has been rendered harmless by Owner, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor’s reasonable additional costs of shutdown, delay, and start-up.

§ 16.2.2 To the fullest extent permitted by law, the Owner waives all claims against Contractor, Subcontractors, Subconsultants, and agents and employees of any of them from and against all claims, damages, losses, and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless by Owner, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the Contractor, Subcontractors or Subconsultants. Contractor shall have the right to accept or decline any compromise or settlement of any claims or actions against Contractor.

§ 16.2.3 The Owner shall be responsible for all fines and costs and expenses in connection with remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents.

§ 16.2.3.1 During the term of this Agreement, each Party shall promptly notify the other of any summons, citation, directive, notice, complaint, letter or other communication, written or oral, received by that Party from any state or federal Environmental Protection Agency or any other governing authority concerning (i) any alleged violations of any state or federal environmental or health and safety law, or (ii) any investigation or request for information relating to the generation, use, handling, packing, transportation, treatment, storage, release, or disposal of Hazardous Materials with respect to the Work or the Site.

§ 16.2.4 Contractor will remove or recycle existing equipment and materials deemed unfit for use (unless such equipment or materials are hazardous). Contractor will transport such items to a salvage yard for recycling to the extent economically sensible. Any salvage value is the property of Contractor. Any deviations shall be mutually approved by Contractor and Owner prior to commencement.

§ 16.2.5 Contractor expressly disclaims any and all responsibility and liability for the indoor air quality of the Owner's Premises, including without limitation, injury or illness to occupants of the facility or third parties, including without limitation any illness, injury, or damage resulting in any manner from any fungi or spores, any substance, vapor or gas produced by or arising out of any fungi or spores, or any material, product, building component or structure that contains, harbors, nurtures or acts as a medium for any fungi or spores.

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor’s Insurance

§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in Exhibit A. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated in Exhibit A.

§ 17.2 Owner’s Insurance

§ 17.2.1 Owner’s Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner’s usual liability insurance as provided by Exhibit A.

§ 17.2.2 Property Insurance

§ 17.2.2.1 As provided by Exhibit A, Contractor shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, builder's risk insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis (the "Builder's Risk Insurance"). On existing buildings and other facilities, the Owner shall maintain its usual property insurance coverage and provide Owner's property insurer's consent to the Work ("Owner's Property Insurance"). The Builder's Risk Insurance shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications. The Builder's Risk Insurance shall be maintained until Substantial Completion and, thereafter, the Owner shall continue to maintain Owner's Property Insurance as provided in Section 17.2.2.2. The Builder's Risk Insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds and Contractor shall be a Named Insured and entitled to adjust the loss.

§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the Owner's Property Insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ 17.2.2.4 If the Work involves Work installed in an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, Owner's Property Insurance on the basis "all-risks" property insurance, on a replacement cost basis, protecting the existing structures against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ 17.2.2.5 Prior to commencement of the Work, Contractor shall secure the Builder's Risk Insurance and the Owner shall secure Owner's Property Insurance, and each shall provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the Owner's Property Insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; and (2) Owner's Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by Builder's Risk Insurance or Owner's Property Insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Owner's Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 17.2.2.7.2 The Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by Owner's Property Insurance.

§ 17.2.2.8 A loss insured under the Builder's Risk insurance shall be adjusted by Contractor, and under Owner's Property Insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner and Contractor, jointly, for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Contractor its just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, Contractor shall make payments to its consultants and Subcontractors in similar manner.

§ 17.2.3 Other Insurance Provided by the Owner

Coverage	Limits
Boiler & Machinery Insurance	Value of Purchased Equipment

§ 17.2.3.1 The Owner shall purchase and maintain boiler and machinery insurance, which specifically shall cover equipment purchased by Owner under this Contract during installation and until final acceptance by Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 As provided by Exhibit A, the Contractor shall furnish bonds covering faithful performance of the Work and payment of obligations arising from the Work as stipulated in the Contract Documents on the date of execution of the Contract.

§ 17.3.2 Notwithstanding any provisions to the contrary contained in this bond or the bonded contract, this bond guarantees only the performance of the installation portion of the contract, and shall not be construed to guarantee the performance of (i) any efficiency or energy savings guarantees, (ii) any support or maintenance service agreement, or (iii) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of the Contract Documents. Owner agrees that the Performance and Payment Bond provided for this Agreement only covers the actual Work and in no way covers the Guaranteed Savings requirement of this Agreement which is solely secured by Contractor's Performance Guarantee as outlined in Attachment 2.

§ 17.3.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and Owner's expenses made necessary thereby, shall be at the Contractor's expense.

§ 18.2 In addition to the Contractor's obligations under Section 9.4 as modified by Section 9.4.1, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3 (the "Correction Period"), and subject to Sections 18.2.1 and 18.2.2, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

§ 18.2.1 Notwithstanding anything to the contrary contained in this Article 18 or the Contract Documents, Contractor's duty to correct under this Article 18 shall not apply to any system or equipment which is separately warranted by written warranty to the Owner by a manufacturer, supplier or Subcontractor of any tier.

§ 18.2.2 In the event of any shortfall in Guaranteed Savings, regardless of whether the shortfall occurs during the Correction Period, Contractor shall have the absolute right to analyze the cause or causes of such shortfall and, to the extent caused by Contractor, remedy the shortfall to the extent possible in lieu of payment to Owner to the extent remedied.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment provided Contractor need not consent to any of the following: (1) to perform absent cure by Owner's lender or lender's designee of any and all Owner breaches including, without limitation, payment in full of all amounts past due; (2) to perform absent commitment by Owner's lender or lender's designee to honor all of Owner's obligations under this Agreement after the date of Owner's Lender's assumption; (3) to give Owner's Lender prior notices of change orders increasing the Contract Sum unless an individual change exceeds two percent (2%) of the Contract Sum before such change order, or if change orders in the aggregate would increase the Contract Sum by five percent (5%); or (4) otherwise to provide Contractor with rights or remedies against Lender which are less favorable than the rights and remedies which Contractor has against Owner under the Contract Documents or at law; or which seek to impose obligations upon Contractor beyond those required by the Contract Documents.

§ 19.2 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests and inspections. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after the Contract Sum is established. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 19.4 The Owner's representative is stated on the cover page.

§ 19.5 The Contractor's representative is stated on the cover page.

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 19.7 Owner represents and warrants that the person signing this Agreement on behalf of Owner has the authority to execute this Agreement, including all legal authorization after duly followed required procedures, and thereby legally bind Owner. Likewise, Contractor represents and warrants that the person signing this Agreement on behalf of Contractor has the authority to execute this Agreement and thereby legally bind Contractor.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Owner (a) fails to make payment by the date as provided in Section 4.1.3 and for a period of thirty (30) days thereafter, or (b) if Contractor discovers that Owner's Information is materially incorrect, the Contractor may, upon seven (7) additional days' notice to the Owner, suspend or terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages including, without limitation, lost profits on the unperformed portion of the Work.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .2 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven (7) days' written notice and provided the Contractor, within such seven (7) day period, has not commenced to cure such cause or breach, terminate the Contract and take possession of the site and may finish the Work by whatever reasonable method the Owner may deem expedient. The Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished, if the Owner chooses to finish, except to the extent amounts otherwise owing to Contractor exceed a good faith estimate of the cost to complete the Work. If Owner chooses not to finish, Owner shall pay Contractor the amount of Section 20.2.4.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This reciprocal obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, along with a Termination Fee of fifty percent (50%) of the unearned Fee on the unperformed Work.

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, may be subject to mediation upon joint agreement of Owner and Contractor.

§ 21.2 Notice of Claims

§ 21.2.1 Claims by either the Owner or Contractor shall be initiated by notice to the other party.

§ 21.3 Intentionally Deleted

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.5 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 21.6 Waiver of Claims for Consequential Damages

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20.

ARTICLE 22 179D TAX DEDUCTION AND ENVIRONMENTAL BENEFITS

§ 22.1 As a result of the Work including, without limitation, Contractor's technical specifications prepared under Attachment 1, certain tax deductions under Section 179D of the Internal Revenue Code may be available because of the Environmental Benefits resulting from energy efficient improvements to the Owner's facilities. The Owner agrees to allocate these Section 179D tax deductions to Contractor to the extent such deductions arise from the implementation of the Work. Upon Substantial Completion, the Owner shall execute the required written allocation in a declaration accompanying documentation prepared by Contractor designating Contractor as Section 179D beneficiary.

§ 22.1.1 "Environmental Benefits" as used in Section 22.1 and this Section 22.2 means any and all credits, deductions, benefits, emission reductions, incentives, offsets, and allowances, howsoever entitled, attributable to and arising from the implementation of the Work, including any energy capacity, reliability, or other energy reduction attributes that result from the implementation of the Work whether such Environmental Benefits now exist or are developed in the future. All Environmental Benefits arising from the implementation of the Work shall be owned by Contractor. Owner agrees to execute all required documentation to assign all Environmental Benefits to Contractor. If any filings are required with the Internal Revenue Service or some other governmental entity to obtain the benefits of the Environmental Benefits, Owner hereby instructs Contractor to prepare and file such documents.

ARTICLE 23 – ADDITIONAL SAVINGS MEASURES / FUTURE PHASES

This Agreement may serve as the baseline contractual Agreement for future directly negotiated energy conservation measures and related facility upgrades by Change Order with a new Scope of Work and supporting cash flow as outlined in Attachment 2, Section 2.1.1.

This Agreement entered into as of the day and year first written above.

The City of South Euclid

LEOPARDO Energy, LLC

LEOPARDO Companies, Inc.

OWNER *(Signature)*

CONTRACTOR *(Signature)*

CONTRACTOR *(Signature)*

(Georgine Welo, Mayor)

(Curtis Leopardo, President)

(Michael L. Leopardo, President)

[Illinois, May 16, 2018]

ATTACHMENT 1 – SCOPE OF WORK

Standard to all ECM's:

All work to be performed during normal working hours, excluding holidays.

General Notes and Assumptions

- Good house-keeping practices will be followed on job sites.
- Internet access and static IP address to be provided by Owner for DDC control system.
- Owner responsible for internal moves and relocations (i.e. desks, electronic equipment, furniture, window treatments, etc.)
- Final patching, painting, or woodwork / trim finishes are excluded unless specifically listed in the Scope of Work below.
- Owner responsible for removal of vegetation growth along building façade and roof.
- Contractor will be responsible for disposal of old equipment removed or replaced per ARTICLE 9.
- This proposal does not include any obligation of Contractor or its subcontractors to identify or remove any hazardous materials, as mentioned in ARTICLE 9.
- Existing systems and components such as fire alarm, life safety, building automation controls, or other such associated systems and components are assumed to be in working order and are excluded for upgrades, repairs, changes or service unless specifically listed in this Scope of Work.
- Lighting retrofits and upgrades are planned as like for like replacements unless specific light measurements and modifications are defined in this agreement.
- Water conservation efforts including fixture replacements are planned as like for like replacements. ADA or other needs are not included unless specifically defined in this agreement. Adequate system pressures, facility sewer, water, drains, and other piping systems are assumed to be sufficient and operating properly.

Professional Services to include:

LIGHTING AND ELECTRICAL UPGRADE

Contractor shall retrofit and replace select interior and exterior lighting systems throughout the Owner's facilities. A full line-by-line is provided in Appendix 7c of the Facility Energy Audit (IGA Proposal). A summary of scope of work by Owner site and scope type is shown below:

City Hall-Fire-Police

Scope ID – 01.01.01 - Retrofit Select Lighting to LED	
Existing Fixture Type	Retrofit Description
Recessed Screw-In 19W LED	2X2 RECESSED TROFFER
2L 8' 59W Low-Bay 4100K Fluorescent	2X2 RECESSED TROFFER
Specialty Wall Sconce	New Decorative Wall Sconce

Bexley Park

Scope ID – 04.01.02 - Retrofit Ball Field Lighting to LED	
Existing Fixture Type	Retrofit Description
Field-Head 1000 W Mercury Vapor	SPORTS LIGHTING

In addition to ballfield lighting, Contractor shall provide receptacle power near two sets of ballfields.

MECHANICAL AND BUILDING AUTOMATION SYSTEM IMPROVEMENTS

The following HVAC and Building Automation improvements will be made in each associated building. Where noted, changes in the HVAC systems shall be incorporated with associated building automation scope. System engineering, performance test and balance shall be included with each new mechanical piece of equipment.

City Hall-Fire-Police

Scope ID – 01.02.01: Retro-Commission Remaining Equipment

- Contractor shall provide service items and retro-commissioning of the following pieces of equipment:
 - 4 ea. Built up Air Handling Units with Hot/Cold Decks
 - AHU 1 – 2 zones
 - AHU 2 – 5 zones
 - AHU 3 – 2 zones
 - 2 ea. Air Cooled DX unit
 - 2 ea. Split System
 - 2 ea. Rooftop Units
 - 2 ea. Fan Coils (enable/disable only)
 - 3 ea. Steam Unit Heater
 - 2 ea. Hot water boiler
 - 1 ea. Steam boiler
 - 2 ea. hot water pumps

Scope ID – 01.03.01: Install New Direct Digital Control (DDC) System

Contractor shall furnish and install a state of the art Direct Digital Control System incorporating open protocol Web Server technology.

The Web accessible front end shall include graphic representation of floor plans and individual equipment components allowing user adjustment of operating perimeters, occupancy scheduling, set point adjustment, integration of economizer, demand ventilation and control of the mechanical HVAC systems.

All newly installed equipment will require integration into the BAS system.

Base control implementation will be on the mechanical systems as listed:

- 4 ea. Built up Air Handling Units with Hot/Cold Decks
 - 9 zones
- 4 ea. Air Cooled DX unit
- 3 ea. Split System
- 7 ea. Rooftop Units
- 2 ea. Fan Coils (enable/disable only)
- 3 ea. Steam Unit Heater
- 6 ea. Exhaust Fans
- 2 ea. Hot water boiler
- 1 ea. Steam boiler
- 2 ea. hot water pumps
- 8-10 Steam valves with local control only

- 3 domestic hot water heaters

Scope ID – 01.04.01: Replace Older Rooftop Units

Contractor shall furnish and replace new equipment for the following pieces of equipment:

- Two (2) Carrier rooftop units
- Four (4) Trane rooftop units
- One (1) Goodman rooftop unit
- One (1) Split System

Scope ID – 01.04.02: Install Hot Water Unit Heater in Sally Port

Contractor shall furnish and install a hot water unit heater in the Sally Port utilizing the existing hot water located in the evidence room.

Scope ID – 01.04.04: Replace Exhaust Fans

Contractor shall furnish and install six (6) building exhaust fans. The exhaust fan located atop the fire apparatus bay shall be excluded as this piece of equipment will be removed when the new roof is installed.

Community Center

Scope ID – 02.03.01: Install Network Thermostats

Contractor shall furnish and replace the three (3) existing thermostats with Wi-Fi thermostats.

Contractor shall integrate new thermostats into existing Wi-Fi network.

Scope ID – 02.04.01 – Replace one (1) Split system and install one (1) Duct Less Heat Pump

Contractor shall furnish and replace new equipment for the following pieces of equipment:

- One (1) Trane Split Systems
- One (1) Ductless Mini Split Heat Pump

Scope ID – 02.04.02–Replace Community Room HVAC

Contractor shall install a new HVAC system to accommodate the needs of the Community Room. The new system shall be a 6-zone variable refrigerant flow (VRF) system.

All newly installed equipment will require integration into the BAS system.

PLUMBING IMPROVEMENTS

The following plumbing improvements will be made in each associated building.

City Hall-Fire-Police

Scope ID – 01.05.01: Plumbing System Improvements

- Contractor shall provide scope to address the following pieces of equipment:
 - Problematic domestic water piping elbows on the 2nd Floor
 - 2 ea. Sink Cleanouts
 - 3 ea. Shop Sinks
 - 3 ea. Sink Cleanouts (Fire)

Scope ID – 01.05.03: Repair Sewer and Storm Piping

- Contractor shall provide scope to address the following pieces of equipment:
 - Install new, combined cleanout area located near sidewalk area at Green Road
 - Re-sleeve existing sanitary piping from front of building out to new cleanout
 - Re-sleeve existing storm piping from front of building out to new cleanout
 - Existing piping from cleanout to street main to remain

ENVELOPE IMPROVEMENTS

The following improvements to the building envelope will be made in each associated building.

City Hall-Fire-Police

Scope ID – 01.06.01 – Replace Roof

Contractor shall provide the following roofing scope:

1. Tear off all roofing material down to the decking.
 - i. Concrete Roof Deck – Prime the roof deck per the insulation adhesive manufacturer's instructions. Install the insulation using approved adhesive per the wind uplift calculations.
 - ii. Gypsum Roof Deck – Install a type II base sheet using 1.4" OlyLock per the provided wind uplift calculations.
 - iii. Metal Roof Deck - Mechanically attach the base layers per the wind uplift calculations. Set the tapered layers and the cover board in insulation adhesive.
 - iv. Wood Deck – Loose lay re rosin paper and tack into place
2. Install the appropriate ISO insulation. Install tapered insulation using approved insulation adhesive. Ensure positive drainage is achieved by using saddles/crickets where necessary.
3. Install a ½" primed gypsum recovery board directly to the ISO insulation using approved insulation adhesive.
4. Sump all drains a minimum of 8' x 8' where possible.
5. Install a torch base sheet. Cover all wall flashings and combustible materials with an approved peel and stick base sheet. Install the base sheet flashing prior to installing the cap sheet.
 - i. Sections K (wood deck near the garage door) – install the base sheet and cap sheet using cold process, low odor, ZERO V.O.C adhesive.
6. Install a coal tar mineral cap sheet using coal tar adhesive per the specifications.
 - i. The mineral sheet will be the finished surface.
7. Install the cap flashing ply using coal tar adhesive. All flashing seams and T-bars are to be 3 coursed.
8. Install new expansion joints where necessary.
9. Flash all drains, soil stacks, hot pipes, pitch pockets per the manufacturer's requirements. Raise all pipes and equipment a minimum of 8" above the roof surface. Units that are small enough to be set on the roof surface shall be set on sleepers.
 - i. Ensure all piping is set on proper pipe supports.
10. Section Q (Per Roofing Report) – remove the steel grating as needed and replace the roof. The equipment, cable, piping, etc. will be moved by others.
11. Install new 22-gauge metal edge.
12. Sections I, J, & K (Per Roofing Report) - The gutter shall be 22-gauge, 7" commercial gutter.
13. Remove all obsolete equipment and plate over with 20-gauge metal plating properly attached to the surrounding deck. All items on Section N (Per Roofing Report) are to be removed.
14. Install adhered walk pads around all HVAC units and for the roof hatch to the cell tower equipment. Set the walk pads in Green Lock Structural adhesive.

15. Provide the following: pipe supports and sleepers for the smaller HVAC units set on the roof. The existing pipe rails will be reused. Raise as needed using 2 x lumber.

Scope ID – 01.06.02 – Replace Windows

Contractor shall furnish and install the following measures:

- Replace the following windows and doors with insulated glass with bronze tint and low-e coating:
 - 56 ea. Window sections
 - 2 ea. Door sections including storefront at east entrance
- Window replacement shall include lintel repair or replacement where needed.
- Window replacement shall include masonry repair where needed.
- Window replacement shall include interior patching where needed.

Scope ID – 01.06.04 – Clean and Seal Façade

Contractor shall chemically clean brick and masonry surfaces where needed. Areas addressed will be sealed and caulked.

Scope ID – 01.06.06 – Reseal Skylights

Contractor shall install new glass joint seals to the following skylight sections:

- Skylights above 2nd Floor Corridor near Council Chambers
- Skylights above 1st Floor Central Corridor
- Skylights above East Entrance
- Skylights above Police Area 1st Floor

Scope ID – 01.06.07 – Tuckpointing

Contractor shall remove failed tuckpointing materials where needed. New repointing with mortar shall be applied to these areas. Areas addressed will be sealed and caulked.

Scope ID – 01.06.08 – Masonry Repair

Contractor shall remove failed brick sections where needed. New brick and mortar shall be installed. The louver removed from the Fire Department garage shall be replaced with masonry.

Scope ID – 01.06.09 – Soffit Repair

Contractor shall replace the existing wood soffits. Engineered material shall be installed in their place.

City Hall-Fire-Police

Scope ID – 02.06.03 – Automatic Door Opener

Contractor shall install automatic operators with touchless sensors at the main entrance.

Service Department

Scope ID – 03.06.01 – Replace Roof

Contractor shall provide the following roofing scope:

1. Tear off all layers to the metal deck.

2. Simultaneously mechanically fasten 2 layers of 2.2" ISO insulation + ½" coverboard.
3. Install a ½" wood fiber cover board using fully moppings of hot asphalt.
4. Install a modified base sheet in 25 to 30 pounds of hot asphalt per 100 square feet. Install a cap sheet in 25 to 30 pounds of hot asphalt per 100 square feet.
5. Aluminize the entire roof surface.
6. Raise all units a minimum of 8" above the newly established roof surface.
7. Install new wood nailer to match the insulation height.

ELEVATOR AND LIFT IMPROVEMENTS

The following improvements to the elevator and lift systems will be made in each associated building.

City Hall-Fire-Police

Scope ID – 01.08.02 – Elevator Modernization and Cab Renovation

Contractor shall furnish and install the necessary measures to modernize the following elevators:

- 1 – Police Area Elevator

Design Intent:

The intent of the scope is to modernize the elevator by providing new equipment and controls.

Components to be refurbished (if replacement not possible) or replaced (at a minimum):

1. Control and Power Unit
2. Schindler Ahead Hardware Controls
3. Battery Lowering
4. Machine Room Wiring
5. Front Door Operator
6. Door Restrictors
7. Door Gibs
8. Door Fire Tabs
9. Front Door Electronic Door Detector
10. Pickup Assemblies
11. Door Interlocks
12. Main Car Operating Panel
13. Car Panel Interface
14. Car Lantern
15. Hall Position Indication
16. Access Switch
17. Hall Pushbutton Station
18. Fixture Finish
19. Hoistway Wiring
20. Car Top Inspection Station and Work Light
21. Car Top Railing
22. Cab Fan
23. Cab Interior
24. Packing

INTERIOR IMPROVEMENTS

The following improvements to the building interiors will be made in each associated building.

City Hall-Fire-Police

Scope ID – 01.08.05 – Replace Flooring in Select Areas

Contractor shall furnish and install the necessary measures to replace flooring in the following areas:

- Basement corridor, stairway, and select Police Areas
- Main Level corridors, staircases, and select areas
- 2nd Floor corridors, Council/Court Chamber, Community Room, and select Police Areas
- Flooring type to be luxury vinyl tile (LVT) and rubber floor
- Reference flooring floorplans in Section 7.d of Facility Energy Audit (IGA Proposal)

Community Center

Scope ID – 02.08.05 – Renovate Entranceway/Reception Area

Contractor shall furnish and install the necessary measures to renovate reception area:

- Remove countertop including framing and glass mounted to the countertop
- Provide rough and finish carpentry work to extend reception desk out into atrium for better visibility. Provide new countertop.
- Provide new millwork and casework where needed.
- Provide necessary flooring modifications.
- Include painting of walls where needed.
- Provide outlets where needed.

PAVING AND CONCRETE IMPROVEMENTS

The following improvements to the parking lots and patio will be made in each associated building.

City Hall-Fire-Police

Scope ID – 01.08.01 – Replace Parking Lot in Select Areas

Contractor shall furnish and install the necessary measures to replace parking lots in the following areas:

- East parking lot that is non-permeable – Approximately 27,000 square feet
- Contractor shall remove and replace 7 inches of concrete

Community Center

Scope ID – 02.08.02 – Replace Patio Concrete

Contractor shall furnish and install the necessary measures to replace the patio in the following areas:

- Contractor shall remove and replace concrete slab

Bexley Park

Scope ID – 04.08.02 – Resurface Tennis Courts

Contractor shall furnish and install the necessary measures to replace the tennis court area:

- Contractor shall remove and replace tennis court surface
- Owner responsible for reinstalling nets and special court lining

PROCUREMENT IMPROVEMENTS

Contractor shall provide professional service and assistance to the Owner related to the operation of its facilities and city operations.

Scope ID – 07.08.04 – Procurement Solutions

- Contractor shall assist the Owner in the setup and execution of reverse auction procurement methods for select materials and services needed by the Owner
- Contractor shall assist in the development of request for proposal (RFP) structure for select materials and services needed by the Owner

ATTACHMENT 2 - PERFORMANCE GUARANTEE

SECTION 2.1 - MEASUREMENT & VERIFICATION (M&V) PROGRAM PARAMETERS

2.1.1 - ANNUAL SAVINGS GUARANTEE

As part of the Guaranteed Energy Savings Contract Agreement, the following performance guarantee will be provided:

Year	Energy Savings	Operational Savings	Total Annual Performance Guarantee
1	\$15,204	\$297,298	\$312,503
2	\$15,508	\$297,585	\$313,093
3	\$15,819	\$297,880	\$313,699
4	\$16,135	\$298,184	\$314,319
5	\$16,458	\$298,497	\$314,955
6	\$16,787	\$298,175	\$314,961
7	\$17,123	\$297,862	\$314,984
8	\$17,465	\$297,558	\$315,023
9	\$17,814	\$297,264	\$315,078
10	\$18,171	\$296,978	\$315,149
11	\$18,534	\$296,701	\$315,235
12	\$18,905	\$296,433	\$315,337
13	\$19,283	\$296,172	\$315,455
14	\$19,668	\$295,919	\$315,588
15	\$20,062	\$295,674	\$315,736
Total	\$262,936	\$4,458,180	\$4,721,116

Contractor guarantees that Owner will realize no less than the savings listed above during the first Fifteen (15) Annual Performance Periods (“Guaranteed Savings Period”) following the receipt of final payment for the project Scope of Work. The Annual Savings Guarantee is for savings in the aggregate and is not on a per ECM basis, notwithstanding the presentation of Actual Savings in Guaranteed Energy Savings Contract Agreement, M&V Workbook or M&V Reports. The Year One Annual Savings Period begins after receipt of final payment for the project Scope of Work and extends through the immediately following twelve-month period.

If the Actual Annual Savings does not equal or exceed the Guaranteed Annual Savings in any Annual Performance Period, Contractor shall pay to the Owner the difference between the Guaranteed Annual Savings and the Actual Annual Savings (“Guarantee Payment”).

If the Actual Annual Savings in any Annual Performance Period exceeds the Guaranteed Annual Savings, the surplus savings may be carried forward and applied against any possible savings shortfall in previous or subsequent Annual Performance Periods. If Contractor makes one or more Guarantee Payments to the Owner and an unapplied surplus accrues in future Annual Performance Periods, the Contractor may invoice the Owner for the sum of the unapplied surplus less the amount of one year’s debt service on the contract price.

2.1.2 - M&V PROGRAM DURATION

One (1) year of measurement and verification has been included as part of the Guaranteed Energy Savings Contract Agreement. During this one-year period, Contractor will measure, collect, and analyze data for the purpose of verifying and reporting energy savings associated with the project scope of work. As part of the M&V program, contractor will provide a Project M&V Workbook and One-Year M&V Report as outlined in Section 2.2 of Attachment 2.

In the event of meeting or exceeding the projected savings amount during the initial Annual Performance Period, the Owner may elect to declare the goals of the Guaranteed Energy Savings Contract Agreement met and deemed mutually acceptable for the years of the Guaranteed Savings Period. This effectively stipulates the remaining years of the Guaranteed Savings Period as acceptable per IPMVP guidelines with no further measurement and verification.

2.1.3 - M&V PROGRAM EXTENSION

The Owner may elect to extend the Measurement & Verification Program for a second Annual Savings Period at an additional cost of \$51,691. The Owner may continue the Measurement and Verification Program for the subsequent years of the Guaranteed Savings Period at a cost to be negotiated separately.

SECTION 2.2 - M&V PROGRAM DELIVERABLES

2.2.1 - M&V WORKBOOK

As part of the Guaranteed Energy Savings Contract Agreement, Contractor will provide an IPMVP-adherent M&V Plan in the form of the M&V Workbook. This project-specific workbook will detail all energy cost savings derived from the Energy Conservation Measures pertaining to the project scope of work and will outline the M&V approaches that will be used to verify project energy savings.

2.2.2 - ANNUAL M&V REPORT

As part of the Guaranteed Energy Savings Contract Agreement, Contractor will provide the Owner with an Annual Project M&V Report for the initial Annual Performance Period. This report will disclose any shortfall or surplus between the Guaranteed Annual Savings and the Actual Annual Savings incurred during the Annual Performance Period. If the Owner elects to extend the M&V Program as outlined in Section 2.1.3 of Attachment, Contractor will produce additional M&V Reports for the corresponding additional Annual Performance Periods.

SECTION 2.3 - CUSTOMER RESPONSIBILITIES

The following items must be maintained by the Owner and are relied upon by the Contractor in order to properly administer the savings program utilizing the M&V Protocol listed under the IPMVP guidelines:

- Copy of all Project Site monthly utility bills within thirty (30) days of receipt of bills
- Copy of building maintenance expenditures for any project site
- Monthly trend-log of all system over-rides
- Changes in operating hours, usages, and/or occupancy schedules of any Project Site from those identified in Attachment 3 of Guaranteed Energy Savings Contract Agreement
- Changes to temperature set-points, schedule changes, and/or changes in ventilation rates at any Project Site from those identified in Attachment 3 of the Guaranteed Energy Savings Contract Agreement.

- Reporting of any Equipment not currently operating
- Reporting of an Equipment break-down/malfunction immediately upon discovery of the problem
- Monthly identification of any added energy consuming equipment (including computers, kitchen equipment, refrigeration equipment, etc.) with schedules of use for any Project Site
- If the Owner is performing maintenance and repair of the Equipment in-house, such maintenance and repair shall be performed consistent with the manufacturer's recommended preventive maintenance applicable to the equipment. During the term of the contract Contractor may request to inspect the Equipment.
- Owner to provide timely access to all historical and current procurement data relevant to the consumable categories listed in Section 3.2.2(b) of Attachment 3.
- Owner to provide annual access to all historical and current budget appropriations and expenditures relevant to the categories listed in Section 3.2.3(b) of Attachment 3.

SECTION 2.4 - ADDITIONAL IDENTIFIED SAVINGS & ADJUSTMENT

2.4.1 - PRE-PERFORMANCE PERIOD

Energy and Operational savings that are achieved by the upgrades and modifications in the Agreement prior to the start of the Guaranteed Savings Period will be added to the first year's Actual Savings Total. Such savings may include any utility rebates or other incentives earned as a direct result of the installed energy conservation measures provided by the Contractor and will be accounted for and applied toward all savings shortfalls before any payment is required.

2.4.2 - OTHER SAVINGS OPPORTUNITIES

Contractor may identify other Energy and Operational Savings opportunities during the construction period or during any guarantee year. Additional Energy and Operational Savings that can be demonstrated as a result of efforts by the Contractor that result in no additional costs to the Owner beyond the costs identified in this Agreement will be included in the Annual M&V Report.

2.4.3 - MODIFICATIONS TO PROJECT SCOPE

Pursuant to Article 13 in the Guaranteed Energy Savings Contract Agreement, in the event that the actual project scope of work deviates from the Scope of Work outlined in Attachment 1, Owner agrees that Contractor may modify any affected savings calculations. Any revisions to the projected energy and operations savings calculations or Performance Guarantee will be detailed in the Annual Measurement & Verification Reports.

2.4.4 - M&V OPTION DEFINITIONS

2.4.4(a) - Energy Savings

Measured Savings

The Annual Energy Savings associated with the Guaranteed Energy Savings Contract Agreement will be measured and verified during the M&V Program using the following IPMVP-adherent M&V Options. Detailed descriptions of the calculations utilized to determine savings are outlined in Attachment 3. The following table details the possible M&V Options provided by IPMVP.

IPMVP Option	Definition	Savings Determination	Typical Applications
Option A	Key Parameter Measurement	Engineering calculation of baseline and reporting period energy from measurement of key parameter and estimated values	Utilized when ECM is independent of building's total energy usage. Key parameter is measured and others are estimated based on facility schedules and occupancy behavior (ex. lighting retrofit only)
Option B	All Parameter Measurement	Full parameter measurement of energy consumption and demand of ECM affected system	Utilized when ECM is independent of building's total energy usage. All parameters are measured (ex. installation of variable speed drive and controls to adjust pump flow).
Option C	Whole Facility Measurement	Measuring energy consumption and demand at whole facility utility meter level.	Utilized where multiple ECMs are measured by a single utility meter (ex. HVAC replacement, lighting retrofit, and envelope improvements at same facility).
Option D	Calibrated Simulation	Model simulation of energy consumption and demand in baseline and reporting period.	Utilized when multiple ECMs are implemented in a facility where no meter data is available for baseline period.

Custom-Measured Savings

When energy related savings cannot be measured by any of the IPMVP M&V Options, savings can be measured by a custom-developed program. The program varies on an ECM by ECM basis to accurately measure and verify savings.

Non-Measured Savings

In some situations, there are no economical or viable IPMVP M&V Options to measure savings. In these cases, savings will be considered Non-Measured. When Non-Measured Savings are selected, the Owner agrees that the savings presented in the Agreement are a true and accurate representation of Annual Savings and no further measurement and verification is required.

2.4.4(b) - Operational Savings

The Annual Operational Savings will be verified during the M&V Program using the custom verification options created for each Operational Savings measure. The following table details the possible Verification Methods.

Method	Definition	Savings Determination	Typical Applications
Method 1	Stipulated Savings	Contractor and Owner agree that engineering calculations are a fair estimation of actual performance period savings with no further verification required.	Situations where minimal savings do not justify the cost of M&V or where there is a high degree of uncertainty in the savings (i.e. lack of baseline data)
Method 2	Budget Line Item Verification	Comparison of pre-project budgets and actual spending during the Performance Period.	High confidence of savings exceeding guarantee with understanding that outside factors may have a large effect on potential savings
Method 3	Engineering Calculation Verification	Pre-Project engineering calculations are modified using data gathered during Performance Period (i.e. quantity of replacements, units purchased, miles driven).	Savings are based directly on cost and do not contain a measurable performance variable.
Method 4	Measured Performance Verification	Measured parameters are monitored and compared with calculated baseline savings model	Savings include a measurable performance variable (i.e. MPG) that is directly impacted by the project.

ATTACHMENT 3 - MEASUREMENT & VERIFICATION PLAN

SECTION 3.1 - ENERGY SAVINGS

3.1.1 - OVERVIEW

The following table outlines the Guaranteed Savings for each measured category included in the Guaranteed Energy Savings Contract Agreement. Detailed measurement and verification strategies for each savings category are provided in subsequent sections of Attachment 3.

Year	Option C Energy Savings ¹	Option A Utility Cost Savings ²	Non-Measured Utility Cost Savings ³	Total Energy Savings
1	\$12,844	\$2,109	\$251	\$15,204
2	\$13,101	\$2,152	\$256	\$15,508
3	\$13,363	\$2,195	\$261	\$15,819
4	\$13,631	\$2,238	\$266	\$16,135
5	\$13,903	\$2,283	\$271	\$16,458
6	\$14,181	\$2,329	\$277	\$16,787
7	\$14,465	\$2,376	\$282	\$17,123
8	\$14,754	\$2,423	\$288	\$17,465
9	\$15,049	\$2,471	\$294	\$17,814
10	\$15,350	\$2,521	\$300	\$18,171
11	\$15,657	\$2,571	\$306	\$18,534
12	\$15,970	\$2,623	\$312	\$18,905
13	\$16,290	\$2,675	\$318	\$19,283
14	\$16,616	\$2,729	\$324	\$19,668
15	\$16,948	\$2,783	\$331	\$20,062
Total	\$222,123	\$36,478	\$4,335	\$262,936

1 - See Section 3.1.2 for detailed Measurement & Verification Plan

2 - See Section 3.1.3 for detailed Measurement & Verification Plan

3 - See Section 3.1.4 for detailed Measurement & Verification Plan

3.1.1(a) - Base Period Operational Conditions

The following tables summarize the facility operational conditions utilized within the energy savings calculations. Customer bears the risk of decreased Energy Savings if the facilities are operated outside these operational parameters. Variation from these parameters will permit the Contractor to adjust savings as needed.

3.1.1(b) - Facility Occupancy Schedules

The HVAC equipment shall be scheduled and set back during the unoccupied periods. The following schedules are to be utilized for all areas unless otherwise indicated.

Facility	Area	Time Period	Operating Hours
City Hall	All Office & Common Areas	Monday – Friday	7:30am – 5:00pm
	Council Chambers	2 nd & 4 th Tuesday of the Month	7:00pm – 10:00pm
Fire Department	Office Areas & Garage Bays	Monday – Friday	7:30am – 5:00pm
	Living Quarters, Locker Room, Kitchen	Monday – Sunday	24/7
Police Department	Office Areas, Common Areas, Storage, Sally Port	Monday – Friday	7:30am – 5:00pm
	Reception, Jail	Monday – Sunday	24/7
	Firing Range	Monday – Friday	(Occupied as necessary; less than 5 hours per week)
Community Center	All Office Areas & Common Areas	Monday – Friday	8:30am – 5:00pm
	Community Room	Saturday & Sundays (as necessary)	(Occupied as necessary; less than 6 hours per week)
Service Center	All Areas	Monday – Friday	7:00am – 3:00pm

3.1.1(c) - HVAC Set-Points

Customer agrees to operate the conditioned spaces within the temperature range indicated in the table below. Set-points are for all areas unless otherwise indicated. All areas shall have a +/- 2 degree allowable adjustment.

Facility	Area	Occupied Setpoint	Unoccupied Setpoint
City Hall	All Office & Common Areas	Heating: 69F, Cooling: 74F	Heating 55F, Cooling: 85F
	Council Chambers	Heating: 69F, Cooling: 74F	Heating 55F, Cooling: 85F
Fire Department	Office Areas	Heating: 69F, Cooling: 74F	Heating 55F, Cooling: 85F
	Garage Bays	Heating: 55F (No Cooling)	Heating: 50F (No Cooling)
	Living Quarters, Locker Room, Kitchen	Heating: 69F, Cooling: 74F	Heating 55F, Cooling: 85F
Police Department	Office Areas, Common Areas, Storage	Heating: 69F, Cooling: 74F	Heating 55F, Cooling: 85F
	Sally Port	Heating: 55F (No Cooling)	Heating: 50F (No Cooling)
	Reception, Jail	Heating: 69F, Cooling: 74F	Heating 55F, Cooling: 85F
	Firing Range	Heating: 69F, Cooling: 74F	Heating 55F, Cooling: 85F
Community Center	All Office Areas & Common Areas	Heating: 69F, Cooling: 74F	Heating 60F, Cooling: 85F
	Community Room	Heating: 69F, Cooling: 74F	Heating 60F, Cooling: 85F
Service Center	Office Areas	Heating: 69F, Cooling: 74F	Heating 55F, Cooling: 85F
	Mechanic & Vehicle Storage Garages	Heating: 55F (No Cooling)	Heating: 50F (No Cooling)

3.1.1(d) - Weather Data Source

In the event that savings are determined by comparing weather-normalized baseline consumption to actual performance period consumption, actual weather data will be gathered from NOAA Station 725245 – Brian Hopkins International Airport. If the weather station is deactivated, weather data will be collected from the

nearest possible alternative station. If there are gaps in the weather data collected, Contractor will use the aggregate for the immediately surrounding days in substitution.

3.1.2 - OPTION C ENERGY SAVINGS

3.1.2(a) - Overview

The Performance Guarantee established in Attachment 2 includes \$12,844 in Year One Option C Energy Savings. These savings will be measured and verified utilizing IPMVP Option C – Whole Facility Measurement. These savings were calculated by applying the base period utility rates to the reduction in facility energy consumption resulting from the project’s energy conservation measures. The following summary details the Year One Savings targets per facility for each facility included in the project scope of work. These figures are subject to change annually to account for any changes in facility operational conditions or utility rates as outlined in Section 3.1.2(f) of Attachment 3.

Facility	Annual kWh Saved	Annual kW Saved	Annual MCF Saved	Year One Utility Cost Savings
Community Center	12,580	(12)	245	\$1,703
City Hall	77,128	70	1,064	\$11,141
Total	89,708	58	1,310	\$12,844

3.1.2(b) - Guaranteed Meters

Option C involves the use of utility meters, whole-facility meters, or sub-meters to assess the energy performance of a facility as a whole. This methodology assesses the aggregated performance of all energy conservation measures applied to the area served by a single energy meter. The following tables lists the meters that will be utilized to monitor and record actual energy consumption for the duration of the M&V Program.

Facility	Utility Type	Utility Provider	Account #	Meter #	Units
Community Center	Electric	First Energy	110024364058	0908261210	kWh, kW
Community Center	Natural Gas	Dominion Energy	0 4418 0060 8237	11166016	MCF
City Hall	Electric	First Energy	110024430958	0909894943	kWh, kW
City Hall	Natural Gas	Dominion Energy	2 4418 0050 6174	11895058	MCF

3.1.2(c) - Energy Savings Calculation Methodology

Energy savings will be measured by comparing the Performance Period’s total energy consumption and demand to the total energy consumption and demand for the same area in the base year period by utilizing energy meter data. Base year energy and demand will be adjusted for differences in weather, length of billing periods, and facility operational conditions in order to estimate how much energy would have been used in the Performance Period if energy conservation measures had not been implemented. Energy savings are defined as the difference between the adjusted base year consumption and demand (Baseline) and the Performance Period consumption and demand. This process will be included for each utility type involved in the guarantee.

The following equations are utilized to determine the difference in energy usage from the baseline period and performance period.

Equation 1 – Energy Consumption Savings

$$E_{Savings} = E_{Baseline} - E_{Performance}$$

Where:

$E_{Savings}$ = Energy Savings

$E_{Baseline}$ = Base year energy usage adjusted for normalization

$E_{Performance}$ = Performance Period energy usage

Equation 2 – Baseline Energy Usage

Baseline energy usage is determined by first analyzing the relationship between base year utility usage and the base year weather and/or other independent variables (i.e. occupancy, production volume). If the relationship between an independent variable is found to be statistically significant through linear regression analysis, the baseline is adjusted using a fit line equation. This equation allows for the accurate comparison of base year utility consumption and performance period utility consumption by routinely adjusting the baseline to mimic the conditions present in the Performance Period.

The following equation is utilized for each meter present within the performance guarantee. Once the degree day balance point temperatures and the coefficients for heating degree days, cooling degree days, and all other applicable variables have been obtained by regression, they remain fixed and are used to derive baseline consumption for the performance period. Specific coefficients per meter can be found in the project M&V Workbook.

$$P_i = [D + (D_h * \Delta T_{BH,i}) + (D_c * \Delta T_{BC,i}) + (D_1 * U_{1,i}) + (D_2 * U_{2,i}) + (D_3 * U_{3,i})] * BM_{m,i} + BM_{o,i}$$

Where:

i = index for N utility bills (i=1..N);

P_i = Best Fit to utility bill demands [Utility Demand Units, e.g., kW];

D = Baseload demand (Utility Units, e.g., kW);

D_h, D_c = Coefficients for Heating and Cooling ΔT (Utility Demand Units/ °F or °C);

$\Delta T_{BH,i}$ = Heating ΔT , (Balance Point Temperature T_{BH} - low temperature $t_{Lo,i}$) (°F or °C);

$\Delta T_{CH,i}$ = Cooling ΔT , (high temperature $T_{Hi,i}$ - Balance Point Temperature t_{BC}) (°F or °C);

D_1, D_2, D_3 = Coefficients for other independent variables, $k_1, k_2,$ and k_3 ;

$U_{1,i}, U_{2,i}, U_{3,i}$ = Values of other independent variables, $k_1, k_2,$ and k_3 ;

$BM_{m,i}$ = Baseline Modification, multiplier;

$BM_{o,i}$ = Baseline Modification, absolute offset.

Equation 3 – Demand Savings

Demand savings are calculated similarly to energy usage savings, as seen by the equation below.

$$D_{Savings} = D_{Baseline} - D_{Performance}$$

Where:

$D_{Savings}$ = Demand savings

$D_{Baseline}$ = Base year demand adjusted for normalization

$D_{Performance}$ = Performance Period demand

Equation 4 – Baseline Demand

Because demand is an instantaneous value, it must be treated differently than energy usage when determining a baseline value. The differences between energy calculations and demand calculations are:

- 1) Demand is not a function of # of days
- 2) Demand does not have a relationship to degree days (which are summed over a number of days) but instead has a relationship to the Heating ΔT or Cooling ΔT .

Heating ΔT is the difference between the demand heating balance point temperature and the lowest temperature during the billing period. The demand heating balance point temperature is unrelated to the balance point temperature used to calculate heating degree days.

Cooling ΔT is the difference between the demand cooling balance point temperature and the highest temperature during the billing period. The demand cooling balance point is unrelated to the balance point temperature used to calculate cooling degree days.

The following equation is utilized for each meter with demand readings available present in the facility utility cost savings guarantee. Once ΔT balance point temperatures and the coefficients for baseload demand, Cooling ΔT , Heating ΔT , and all other variables have been obtained by regression, they remain fixed and are used to derive baseline demand throughout the performance period.

$$P_i = [D + (D_h * \Delta T_{BH,i}) + (D_c * \Delta T_{BC,i}) + (D_1 * U_{1,i}) + (D_2 * U_{2,i}) + (D_3 * U_{3,i})] * BM_{m,i} + BM_{o,i}$$

Where:

- I = index for N utility bills ($i=1..N$);
- P_i = Best Fit to utility bill demands [Utility Demand Units, e.g., kW];
- D = Baseload demand (Utility Units, e.g., kW);
- D_h, D_c = Coefficients for Heating and Cooling ΔT (Utility Demand Units/ $^{\circ}F$);
- $\Delta T_{BH,i}$ = Heating ΔT , (Balance Point Temperature T_{BH} - low temperature $t_{Lo,i}$) ($^{\circ}F$);
- $\Delta T_{CH,i}$ = Cooling ΔT , (high temperature $T_{Hi,i}$ - Balance Point Temperature t_{BC}) ($^{\circ}F$);
- D_1, D_2, D_3 = Coefficients for other independent variables, k_1, k_2 , and k_3 ;
- $U_{1,i}, U_{2,i}, U_{3,i}$ = Values of other independent variables, k_1, k_2 , and k_3 ;
- $BM_{m,i}$ = Baseline Modification, multiplier;
- $BM_{o,i}$ = Baseline Modification, absolute offset.

Equation 5 –Degree Days

The heating and cooling degree days utilized in the baseline equation are calculated for each billing period using daily temperature data. For any given period from dates D_{i-1} to D_i , heating degree days are calculated as the sum of positive differences of a balance point temperature and the average daily dry bulb temperatures. Both heating and cooling balance point temperatures vary per building and are a function of building composition, heating system parameters, and internal gains. The balance point temperature is usually obtained from the best fit of regression.

The following equation is used to calculate heating degree days:

$$HDD_{BH,i} = \sum_{d=D_{i-1}+1}^{D_i} (T_{BH} - T_{O,d})^+$$

Where:

- $HDD_{BH,i}$ = Heating Degree Days (the days from D_{i-1} to D_i), $^{\circ}F$ -day;
- D_i = Last day of the i -th billing period;
- D_{i-1} = Last day of the $(i-1)$ -th billing period;
- $D_{i-1}+1$ = 1st day of the i -th period.
- T_{BH} = Heating Balance Point Temperature, $^{\circ}F$;

$T_{o,j}$ = Average outdoor temperature for the day D_i , °F;
 $(X)^+$ = Indicates that only positive differences are to be used, and negative differences set to zero.

The following equation is used to calculate cooling degree days:

$$CDD_{BC,i} = \sum_{d=D_{i-1}+1}^{D_i} (T_{o,d} - T_{BC})^+$$

Where:

$CDD_{BC,i}$ = Cooling Degree Days (the days from D_{i-1} to D_i), °F-day;
 D_i = Last day of the i -th billing period;
 D_{i-1} = Last day of the $(i-1)$ -th billing period;
 $D_{i-1}+1$ = 1st day of the i -th period.
 T_{BC} = Cooling Balance Point Temperature, °F
 $T_{o,j}$ = Average outdoor temperature for the day D_i , °F;
 $(X)^+$ = Indicates that only positive differences are to be used, and negative differences set to zero.

3.1.2(d) - Measurement Procedure

The following procedure is utilized to calculate utility unit savings:

- 1) Determination of Baseline Period
 A baseline period is first determined that best represents the facility's pre-retrofit utility usage pattern. Typically, this period consists of the most recent twelve months prior to the retrofit.
- 2) Performance of Regression Analysis
 Regression analysis is performed through Metrix utility accounting software. Utility bills, weather data, and other independent variable data (e.g. production or occupancy) are entered into Metrix. Regression of usage/demand vs. weather and/or another independent variable is performed per independent variable unit for each meter in which statistically significant relationship can be established. The fit line resulting from this equation is used throughout the annual performance periods to ensure accurate comparisons are made.
- 3) Documentation of Baseline Information
 The results of the linear regression are included in the project M&V Workbook. These reports will document:
 - A) Utility bills used, including meter read date, number of days in bill, usage (or demand)
 - B) Independent variable amounts per bill (e.g. CDD, HDD, Occupancy, Production)
 - C) Weather station used and balance point temperatures used to calculate CDD and HDD
 - D) Fit line equation, coefficients of consumption (and demand) per independent variable unit (e.g. kWh/HDD, Therms/Building Occupancy).
 - E) Statistical Indicators: R2 value, T-statistics, CVRMSE, and Mean Bias Error
- 4) Determining Post-Retrofit Utility Unit Savings
 For each included annual performance period, utility bills, weather data, and other applicable independent variable information is entered into Metrix to determine the adjusted baseline value for each Performance Period utility bill. The adjusted baseline is calculated by Metrix using the fit line equation and any baseline modifications that may be applicable. Savings are equal to the

adjusted baseline value minus the actual consumption (or demand) for the corresponding billing period.

3.1.2(e) - Baseline Modifications

A baseline modification is an additional factor that is added or multiplied to the fit line equation to represent one of two types of anomalies: deviations from the usage pattern which occurred during the baseline period (annual periodic modifications) or post-retrofit changes in usage patterns caused by the customer which may compromise savings numbers (additional modifications).

Annual Periodic Modifications

Annual Periodic Modifications may be used to correct Adjusted Baseline consumption for anomalies that occurred during the Baseline period because of operational procedures or abnormal conditions that occurred. These “out of line” consumption periods cause the regression equation to over or under predict consumption. A modification helps to fit the equation’s predicted value to the actual value that occurred during the tuning period. Future consumption can be predicted with a higher degree of confidence once the predicted and actual tuning period consumption is matched properly. Annual Periodic Modifications for the Project, if any are used, are identified in the M&V Workbook.

Facility Modifications

During the term of the Agreement, the baseline may need to be adjusted to equalize the parameters of the current year to the base period. This allows for accurate analysis to be performed and valid savings to be measured. Potential reasons for adjustment include, but are not limited to:

- Changes in facility occupancy and use
- Changes in ventilation rates due to potential changes in any regulatory requirements
- Additions or deletions of energy using equipment
- Set-Point and schedule deviations from the initial agreed-upon settings

The operational conditions to be withheld are detailed in Section 3.1 of Attachment 3. Deviation from these parameters that impact energy savings will be documented and adjusted for in the annual M&V Reports.

Bill-Matching

Some meters are not used to heat or cool a facility, and thus may not have a statistically significant relationship to CDDs, HDDs, or any other independent variable (e.g. occupancy, production, etc.). Some meters instead have random usage patterns that are not successfully predicted by the independent variables chosen, resulting in Baseline regressions that do not meet industry standard tests for validity. In this case, the Contractor will forgo regression analysis and will, instead, for the meter in question, compare monthly Baseline bills to their corresponding monthly bills during the Performance Period to determine Energy Unit Savings. In order to compare equal numbers of days in the Performance Period and Baseline bills, the Baseline amounts may be prorated accordingly.

3.1.2(f) - Cost Savings Methodology

Assigning Utility Cost to Utility Units

Facility utility cost savings are determined by applying utility unit costs to utility unit savings. The method used for applying utility costs differs per meter based on utility data availability and differences in utility rate structures. The following table details the potential cost calculation methods. The specific cost calculation methodologies selected for each meter can be found in the project M&V Workbook.

Method	Description	Typical Utilization
Blended Rate	Applies average total cost of utility bill to single consumption unit (e.g. kWh, Therm) for the billing period.	Utilized when vast majority of utility bill is based on \$/single unit type. Least detailed method as it does not factor out any non-unit based charges or charges based on other billed unit types.
Marginal Rate	Applies average cost per unit type to each available billed unit (e.g. \$/kWh, \$/kW, \$/rKVA). Factors out any non-unit based charges as miscellaneous costs.	Utilized when utility bill is billed based on multiple unit types (e.g. billed on both consumption and demand). Also utilized when non-unit based charges make up significant portion of total utility bill.
Rate Tariff Schedule	Applies modeled tariff rate to utility units. If utility provider changes the rate of utility being provided, calculations are modeled using new rates.	Utilized when meter is billed on complex utility rate structures (e.g. tiered billing structures, monthly/contract minimums, power factor) and cost per unit type cannot be accurately determined using the previous methods.

Base Period Rate Data

The Base Utility Rates are the utility rates set forth below and are used to calculate the initial monetary value of Energy Savings. The Base Utility Rate shall be increased annually during the Guarantee Term by 2% per year, compounded annually (“Adjusted Base Utility Rates”). Owner and Contractor agree that such an adjustment is a reasonable projection of the future increases in utility rates based on past inflation experience. In calculating the monetary value of the Energy savings for the purpose of the Energy Savings Guarantee reconciliation, Contractor will use the greater of (i) the then current applicable utility rate unit cost and (ii) the Adjusted Base Utility Rates. The utility rates for electricity and natural gas used for each building are as follows:

Facility	Meter	Units	Customer Charge	\$/ Consumption Unit	\$/ Demand Unit
Community Center	908261210	kWh, kW	\$78.36	\$0.0636	\$17.8393
Community Center	11166016	MCF	\$33.47	\$4.5475	N/A
City Hall	909894943	kWh, kW	\$78.36	\$0.0606	\$17.8393
City Hall	11895058	MCF	\$125.26	\$4.9054	N/A

Equation 6 – Cost Savings

The following equation will be utilized to determine utility cost savings:

$$\$ Savings = \$ Baseline - \$ Performance$$

Where:

- \$Savings = Guarantee year utility cost savings
- \$Baseline = Baseline period utility cost
- \$Performance = Performance period utility cost

3.1.3 - OPTION A ENERGY SAVINGS

3.1.3(a) - Overview

The Guaranteed Savings outlined in this section will be measured and verified using IPMVP Option A – Retrofit-Isolation: Key Parameter Measurement. Within Option A, savings are calculated through an engineering calculation of baseline period energy usage and reporting period energy usage. Savings are measured and verified by field measurement of the key parameters, which define the energy consumption and/or demand of the ECM's included within the project.

The following table outlines the Guaranteed Annual Savings for each ECM where Option A will be utilized. The calculation methodologies presented in this section will apply to each of the listed savings categories.

ECM Description	Year One Total Savings
Bexley Park – Retrofit Ball Field Lighting to LED	\$2,344

3.1.3(b) - Energy Savings Calculations

Energy savings will be measured by comparing the Annual Performance Period's total energy consumption to the energy consumption for the same fixtures in the base year period. Energy savings are defined as the difference between base year consumption and Annual Performance Period consumption. This process will be applied to each fixture included in the project scope of work.

Equation 1 – Energy Consumption Savings

Savings were determined for each fixture and summed for all fixtures that were retrofitted using the following formula:

$$kWh_{Savings} = \sum_{i=1}^n [kW_{Base} \times H_{Base} - kW_{Performance} \times H_{Performance}]$$

Where:

n	= Number of Fixtures
kWh _{Savings}	= Energy Savings
kW _{Base}	= Energy usage in Baseline Period
kW _{Performance}	= Energy usage in Annual Performance Period
H _{Base}	= Baseline burn hours
H _{Post}	= Performance Period burn hours

Equation 2 – Demand Savings

Savings were determined for each fixture and summed for all fixtures that were retrofitted using the following formula:

$$kW_{Savings} = \sum_{i=1}^n [kW_{Base} - kW_{Performance}] \times DF$$

Where:

n	= Number of Fixtures
kW _{Savings}	= Energy Savings
kW _{Base}	= Annual Demand in Baseline Period
kW _{Performance}	= Demand in Annual Performance Period

DF = % Demand Savings Factor

3.1.3(c) - Key Parameter Measurement Strategy

[LIGHTING]For the lighting retrofit ECMs included in this section, the key parameters that will be measured are the wattage (power) of each fixture type. Pre and post Measurements will be taken until the 80% confidence interval spans no more than 20% above and below the mean of the sample. The mean of the sample set will be treated as the water consumption for that fixture type for all savings calculations. The table below lists each fixture type to be measured, the total quantity of that fixture type, and the minimum amount to be measured following the completion of the lighting retrofit. The sample size of each fixture type may be altered based on any on site observations or accessibility concerns.

Pre-Retrofit Fixtures

Pre-Retrofit Fixture	Total Quantity	Minimum Sample
Field-Head 1000 W Mercury Vapor	64	9

Post-Retrofit Fixtures

Post-Retrofit Fixture	Total Quantity	Minimum Sample
North Star Lighting SBL 600 W	64	9

3.1.3(d) - Parameter Estimates

Under IPMVP guidelines, several of the variables identified under the equations for energy savings in Section 3.1.3(b) of Attachment 3 are estimates. The following values have been agreed upon as true and accurate and will be utilized to calculate savings during the measurement and verification period.

Burn Hours

Location			Pre-Retrofit		Post-Retrofit	
Building	Area	Qty	Fixture Type	Hours	Fixture Type	Hours
Bexley Park	Ball Field	64	Field-Head 1000 W Mercury Vapor	202	North Star Lighting SBL 600W	202

Demand Factor

Building	Area	Demand Savings Factor
Bexley Park	Ball Field	36.62%

3.1.3(e) - Cost Savings Calculations

Option A Utility Cost Savings are calculated as the difference between baseline and performance period energy costs. The following base year utility rates were current at the time of the energy savings calculations and will be utilized to determine savings for each savings category.

Unit	Avg. Cost per Unit
kWh	\$0.0651
kW	\$17.84

The base year utility rate will constitute the minimum value when assigning utility unit costs to utility units. In calculating the monetary value of Utility Costs for the purposes of guarantee reconciliation, the contractor will select the greater of (i) the performance period utility rate and (ii) the base period utility rate. This rate will then be applied to both the base year energy consumption and performance period energy consumption to ensure a true and accurate cost comparison.

Equation 2 – Cost Savings

The following equation will be used to determine Utility Cost Savings for each Annual Performance Period included in the Guaranteed Savings Period.

$$\$_{Savings} = \$_{Base} - \$_{Performance}$$

Where:

$\$_{Savings}$ = Guarantee Year Utility Cost Savings
 $\$_{Base}$ = Baseline Period Utility Cost
 $\$_{Performance}$ = Performance Period Utility Cost

3.1.4 - NON-MEASURED ENERGY SAVINGS

Non-Measured Energy Savings were calculated as \$1,039 per year for 15 years. Savings were calculated as the difference between pre-retrofit energy consumption and calculated post-retrofit energy consumption for each measure included in the table below. Utility costs were assigned to unit savings based on the current period's utility rates. Savings will escalate at a rate of 2% per year, compounded annually. Owner and Contractor agree that such an adjustment is a reasonable projection of the future increases in utility rates based on past inflation experience. Once the construction of each of the measures listed below is completed, savings will be prorated monthly and declared as Pre-performance Savings until the start of the Guaranteed Savings Period.

Facility	ECM	Annual Electric (kWh) Savings	Annual Nat Gas (MCF) Savings	Year One Utility Cost Savings (\$)
Service Department	Replace Roof over Parking Garage	259	50	\$1,039
Total		259	50	\$1,039

SECTION 3.2 - OPERATIONAL SAVINGS

3.2.1 - OVERVIEW

The following table details the Operational Savings included as part of the Guaranteed Energy Savings Contract Agreement.

Year	Procurement Solutions Savings	Budget Variance Savings	Building Maintenance & Repair Savings	Total Operational Savings
1	\$164,628	\$123,117	\$9,553	\$297,298
2	\$164,628	\$123,117	\$9,840	\$297,585
3	\$164,628	\$123,117	\$10,135	\$297,880
4	\$164,628	\$123,117	\$10,439	\$298,184
5	\$164,628	\$123,117	\$10,752	\$298,497
6	\$164,628	\$123,117	\$10,429	\$298,175
7	\$164,628	\$123,117	\$10,117	\$297,862
8	\$164,628	\$123,117	\$9,813	\$297,558
9	\$164,628	\$123,117	\$9,519	\$297,264
10	\$164,628	\$123,117	\$9,233	\$296,978
11	\$164,628	\$123,117	\$8,956	\$296,701
12	\$164,628	\$123,117	\$8,687	\$296,433
13	\$164,628	\$123,117	\$8,427	\$296,172
14	\$164,628	\$123,117	\$8,174	\$295,919
15	\$164,628	\$123,117	\$7,929	\$295,674
Totals	\$2,469,418	\$1,846,760	\$142,002	\$4,458,180

3.2.2 - PROCUREMENT SOLUTIONS SAVINGS

3.2.2(a) - Overview

Procurement Solutions Savings were calculated as \$164,628 per year for 15 years. Savings will be measured and verified by utilizing Method 3 – Engineering Calculation Verification. Within Method 3, savings are calculated through engineering calculations of baseline period procurement and modeled performance period procurement per consumable category. The Owner agrees that the Method 3 model utilized to calculate savings is true and accurate and will be utilized annually to determine savings. The baseline procurement spend will be modified to reflect any changes as detailed in Section 3.2.2(e) in Attachment 3.

In calculating the baseline value of Procurement Solutions Savings, the Contractor analyzed Owner's invoices from calendar year 2019. The following table details total savings per approach to be utilized in the Performance Period. These approaches are detailed in Section 3.2.2(c) in Attachment 3.

Savings Approach	Annual Projected Savings
Reverse Auction	\$119,314
Consolidate w/ RFP	\$45,314
AP & Procurement Matching	\$0

Savings Approach	Annual Projected Savings
Total	\$164,628

3.2.2(b) - Projected Savings Calculation

Procurement Solutions Savings were calculated utilizing industry-standard percentages per savings approach per consumable category. The following table summarizes projected savings per savings approach per category.

Consumable Category	2019 Baseline Spend	Reverse Auction Savings	Consolidate w/ RFP Savings	AP & Procurement Matching Savings	Projected Annual Post Spend	Projected Annual Total Savings
Concrete/Construction	\$1,960,143	\$78,406	\$31,362	\$0	\$1,850,375	\$109,768
Employee Expenses	\$120,822	\$0	\$0	\$0	\$120,822	\$0
Fire Equipment	\$173,028	\$6,921	\$2,768	\$0	\$163,338	\$9,690
Fuel & Oil	\$123,201	\$4,928	\$1,971	\$0	\$116,302	\$6,899
IT	\$9,818	\$0	\$0	\$0	\$9,818	\$0
Maintenance	\$78,974	\$3,159	\$1,264	\$0	\$74,551	\$4,423
Police Equipment	\$219,682	\$8,787	\$3,515	\$0	\$207,379	\$12,302
Salt	\$251,191	\$16,076	\$4,019	\$0	\$231,095	\$20,095
Traffic Signals	\$25,913	\$1,037	\$415	\$0	\$24,461	\$1,451
Vehicle Purchase	\$139,562	\$0	\$0	\$0	\$139,562	\$0
Total	\$3,102,331	\$119,314	\$45,314	\$0	\$2,937,704	\$164,628

3.2.2(c) - Performance Period Savings Determination

Annual Procurement Solutions Savings will be calculated as 2019 Baseline Spend per consumable minus the corresponding actual Performance Period spend.

Equation 1: Procurement Solutions Savings

$$PS_{Savings} = \sum_{i=1}^n \$_{BL} \pm \$_{Adj} - \$_{Perf}$$

Where:

- n = Line Items processed in Performance Period
- \$_{BL}\$ = 2019 Baseline Spend
- \$_{Adj}\$ = Baseline Adjustment for market demand and conditions
- \$_{Perf}\$ = Performance Period Spend

The table below details the methods that will be utilized to reduce Performance Period costs.

Savings Approach	Methodology
Reverse Auction	Savings are generated by reducing purchase prices as a result of utilizing an increased network of bidders and structured volume purchasing.
Consolidate w/ RFP	Savings are generated by reducing individual purchases into consolidated RFPs to receive favorable unit pricing.
AP & Procurement Matching	Savings are generated by eliminating overpayments caused by failing to match payable amounts to the original procurement amounts.
Rebate Generation	Revenue is generated from rebates achieved by utilization of virtual debit card process.

3.2.2(d) - Measurement Strategy

Savings will be measured and verified through quarterly review of all purchases in each consumable category while the Measurement & Verification program is in effect. Owner is responsible for adhering to the Customer Responsibilities as stated in Section 2.3 of Attachment 2 to ensure savings are achieved.

3.2.2(e) - Basis for Baseline Adjustment

Owner agrees that baseline spend per consumable may be adjusted during the performance period to account for changes in market demand and conditions. Total annual baseline spend may be adjusted if quantity and/or costs of purchases varies from 2019 baseline. Contractor will provide detailed reasoning for all baseline adjustments prior to acceptance of any Annual Measurement & Verification reports.

3.2.3 - BUDGET VARIANCE SAVINGS

3.2.3(a) - Overview

Budget Variance Savings were calculated as \$123,117 per year for 15 years. Budget Variance Savings will be measured and verified by utilizing Method 2 – Budget Line Item Verification. Within Method 2, savings are calculated by direct comparison of pre-project budgets and actual spending during the Annual Performance Period. In calculating the base period value of Budget Variance Savings, the Contractor analyzed the annual appropriations for the 2020 Budget Year in comparison to Actual Expenditures of 2019. An industry-standard savings factor was applied per line item to account for unforeseen adjustments to spending during the Performance Period. The following table summarizes the calculated Budget Variance Savings per fund included in the Guaranteed Energy Savings Contract Agreement.

Fund	Projected Budget Variance Savings
Capital Projects Fund	\$2,115
General Fund	\$70,944
Special Revenue Fund	\$50,058
Total	\$123,117

3.2.3(b) - Projected Savings Calculation

Budget Variance Savings were calculated utilizing industry-standard savings factors per savings category. The following table summarizes the 2020 Budget Year Appropriations, 2019 Actual Expenditures, and projected savings per savings category based on the applied savings factor.

Fund	Savings Category	Sub-Category	2020 Budget Appropriations	2019 Actual Expenditures	Budget Variance (2020 Budget – 2019 Actual)	Savings Factor	Budget Variance Savings
Capital Projects Fund	Building Maintenance & Repair	Buildings / Structures	\$79,000	\$76,356	\$2,644	80%	\$2,115
General Fund	Building Maintenance & Repair	Building Improvements	\$34,000	\$19,945	\$14,055	80%	\$11,244
		HVAC	\$6,000	\$0	\$6,000	80%	\$4,800
		Operating Supplies	\$53,250	\$42,487	\$10,763	80%	\$8,610
	Procurement Solutions	Fleet Fuel	\$144,750	\$107,405	\$37,345	50%	\$18,673
	Utility	Electric	\$132,600	\$99,967	\$32,633	50%	\$16,317
		Natural Gas	\$61,000	\$38,399	\$22,601	50%	\$11,301
Special Revenue Fund	Procurement Solutions	Fleet Fuel	\$100,000	\$79,024	\$20,976	50%	\$10,488
		Salt	\$310,000	\$276,461	\$33,539	80%	\$26,831
	Utility	Electric	\$516,500	\$493,072	\$23,428	50%	\$11,714
		Natural Gas	\$5,500	\$3,450	\$2,050	50%	\$1,025
Total			\$1,442,600	\$1,236,566	\$206,034		\$123,117

3.2.3(c) - Performance Period Savings Determination

Annual Budget Variance Savings will be calculated as the Adjusted Baseline Appropriations per Budget Line Item minus the corresponding actual Performance Period spend. To ensure that savings are not duplicated, any savings claimed through another methodology as depicted in the Guaranteed Energy Savings Contract Agreement will be factored out in the determination of Budget Variance Savings. The Guarantee may be adjusted per the terms stated in Section 3.2.3(e) of Attachment 3.

$$BV_{Savings} = \sum_{i=1}^n \$_{BL} - \$_{Perf} \pm \$_{Claimed} \pm \$_{GAdj}$$

Where:

- n = Budget Line Items
- \$_{BL}\$ = 2020 Baseline Spend
- \$_{Perf}\$ = Performance Period Spend
- \$_{Claimed}\$ = Savings claimed through other M&V Methods
- \$_{GAdj}\$ = Guarantee Adjustments

3.2.3(d) - Measurement Strategy

Savings will be measured and verified through an annual review of budget appropriations and actual expenditures while the Measurement & Verification program is in effect. Owner is responsible for providing Budget Appropriation and Expenditure information as stated in Section 2.3 of Attachment 2. Savings will be reconciled annually per the terms detailed in Section 2.1 of Attachment 2.

3.2.3(e) - Basis for Guarantee Adjustment

Owner agrees that the annual appropriations used to calculate Budget Variance Savings are true and accurate and will be used annually in the calculation of Actual Savings. Future annual savings guarantee amounts may be adjusted annually during the Guarantee Term to account for irregular variations. Contractor will provide detailed reasoning for all savings guarantee adjustments prior to acceptance of any Annual Measurement & Verification reports.

3.2.4 - BUILDING MAINTENANCE & REPAIR SAVINGS

Building Maintenance & Repair Savings were calculated as \$9,553 per year for 15 years. Savings will be measured and verified utilizing Method 1 – Stipulated Savings. Building Maintenance & Repair Savings were derived from reduced annual operational, maintenance, and repair expenditures resulting from the project’s energy conservation measures. Baseline Building Maintenance & Repair Costs were determined by applying an industry-standard maintenance cost per square foot to each facility included in the Guaranteed Energy Savings Contract Agreement. Savings will escalate at a rate of 3% annually for the first 5 years of the Guaranteed Savings Term and then de-escalate at a rate of 3% annually for the remainder of the Guaranteed Savings Term to account for anticipated inflation and aging of equipment.

The Building Maintenance & Repair Savings outlined within this section will constitute Actual Savings for the purposes of the Performance Guarantee. Contractor and Owner mutually agree to these values with no further forms of measurement and verification required. In the event that verification steps are performed by the Contractor or Owner, the annual savings provided below will still be the reported savings and values used for reconciling the Annual Savings Guarantee. The following table outlines the Guaranteed Savings for each Method 1: Stipulated Savings category included in the Guaranteed Energy Savings Contract Agreement.

The following table details Building Maintenance & Repair Savings per ECM included in the Guaranteed Energy Savings Contract Agreement.

Building Name	ECM	Building Maintenance & Repair Savings
Community Center	Replace Two Split System Units	\$538
Community Center	Replace Community Room HVAC	\$743
Bexley Pool / Park	Retrofit Ball Field Lighting to LED	\$33
City Hall	Replace Older Rooftop Units	\$3,831
City Hall	Replace Roof	\$3,620
Service Department	Replace Roof over Parking Garage	\$788
Total		\$9,553

The following table details the calculations used to determine Building Maintenance & Repair Savings associated with the HVAC ECM’s included in the Guaranteed Energy Savings Contract Agreement.

Building	Sq Ft	Calculated Maintenance \$/Sq Ft	Projected Maintenance Cost Reduction	Baseline HVAC Maintenance Costs	Calculated Post-Project HVAC Maintenance Costs	HVAC Maintenance Savings
City Hall	61,288	\$0.25	25%	\$15,322	\$11,492	\$3,831
Community Center	11,386	\$0.15	75%	\$1,708	\$427	\$1,281
Total				\$17,030	\$11,918	\$5,111

The following table details the calculations used to determine Building Maintenance & Repair Savings associated with the Roof Replacement ECM's included in the Guaranteed Energy Savings Contract Agreement.

Building	Estimated Reduction	Baseline Roof Maintenance Cost (2019)	Calculated Post-Project Roof Maintenance Costs	Roof Maintenance Savings
City Hall	80%	\$4,525	\$905	\$3,620
Service Department	80%	\$985	\$197	\$788
Total		\$5,510	\$1,102	\$4,408

The following table details the calculations used to determine Building Maintenance & Repair Savings associated with the Lighting ECM's included in the Guaranteed Energy Savings Contract Agreement.

Building	Lighting Maintenance Savings
Beckley Park	\$33
Total	\$33

Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated _____, 2020.

for the following **PROJECT**:

Guaranteed Energy Savings Performance Contract

Michael Love
Economic Development Director
City of South Euclid
1349 South Green Road
South Euclid, OH 44121
(216) 691-4205
mlove@seuclid.com

Attn: Michael Love
Telephone: (216) 691-4205
Email: mlove@seuclid.com

And collectively the Contractor:

Leopardo Energy LLC, an Illinois limited liability company, and
Leopardo Companies, Inc., a corporation duly organized the laws of the state of Illinois

Leopardo Energy, LLC.
5200 Prairie Stone Parkway
Hoffman Estates, Illinois 60192
Attn: Joe Frankini
Telephone: (847) 783-3902
Email: JFFrankini@leopardoenergy.com

TABLE OF ARTICLES

- A.1 GENERAL**
- A.2 OWNER'S INSURANCE**
- A.3 CONTRACTOR'S INSURANCE AND BONDS**
- A.4 SPECIAL TERMS AND CONDITIONS**

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and Contractor shall provide bonds, as set forth in this Exhibit.

ARTICLE A.2 OWNER’S INSURANCE (EXCEPT AS PROVIDED IN SECTIONS A.2.3.1 AND A.2.4)

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 (except under Sections A.2.3.1 and A.2.4 to be provided by Contractor) and, upon the Contractor’s request, provide a copy of the property insurance policy or policies required by Section A.2.3.3 and A.2.5. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner’s usual general liability insurance.

§ A.2.3 Required Property Insurance

§ A.2.3.1 Contractor shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located with an A.M. Best “A X” rating or better, property insurance on the portion of Owner’s property upon which to Work is being performed with written permission by the property insurer for the portion of the structure not part of the Work for the Work to be performed written on a builder’s risk “all-risks” completed value inland marine form or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as named insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 Causes of Loss. The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, water damage (including sewer backup, sprinkler leakage and pipe breakage), pollution, fungus and mold, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss

Sub-Limit

§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, hot testing and to building systems from equipment breakdown, testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Contractor’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage

Sub-Limit

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.2 of the Contract.

§ A.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner’s occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves Work in an existing structure, the Owner, not Contractor, shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.2 of the Contract, “all-risks” property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work and Contractor’s purchase of Builder’s Risk Insurance insuring damage to the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.4 Optional Extended Property Insurance.

The Contractor shall purchase and maintain the insurance selected and described below.

(For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

[] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner’s property, or the inability to conduct normal operations due to a covered cause of loss.

[] **§ A.2.4.2 Intentionally omitted**

[] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[] **§ A.2.4.5 Intentionally omitted.**

[] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured’s business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

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§ A.2.5 Other Owner Insurance.

The Owner shall purchase and maintain the insurance selected below.

[] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

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[] **§ A.2.5.2 Other Insurance**

Coverage	Limits
Boiler and Machinery Insurance	Value of Equipment Purchased by Owner from Contractor

ARTICLE A.3 CONTRACTOR’S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner’s written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor’s Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner and Owner’s Lender as additional insureds for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor’s negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner’s general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 04 13, CG 20 37 04 13.

§ A.3.2 Contractor’s Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.2 of the Contract, unless a different duration is stated below:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

Completed operations for four (4) years after Substantial Completion.

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate, and Two Million Dollars (\$2,000,000) aggregate for products-completed operations hazard, with waiver of subrogation and providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18.1 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 9.15.1 of the Contract arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Intentionally omitted.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Intentionally omitted.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Business Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than One Million Dollars (\$1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor's Umbrella/Excess Liability insurance for the Project written on a "follow form" basis over the Commercial General Liability, Business Automobile Liability and Employers Liability Insurance with limits of Fifty Million Dollars (\$50,000,000) per claim and Fifty Million Dollars (\$50,000,000) in the aggregate with waiver of subrogation. In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) each employee, and One Million Dollars (\$1,000,000) policy limit.

§ A.3.2.7 Intentionally omitted

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits in the aggregate provided by Section A.3.2.10 below.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits in the aggregate provided by Section A.3.2.10 below.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 is procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than Fifteen Million Dollars (\$15,000,000) per claim and Fifteen Million Dollars (\$15,000,000) in the aggregate.

§ A.3.2.11 Intentionally omitted.

§ A.3.2.12 Intentionally omitted.

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.2 of the Contract, unless a different duration is stated below:

None.

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

[] § A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Sections A.2.3.1.3, A.2.3.3 and A.2.5. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Contractor shall adjust and settle the loss with the insurer for the property insurance procured by Contractor in accordance with Section 17.2.2.1 of the Contract.

[] § A.3.3.2.2 Other Insurance
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage

Limits

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located for the Work (but not the Savings Guaranty), as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	Contract Sum plus or minus net Modifications by Change Order
Performance Bond	Contract Sum plus or minus net Modifications by Change Order

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

[Illinois, May 16, 2018]