

## Energy Savings Contract

This energy savings contract ("contract") is between the City of Clearwater (the "City") and Cenergistic LLC ("Cenergistic"). This contract is subject to all applicable state and federal laws.

Cenergistic® delivers customized, comprehensive people-driven energy conservation programs that focus on changing human behavior to help clients reduce their consumption of energy and water without any equipment upgrades. Implementation of these programs is guided by Cenergistic's team of energy consultants - together representing several hundred years of energy conservation experience. Cenergistic's clients can invest the financial savings that result in the lives of the people they serve, rather than in utility companies. Cenergistic guarantees the success of these programs as set out in paragraph 7 below. To date Cenergistic has served more than 1,450 clients in 48 states.

The City is committed to its mission: "The mission of the City of Clearwater is to provide cost effective municipal services and infrastructure; facilitate development of the economy; and support a high quality of life and experience." The City uses electricity, gas, water and sewer (collectively "energy") to fulfill its mission.

The City selected Cenergistic based on Request for Proposal ("RFP") #15-20 and responses by Cenergistic to RFP #15-20.

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

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

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

As a part of this shared responsibility, Cenergistic offers a *Fee Free Period* during the first month to allow for acceleration of savings for the City before Monthly Fee payments begin.

In consideration of the mutual promises contained herein and other good and valuable consideration, the Parties agree that the above terms, recitals, and representations are true and accurate and are incorporated herein by reference, and the Parties further agree as follows:

1. **Program.** On March 1, 2022 ("Start Date") Cenergistic shall begin its work on this contract to provide the City with a people-driven energy management program that is customized to enable the City to reduce consumption of energy ("Program").

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

- Through Cenergistic's on-site and ongoing assessments of the City's facilities and based on Cenergistic's experience in having assessed thousands of client facilities, Cenergistic's energy consultants shall deliver hundreds of recommendations that are specific to the City's environment.

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

3. **Energy Specialist.** (a) *Onsite Assignment.* Program implementation requires a daily focused effort in the City's facilities and areas. One or more Cenergistic employed energy specialists ("energy specialist"), and the use of technology will be used to assist the City with making conservation a priority while positively engaging people to conserve energy. Cenergistic will adequately staff the Program for optimal success through a combination of an energy specialist, onsite engineer and energy expert visits, use of monitoring technology and remote support through our EMS and engineering group in Dallas. Cenergistic shall take immediate actions to identify and employ the energy specialist for this contract. The salary or contract expense for the energy specialist will be paid by Cenergistic. Cenergistic will be the employer of the energy specialist and is fully responsible for providing unemployment and workers compensation, payroll taxes, and insurance premiums (e.g. Medicare). In the event the Program is suspended for reasons set out in paragraphs 7(b) or 8(c) below, the City shall reimburse Cenergistic for the compensation of the energy specialist during the period of Program suspension. Cenergistic will not assign an energy specialist to the City that is unacceptable to the City (which acceptance shall not be unreasonably withheld).

(b) **Duties.** The primary duties of the energy specialist will be to spend time in the City's facilities to identify savings opportunities and to work closely with the City's staff to execute proven implementation strategies to change behavior linked to energy consumption. The effective management of energy information is also important for achieving positive results through accountability. For this the energy specialist will work to maintain energy consumption and other information related to energy use in the City's facilities and areas. The energy specialist will use the EnergyCAP<sup>®</sup> energy accounting program from EnergyCAP, Inc. ("Third Party Software").

(c) **Local Resources.** Within 30 days after the Start Date, the City will provide Cenergistic personnel with office space, an office phone, internet access, email address, on-campus parking, building keys and alarm codes. Use of these resources is subject at all times to City policies and procedures.

4. **Program Implementation.** (a) *Prompt Start.* Upon completion of the Fee Free Period, the City will promptly begin and then continue to implement the Program.

(b) **Commitment and Communication.** In Cenergistic's experience, the success of the City's Program implementation will be a function of the demonstrated commitment of the City Council, Mayor and other administrators, e.g. through timely communication of high level support for the Program. More specifically, no later than 60 days after the Start Date, the City Manager must adopt an appropriate policy and, no later than 30 days after the Start Date, the administration must adopt appropriate administrative guidelines reflecting the City's commitment to the Program. Cenergistic shall provide templates together with support and assistance for the City in its review and adoption of policy and guidelines, however, the contents of the policies and guidelines are at the discretion of the City Council and the City administration, respectively. The City shall communicate these guidelines to its employees and on-site service providers, if any. Cenergistic will facilitate semi-annual progress reports for the City Council. The City will make its utility records available for review and copying on request of the energy specialist, Program Liaison or Cenergistic.

(c) **Software.** (i) **Cenergistic GreenX™ Software.** The GreenX mobile and desktop application which is accessible over any browser-enabled device serves as the focal point for energy savings across your entire facilities portfolio. Our machine-learning anomaly detection algorithms provide transparency into the energy consumption profiles of your buildings and provides alerts and potential resolutions by combining building, equipment and sensor data with historical energy use, weather and other seasonal data. ("Cenergistic Software")

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

(d) **Program Liaison.** Within thirty (30) days after the Start Date, Cenergistic and the City will discuss and collaborate on identifying one of the City's senior-level business personnel to serve as the liaison and primary point of contact for the City on the Program ("Program Liaison"). The Program Liaison should be accessible and responsive to Cenergistic for communication and meetings and may not be someone (including any Successor Program Liaison) who is unacceptable to Cenergistic. Cenergistic will offer education and training for the Program Liaison (and any replacement Program Liaison) to effectively serve in the role, with an emphasis that will promote the Program Liaison's role in reviewing all savings determinations.

To assist in the education and training, at the next scheduled session after the Start Date, the Program Liaison shall attend, at Cenergistic's expense, the EnergyCAP workshop provided by EnergyCAP Inc. in Dallas, TX. The Program Liaison may bring other City representatives to the EnergyCAP workshop, at City expense. In the event there is a replacement Program Liaison, after designation for that position, that person shall attend the next offered EnergyCAP workshop, at Cenergistic's expense, in Dallas, TX. The Program Liaison position shall not be vacant for more than thirty (30) consecutive days during the Term of the contract.

(e) **Access, Authority and Control.** Cenergistic personnel shall have access to the City's systems controls, including the energy management systems ("EMS"), and the authority (*in communication and coordination with other City personnel*) to make changes so that facilities are not operated outside of the established policy and guidelines. The energy specialist needs the authority to: (1) program the EMS including changes in the temperature settings and run times of EMS controlled equipment (e.g. HVAC, heating and lighting systems), and (2) change settings and run times for each facility's equipment and systems (e.g. lighting, time clocks and thermostats) that are not controlled by the EMS. The energy specialist will not have authority to make any changes that violate City established policy and guidelines and the City retains the right to suspend access of the energy specialist to the energy management systems ("EMS") at any time. In the event of such a suspension the City will immediately inform Cenergistic of the suspension and the basis. The City shall provide such access and authority to Cenergistic within 30 days of the Start Date. In order to evaluate and track occupant comfort, within 30 days of the Start Date, the City will set up or expand its internal procedure to ensure that all comfort feedback is immediately routed to the energy specialist. This contract does not alter the City's exclusive right of control over its people and facilities and its pre-existing responsibility, if any, to provide reasonable premises safety. Cenergistic's recommended energy conservation measures and changes implemented by the energy specialists shall comply with the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 55 for thermal comfort. The City and Cenergistic will work together to ensure that each site has an acceptable operating environment that is conducive to conducting the City's business.

(f) **No Third Party Interference.** The City shall not allow any third party to interfere with the City's Program implementation.

5. **Savings Determination.** (a) *General.* Energy savings are determined in accordance with the Measurement and Verification Plan ("M&V Plan") attached hereto by comparing measured use before and after the start of Program implementation, with appropriate adjustments for changes in conditions that are independent of the Program. The simple formulaic expression is:

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

The energy specialist shall use the Third Party Software to calculate the City's savings by subtracting the energy actually used (i.e. consumption: kWh, BTUs, etc.) in each Performance

Year (as defined below) from the use in the Base Year (as defined below), plus or minus any Adjustment Variables (as defined below), and applying the price (based on the blended rate to the City for each type of energy purchased by the City for all sources of energy except for solar which shall be valued as set out in paragraph 5(d)(iii) below) ("Savings"). The "Total Savings" means the Savings and any additional verifiable cost containment or avoidances resulting from the Program (e.g. utility refunds received as a result of a Program billing audit), in accordance with current industry-accepted valuation methodology. Savings reports shall be delivered to the Program Liaison for review and verification. The Program Liaison will work diligently to review reported Savings and will present any questions about the savings reports within five business days of receipt. Cenergistic's projections of Total Savings when using the Program are based upon energy consumption and other data furnished by the City.

(b) **Baseline Period.** A baseline period will be established as set out in the attached M&V Plan by Cenergistic and the energy specialist, in consultation with the Program Liaison. Unless modified as set out below, the Third Party Software will be used to establish a baseline period consisting of 12 consecutive months that precede the Start Date ("Base Year"). The City represents that the historical utility usage data and building information provided to Cenergistic for the purpose of savings projections is accurate. If it is later determined that either: 1) there is a variation between the data provided and the Base Year data of  $\pm 5\%$  or more or, 2) changes in the 12 months preceding the Start Date would cause those 12 months to not accurately reflect actual pre-program usage by the City ("variation"), Cenergistic may select as the Base Year an alternate 12-month period from the 36 months preceding the Start Date. For new construction, the energy specialist and Cenergistic, in consultation with the Program Liaison, will use detailed, calibrated simulation analysis to compile the Base Year.

(c) **Reporting Period.** Each reporting period will be a 12 month period ("Performance Year"). The first Performance Year will begin after the *Fee Free Period* (as defined below) ends ("First Year") and each Performance Year is consecutively named. The "Second Year" means the 12 month reporting period following the end of the First Year, the "Third Year" follows the Second Year, and so on. If a Performance Year is suspended as set forth in paragraphs 7(b) or 8(c), it will consist of twelve non-consecutive months; however, for purposes of determining Savings, Savings, if any, during the suspended period shall continue to accrue. Using the Third Party Software, Savings shall be calculated for each Performance Year in comparison to the Base Year.

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

(ii) The Third Party Software allows appropriate adjustments to the Base Year, using available data to account for the following factors occurring during the Performance Year that affect the energy used in facilities ("Adjustment Variables"): outside temperature; floor space; occupancy type or schedule; amount, type or use of equipment; number of days in the

billing period; energy rates; and reasonably estimated energy loads added or reduced after Program implementation.

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

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

(e) Third Party Contractor. The parties agree that Cenergistic may utilize the services of a third party contractor to (1) automatically retrieve utility bill data from both online and offline sources by, among other things, accessing utility vendor websites, OCR of scanned copies of bills or reading from machine readable files, (2) import the data into the Third Party Software and (3) utilize the service of other third party contractors. The City (1) consents to allowing access to utility bills by such third party contractor and (2) agrees to reasonably cooperate with such third party contractor, with assistance as necessary from Cenergistic, to enable the third party contractor to have and maintain access to (including online) to the City's utility bills.

6. **Term.** This contract shall be for a term beginning on the Start Date and ending on the last day of the Fifth Year ("Term").

7. **Fee Free Period and Fees.** (a) **Fee Free Period.** The *Fee Free Period* shall begin on the Start Date and end one month after the Start Date, or on such later date as determined

by Cenergistic ("Fee Free Period"). In the event the Performance Year is suspended as set out in paragraph 7(b) or 8(c), the Monthly Fees for the suspended period shall be deferred and the term shall be extended until 60 monthly fee payments have been made.

(b) **Monthly Fee.** The City shall pay Cenergistic a fee of \$41,758.33 for each month during the First Year, \$46,100.00 for each month during the Second Year, \$50,441.67 for each month during the Third Year, \$54,783.33 for each month during the Fourth Year, and \$59,125.00 for each month during the Fifth Year ("Monthly Fee") for a total of 60 consecutive months ("Fee Period"). The average monthly fee is \$50,441.67 ("Average Monthly Fee"). Cenergistic will submit invoices to the City monthly on or near the last day of each calendar month beginning with the first month following the Fee Free Period. Payment is due no later than 30 days after the City receives the billing statement. Failure to pay the billing statement within 60 days after it is due, at Cenergistic's option, shall result in the Program being suspended (including, without limitation, the suspension of consultant and energy specialist participation in the Program). Savings shall continue to accrue during any suspension for failure to pay the billing statement. A valid request or need for an adjustment to a billing statement shall not be good cause for failure to pay a given billing statement; any appropriate adjustments shall be made to subsequent billing statements.

(c) **Additional Facilities; Water.** The City facilities not included in this contract are listed in Exhibit A, attached hereto and incorporated herein by reference. In the event any City facilities excluded from this contract are to be included as part of the Program at a later time, or the City builds, acquires, contracts with, or otherwise becomes responsible for additional facilities ("additional facilities"), such additional facilities will be included and become part of the Program pursuant to this Contract for all purposes. Water used by the City is not included in this contract and is therefore not a part of the Program. The parties agree to consider water for inclusion in this contract and the Program on each anniversary of the Start Date. If the parties mutually agree to add water, then water used by the City will be added to this contract and to the Program. If the City is requested by another city ("requesting city") to allow the energy specialist to provide energy management support, the City agrees to not share, utilize, or include the Program (including the use or services of the energy specialist trained by Cenergistic) to any extent, in any facilities in the requesting city without Cenergistic's express written consent and payment of additional fees as mutually agreed.

(d) **Savings Guarantee.** Cenergistic's commitment to the quality of the Program is evidenced by Cenergistic's Savings Guarantee (as defined below). Cenergistic shall reimburse the City for the difference if the City's Costs (as defined below) exceed its Total Savings, computed from the Start Date to the end of any Performance Year during the Term ("Savings Guarantee"). Due to the cumulative nature of the Savings Guarantee it is necessary to specify that Cenergistic shall not make reimbursement for amounts that Cenergistic has already paid or reimbursed for a prior Performance Year. The City shall refund prior reimbursements on the Savings Guarantee to Cenergistic if (1) the Total Savings exceed the City's Costs, computed from the Start Date to the end of a later month during the Term, or (2)

the City exercises its right of Termination for Convenience (as defined below). The City shall pay Cenergistic a required refund: (1) no later than 90 days after the results for such later month have been finalized by Cenergistic and the energy specialist, or (2) on the effective date of a Termination for Convenience. To be eligible for the Savings Guarantee the City must have substantially implemented the Program. The "City's Costs" means the total amounts paid for initial and renewal costs of the Third Party Software, and the Monthly Fees. Cenergistic shall pay the City a required reimbursement no later than 90 days after the results for the prior Performance Year have been finalized by Cenergistic and the energy specialist. If Cenergistic fails to make a required reimbursement, the City may terminate this contract without payment of a Work Fee and recover the amount of the required reimbursement from Cenergistic.

8. **Termination for Convenience.** (a) Termination for Convenience by City. As provided in this contract Cenergistic anticipates a long-term relationship and remains committed to the City through the Term and beyond. However, the City may terminate this contract for any reason and without cause as provided in this paragraph. The City must pay Cenergistic a Work Fee to compensate Cenergistic for its Intellectual Property, the work performed by Cenergistic and for the benefits received by the City (and not as a penalty) ("Work Fee"), with the calculation based upon the date of termination, as follows:

Contract Start Date through the end of Performance Year One	<ul style="list-style-type: none"> <li>a. Payment for the value of Cenergistic's Intellectual Property and the continuing benefits of the program after termination: in the amount of \$170,100, which represents 15% of Projected Performance Year One Total Gross Savings per the Cenergistic matrix; plus</li> <li>b. \$700 per day, for each Cenergistic employee on-site from Start Date through the termination date to cover costs including overhead. Employee as used herein includes the Energy Specialist and consultants that are present to provide services, training, and support for the Program but does not include marketing or corporate office staff.</li> </ul>
Performance Years Two through Four	An amount equal to twelve multiplied by the Average Monthly Fee



Performance Year Five	The lesser of: (a). the remaining fees due under the Contract; or, (b). an amount equal to four Months Fees at the Fifth Year rate
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(b) To validly exercise its right to terminate during the Term for any reason and without cause (including if there is no appropriation of funding or for any other termination that is not based on Cenergistic's failure to perform its material obligations under this contract) (a "Termination for Convenience"), the City shall provide Cenergistic with at least 60 days prior written notice and shall promptly pay Cenergistic, in addition to the Work Fee, (i) an amount equal to the unpaid Monthly Fees, but only through the termination effective date (including any months which were deferred because of a suspension of the Performance Year) and (ii) the positive amount, if any, between (x) the Average Monthly Fee multiplied by the number of months from the Start Date through the termination effective date less (y) the sum of the Monthly Fees actually received by Cenergistic. A Termination for Convenience voids the Savings Guarantee. The City's right to terminate for convenience does not limit the rights and remedies of the City. More specifically, if Cenergistic fails to perform its material obligations under this contract, the City's legal rights and remedies are not limited by the terms of this paragraph. If the City contends Cenergistic has committed a material breach of the contract, the City will provide written notice to Cenergistic specifically describing the breach and giving Cenergistic a reasonable opportunity and time (not less than 30 days) to cure the claimed breach before taking other action. If the material breach is not remedied by Cenergistic following the notice as set out above, the City may terminate this contract without any obligation to pay a Work Fee.

(c) Substantial Implementation. If Cenergistic reasonably *determines that the City is not substantially implementing the Program*, Cenergistic shall give the City written notice of its determination (including specific details supporting Cenergistic's determination and specific recommendations for appropriate City action) and, at Cenergistic's discretion, the Performance Year and payment of the Monthly Fees shall be suspended until the City is substantially implementing the Program. The City shall act within a reasonable time to cure such failure, with curative steps being taken within sixty (60) days after receipt of the written notice referenced above. If the parties are unable to agree on whether the City is substantially implementing the Program, the parties agree to meet to resolve the differences as set out in paragraph 12(c) below. "Substantial implementation of the Program" does not require the City to have implemented the Program in every detail. To "substantially implement" the Program means that the process of implementation is material to the extent that the program functions as intended, consistent with the administrative guidelines as adopted by the City and overall goals of the Program. It requires that the Program has been implemented in its material elements, or almost fully implemented. Without limiting the foregoing, the following shall be a lack of substantial implementation for purposes of this paragraph: (i) failure to pay a billing statement within 90 days from the due date; (ii) failure to approve the administrative guidelines within 60 days of the start date; or, (iii) if the City directs Cenergistic to stop work for reasons other than a material breach

of this contract and such notice is not withdrawn within sixty (60) days after initial delivery to Cenergistic. For purposes of determining savings, savings shall continue to accrue through any suspension period.

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

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

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

(b) **Limitations on Use; Confidentiality.** The City hereby agrees that Cenergistic is the owner of all right, title and interest in and to the Proprietary Information. The City agrees that nothing contained in this Agreement shall be construed as granting any ownership right to the City in any Proprietary Information, or to any invention or any patent, copyright, trademark, or other intellectual property right. The City shall not make, have made, use or sell for any purpose, any product or process using, incorporating or derived from any Proprietary Information. The City shall not copy, modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in the Proprietary Information. The City

agrees that an invention or work created by the City or any of its personnel based on or incorporating any of the Proprietary Information shall be owned exclusively by Cenergistic. The City agrees that the Proprietary Information (including all copies) continues to be Cenergistic's property and should be kept confidential to the full extent permitted by law. The City agrees not to challenge, or assist any third-party in challenging, Cenergistic's ownership rights in the Proprietary Information, and in any invention, patent, copyright, trademark, or other intellectual property right. The City agrees that the Proprietary Information, including but not limited to the patents and copyrights of Cenergistic, are valid and enforceable. The City shall not challenge the validity or enforceability of any patent, trademark or copyright owned by Cenergistic in any court, at the Patent and Trademark Office, or in any other forum or before any arbitrator. The City shall give Cenergistic written notice and an opportunity to respond if the City receives a third-party request for Proprietary Information. The City shall not disclose the Proprietary Information to any unauthorized person or use it outside of the City or this contract. The City shall assist Cenergistic in the protection of the Proprietary Information and shall execute all documents reasonably necessary to vest and perfect title to the Proprietary Information in Cenergistic upon written request. The City's obligations under this paragraph survive termination of this contract. City hereby agrees that breach of this subparagraph will cause Cenergistic irreparable harm for which recovery of money damages would be inadequate, and that Cenergistic shall therefore be entitled to obtain immediate and permanent injunctive relief, without the necessity of posting bond, as well as such further relief as may be granted by a court of competent jurisdiction.

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

11. Intentionally Left Blank.

12. **Miscellaneous.** (a) This contract constitutes the entire agreement of the parties with respect to the subject matter of this contract. This contract supersedes the parties' prior communications, requests, responses, proposals, offers and agreements, if any. This contract may be modified only by a writing signed by the parties. Invalidity or unenforceability of one or more provisions of this contract shall not affect any other provision of this contract.

(b) The Parties agree that if any dispute, controversy or claim cannot be settled through good faith efforts outlined in the paragraph below then it shall be settled by a court with competent jurisdiction. The laws of the State of Florida shall govern this contract, and the parties designate Pinellas County Florida to be the proper jurisdiction and venue for any suit or action arising out of this contract.

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

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

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

(e) This contract may not be assigned either in whole or in part without first receiving the City's written consent, which consent shall not be unreasonably withheld. Any assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right at its option to terminate this contract without payment of the Work Fee.

(f) Cenergistic represents and warrants that it does not illegally discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. Cenergistic and its personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and applicable rules in performance under this contract.

(g) Cenergistic and its subcontractors shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. Cenergistic will not enter into a contract with any subcontractor unless each party to the contract registers with and uses the E-Verify system. Subcontractor must provide Cenergistic with an affidavit stating that subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Cenergistic shall maintain a copy of such affidavit. The City may terminate this contract for any violation of this subsection (g) provided such violation continues to exist after City's written notice of such violation to Cenergistic and an opportunity of not less than thirty (30) days to cure. See Section 448.095, Florida Statutes (2020).

13. **Public Records.** To the extent applicable, Cenergistic (hereinafter "contractor" in this section) will be required to comply with Section 119.0701, Florida Statutes, as may be amended from time to time, specifically to:

(a) Keep and maintain public records required by the City of Clearwater (hereinafter "public agency") to perform the service being provided by the contractor hereunder.

(b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided

for in Chapter 119, Florida Statutes, as may be amended from time to time, or as otherwise provided by law.

(c) Ensure that the public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

(d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 727-562-4092, Rosemarie.Call@myclearwater.com, 600 Cleveland Street, Suite 600, Clearwater, FL 33755.**

14. **Insurance Requirements.** Insurance Requirements are set forth in Exhibit B, which is incorporated by reference and attached hereto.

15. **Independent Contractor.** It is expressly understood that the relationship of Cenergistic to the City will be that of an independent contractor. Cenergistic and all persons employed by Cenergistic, either directly or indirectly, are Cenergistic's employees, not City employees. Accordingly, Cenergistic and Cenergistic's employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Cenergistic employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. If any Cenergistic employees or subcontractors assert a claim for wages or other employment benefits against the City, Cenergistic will defend, indemnify and hold harmless the City from all such claims.

16. **Indemnity.** To the fullest extent permitted by law, Cenergistic agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses

incident thereto, to the extent and only to the extent relating to, arising out of, or resulting from: any negligent acts, errors, mistakes or omissions by Cenergistic and specifically excluding those arising from the negligent acts, errors, mistakes or omissions by City or a third party. Nothing contained herein is intended to serve as a waiver by the City of its sovereign immunity, to extend the liability of the City beyond the limits set forth in Section 768.28, Florida Statutes, or be construed as consent by the City to the sued by third parties.

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

CITY OF CLEARWATER

CENERGISTIC LLC

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

By: *John Bernard*

Name: \_\_\_\_\_

Name: John Bernard

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

Title: President

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

Date: February 10, 2022

Countersigned: CITY OF CLEARWATER, FLORIDA

*Frank V. Hibbard*

Frank V. Hibbard  
Mayor

*Jon P. Jennings*

Jon P. Jennings  
City Manager

Date: *2/22/2022*

Approved as to form:

Attest:

*Owen Kohler*

Owen Kohler  
Assistant City Attorney

*Rosemarie Call*

Rosemarie Call  
City Clerk

City of Clearwater, FL - K12 TK CONTRACT v.12 FF Option 012722



## MEASUREMENT AND VERIFICATION PLAN

This Measurement & Verification Plan ("M&V Plan") is prepared for City of Clearwater (the "Organization") by Cenergistic and is agreed to by the parties as the M&V plan in accordance with the protocols of the International Performance Measurement and Verification Protocol ("IPMVP") for the energy program delivered by Cenergistic pursuant to the contract with a Start Date of \_\_\_\_\_.

This M&V Plan is prepared in accordance with Section 7 of IPMVP Core Concepts (EVO 10000-1:2016).

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

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

- 1. Facility and Project Overview** Cenergistic energy programs are people driven programs that include multiple facilities and conservation steps. The program scope and list of measures are described within the contract.
- 2. ECM Intent** The energy conservation measures ("ECMs") reduce electricity, gas, water and other energy usage and cost, depending on the specific facility. Many varied ECMs will be used to achieve the savings. The expected savings will be an amount in excess of the cost of the program in accordance with the Savings Guarantee. ECMs will be operational in nature (not equipment, facility or hardware retrofits) and are generally categorized as turning off energy-using systems when not necessary, setting back energy-using systems when possible, and improving efficiency of energy-using systems when in use. Space conditions, during both occupied and unoccupied periods, will change as necessary to comply with the organization's published energy policy and administration guidelines.
- 3. Selected IPMVP Option and Measurement Boundary** IPMVP Option C (Whole Facility) will be used for savings determination because it is the most appropriate M&V method for total facility energy reduction when all energy-using systems are affected and ECMs cannot be isolated, submetered or simulated by computer model. Option C was also chosen because many ECMs will be involved, and some of them cannot be directly measured. Utility meters for electricity, gas, water and sewer will be included in the savings M&V for the organization. Together, these meters will account for all energy use by each facility. The total savings is the sum of savings for each facility. The measurement boundary includes all facilities and infrastructure owned and leased by the Organization except as specifically

excluded by the contract. In the event metering equipment is determined to be unreliable, unavailable, or does not measure the effect of the ECM, Option A (Retrofit-isolation: Key Parameter Measurement), Option B (Retrofit Isolation: All Parameter Measurement) or Option D (Calibrated Simulation), will be used.

- 4. Baseline: Period, Energy and Conditions** Using the Third Party Software (as defined in the contract, hereinafter "Third Party Software"), a baseline period shall be established for each meter consisting of 12 consecutive months (or 24 consecutive months when conditions warrant an expanded baseline) that precede the energy program Start Date. Normally this will be the 12 months immediately prior to start date, but under circumstances described in the contract, an alternate period (up to 24 months) may be chosen.

The baseline data for each meter will be defined and available in the M&V Third Party Software upon import and preparation of the data for each meter & facility. The Third Party Software also includes static factors such as weather and building size. Included in the baseline data will be an identification of the baseline period, baseline energy consumption and demand data, other independent and relevant variable data, and other static factors (i.e. occupancy type, building information such as square footage, etc.). Other baseline data may be included and/or supplemented as agreed by the parties. Local weather data will be obtained from a nationally-recognized service.

- 5. Reporting Period** Each reporting period will be a 12 month period called a "Performance Year". The Performance Year begins according to the terms of the contract.
- 6. Basis for Adjustment** Energy savings are determined by comparing measured use before and after the start of Program implementation, after making appropriate adjustments for changes in conditions that are independent of the Program. Since savings are to be reported as "cost avoidance", under reporting period conditions, the IPMVP equation for reporting period savings will be used. This method quantifies how savings in a given reporting period is determined, relative to what energy use would have been without the ECMs in place, consider routine and non-routine adjustments and is expressed as:

*Avoided Energy Use (or Savings) =*

*Adjusted-Baseline Energy – Reporting-Period Energy ± Non-Routine  
Adjustments of baseline energy to reporting-period conditions*

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

- 7. Calculation Methodology and Analysis Procedure** The Third Party Software performs the cost avoidance calculation and analysis procedure. The Third Party Software allows appropriate routine and non-routine adjustments to the baseline period, using available data to account for the following factors occurring during the reporting period that affect the energy used in facilities: number of days in the billing period, energy unit cost, and reasonably



estimated energy loads added or reduced after Program implementation due to such factors as outside temperature; floor space; occupancy type or schedule; amount, type or use of equipment; facility construction/renovation; and energy management hardware retrofits installed under unrelated projects. Specific cost avoidance analysis algorithms used by the Third Party Software are extensively documented and can be furnished upon request.

The Third Party Software also allows other appropriate adjustments for a more accurate Savings calculation. If the organization has experienced abnormal temperatures during the baseline period, a total of 36 months of billing information can be used to create a more representative statistical weather model. Savings will be determined using either calibrated simulation or by making appropriate adjustments, as mutually agreed by the parties, in the event of any of the following: (a) the organization's energy conservation guidelines are not substantially followed by its construction contractors or on-site management service providers, if any, (b) the City chooses not to substantially implement Cenergistic's water conservation recommendations; or, (c) there are equipment malfunctions that can negatively impact program savings.

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

- 8. Energy Prices** Reporting of cost avoidance will value the energy use avoided at the then-current unit cost for each meter, each period. Prices will be calculated by the Third Party Software for each month. The price applied for each utility (except solar) is the realized price, based on the blended rate to the Organization for each type of energy purchased by the organization, taking into account consumption and all charges from the utility provider. In the event solar electricity is implemented by the Organization, the parties agree to a process that recognizes net metered electric generation to exclude any solar production sold back to the grid from the reported EnergyCAP use and cost avoidance. Solar energy produced (that was consumed by the building) is tracked in EnergyCAP to allow for the total energy consumption comparisons. All savings reported in the cost avoidance reports shall be from energy purchased from the grid (metered electricity) so it will be valued at the grid average unit cost (as "average unit cost" is defined in this contract and Measurement and Verification Plan).
- 9. Meter Specifications** Utility grade meters used for billing are the only meters used. Exception: For bulk fuel stored in tanks, manual measurements recorded by the organization or by the provider may be used. In master-metered campus situations, submeters may be necessary for accurate identification of building by building energy usage.
- 10. Monitoring responsibilities** Energy data from utility bills will be recorded in the Third Party Software as set out in the contract. The Third Party Software captures weather information necessary for calculating and applying adjustments. Changes to the baseline conditions, such as facility size, occupancy or equipment changes, will be documented in the Third Party

Software. Responsibility for collection, entry, calculation and accuracy of the data in the Third Party Software is the responsibility of the Energy Specialist(s) under the supervision of Cenergistic.

- 11. Expected Accuracy** The accuracy of data capture of the utility billing data and entry of that data into the Third Party Software is expected to be verified 100% ( $\pm 2\%$ ) via reports that reconcile data with utility bill accounts payable to ensure the quality of the data entered, to ensure consistency with previous billing, elimination of gaps or duplicate entries, and reasonable protection against user errors in data entry. Statistical accuracy of the Third Party Software's routine weather adjustment process uses industry-standard linear regression techniques and is evaluated on a meter-by-meter basis. Data analysis does not involve sampling since the actual data, as entered into the Third Party Software, is used for any savings calculations. The accuracy of the Third Party Software's calculations has been validated empirically against the Department of Energy's ENERGY STAR program, which benchmarks buildings' performance. The calculations of the Third Party Software are consistent with ENERGY STAR results in determining increase in building energy utilization index (EUI – Energy usage per square foot per year).
- 12. Budget** The cost of M&V includes the Third Party Software cost, as defined in the contract, plus a portion of the Energy Specialist's time. The Third Party Software cost is defined in the contract. More time will be required early in the energy program by the Energy Specialist as the baselines are determined and the Energy Specialist becomes familiar with the Third Party Software and the process for entering data and determining savings. Once the utility bills have been entered, the baseline has been determined and the Energy Specialist has become familiar with the Third Party Software and the process, subsequently, the savings determination process and its review with operating and administrative staff is expected to require approximately 5% of an Energy Specialist's time, across all meters and facilities for the organization.
- 13. Report Format** Cost avoidance will be calculated on a monthly basis as set out in the contract. M&V and cost avoidance reports will be prepared and provided at least semi-annually to the organization. Cost avoidance calculations will commence with a formal data release occurring approximately five months after the Energy Specialist is in place. Cost avoidance reports will include results from the Third Party Software and show energy as well as expenditure savings versus the baseline. Cost avoidance reports have different formats for different audiences, but in general show usage and cost for: baseline actual, baseline adjusted to reporting period conditions, reporting period actual, and calculated cost avoidance (adjusted baseline minus reporting period actual).
- 14. Quality Assurance** Cenergistic quality assurance procedures and testing principles are applied to the baseline and performance data at the beginning of each program and periodically throughout the term of the contract. Testing includes, but is not limited to a review of the baseline for compliance with contractual terms including M&V Plan, testing of baseline data for reasonableness, accuracy and completeness, substantive sampling techniques for

Third Party Software bill entry data correctness, Third Party Software settings and standard and special adjustments appropriateness and correctness.

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

This M&V plan has been developed for City of Clearwater.

**EXHIBIT A**  
**CITY FACILITIES EXCLUDED FROM THIS CONTRACT**

All Public Utilities facilities and operations except administrative facilities.

Clearwater Gas Systems as it relates to the distribution of natural gas to its residential, commercial, and industrial customers

Notwithstanding any exclusions listed in the Contract or exhibits thereto (including but not limited to those exclusions set forth above), all heating, ventilating and air conditioning (HVAC) equipment is included in the Program and in the Contract.

Any facility owned by the City, operated by a third party, and the third party is responsible for the payment of any utilities.

Any facility not owned by the City, operated by the City, and the payment of any utilities is paid by the facility owner.

This Exhibit A may be amended by mutual written agreement by the City Manager and Cenergistic, without City Council approval.

## EXHIBIT B

**INSURANCE REQUIREMENTS.** Cenergistic (hereinafter "CONTRACTOR" in this Exhibit B) shall, at its own cost and expense, acquire and maintain (and cause any subcontractors, representatives or agents to acquire and maintain) during the term with the City, sufficient insurance to adequately protect the respective interest of the parties. Coverage shall be obtained with a carrier having an AM Best Rating of A-VII or better. In addition, the City has the right to review the CONTRACTOR'S deductible or self-insured retention and to require that it be reduced or eliminated.

Specifically, the CONTRACTOR must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum three (3) year tail following the termination or expiration of this Agreement. Specific work may require additional coverage on a case by case basis:

- a. **Commercial General Liability Insurance** coverage, including but not limited to, premises operations, products/completed operations, products liability, contractual liability, advertising injury, personal injury, death, and property damage in the minimum amount of \$1,000,000 (one million dollars) per occurrence and \$2,000,000 (two million dollars) general aggregate.
- b. **Commercial Automobile Liability Insurance** coverage for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$1,000,000 (one million dollars) combined single limit.
- c. Unless waived by the State of Florida, statutory **Workers' Compensation Insurance** coverage in accordance with the laws of the State of Florida, and **Employer's Liability Insurance** in the minimum amount of \$100,000 (one hundred thousand dollars) each employee each accident, \$100,000 (one hundred thousand dollars) each employee by disease and \$500,000 (five hundred thousand dollars) aggregate by disease with benefits afforded under the laws of the State of Florida. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, contractors, subcontractors, and volunteers, if any.
- d. If the CONTRACTOR is using its own property, or the property of the City or other provider, in connection with the performance of its obligations under this Agreement, then **CONTRACTOR'S Equipment Insurance or Property Insurance** on an "All Risks" basis with replacement cost coverage for property and equipment in the care, custody and control of others is required.

- e. **Professional Liability Insurance** coverage appropriate for the type of business engaged in by the CONTRACTOR with minimum limits of \$1,000,000 (one million dollars) per occurrence. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless prior policy was extended indefinitely to cover prior acts. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great a duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

#### **OTHER INSURANCE PROVISIONS.**

- a. Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement remains in effect, the CONTRACTOR will furnish the City with a Certificate of Insurance(s) (using appropriate ACORD certificate, SIGNED by the Issuer, and with applicable endorsements) evidencing all of the coverage set forth above and naming the City as an "Additional Insured." In addition, when requested in writing from the City, CONTRACTOR will provide the City with certified copies of all applicable policies. The address where such certificates and certified policies shall be sent or delivered is as follows:

**City of Clearwater  
Attn: Purchasing, RFQ #15-20  
P.O. Box 4748  
Clearwater, FL 33758-4748**

- b. CONTRACTOR shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
- c. CONTRACTOR'S insurance as outlined above shall be primary and non-contributory coverage for CONTRACTOR'S negligence.
- d. CONTRACTOR reserves the right to appoint legal counsel to provide for the CONTRACTOR'S defense, for any and all claims that may arise related to Agreement, work performed under this Agreement, or to CONTRACTOR'S design, equipment, or service. CONTRACTOR agrees that the City shall not be liable to reimburse CONTRACTOR for any legal fees or costs as a result of CONTRACTOR providing its defense as contemplated herein.

**The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the City, and failure to request evidence of this insurance shall not be construed as a waiver of CONTRACTOR'S obligation to provide the insurance coverage specified.**