

ENERGY SAVINGS PERFORMANCE AGREEMENT

This Energy Savings Performance Agreement, along with Schedule 1 and Exhibits A through N (collectively referred to as the “Agreement”) is made by and between the River Valley School District (“Client”), with an office at 660 West Daley Street Spring Green, WI 53588 and H&H Energy Services, Inc., a Wisconsin corporation (“H&H”), with its principal place of business at 3201 Latham Drive, Madison, Wisconsin 53713. Client and H&H may be referred to as “Party” or collectively as “Parties.” Capitalized terms used in this Agreement without definition shall have the meanings assigned to them in Schedule 1, attached.

RECITALS

- A. Client desires to retain H&H to complete an Investment Grade Audit and perform the Work set forth in the scope of work, as described in Exhibit C to this Agreement (the “Scope of Work”), which relates to facility alterations, services and programs that are designed to reduce energy consumption, and operating costs at one or more of the locations that collectively comprise Client’s Facility, as described in Exhibit A to this Agreement (the “Facility”);
- B. Client is authorized under Section 66.0133, Wisconsin Statutes (the “Statute”) to enter into guaranteed energy savings agreements with qualified providers for the purpose of implementing comprehensive utility cost-savings measures to improve the energy efficiency of the Facility, provided that the cost of implementing the measures will not exceed the amount to be saved in utility operation and maintenance costs over the term of this Agreement;
- C. H&H is a qualified provider as that term is defined in the Statute (a “Qualified Provider”);
- D. Client solicited bids from H&H and other Qualified Providers to perform the Work in accordance with the Statute and has provided the proper notice required under the Statute to enter into this Agreement;
- E. Client has reviewed the estimated Project Costs and Savings and has confirmed that the Assumed Conditions, as stated below, are accurate and that the estimated Savings exceed the estimated Project Costs and believes such estimates to be reasonable and accurate;
- F. H&H represents that it is qualified, willing and able to responsibly act as guarantor for the Savings;
- G. Client has published the notice required by the Statute, and held a meeting on 9/8/2016 in which it proposed to award a performance contract to implement the Recommendations, named the parties to the proposed performance contract, and discussed the performance contract's purpose; and
- H. H&H was selected as the Qualified Provider by the Client on 7/14/2016.

NOW, THEREFORE, in consideration of the mutual benefits and obligations set forth herein, the parties hereto agree as follows:

AGREEMENT

1. **Exhibits & Schedules.** The following Schedule and Exhibits are attached to and part of this Agreement:

Schedule 1: Definitions

Exhibit A: Facility Description

Exhibit B: Summary of Cost and Savings

Exhibit C: Scope of Work

Exhibit D: Utility Savings and Operating Parameters

Exhibit E: Performance Guarantee

Exhibit F: Measurement and Verification Responsibilities

Exhibit G: Schedule of Payments

Exhibit H: Project Schedule

Exhibit I: Certificate of Substantial Completion for Warranty

Exhibit J: Certificate of Completion and Acceptance

Exhibit K: Client's Maintenance Responsibilities

Exhibit L: General Requirements

Exhibit M: Insurance Coverage

2. **Term of Agreement; Notice to Proceed.**

2.1. Effective Date. The Effective Date of this Agreement shall be the date all signatures required have been obtained. H&H shall not begin work under this Agreement until this Agreement is fully executed.

2.2. Term. Unless otherwise canceled or terminated, the term of this Agreement ("Term of this Agreement") shall commence on the Effective Date and shall expire twelve (12) months following the date of final completion of the Work, as described as "Final Completion" in Section 5.5.

2.3. Financing. Client intends to finance payment for the Work with funds other than its own. Client intends to use revenue from tax levy. Client shall diligently work to obtain financing in a sum not less than Client's total obligation under Section 8 of this Agreement as soon as possible and, in any case, no later than September 1, 2016. Within five (5) calendar days of the date Client obtains the requisite financing, Client shall provide H&H with proof of financing by providing Client with resolutions authorizing the use of tax levy. . In the event that Client does not obtain the requisite financing by October 1, 2016, either Party may terminate this Agreement by providing fourteen (14) calendar days written notice to the other party. Upon receipt of notice of termination of this Agreement for lack of financing, H&H shall immediately cease all further Work. Client shall be responsible for all Hard Costs and H&H's Fees incurred prior to the date of termination, and the Parties shall have no other further obligations to the other.

3. **Contract Administration.**

H&H shall employ, and specifically assign to the Work performed pursuant to this Agreement, a project manager (“H&H Contact”) experienced in work of the character required by the Scope of Work. This person shall have the authority to act on behalf of H&H and shall be, to the extent possible, the point of contact and communication for the Client and any subcontractors to facilitate efficient, timely, and cost effective completion of the Work. H&H Contact shall be:

Josh Kaurich
Vice President of H&H Energy Services, Inc.
3201 Latham Ave
Madison, WI 53713
608-273-4464
jkaurich@henergy.com

Client has retained CESA 10 (CESA) as its representative for the development and delivery of this project. All communications between Client and H&H shall be made through CESA via its designated representatives (hereafter “Client Contact”). The designated representatives from CESA for this project are:

Kerrie Ackerson
725 W Park Ave, Chippewa Falls, WI 54729
715-720-2165
kackerson@cesa10.k12.wi.us

Mark Ziemann
725 W Park Ave
Chippewa Falls, WI 54729
715-720-2148
mziemann@cesa10.k12.wi.us

The Parties shall cooperate with each other and with any H&H subcontractors to assure successful completion of the Work, and help to quickly resolve any problems that arise.

Either Party may designate a new contact by providing advance written notice to the other Party.

4. **Scope of Work; H&H’s Duties.**

4.1. Equipment and Materials. H&H shall provide all materials and equipment necessary to perform the Scope of Work of this Agreement, as more specifically described in Exhibit C. H&H shall provide Client with specifications, drawings, cut sheets, and other information required by Client regarding the materials and equipment for review, acceptance and approval pursuant to Section 5 prior to implementation of the Work.

H&H shall use commercially reasonable efforts to comply with all specifications and any drawings provided in this Agreement. Any reference to brand names and numbers is descriptive, but not restrictive, unless otherwise specified. When specific manufacturer and model numbers are shown, they are used to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are identified, they shall be identified by manufacturer, stock number, and such other information necessary to establish equivalency.

4.2. Installation Services. H&H shall install, replace and refurbish equipment and energy systems components at the Facility, as more specifically described in Exhibit A and Exhibit C. H&H shall use commercially reasonable efforts, consistent with meeting the estimated Project Schedule, to provide the installation, replacement and refurbishment services with minimum interruption to the normal business of the Facility.

4.3. Project Schedule. H&H shall use commercially reasonable efforts to perform all Work under this Agreement according to the Project Schedule set forth in Exhibit H. However, unless this Agreement expressly provides otherwise, the Parties recognize that such Project Schedule is only an estimate and is subject to modification. H&H shall not be liable or subject to damages solely for deviations from the Project Schedule or for delays beyond its reasonable control in completing the Work in accordance with the Project Schedule, including delays due to a Force Majeure Event (as defined in Section 19.2), or due to the acts and omissions of Client or third parties.

Client shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of any portion of the Facility or any tenants or invitees thereof. H&H shall, upon Client's request, reschedule any portion of the Work affecting operation of a portion of the Facility during hours when the Facility or portion thereof are not in operation. To the extent that any postponement, rescheduling, or performance of the Work under this Section results in H&H incurring damages or additional costs or delays in time to timely complete the Work in accordance with the Project Schedule, such will be grounds for an extension of the time for completion of the Work and an increase in the compensation payable to H&H (Hard Cost and H&H Fees) under this Agreement if the performance of the Work was properly scheduled by H&H in compliance with the requirements of this Agreement.

In addition to Client's right to direct a postponement or rescheduling under the preceding paragraph, if Client orders H&H for any cause other than an Event of Default (as defined in Section 16.2) by H&H to suspend, delay or interrupt the Work in whole or in part, the compensation payable to H&H under this Agreement and the Project Schedule shall be adjusted for increases in the cost and time caused by such suspension, delay or interruption. Adjustment of the compensation payable to H&H under this Agreement shall include both Hard Costs and H&H's Fees, as described in Section 8.1.

4.4. Measurement and Verification Responsibilities; Monitoring. H&H shall provide the measurement and verification responsibilities as described in Exhibit F ("Measurement and Verification Responsibilities"). H&H shall use the energy consumption and operation cost of

the Facility prior to the Work, information from Exhibit E and information obtained from the performance of its Measurement and Verification Responsibilities to monitor the reductions in energy consumption and cost savings attributable to the Work during the Term of this Agreement. In accordance with Section 9.4, H&H shall prepare and provide a yearly guaranteed reconciliation report, in accordance with Exhibit E (“Guaranteed Reconciliation Report”) to Client documenting the reductions in energy consumption and cost savings to Client.

4.5. Damaged Facilities to be Restored. Where H&H, its subcontractors or any of its agents, cause damage to any part of the Facility during the Work, H&H shall restore or replace the damaged part to its original condition.

4.6. Personnel. H&H shall secure, at its own expense, all personnel required in the performance of this Agreement. Such personnel shall not be deemed employees of Client for any purposes whatsoever. H&H further represents that all of the services required hereunder will be performed by personnel fully qualified and authorized under applicable law to perform such services. H&H agrees to defend, indemnify and hold Client free and harmless from and against any and all claims, loss, damage, and expenses resulting from the Work performed by H&H’s subcontractors.

4.7. Cleanup. H&H shall keep the Facility and the surrounding area free from accumulation of waste materials or rubbish caused by the Work and, upon completion of the Work, H&H shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials.

4.8. Safety. H&H shall be responsible to Client for the performance of the Work in a safe manner and in accordance with industry standards. H&H shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities related to safety of persons or property.

All materials, equipment, and supplies provided to Client must comply fully with applicable safety requirements as set forth by the Wisconsin Administrative Code, Rules of the Wisconsin Department of Safety and Professional Services and any successor agency and all applicable OSHA Standards.

If any item(s) on order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, H&H shall provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy to Client Contact.

4.9. Disposal Manifests. H&H shall provide to the Client Contact copies of all records (e.g., manifests, disposal facility receipt, etc.) which indicate that H&H has disposed of any and all equipment, including lamps, and ballasts.

4.10. Training by H&H. H&H in conjunction with Client Subcontractors shall provide training for Client following the Certificate of Completion and Acceptance Date using final operation and maintenance data, as well as demonstrate operation of systems and equipment, and shall

review with Client set points, operating parameters, control sequences and routine maintenance procedures.

4.11. Certificate of Substantial Completion for Warranty. After H&H has performed all Work, H&H shall submit a written Certificate of Substantial Completion for Warranty to the Facility's Client Contact as described in Exhibit I.

4.12. Compliance. H&H shall ensure that all Work complies with current local, state, and federal construction and environmental codes and regulations. However, H&H shall not be obligated to provide any change to or improvement of the Facility or any portion thereof required under any applicable building, fire, safety, sprinkler or other applicable code, standard, law regulation, ordinance or other requirement, unless the same expressly regulates the installation of the Work. Without limiting the foregoing, H&H's obligations with respect to the Work do not include any changes or improvements that relate to any compliance matters that do not directly regulate the installation of the Work but which may be imposed because of the occasion of opportunity of review by any governmental authority.

5. Acceptance.

5.1. Authority. The Client Contact shall have final authority on behalf of Client to review and approve specifications, drawings, and related documents concerning the Work ("Construction Documents"), to approve and accept all equipment, materials and services, and to approve H&H's invoices for payment.

5.2. Construction Documents. During the construction period, H&H shall keep copies of Construction Documents at the Facility for review by Client at all reasonable hours and shall provide a complete set to the Client upon completion of the Work.

5.3. Satisfactory Performance; Non-Compliant Work. Within fifteen (15) days of receipt of an invoice, Client shall have the right to review the Work performed by H&H on the Facility, for purposes of determining whether the Work is in compliance with the terms of this Agreement. Where Client finds the Work performed by H&H does not comply with the terms of this Agreement, the Client Contact shall provide H&H with a written notice of non-compliant Work within ten (10) days of its receipt of H&H's invoice. H&H shall provide to the Client Contact a plan to remediate the non-complaint Work within fifteen (15) days after receiving the Client Contact's notice of non-compliant Work. When the invoiced Work has been completed in accordance with this Agreement, the Client Contact shall approve the invoice for payment. See Exhibit G for the schedule of payments.

5.4. Substantial Completion. Prior to final completion of the Work as described in Section 5.5 ("Final Completion"), H&H may provide Client with written notice that all or a portion of the Work is Substantially Complete. Within ten (10) days of the date Client receives notice that a portion of the Work is Substantially Complete, Client shall inspect that portion of the Work and determine whether the same appears to have been completed in accordance with this Agreement. If the Work (or applicable portion thereof) appears to be Substantially Complete and performed in accordance with the Agreement, H&H and Client shall execute a Certificate of Substantial Completion for Warranty in the form attached hereto as Exhibit I. Any minor

Work remaining shall be specified on a punch-list prepared by H&H attached to the Certificate of Substantial Completion for Warranty, the substance of which shall be mutually agreed to by the Parties. H&H shall complete and correct items on the punch-list before submitting the Certificate of Substantial Completion for Warranty (Exhibit I) Notice of Work Completion to Client. If an item on the punch-list is Substantially Complete, the punch-list shall be amended to remove such item from the list of incomplete items and such items shall be re-inspected to confirm completion during the final inspection.

Warranties required by this Agreement shall commence on the date of Substantial Completion of the Work or designated portion thereon or, if the Work is equipment for which start up is required, on the date of initial start-up. The Certificate of Substantial Completion shall identify the date of Substantial Completion for Warranty for each portion of the Work and such date shall be the date the warranties commence for such Work or portion thereof.

5.5. Final Completion. After all the Work is Substantially Complete and all punch-list items have been completed (“Final Completion”), H&H shall provide written notice to Client of Final Completion. Upon Client’s receipt of such notice Final Completion from H&H, Client and H&H shall inspect the Work and determine whether it appears to have been completed in accordance with this Agreement. If the Work appears to be complete and performed in accordance with this Agreement, H&H shall issue a Certificate of Completion and Acceptance, (in the form attached as Exhibit J), which shall be executed by both Parties. The Certificate of Completion and Acceptance shall identify the date of Final Completion for any portions of the Work whose initial start occurred after the date of Substantial Completion and that is the date the warranties shall commence for such portions of the Work.

Final payment shall be due upon Final Completion. The making of final payment shall constitute a waiver of claims by Client except those arising from (i) the Guarantee, (ii) any uncured breach of this Agreement by H&H for which Client has notified H&H prior to such payment that remains unsettled; and (ii) any warranties made by H&H regarding the Work.

6. General and Site Specific Requirements.

In order to minimize disruption of the use of the buildings, the Parties agree to the “General Requirements” and “Site Specific Requirements”, as set forth in Exhibits L and L-1 respectively, attached hereto and made a part hereof thereby.

7. Change and Extra Work.

7.1. Amendments of Agreement and Exhibits. The Parties expressly recognize, prior to the Final Completion, that there may be Change or Extra Work, either at the request of Client or at the suggestion of H&H; but in each event only upon written agreement by both Parties that the proposed Change or Extra Work is proper. If the proposed Change or Extra Work increases H&H’s cost and/or time for performance, H&H shall be entitled to additional compensation (including Hard Costs and H&H Fees) and/or an increase in time for performance in accordance with this Section 7. The Parties also recognize that the correct interpretation and administration of this Agreement depends in large part on the accuracy of all of the exhibits

attached hereto, which may need to be amended according to the type of Change or Extra Work agreed to by the Parties, and therefore the Parties agree to amend this Agreement or the exhibits hereto as appropriate to reflect the agreed upon Change or Extra Work. Any Change or Extra Work providing for price or Project Schedule adjustments or relief will be made in accordance with the procedures established herein.

7.2. Client Initiated. Client, at any time prior to Final Completion, may propose Changes or Extra Work in writing. H&H shall respond by submitting to Client a written proposal containing the estimated cost to perform the Change or Extra Work (including Hard Costs and H&H Fees), annual energy and annual utility, operational and maintenance cost savings, payback period, and a schedule for completion of the Change or Extra Work within fifteen (15) days of Client's request. H&H shall perform the Changes or Extra Work only upon receipt of Client's approval of the written proposal. Any Change or Extra Work performed by H&H which is not approved by Client's Contact in writing shall not be approved for payment and will not be included in the final Scope of Work. The Parties will amend any exhibits affected by the Change and/or Extra Work accordingly.

7.3. H&H Initiated. H&H, at any time prior to the Completion Date, may propose Changes or Extra Work in writing. H&H shall submit to Client a written proposal that explains the circumstances for the change, the estimated cost to perform the Change or Extra Work (including Hard Costs and H&H Fees), annual energy and utility, operational and maintenance cost savings, payback calculations and a schedule for completion of the Change or Extra Work. Client may accept or reject the request within ten (10) days. Failure by Client to respond within ten (10) days to the proposed change order shall be deemed a rejection by Client. H&H shall perform the Changes or Extra Work only upon receipt of Client's approval of the written proposal and after execution of an amendment to this Agreement when an amendment is required for performance of the Extra Work or Change. The Parties will amend any exhibits affected by the Change and/or Extra Work accordingly.

8. Consideration and Payment.

8.1. Total Obligation. As payment for H&H's performance of the Work, the Client shall pay or cause to be paid to H&H the sum of \$1,200,000 (the "Contract Price") H&H agrees that the Contract Price includes compensation for all anticipated costs associated with the Project, including but not limited to, the following: consulting, design and engineering costs, bid packet and request for proposal preparation, the cost of materials, labor costs, delivery and transportation fees, environmental studies and all other necessary expenditures incurred by H&H in completion of the Project (collectively, "Hard Costs"). In addition to Hard Costs, the Contract Price includes compensation for H&H's services ("H&H's Fee"), which includes fees for the following services: project management, administration support, overhead and profit, and measurement and verification of energy savings reports, the energy guarantee and bonds (as required under Wisconsin Statute 66.0133(8)). H&H's Fee shall be equal to thirteen percent (13%) of the total Project Hard Costs. Hard Costs shall not include work performed by internally by H&H unless H&H has followed the agreed upon bidding stipulations set forth in Section 19.1. Contract price also includes CESA Fee as described in Section 8.5.

8.2. Initial Payment. Client shall make an initial payment equal to ten percent (10%) of the Contract Price (“Initial Payment”) by a date no later than fifteen (15) days after the execution of this Agreement or Client’s receipt of the bond or loan for the project. The Initial Payment is non-refundable. The Initial Payment is consideration for mobilization costs of selected energy conservation measures (“ECM”) and the CESA Fee. H&H will submit an invoice for the Initial Payment upon the execution of this Agreement or receiving the bond or loan for the project.

8.3. Invoice & Payment. H&H shall submit invoices to Client for completed Work in accordance with the anticipated billing schedule contained in Exhibit G. Client shall pay each invoice within thirty (30) days following the receipt of said invoice. If the invoice is incorrect, defective, or otherwise improper, Client must notify H&H within ten (10) days of Client’s receipt of the invoice. Unless Client notifies H&H within ten (10) days after receipt of an invoice that the invoice is incorrect, defective or otherwise improper, such invoice shall be deemed to be correct and proper. If Client disputes any portion of any invoice submitted by H&H, Client shall pay the undisputed portion of the invoice on or before its due date and Client. H&H and Client shall resolve any disputes over invoices in accordance with Section 19.1. H&H shall, at its election, stop performance of the Work on the Project until any disputes are resolved.

8.4. Interest on Unpaid Invoices. Client shall, on demand by H&H, pay simple interest on any invoice not paid by its due date, at the lesser of the maximum allowable legal interest rate or 1.5% of the unpaid principal amount due at the end of each month (the “Default Rate”).

8.5 CESA 10 Fee. In addition to the payment obligations set forth above, Client shall be responsible for paying H&H for the services provided by CESA (“CESA Fee”). H&H agrees to pay seventy-five percent (75%) of CESA Fee of 43,500.00 (\$32,625.00) to CESA within thirty (30) days of the execution of this Agreement and the remaining twenty-five percent (25%) of CESA Fee (\$10,875.00) within twelve (12) months of the date of execution of this Agreement or upon the date of Substantial Completion for Warranty, whichever is earlier. Notwithstanding the foregoing, Client understands and agrees that H&H’s obligation to make any payment to CESA shall not commence prior to receipt by H&H of payment from Client for said services and shall be limited to the amount received for said services. CESA shall not be entitled to interest and late fees on monies due from H&H as a result of late payment from Client. Notwithstanding H&H’s payment obligations to CESA, H&H expressly disclaims all liability relating to CESA’s acts or omissions. In the event that the “Total Project Costs” to complete the Work exceeds the estimated cost to complete the Work, Client may, in its sole discretion, agree to pay an additional fee to CESA (“Additional CESA Fee”) for services provided by CESA to Client. “Total Project Costs” shall mean all costs incurred to complete projects identified in the report provided by H&H, including any materials purchased directly by the Client and any and all change orders. If Client agrees to pay CESA an Additional CESA Fee, CESA shall notify H&H of the amount of the Additional CESA Fee and the CESA Fee will be passed through to the Client without any additional markup.

8.6. Energy Incentives. H&H will make commercially reasonable efforts to obtain for the benefit of Client Focus on Energy and other credits, incentives, rebates, rewards, awards or

other incentives (collectively, “Energy Incentives”) that may be available to reduce the cost of the Work. H&H will cooperate in good faith with Client to submit all paperwork associated with such Energy Incentives and Client agrees that it will cooperate in good faith with H&H to the same end. Client recognizes that the availability of such Energy Incentives is dependent upon circumstances beyond the reasonable control of H&H, including, without limitation, the circumstances of the various governmental, utility and other programs under which they arise, including timing and program utilization. Client acknowledges that H&H does not have the ability to forecast whether the Energy Incentives will be available or the amount of Energy Incentives that Client will ultimately qualify for. Client agrees that the figure in Exhibit B for “Total Incentive Amount” and any other estimates by H&H of the value of such Energy Incentives set forth in this Agreement are merely projections. H&H specifically and categorically disclaims all warranties or guarantees relating to the existence or amount of Energy Incentives available to Client.

9. H&H’s Energy Savings Guarantee

9.1. Total Guaranteed Savings. H&H guarantees (“Guarantee”) that the aggregate amount to be saved at the entire Facility in utility, operation and maintenance costs over the Term of this Agreement shall be at least the savings as set forth in Exhibit E (the “Total Guaranteed Savings”).

9.2. Guarantee Term. The term of the Guarantee shall be the Term of the Agreement, and Client’s rights relating to the Guarantee shall not be deemed to have been established until the Guarantee Reconciliation Report has been completed. Except as expressly provided in this Agreement, the Guarantee will be terminated if Client materially fails to carry out Client’s Maintenance Responsibilities under Section 10, Exhibit K, or any other provision of this Agreement, or prohibits or materially impairs or delays H&H in performing the Measurement and Verification Responsibilities, as illustrated in Exhibit F and Sections 9.6 of this Agreement.

9.3. Guarantee Reconciliation. H&H shall perform guarantee reconciliation at the end of the term of the Guarantee and submit a Guarantee Reconciliation Report in accordance with Exhibit E to the Client Contact within forty-five (45) days. H&H shall calculate the Total Actual Savings as set forth in Exhibit E for the term of the Guarantee. The frequency and methods of reconciliation to be used have been approved by Client at or before the time this Agreement was executed and are defined in Exhibit E. Any changes to such frequency or methods shall be made only by mutual consent of the Parties; provided, however, if a utility providing energy to Client modifies its method of billing during the Term of this Agreement, or if Client changes its utility supplier(s) or method of purchasing utility service, H&H may, at its option, adjust the reconciliation methods to methods appropriate to the utility’s revised method of billing.

9.4. Energy Savings Guarantee Shortfall. In the event that the Total Actual Savings realized by Client is less than the Total Guaranteed Savings, H&H will reimburse the Client the amount of the shortfall. Such reimbursement shall be the sole and exclusive remedy of Client for any

failure by H&H to achieve guaranteed Total Guaranteed Savings under this Agreement, including any breach of any other express or implied warranty.

9.5. Post-Completion Services. H&H's ability and willingness to provide the Total Guaranteed Savings set forth in this Section 9 is contingent upon H&H having the ability to provide the post-completion technical services, described in Exhibit F to this Agreement, to inspect and assure proper performance of the Work (the "Post-Completion Services"). H&H shall provide the Post-Completion Services at no additional cost to Client. However, it is essential to the provision of such Post-Completion Services in an effective manner that Client afford H&H prompt and sufficient access to the completed Work to provide such Post-Completion Services. Client acknowledges that H&H's Guarantee is contingent upon Client permitting H&H to perform the Post-Completion Services without material delay or other material interference.

9.6. Limitation on Energy Savings Guarantee. H&H has disclosed to Client and Client acknowledges that H&H's ability to deliver the Total Guaranteed Savings is dependent upon the existence of certain assumptions and factors outside of H&H's control (collectively, "Assumed Conditions"). These Assumed Conditions include but are not limited to, the following:

- Client executing and issuing H&H a notice to proceed with the Work no later than December 1, 2016;
- At all times relevant to H&H's Investment Grade Audit and H&H's determination of the Calculated Annual Utility Savings, to the best of Client's knowledge Client's operation of the Facility has been in compliance with all applicable building codes, regulations and requirements. To illustrate this Assumed Condition by way of an example, Section 403 of the International Mechanical Code 2006 sets forth the level of ventilation by mechanical means required within a building intended to be occupied. H&H relies on the assumption that Client has operated the Facility in compliance with said code, and Client's failure to comply with said requirements constitutes a failure of an Assumed Condition.
- Client promptly performing Client's Responsibilities set forth in Section 10 of this Agreement and all other duties imposed by this Agreement;
- Client maintaining the operating parameters for the completed work as set forth in Exhibit D ("Operating Parameters");
- Client following the control sequences specified in the design and engineering documents;
- The absence of changes in materials or equipment used at the Facility that affects the projected Total Guaranteed Savings;
- The accuracy of all information provided by Client and otherwise available to H&H at the time of this Agreement;
- The absence of changes in other conditions that are reasonably expected to inhibit H&H's ability to achieve the Total Guaranteed Savings.

Client agrees that in the event any of the foregoing Assumed Conditions fail for reasons that are not primarily due to the acts or omissions of H&H, H&H's Guarantee shall no longer apply. Without limiting the foregoing, if H&H determines that it is reasonably practical, H&H shall calculate and send to Client a notice of adjustment to the baseline and/or other assumptions

upon which the Total Guaranteed Savings were based to reflect the impact of such change or condition. Except as expressly provided in Section 9.7.1., the adjustment shall become effective as of the date that the change or condition first arose.

9.6.1. Changes in Use. Client agrees to notify H&H, within fifteen (15) days, of any actual or intended change in the use of any Facility or equipment or change in conditions that contributes to the projected Total Guaranteed Savings that reasonably could be expected to change the amount of Total Actual Savings. Changes in use or conditions include, among other things, adding a new school session, changes to the hours of occupancy, changes in the operation or primary use of any Facility, changes or modifications (including changes in settings of controls and Operating Parameters from those set forth in this Agreement or the Exhibits) to any equipment provided as part of the Work under this Agreement, material changes to building square footage, building remodeling, the addition or deletion of equipment to the Facility, change in usage of equipment, building code violations, changes in utility suppliers, service tariffs or method of utility purchasing, improper maintenance of the Work (including Client's failure to materially carry out Client's responsibilities under Section 10 and Exhibit K of this Agreement). Upon receipt of such notice, H&H shall make an adjustment to the baseline in accordance with Section 9.7. Should Client fail to provide H&H with notice of any such change or condition, H&H may make reasonable estimates as to the impact of such change or condition and as to the date on which such change or condition first arose in calculating the impact of such change or condition and such estimates shall be conclusive.

9.7. Survival. This Section 9 shall terminate upon Completion by H&H of a final Guarantee Reconciliation and final payment of any savings deficiencies.

10. Client Responsibilities. Client agrees to perform the following tasks in addition to those set out in Exhibit K of this Agreement:

10.1. Daily Operations. After acceptance by Client of the Work performed as evidenced by a Certificate of Substantial Completion for Warranty, Client shall be responsible for all routine maintenance as set out in the original equipment manufacturer's documentation provided by H&H to the Client. Exhibit D contains a set of Operating Parameters that need to be maintained to obtain the Utility Savings and the operation and maintenance cost savings outlined in Exhibit E.

10.2. Automatic Functions. To protect public health and safety, or Client property, Client may manually override any automatic function provided by H&H's equipment furnished hereunder, or make changes in operating procedures specified. In that event, H&H shall calculate and send to Client a notice of adjustment to the baseline or other assumptions upon which the Total Guaranteed Savings were based to reflect the impact of such changes, and the adjustment shall become effective as of the date that the change or condition first arose.

10.3. Access. Client shall grant H&H reasonable access to the Facility to perform H&H's Verification Responsibilities described in Exhibit F. Client shall further grant H&H reasonable access (to the extent Client has legal authority to do so) to metering equipment that measures energy usage from the Facility. If the metering equipment is under the custody and control of

a third party, such as the local electric utility, Client shall cooperate promptly and in good faith with H&H to have access provided to H&H for the desired purpose (meter-reading, testing of suspected defective meter, etc.).

10.4. Energy Management System. To the extent practicable, Client shall provide energy management system reports and access to the Building Automation System to H&H for Guarantee Reconciliation when requested by H&H.

10.5 Allocation of Section 179D Deductions. In the event that the federal tax deduction for energy-efficient commercial buildings previously referred to as the Section 179D deduction is still in effect during the construction of the project, extended or renewed or is replaced by a similar federal or state tax deduction Client hereby acknowledges that H&H is the “designer” (i.e. the architect, engineer or other professional who created the technical specifications that incorporated energy efficiency into the Work) or qualifies as the analogous professional under any successor federal or state tax deduction or tax credit program and is entitled to claim the full deduction or credit, as applicable. Client will execute any documents or take any action reasonably requested by H&H to enable H&H to claim and apply for this and all other applicable tax benefits.

10.6. Equipment Location and Access. Client shall provide, without charge, a mutually satisfactory location or locations for the installation and operation of the equipment and the performance of the installation work, including sufficient areas for staging, mobilization and storage. Subject to Client’s limitations on access related to the operations of school at the Facility, Client shall provide reasonable access to the Facility for H&H and its subcontractors during regular business hours, or such other hours as may be requested by H&H and acceptable to Client, to install, adjust, inspect, and correct the installation work provided as part of the Work. H&H’s access to correct any emergency condition shall not be restricted by Client, provided that advance notice has been given to Client Contact.

10.7. Utilities During Construction. At no cost to H&H, Client shall provide and pay for water, heat, and utilities consumed by H&H during performance of the Work hereunder.

11. **Insurance.** H&H shall maintain in full force and effect, at its expense, property, casualty, worker’s compensation and liability insurance as specifically described in Exhibit M. The insurance is for the benefit of the Facility. In the event of loss or damage to the property under this Contract as a result of H&H’s performance under this Contract, loss payment will be made in favor of the Facility.

12. **Asbestos/Hazardous Materials/Concealed & Unknown Conditions**

12.1. Asbestos/Hazardous Materials. Client and H&H agree that unless expressly agreed otherwise in this Agreement, including a budget line item, the Work does not include the removal or remediation of asbestos or any hazardous material and H&H shall have no obligation to remove asbestos or other hazardous materials encountered during the Work, which the obligation and cost of which shall be the sole responsibility of Client. In the event H&H encounters asbestos or other hazardous material, H&H shall stop all Work immediately and shall notify Client at once to determine the appropriate action. Any delay in completion

of the Work according to the Project Schedule in Exhibit H caused by H&H's encounter with asbestos or other hazardous material and Client's determination of appropriate action to correct the situation shall not constitute an Event of Default. Where a delay under this section will be for a material amount of time, as reasonably determined by H&H, the parties agree to meet in good faith to discuss an appropriate Change to the work, including, as applicable, a Change to the Contract Price, Completion Date and/or change to the scheduling of Work, to that Work and payment hereunder can begin notwithstanding the delay caused hereunder.

12.2. Concealed and Unknown Conditions. If H&H is delayed in the commencement, performance, or completion of the Work and/or Post-Completion Services by causes beyond its control and without its fault, including, but not limited to, inability to access the Facility, concealed or hidden conditions encountered at the Premises (including the presence of Asbestos or other Hazardous Materials), a Force Majeure Event (defined below) condition, failure by Client to perform its obligations under this Agreement, or failure by Client to cooperate with H&H in the timely completion of the Work, H&H shall provide immediate verbal and written notice of such condition to the Client. In the event that any of the foregoing causes an increase in the cost of performance of the Work, an increase in the time required for completion of the Work or an adjustment in the Total Guaranteed Savings, H&H shall be entitled to the same. In such instances, H&H shall notify Client of additional compensation required to complete the Project (Hard Costs and H&H Fees), a time extension, and/or an adjustment in the Total Energy Savings Guarantee in writing within five (5) business days after H&H first has notice of the event which allegedly gives rise to the change. Any additional compensation, time extensions and/or adjustment in the Total Guaranteed Savings shall only be allowed if such changes are written and signed by H&H and Client. H&H may suspend all Work on the Project pending Client's approval of any request for additional compensation, time extension and/or an adjustment in the Total Energy Savings Guarantee.

12.2. Hazardous Material. For purposes of this Agreement, the term "hazardous material" means any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under applicable law relating to or addressing public or employee health and safety and protection of the environment, or which is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel, fuel, another petroleum hydrocarbon product, or polychlorinated biphenyls. "Hazardous Material" specifically includes mold and lead-based paint and asbestos containing materials (ACM).

13. **Indemnification.** H&H shall indemnify and save and hold harmless Client, its employees, agents and assigns, from and against any and all claims, demands, or causes of action, and damages, including reasonable attorney's fees that they may incur, pay or sustain as a result of any negligent, intentional or wrongful act, error or omission of H&H in the performance of this Agreement except for any damages caused by the negligence of Client, its employees, agents or assigns. Following the Completion Date, Client assumes all risk and liability for the use, operation and storage of the equipment installed as part of the Work, and for any damages arising out of the use, operation or storage of the Equipment, except for those damages caused by the negligence of H&H, its employees, agents or assigns. Client shall indemnify and save and hold H&H, its employees agents and assigns harmless from and against any and all claims,

demands, or causes of action, and damages, including reasonable attorneys fees, that they may incur, pay or sustain as a result of any negligent, intentional or wrongful act, error or omission of Client in the performance of this Agreement, except for injuries or death to persons or damage to property caused by the negligence of H&H, its employees, agents or assigns. This section shall not be construed to bar either Party from exercising any legal remedies it may otherwise have under this Agreement for the other Party's failure to fulfill its obligations pursuant to this Agreement.

14. Performance and Payment Bonds. H&H shall be responsible for securing the payment and performance bonds (the "Bonds"), in an amount equal to the Cost of the Work. The Bonds shall cover completion of the physical work per the approved design, and shall not cover any design obligation or any guarantee or warranty of efficiency or system performance. The Bonds shall not cover any obligation of H&H to ensure that the Work as constructed will result in any particular level of energy savings. Any suit on the Bonds must be brought within the period of one (1) year after Substantial Completion as defined in the contract; provided, however, that if this suit limitation is void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable. Payment Bond is intended for the use and benefit of all persons furnishing labor and materials who are engaged by H&H. Performance Bond is intended for the use and benefit of the Client to complete the Work as described in Exhibit C. These bonds shall be released within forty-five (45) days of the Completion Date. The surety for each such bond shall be an insurance company or corporate surety licensed to do business in the state of Wisconsin. The Bonds shall contain a provision requiring reasonable advance notice to Client in the event that H&H is in default of any obligation in relation to the Bonds.

15. Representations and Warranties.

15.1. H&H warrants and represents to Client as follows:

- A. It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder.
- B. Its execution, delivery, and performance of this Agreement have been duly authorized and it constitutes its legal, valid and binding obligation.
- C. Its execution, delivery, and performance of this Agreement will not result in a breach or violation of, or constitute a default under, any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected.
- D. It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially adversely affect its ability to perform hereunder.
- E. It has made secure provisions for promptly paying all its suppliers and subcontractors in connection with this Agreement.

F. It has prepared the Recommendations in good faith based on generally accepted engineering practices and mathematical formulas.

G. It has all right, title and interest in, or appropriate licenses to use, any intellectual property required by this Agreement to be installed, employed, or modified.

15.2. Client warrants and represents to H&H that, at all times relevant to this Agreement, to the best of Client's knowledge, Client's operation and use of the Facility has been and is in compliance with all applicable building codes, regulations and requirements. Client acknowledges that compliance with said codes, regulations and requirements may affect the Facility's energy consumption and, consequently, may inhibit H&H's ability to achieve the Total Guaranteed Savings.

15.3 H&H's Warranty/Assignment of Manufacturer's warrants to Client that the services performed under this Agreement will be of high professional standards and quality and will comply with all applicable laws, codes and regulations. H&H further warrants that all equipment (including the material supplied by H&H) installed as part of this Agreement are new, in good and proper working condition and shall be free from material defects and protected by appropriate written manufacturers warranties covering all parts and equipment performance. H&H agrees to deliver all warranty documentation to the Client Contact as required in Section 4.10. H&H agrees that Client will pursue rights and remedies against manufacturer for equipment under warranties in the event of equipment malfunction or improper or defective function, and defect in parts, workmanship and performance. H&H agrees to cooperate with Client in enforcing warranties.

H&H shall use commercially reasonable efforts in its negotiations with manufacturers to ensure that all manufacturers' warranties shall be transferable and extend to Client. The warranties shall specify that only new and non-re-conditioned parts may be used and installed when repair is necessitated by malfunction. All warranties required hereunder shall be in force for a minimum of one year from the date of installation.

15.4. Obligation to Correct Non-Conforming Services. H&H will promptly re-perform any Work that does not comply with the terms of this Agreement ("Non-Conforming Services") for no charge, as long as Client provides written notice to H&H within one (1) year following the commencement of the warranty for the Work at issue ("Warranty Period"). If Client fails to notify H&H and give H&H an opportunity to correct the Non-Conforming Services during the Warranty Period, Client waives the rights to require correction by H&H and waives all associated claims for breach of warranty. The remedies set forth in this Section 15.4 with respect to the services within the Work, together with any remedy provided by goods or equipment manufacturers, shall be Client's sole and exclusive remedies for warranty claims. These warranties do not extend to any Work that has been abused, misused, repaired or in any way altered by Client or third parties without the prior written approval of H&H. H&H shall not be considered a merchant or vendor of goods or equipment within the Work. **NO OTHER WARRANTY OR GUARANTEE, EXPRESSED OR IMPLIED, IS MADE WITH RESPECT TO THE WORK AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.**

16. Event of Default.

16.1. Default by Client. Each of the following events or conditions shall constitute an “Event of Default” by Client:

- A. Failure to make payments in accordance with Sections 5 and 8 of this Agreement.
- B. Any material misrepresentation or warranty furnished by Client, which was false or misleading in any material respect when made.
- C. Any other material failure to perform or comply with the terms and conditions of this Agreement, including breach of any covenant or duty contained herein, provided that such failure continues for thirty (30) days after written notice to Client demanding that such failure to perform be cured or, if cure cannot be effected in such thirty (30) days, without commencement of a cure and diligent subsequent completion thereof. In the event the default is cured within said periods, this Agreement shall remain in full force and effect.

16.2. Default by H&H. Each of the following events or conditions shall constitute an “Event of Default” by H&H:

- A. The installation of the materials and equipment is not completed according to the terms of this Agreement; provided, however, that H&H shall have thirty (30) days from receipt of written notice that it is in default to cure said default. In the event the default is cured, this Agreement shall remain in full force and effect.
- B. Any representation or warranty furnished by H&H in this Agreement, which is false or misleading in any material respect when made.
- C. Any other material failure by H&H to perform or comply with the terms and conditions of this Agreement, including breach of any covenant or duty contained herein, provided that such failure continues for thirty (30) days after written notice to H&H demanding that such failure to perform be cured, or if cure cannot be effected in such thirty (30) days, without commencement of a cure and diligent subsequent completion thereof. In the event the default is cured within said period, this Agreement shall remain in full force and effect. Notwithstanding anything else in this Section to the contrary, it shall not be an Event of Default justifying Client to exercise the remedies available under Section 17.2 of this Agreement if H&H fails to achieve guaranteed Total Guaranteed Savings under this Agreement, including any breach of any express or implied warranty, but rather shall be limited to the remedy set forth in Section 9.5 of this Agreement;

17. **Remedies Upon Default**. Subject to the limitations upon remedies set forth in Section 9.5 relating to H&H’s failure to achieve Total Guaranteed Savings under this Agreement, the Parties shall have the following remedies upon the occurrence of an Event of Default:

17.1. Default by Client. Upon the occurrence of an Event of Default by Client, H&H may elect

to enforce one or more of the following remedies:

- A. Terminate this Agreement by delivery of a notice declaring termination, whereupon H&H may enter the premises on which the Work is being performed and remove H&H's property, which shall include equipment not paid for by the Client;
- B. Seek damages in the amount of all payments, then or thereafter owing from Client to H&H pursuant to this Agreement, together with all costs and expenses reasonably incurred in exercise of its remedies (including reasonable attorneys' fees and court costs) in seeking and enforcing any or all of the remedies provided in this section;
- C. Seek specific performance of the terms and conditions of this Agreement to the extent permitted by law, including without limitation injunctive relief where appropriate; and/or
- D. Suspend further provision of the Work. If delivery of the Work has been suspended as a result of Client's default and Client and H&H agree to arrange for the reinstatement of the performance of the Work, Client shall pay to H&H a performance reinstatement fee in such amount or amounts, and payable on such date or dates as shall be reasonably acceptable to H&H, as will reimburse H&H for its actual costs (including overhead and interest at the Default Rate) to be incurred in reinstating performance of the Work; provided, however, that nothing herein shall obligate H&H to reinstate the performance of the Work.
- E. If the performance of Work is stopped for a period of 60 consecutive days through no act or fault of H&H, its subcontractors or employees because Client has repeatedly failed to fulfill Client's obligations under this Agreement with respect to matters important to the progress of the Work, H&H may, upon seven additional days' written notice to Client, terminate this Agreement and recover from Client payment for Work performed and a proven loss with respect to materials, equipment, tools and construction equipment and machinery, including reasonable overhead, profit and damages based on the Work completed to date.

17.2. Default by H&H. Upon the occurrence of an Event of Default by H&H, Client shall have the right to:

- A. Seek specific performance of the terms and conditions of this Agreement to the extent permitted by law, including without limitation injunctive relief where appropriate;
- B. Terminate the Agreement by delivering a notice declaring termination (permitting H&H to enter the Premises and remove all of its Property), including equipment not paid for by Client); and/or
- C. Seek damages.

18. **Termination.**

18.1 For Uncured Breach. Either party may terminate this Agreement thirty (30) days after

written notice to the other party of any material breach of this Agreement by such party that has not been cured within such thirty (30) day period (an “Event of Default”). The notice must set forth the nature of the breach with reasonable specificity. In the event of a termination initiated by the Client and after equipment has been installed, H&H shall not be responsible for performance or energy savings guarantee arising after the date of such termination. Additionally, H&H shall be entitled to payment, calculated on a pro rata basis for work or services satisfactorily performed and for reasonably unavoidable cancellation, demobilization and/or restocking charges incurred for materials and/or equipment. Notwithstanding the foregoing, H&H shall have the right to terminate this Agreement if Client fails to pay any amounts due in accordance with Section 8 of this Agreement.

18.2 Bankruptcy. In addition to Section 18.1 and any other rights it may have at law or in equity, either party may terminate and without liability suspend all activity related to this Agreement immediately if the other party is adjudicated a bankrupt, ceases to do business as a going concern, makes an assignment for the benefit of creditors, permits the appointment of a receiver, or otherwise avails itself of or becomes subject to any bankruptcy or insolvency statute.

19. **Subcontracted Work.**

19.1 Bidding. H&H shall solicit bids for all Work (except the work that is included in H&H’s Fee). If H&H (or one of its affiliates) desires to complete the Work, H&H (or one of its affiliates) shall participate in a sealed bidding process, wherein H&H will present a request for proposal (“RFP”) to at least three other bidders, directing the bidders to submit sealed bids directly to the Client and CESA for review and selection. For work that H&H (or one of H&H’s affiliates) does not intend to perform, H&H will present an RFP and will direct at least three bidders to submit sealed bids to the Client and CESA for review and selection. H&H shall have control over the specifications and requirements contained in the RFP. Any bid selected by Client and CESA through this bidding process must comply with all bidding requirements set forth in the RFP and be approved by H&H. Unless otherwise agreed to by H&H, all bidders must agree to and execute H&H’s standard subcontract agreement before beginning any portion of the Work. H&H shall not unreasonably withhold approval of any bid selected by Client and CESA through this bidding process.

19.2. Compliance by H&H’s Subcontractors and Consultants. H&H shall provide and require in all of its contracts or subcontracts with other parties who provide services in regard to performance of this Agreement that such subcontractors, consultants, or other parties contracting with H&H with regard to performance of this Agreement shall comply with those requirements of Wisconsin law specified herein and otherwise required of persons performing work for the Client of the type contemplated under this Agreement.

20. **General Provisions.**

20.1. Governing Law, Jurisdiction and Venue, Arbitration and Litigation. This Agreement is governed by the laws of the State of Wisconsin. The sole venue for any dispute resolution proceedings is agreed to be in Dane County, State of Wisconsin, and the Parties consent to

such jurisdiction. The Parties shall proceed as follows with respect to any dispute, claim or controversy (a ‘Dispute’) arising under this Agreement:

- A. First, the Parties shall attempt to resolve the Dispute informally by discussion and negotiation in good faith between the H&H Contact and the Client Contact.
- B. If such informal dispute resolution effort is not successful, then either Party shall have the right to seek resolution of a Dispute by providing written notice of the Dispute to the President of H&H and Superintendent of Client, which notice shall be deemed sufficient notice to each Party. Within five (5) days of such notice, the President and Superintendent and/or their designees with authority to resolve the Dispute shall meet, review such relevant information as they may determine and render their decision within five (5) days of such meeting (or such other timeline to which they mutually agree).
- C. If the President and the Superintendent cannot arrive at a mutually agreeable decision within the five (5) day period provided, either Party may elect to either (i) arbitrate any Claim or dispute between Contractor and Subcontractor relating to Subcontract in Dane County, Wisconsin; or (ii) submit said Claim or dispute to the appropriate state court or federal court located in Dane County, Wisconsin. Either H&H or Client, at their discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration or civil action. H&H and Client grant to any person or entity made a party to an arbitration or civil action conducted under this Section, whether by joinder or consolidation, the same rights of joinder and consolidation as H&H and Client under this Agreement.

20.2. Conditions Beyond Control of Parties. Neither party will be responsible for any failure to comply with, or for any delay in performance of, the terms of this Agreement where the failure or delay is due to acts of God or the public enemy, war, riot, embargo, fire, explosion, sabotage, flood, strikes, labor disputes, defective equipment not owned or controlled by that party, default of subcontractors, accident; or, without limiting the foregoing, any circumstances of like or different character beyond its control (collectively, “Force Majeure Event”). If either party is unable to perform under this Agreement for more than sixty (60) due to a Force Majeure Event, then the other party may terminate this Agreement upon fifteen (15) days’ written notice, and H&H shall be entitled to payment for Hard Costs and H&H Fees for all Work satisfactorily performed. If the Parties agree to continue performance of the Agreement, the Parties shall proceed in accordance with Section 12.2.

20.3. Notices and Changes of Address. All notices to be given by either party to the other shall be in writing and must be either delivered in person or mailed by registered or certified mail, return receipt requested, addressed as follows:

To H&H:

Josh Kaurich, Vice President
H&H Energy Services, Inc.
3201 Latham Drive
Madison, WI 53713
608.268.4315 Office

608.438.7354 Cell
Attn: Josh Kaurich, H&H Contact

To the Client:
River Valley School District
660 West Daley Street
Spring Green, WI 53588

Or such other addresses as either party may hereinafter designate by a written notice.

20.4. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties herein. H&H shall not assign or transfer any part of its interest in this Agreement or any right or duty under this Agreement in whole or in part of without prior written consent of Client.

20.5. Permits. H&H shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations hereunder.

20.6. No Waiver. The failure of H&H or Client to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of H&H or Client. The waiver of any default by either party shall not be deemed a continuing waiver, but shall apply only to the instance to which such a waiver is directed.

20.7. Complete Agreement. This Agreement, when executed, together with all exhibits attached hereto as provided for by this Agreement, shall constitute the entire agreement between both parties and shall take precedence over any prior communication between the Parties, including different or additional terms and conditions that either of them may have included in any documents that were not incorporated into this Agreement or the attached exhibits. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by both parties.

20.8. Severability. In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid, void or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement unless the result would be manifestly inequitable or unconscionable.

20.9. Recitals. The background recitals set forth at the beginning of this Agreement are expressly incorporated into and made an integral part of the body of this Agreement and the terms of the Recitals fix the obligations of the parties and are binding upon them in the same way and to the same extent as all other provisions of this Agreement.

20.10. Headings. The headings of all provisions are for ease of reference only. The headings in no way define, limit or describe the scope, intent or obligations of the provisions of this Agreement and therefore are not to be used in construing this Agreement.

20.11. Amendments. Amendments to this Agreement shall be valid only if they are in writing and are signed by the same parties, or their successors in office, who signed the original Agreement.

20.12. Limitation on Liability. Except as otherwise provided in this Agreement, in no event shall the Parties be liable to one another for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of this Agreement.

A. Client's Liability. The Client's maximum obligation under this Agreement shall not exceed the amount set forth in Section 8.1, subject to adjustments for changes or claims for extra work, and other adjustments or increases expressly permitted under this Agreement.

B. H&H's Liability. Except for the Energy Savings Guarantee, responsibility for which is established and limited by Section 9 of this Agreement, to the extent permitted by law, the total liability of H&H to Client for any and all claims arising out of this Agreement, whether caused by negligence, errors, omissions, strict liability, breach of contract or contribution, or indemnity claims based on third party claims, shall not exceed the compensation paid to H&H under this Agreement.

C. CESA. H&H disclaims all liability for damages or claims relating to CESA's negligent acts or omissions.

20.13. Ownership of Works and Intellectual Property Rights. For the purposes of this paragraph, the term "Works" includes creative writings, research data and reports, writings, sound recordings, pictorial reproductions, drawings, film and video recordings, and other graphical representations, software, business methods, inventions, improvements, and discoveries, and works of any similar nature (whether or not eligible for copyright, trademark, patent or other proprietary rights), which are to be prepared for the Client and delivered under this Agreement. It does not include any of H&H's background intellectual property. Ownership of the Works and all copyrights, trademarks, patents and other proprietary rights in the Works shall be owned exclusively by H&H. Notwithstanding the foregoing, the Client shall have a license to utilize the Works to maintain its equipment or to complete the Work in the event of a termination of H&H for cause.

21. Tax Exemption and Direct Owner Purchases

21.1 Tax Exemption. Client is exempt from the payment of Federal Excise Tax and State Sales Tax. Client's tax-exempt number is **063580**.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

RIVER VALLEY SCHOOL DISTRICT (“CLIENT”)

By _____

Its: _____

Date: _____

H&H ENERGY SERVICES, INC



By: Josh Kaurich

Its: Vice President

Date: September 2, 2016

Schedule 1: Definitions

The terms defined in this Schedule shall, for all purposes of this Agreement, have the meaning herein specified

“Calculated Annual Utility Savings” has the meaning set forth in Exhibit E.

“Change” means substitutions, additions, or deletions within the scope of the Agreement as expressly approved in writing by Client.

“Completion Date” means the date on which Client issues the Certificate of Completion and Acceptance.

“Days” means calendar days. When this Agreement refers to a period of Days, the period shall be extended by the number of days in such period that fall on a vacation day, snow day or other scheduled or unscheduled school closure day of Client within that period that occurs during the August through June school year. Client shall cooperate in good faith with H&H by providing H&H accurate and up to date information all such scheduled and unscheduled school closure dates.

“Extra Work” means work outside the scope of this Agreement.

“Guaranteed Annual Utility Savings” has the meaning set forth in Exhibit E.

“Guarantee Commencement Date” shall be the Completion Date.

“Guarantee Term End Date” shall be the last date of the term of this Agreement, after which H&H’s guarantee term ends.

“Guarantee Year” means each twelve (12) month period during the Term of this Agreement, beginning on the Completion Date.

“Investment Grade Audit” is the examination performed by H&H to determine the Client’s Calculated Annual Utility Savings and Recommendations.

“Measured and Verified Savings” means Utility Savings calculated using utility consumption data recorded by utility meter(s).

“Pre-agreed Savings” means Utility Savings calculated using generally accepted engineering methods when actual measurements are impossible or not cost effective.

“O&M Savings” means the aggregate operation and maintenance cost savings at the Facility, as outlined in Exhibit E.

“Recommendations” means the energy savings and other recommendations developed by H&H as the result of the Investment Grade Audit and subsequently in consultation with Client.

“Stipulated Savings” means savings that are agreed upon prior to the project start and are carried forward as agreed upon savings thereafter.

“Substantially Complete” means that H&H has provided sufficient materials and services for the Work, or the applicable portion thereof, to permit Client to operate the Work, or the applicable portion thereof, except for punch list items that do not materially interfere with the use and enjoyment of the Work (or applicable portion thereof).

“Total Actual Savings” means the sum of the reconciled Utility Savings and the O & M Savings measured over the period referred in the context of where they are referenced in this Agreement.

“Utility Savings” means the difference between the utility consumption under the pre-contract conditions and the utility consumption in the entire Facility after the “Work” has been completed under the contract.

“Work” means duties set forth in Section 4 and in Exhibit C.

Exhibit A: Facility Description

Projects will be implemented at the following location:

#	Facility Name	Address	Square Footage
1	River Valley High School	660 Varsity Blvd Spring Green, WI	128,000



Exhibit B: Summary of Project Costs

The following table has a list of Project Budgets Costs (Contract Price). Project Budgets include H&H's Fee.

Project Code	Project Name	Project Budget (\$)
100	Project Contingency	\$64,000
200	HVAC Upgrades	\$806,500
300	Roofing Upgrades	\$220,000
400	Domestic Water Heaters	\$66,000
Contract Price:		\$1,200,000

Clarifications on Project Savings and Cost Summary Table:

- A Project Contingency of \$64,000 has been included within the Contract Price, put under Project Code 100, which will be used for unforeseen conditions and modifications to the scope of work. The Project Contingency will be owned and managed by H&H; all remaining funds are returned back to the District.
- The Contract Price is a Budget Price amount (which excludes financial incentives such as Focus on Energy). The Contract Price is the summation of the Project Budgets. Each individual Project Hard Costs with H&H's Fee may go over the Project Budget listed in this table and be invoiced from H&H to the Client accordingly, so as long as the Contract Price is not exceeded in this process.

Exhibit C: Scope of Work

H&H shall provide construction services as described in this section for each project that is included as part of the Energy Savings Performance Agreement signed between the District and H&H.

Final scope of work, product data sheets, design specifications, and drawings (as appropriate) will be included for review before procurement and installation of projects. Upon completion of the project, “as built” product data, drawings, operational and maintenance manuals (O&M’s), and warranty information will be submitted to the client. In any case, the Scope of Work shall be limited to one or more of the following items:

200. HVAC Upgrades

Provide Condensing Boiler

Provide a natural gas-fired, fully-condensing, sealed-combustion boiler next to the existing boilers in the 1998 addition along with a new expansion tank. Boiler output 2,000 MBH with AFUE of 90 and regulator that accepts 5-psig natural gas. This boiler can be installed in the location currently occupied by ventilation fan CF-2.

Replace existing steel, ceiling-mounted expansion tank with new, floor-mounted, 80-gallon expansion tank with diaphragm. New expansion tank will prevent air and contaminants from entering the hot water system.

The existing hot water boilers and hot water pumps will remain. To balance the boiler run times, each year one of the existing boilers will be switched off at its electrical disconnect, manually valved-off, and used only as a backup if one of the other boilers is off-line for unscheduled maintenance.

Remove existing boiler room ventilation fan CF-2 and replace it with a ceiling-mounted 2,800 cfm centrifugal fan and low-leakage damper tied to the existing outdoor air intake for CF-2. Provide new wall-mounted thermostat to control new fan and damper.

Proposed control sequence:

- Change the control sequences on the boilers in the 1998 addition so all boilers are off whenever the outdoor air temperature is above 70⁰ F and the new condensing boiler switches on when the outdoor air temperature drops below 55⁰ F (condensing boiler is always the lead boiler).
- New boiler will deliver 140⁰ F hot water when the outdoor air temperature is above 20⁰ F and 200⁰ F hot water when outdoor air temperature is below 10⁰ F.
- Active boiler (one not valved-off) will switch on when the outdoor air temperature is below 10⁰ F and deliver 200⁰ F hot water. Active boiler will switch off when the outdoor air temperature is above 30⁰ F.

- If the outdoor air temperature is below 50⁰ F and the return water temperature falls below 100⁰ F, send an alarm to the BAS (boiler or hot water pump failure).
- Outdoor air damper will open and switch on if boiler room temperature climbs above 80⁰ F and be closed/off otherwise.

Preliminary scope of work to include:

- Remove existing fan CF-2 and associated ductwork
- Provide 2,800 cfm vent fan at ceiling level with new damper
- Provide wall-mounted thermostat and control to new fan and damper
- Provide 2,000 MBH, natural gas-fired, sealed combustion, condensing boiler
- Provide electrical hookup and disconnect
- Provide return water temperature sensor and outdoor air temperature sensor
- Provide re-piping and shutoff valves for new boiler
- Tie boiler control boards, return water temperature sensor, outdoor air temperature sensor, and hot water pumps to building automation system (BAS)
- Remove existing expansion tank
- Provide new 80-gallon, bladder-type expansion tank
- Flush and fill hot water system
- Balance water flows through boilers and at heating coils
- Change control sequences to match those outlined above

If asbestos or lead abatement is required, that cost is not included.

Provide Gym AHU-2 Controls

Provide a variable frequency drive (VFD) on AHU-2 which will vary air flow to match temperature requirements in the 1998 gymnasium rather than run at full volume at all times.

Proposed control sequence:

- AHU-2 fan will run continuously during occupied periods and cycle, as needed, to maintain space temperature during unoccupied periods.
- When the outdoor air temperature is below 50⁰ F, fan will run at 50% of full speed and hot water valve will modulate to maintain space temperature at 65⁰ F during occupied hours and 60⁰ F during unoccupied hours.
- When the outdoor air temperature is above 50⁰ F, chilled water valve will modulate to maintain supply air temperature at 55⁰ F and fan speed will vary to maintain space temperature at 72⁰ F during occupied hours and 78⁰ F during unoccupied hours.

Preliminary scope of work to include:

- Provide 20-horsepower VFD and connect to existing motor
- Tie AHU-2 and VFD to building automation system (BAS)
- Change control sequences to match those outlined above

If AHU-2 motor replacement is required, that cost is not included. Re-balancing of the chilled water system is not included.

Provide a carbon dioxide (CO₂) sensor in the return duct serving AHU-2 to vary outside (ventilation) air based on demand in the 1998 gymnasium.

Proposed control sequence:

- When the outdoor air temperature is between 55 and 65⁰ F, outdoor air damper will be full open and return air damper will be full closed (economizer override). Otherwise, dampers will operate according to the following control sequences.
- During unoccupied periods, outdoor air damper will remain closed and return air damper will remain full open.
- During occupied periods, outdoor air damper will open 10% and return air damper will open 90%. If the CO₂ level rises to 1,000 ppm, outdoor air damper will open 25% and return air damper will open 75%. When CO₂ level drops below 800 ppm, outdoor air damper will return to 10% open and return air dampers will return to 90% open.

Preliminary scope of work to include:

- Provide a CO₂ sensor in the return air duct
- Tie CO₂ sensor, outdoor air damper, and return air damper to building automation system (BAS)
- Change control sequences to match those outlined above

If dampers or damper actuators need to be replaced, that cost is not included.

Replace Exhaust Fan with ERV

Replace the exhaust fan serving the 1998 bathrooms with a 1,500 cfm energy recovery ventilator (ERV).

Proposed control sequence:

- ERV will switch on during occupied hours and be off otherwise.
- Dampers in the exhaust air outlet and outdoor air inlet will open when ERV is on and be closed otherwise.

Preliminary scope of work to include:

- Remove existing roof exhaust fan and curb
- Provide roof-mounted ERV, roof curb, and dampers
- Provide electrical hookup and disconnect
- Tie exhaust air intake from ERV to existing bathroom exhaust ductwork
- Tie fresh air outlet from ERV to return air duct in nearby corridor
- Tie ERV to building automation system (BAS)
- Flash and seal ERV and roof curb weather-tight
- Program control sequences to match those outlined above

If asbestos or lead abatement is required, that cost is not included.

Provide Hot Water Fan Coil Unit Heaters

Provide six (6), ceiling-mounted, hot water fan coil unit heaters to serve the gymnasium, theatre, and two (2) music rooms respectively. Install units with quiet fans in the 1961 music rooms. These units would take the place of the furnace that serves these areas currently. These unit heaters could be connected to new outdoor air hoods in the roof with shutoff dampers where they can access clean, outdoor air for ventilating the spaces and can better control temperature in the spaces they serve. Hot water would be piped from the central boiler room in the 1998 addition.

Proposed control sequence:

- Outdoor air dampers will be open during occupied periods and be closed otherwise.
- Fan coil unit fans will run during occupied periods and cycle, as needed, to maintain space temperature during unoccupied periods.
- Hot water valve in fan coil will modulate to maintain space temperature at 72⁰ F during occupied hours and 60⁰ F during unoccupied hours.

Preliminary scope of work to include:

- Remove 2 existing vent units in music rooms
- Provide 2 fan coil units in music rooms with blank space for potential addition of cooling coil
- Provide 4 fan coil units in Gym with blank space for potential addition of cooling coil
- Provide 2 hoods and dampers over music rooms in locations currently occupied by vent units
- Provide 4 hoods, curbs, and dampers over gym
- Provide electrical hookups and disconnects
- Flash and seal hoods and curbs weather-tight
- Connect fan coils to boilers by routing hot water piping to 1998 addition
- Provide new wall-mounted thermostats (one per fan coil unit) and tie back to building automation system (BAS)
- Tie outdoor air dampers back to BAS

If asbestos or lead abatement is required, that cost is not included.

Replace Furnace with DOAS and Radiant Heat

Replace the furnaces in the 1961 school with a dedicated outdoor air system (DOAS) and a perimeter hot water system for radiant heat coupled to the existing hot water system in the 1998 addition.

Proposed control sequence:

- Outdoor air damper serving DOAS will be open during occupied periods and be closed otherwise.
- Fan in DOAS will run during occupied periods and be off otherwise.

- Hot water valve on DOAS will modulate to maintain 72⁰ F discharge air temperature during occupied hours.
- Hot water valve will open 100% and an alarm will be sent to building automation system (BAS) if return air temperature falls below 45⁰ F (freeze protection).
- Hot water valve in each radiant heating element, or fan coil unit, will modulate to maintain space temperature at 72⁰ F during occupied hours and 60⁰ F during unoccupied hours.
- Fan in each fan coil units will run whenever their respective hot water valves open and be off otherwise.

Preliminary scope of work to include:

- Remove existing furnaces and associated ductwork in mechanical room
- Provide DOAS with outdoor air damper, blank space for potential addition of cooling coil, return and discharge air temperature sensors
- Provide electrical hookup and disconnect
- Tie DOAS outdoor air duct to existing outdoor air hood
- Remove existing air mixing dampers in tunnels
- Duct discharge air from DOAS through tunnels and connect to existing air vents leading to classrooms
- Provide balancing dampers in room discharges
- Insulate and seal ductwork
- Provide radiant heating elements in classrooms with wall-mounted thermostats (one per room)
- Provide hot water unit heaters in some rooms where radiant heating cannot be installed and include wall-mounted thermostat (one per room)
- Tie DOAS, discharge air temperature sensor, return air temperature sensor, unit heaters, and wall-mounted thermostats to building automation system (BAS)
- Provide hot water supply and return piping through tunnels to serve DOAS, radiant heating elements, and unit heaters
- Remove auxiliary boiler and expansion tank in 1993 addition
- Provide hot water supply and return piping from tunnels to 1993 boiler room and connect to 1993 hot water system.
- Balance hot water flow through DOAS, radiant heating element, and unit heater
- Balance air flow from DOAS to each room served
- Program control sequences to match those outlined above

If asbestos or lead abatement is required, that cost is not included.

Replace 100 Ton Chiller

Replace existing Carrier Model 30GX-106-Y-520HA 100 ton chiller with a new, higher efficiency 100 ton chiller that uses R410 refrigerant.

Proposed control sequence:

- Chiller and chilled water pumps will run when the outdoor air temperature is above 70⁰ F and shut off when the outdoor air temperature drops below 55⁰ F.
- Chiller will provide 48⁰ F supply water when operating
- Chilled water valves in AHU will modulate to maintain 55⁰ F supply air temperature when chiller is operating.

Preliminary scope of work to include:

- Remove existing chiller and shutoff valves
- Provide new chiller and shutoff valves
- Replace electrical disconnect
- Remove and dispose of existing glycol from chilled water system
- Provide new chilled water supply and return temperature sensors
- Flush chilled water system
- Provide new commercial-grade glycol for chilled water system
- Balance chilled water (glycol) flow through chiller and air handling units
- Tie chiller, chilled water pumps, and air handling unit chilled water valves back to building automation system (BAS).
- Program control sequences to match those outlined above

If a new chiller pad, chilled water valves, or actuators need to be replaced, that cost is not included.

Install vestibule at main entrance

Preliminary scope of work to include:

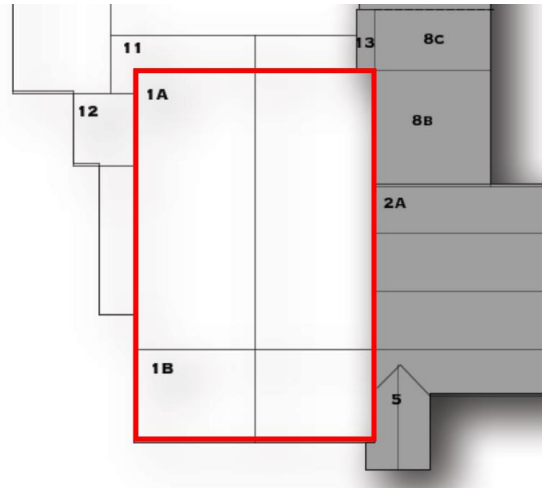
- Install four (4) interior doors (36" x 84") to create large vestibule
- Transom frame and Sidelites
- Hardware to match existing doors
- Glass insulated exterior, non-insulated interior
- Installed in new rough openings
- Approx. 36' of storefront framing to make secure corridor to office
- ¼" clear safety glass (for secure corridor)
- Framing would be open at head to allow heat to pass through
- Finish match existing
- Install Airphone device and locking mechanism

300. Roofing Upgrades

Scope of work to include re-roof of section 1A & 1B (1961 gym and stage area).

Existing Roof for Section 1A & 1B:

- 16,483 square feet (SF)
- Structurally sloped tectum deck
- 2 ply hot asphalt vapor barrier
- ½” wood fiberboard
- 2.5” EPS 1# density
- ¾” perlite
- EPDM and stone ballast
- Existing Estimated R-Value: 13.75



Preliminary scope of work for re-roof of section 1A & 1B to include:

- Remove existing brick chimney to below the roof deck
- Complete roof tear off to deck
- Adhere 2 layers of 2.6” Carlisle polyisocyanurate (20 psi) to deck with beads of flex fast adhesive
- Adhere 115 mil Carlisle Fleeceback EPDM with 3” fat @ seams in flex fast adhesive
- Install new gutters and edge metals (24 ga steel with kynar)
- Provide 20 year total systems warranty with 80 mph wind speed
- Proposed Estimated R-Value: 30

Roofing upgrade to be designed using the Group4 Reps/Building Owner Services (BOS) Program (Weather Tek Division, part of Gulfeagle Supply, who is a manufacturer rep for Carlisle Syntec Systems). Final scope of work is subject to modifications based upon the full investigation of existing field conditions and final design of the project.

400. Domestic Water Heaters

Replace three (3) existing domestic water heaters with new high efficiency, sealed combustion, fully modulating water heaters.

Scope of work to include:

Locker Room Area

- Remove and dispose of existing one (1) Bock Model No. 361PG, Input 385,000 BTU/HR, recovery rate of 347 gallons per hour, 90 gallon natural gas water heater from 2001.
- Install one (1) new water heater. Basis of design is a Bock opti-THERM (or equivalent) sealed combustion fully modulating water heater, 100 gallon natural gas, input of 299,999 BTU/HR, 93% to 98% thermal efficiency, recovery rate of 419 gallons per hour (80F temp rise), and 5 year tank/heat exchanger limited warranty.

1961 Mech Room 46

- Remove and dispose of existing two (2) PVI Model No. 80 V 125, Input 800,000 BTU/HR, recovery rate of 937 gallons per hour (80F temp rise), 125 gallon natural gas water heater from 1998.
- Install two (2) new water heater. Basis of design is a Bock opti-THERM (or equivalent) sealed combustion fully modulating water heater, 125 gallon natural gas, input of 500,000 BTU/HR, 93% to 97% thermal efficiency, recovery rate of 698 gallons per hour (80F temp rise), and 5 year tank/heat exchanger limited warranty.

Exhibit D: Utility Saving and Operating Parameters

They are based on standard and sound engineering principles using building energy model simulations and engineering calculations. The baseline operating parameters of the equipment was collected and identified during the Investment Grade Audit by H&H. The Contractor shall be allowed to make adjustments to the calculated annual utility savings using standard and sound engineering principles if the baseline operating parameters used are found to be inaccurate. This includes, but is not limited to, the following:

- a. Building Occupancy Hours
 - The hours the respective building is occupied and/or equipment and lighting is utilized is a variable which will be adjusted for if the number of hours rises or drops more than 10% of the quantity used in the calculations of the annual utility savings.

- b. Building Changes
 - The Contractor may use energy modeling software to calculate changes in the established baseline and calculated savings due to building square footage changes, weather, major remodeling, addition of equipment, or change in building or central plant usage. The Client agrees to notify the Contractor of any changes or additions of equipment or environments that may affect the energy consumption associated with the building under this Agreement at the Annual Meeting.

Exhibit E: Performance Guarantee

Guaranteed Annual Utility Savings

The following table shows the *Calculated Annual Utility Savings* for each fuel type (electric, gas) and the final *Guaranteed Annual Utility Savings*. H&H guarantees that the Client will achieve the following *Guaranteed Annual Utility Savings* compared to the established baseline in annual utility consumption in each Guarantee Year during the Term of this Agreement. This value may be adjusted based on changes to the baseline operating parameters as explained in Exhibit D and elsewhere in this Agreement.

Utility	Fuel Type	Unit of Savings	Calculated Annual Utility Savings	Net Effective Guarantee Multiplier ¹	Guaranteed Annual Utility Savings ²
Alliant Energy	Electric	kWh	73,177	70%	51,224
Alliant Energy	Natural Gas	Therms	19,536	70%	13,675

1. The *Calculated Annual Utility Savings* are multiplied by the Net Effective Guarantee Multiplier to develop the final *Guaranteed Annual Utility Savings*. The Net Effective Guarantee Multiplier is adjusted based on level of certainty of assumed operating conditions versus actual operating conditions.

2. The total *Guaranteed Annual Utility Savings* is based on the aggregate energy savings for all projects, not on individual project savings. Guaranteed Annual Utility Savings are transferable between electric (kWh) and natural gas (therm) using the conversion of 1 therm = 29.308 kWh (or 1 kWh = 0.03412 therms).

Operation & Maintenance Savings

The Parties agree that the Work will result in the following stipulated O&M savings:

Description	Annual O&M Savings (\$)
HVAC Upgrades	\$19,600
Roofing Upgrades	\$2,700
Domestic Water Heaters	\$600
Total	\$22,900

The Parties agree to use the Operation & Maintenance Savings each Guarantee Year for the annual Guarantee Reconciliation subject to adjustment provisions set forth in this Agreement. All Operation and Maintenance Savings are subject to the same inflation values as that approved for energy cost increases.

Exhibit F: Measurement and Verification Responsibilities

1. Scope of Services

The Contractor or its Subcontractors shall provide the services identified below:

- All pre and post retrofit measurements as needed to verify each project as noted in the following tables.

2. Contractor's Equipment

The Contractor or its Subcontractors may provide tools, documentation, panels, or other equipment in the facility for the Contractor's convenience in performing the Contractor's Measurement and Verification Responsibilities. That equipment shall remain the Contractor's property. The Contractor retains the right to remove such items at any time during the term, or upon the termination of Contractor's Measurement and Verification Responsibilities.

3. Annual Reporting Terms and Conditions

During the term of the Guarantee, H&H will conduct an annual Measurement and Verification report to the Client. The Contractor's obligation to perform such measurement and verification services does not extend beyond this Agreement.

The Client will give Contractor full access to all Equipment, records, and to the facilities themselves when Contractor requests such access. If access cannot be provided, Contractor's obligations under this Contract as it relates to the inaccessible equipment will be suspended until such access to the Equipment is provided. To fulfill the requirements of the annual report, the Client will provide the following data to the Contractor by January 30th of each year for the previous year (previous 12 months):

- Access to the Client's online utility websites to obtain monthly usage

An itemized list and explanation of all facility changes, modifications to Equipment, addition of equipment, and changes in operation hours or usage which may affect the benchmark value and savings guarantee.

4. Measurements and Verification Methods

The Contractor shall use the following methods to measure and verify utility savings throughout the Term of this Agreement.

FEDERAL M&V OPTIONS:

M&V Option	Performance and Usage Factors	Savings Calculation
Option A – Estimated and Short-Term Measured Factors	Based on a combination of measured and estimated factors. Measurements are spot or short-term taken at the component or system level. Estimated (non-measured) factors are supported by historical or manufacturer’s data.	Engineering calculations, component or system models.
Option B – Periodically or continuously Measured and Estimated Factors	Based on periodic or continuous measurements taken at the component or system level when variations in factors are expected. Spot or short-term measurements may suffice when variations in factors are not expected	Engineering calculations, component or system models.
Option C – Utility Billing Data Analysis	Based on long-term whole-building utility meter, facility level, or sub-meter data.	Based on regression analysis of utility billing meter data to account for factors that drive energy use.
Option D – Calibrated Computer Simulation	Computer simulation inputs may be based on a combination of the following: reasonable assumptions based on historical data gathered at facilities, performance specifications of equipment of system being installed, engineering estimates, spot, short-term or long term measurements of systems components, and long-term whole-building utility meter data.	Based on computer simulation model calibrated with whole-building or end-se metered data or both.

Exhibit G: Schedule of Payments

Besides the Initial Payment, monthly billings will be based upon actual work completed and/or materials & equipment for which orders are pending. All values are based upon the total Contract Amount. The following is the projected invoice amounts but will likely be adjusted once the project is engineered and bids are received back.

Month	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb 17	Mar-17	Apr-17	May 17	June 17	Jul-17			Dec-17
Payment Amount	\$120,000													
	After initial payment, progress billing to \$600,000										Progress billing to \$600,000			

Exhibit H: Project Schedule

An updated project schedule will be developed, reviewed with the Client, and then finalized prior to commencement of the construction phase.

Exhibit I: Certificate of Substantial Completion for Warranty

H&H Project No.: _____
Date of Issuance: _____
Date of Agreement: _____

Pursuant to the Agreement, by and between the Contractor and the Client, the Client does hereby acknowledge the following:

The Client agrees that the scope of work specified in Exhibit C of this Agreement and any applicable amendments thereof have been sufficiently completed as to allow beneficial use of said systems and/or equipment and that the client hereby acknowledges the commencement of warranties as of the date specified.

Project #	Description of Project	Date ¹	Client Approval (Signature)
200	HVAC Upgrades		
300	Roofing Upgrades		
400	Domestic Water Heaters		

1. Warranty Commencement Date

The Warranty Period commences as of the date of Substantial Completion for the Work described on Exhibit C.

CLIENT
 River Valley School District

H&H
 H&H Energy Services, Inc.

Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____

Signature: _____
 Printed Name: Josh Kaurich
 Title: Vice President
 Date: _____

Exhibit J: Certificate of Completion and Acceptance

H&H Project No.: _____
Date of Issuance: _____
Date of Agreement: _____

Pursuant to the Contract, by and between the Contractor and the Client, the Client does hereby acknowledge the following:

- Completion and Acceptance:** The Client agrees that the scope of work specified in Exhibit C of this Agreement and any applicable amendments thereof have been completed by the Contractor and are hereby accepted by the Client. The client hereby releases Contractor obligations under any performance and payment bonds posted for the Project as of the date its signature.
- Project Completion Documents:** The Client acknowledges receipt of finalized project costs, all amended exhibits, as-built drawings, operations and maintenance manuals, manufacturer warranty information, contact names and numbers of all vendors and applicable service representatives, and training required under this Agreement.

Project #	Description of Project	Date ¹	Client Approval (Signature)
200	HVAC Upgrades		
300	Roofing Upgrades		
400	Domestic Water Heaters		

1. Date of Final Completion

Customer accepts Services as fully complete and assumes full possession of the scope of work as of the Date of Final Completion. Upon execution of this certificate, Customer shall pay all applicable retention to H&H.

CLIENT
 River Valley School District

H&H
 H&H Energy Services, Inc.

Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____

Signature: _____
 Printed Name: Josh Kaurich
 Title: Vice President
 Date: _____

Exhibit K: Client's Maintenance Responsibilities

The Client hereby agrees to assume the following responsibilities as part of this Agreement:

1. Maintain and/or Replace Faulty Equipment
 - a. The Client shall properly maintain all equipment that is being repaired, replaced or modified as a result of the Work, or that will have an impact on the Contractor's ability to meet the Performance Guarantee. When it is necessary to replace the equipment that affects the Contractor's ability to meet the Performance Guarantee, the Client shall replace it with an equipment of at least equal energy and operational efficiencies.
 - b. Upon receiving a written notice from the Contractor describing any operational or maintenance deficiency, the Client shall immediately make arrangements to remedy the deficiency. Once the deficiency is corrected, the Client shall notify the Contractor to perform inspection on the remedial improvements.
2. Notification of Problems
 - a. The Client shall promptly notify the Contractor of any system or building changes, which may impact the Contractor's ability to meet its obligation in Exhibit E: Savings Guarantee
3. Current Responsibilities
 - a. The Client shall perform the following work before the Completion Date:
 - Be available for a project kick off meeting and project completion meeting
 - Be available for any on-site safety concerns as they may arise during project construction
 - Designate appropriate personnel for signing off on pre and post Measurement and Verification of ECM's.
 - Designate appropriate personnel for signing off on completed training hours.
 - Client to make the Contractor aware of any specific customer site conditions that will need to be adhered to during the construction phase of the project.

The following are the responsibilities of the Client, not otherwise set forth in this Contract, in connection with the management and administration of the Performance Guarantee after project completion:

1. Provide the Contractor copies of all Utilities (gas, agri-fuels, oil, water, and electric bills) upon request.
2. Provide the Contractor with the following information:
 - a. Major schedule changes within 72 hours of occurrence
 - b. Major Facility Construction/Remodeling/Expansion changes or plans
 - c. Changes to HVAC equipment
 - d. Changes, additions, or deletions of major energy consuming equipment.
 - e. Occupancy or use changes.
3. Notify the Contractor equipment, controls, or strategy changes that might impact savings during the Measurement and Verification phase of the Project.
4. Notify the Contractor of any known building code violations.
5. Maintain standard facility and building operation to conserve energy, including but not limited to the following: Keep windows closed; Maintain thermostat set points and schedules per this Contract; Turn off lights in unoccupied rooms; Control HVAC equipment in the unoccupied mode when space is unoccupied; Keep vestibule doors closed to reduce infiltration.

6. Discuss with the Contractor before any changes with respect to utility deregulation or any proposed utility agreements, as it pertains to the facilities within this contract.
7. Ensure that Maintenance Personnel are properly trained throughout the term of this Contract.
8. Provide a security space on the job site for material storage, meeting room, and toilet facilities for the construction personnel.
9. Provide the installation and monthly cost of electronic access (internet or dedicated telephone line) used by the Direct Digital Control (DDC) system for on-line analysis, data transfer, troubleshooting, and programming, between the Contractor and the Facilities.

Exhibit L: General Requirements

1.0 CONTRACTOR'S USE OF PREMISES

The Contractor shall limit his or her use of premises for work and storage to allow for facility occupancy in all areas. The Contractor shall assume full responsibility for the protection and safekeeping of products under this contract stored on the site and shall move any products under his or her control that interfere with Facility operations.

2.0 BUILDING OCCUPANCY

The Contractor shall cooperate with the Client to establish work schedules if disruption is necessary in any area.

3.0 ENERGY SYSTEM DISRUPTION

The Contractor shall consult with the Client prior to disrupting any energy systems.

4.0 STORAGE OF MATERIALS

The Contractor shall make arrangements with Client to provide for the storage of materials on the job site. If such arrangements cannot be made, contractor shall provide facilities necessary for storage. This may also include crew quarters and lunchroom facilities if necessary. All contractor storage areas must be confined to the area designated by the Client.

5.0 RECEIVING, HANDLING, AND STORAGE

The Contractor shall receive from carriers at the Client and check, unload, handle and store all materials and equipment that are to be incorporated in the construction under these Specifications. The Contractor shall be responsible for the prompt unloading of materials and equipment. The Contractor shall provide all storage facilities for contractor-furnished materials and equipment. The Contractor MAY NOT use the Client receiving area, personnel or equipment to receive any materials unless approved by the Client.

6.0 TEMPORARY LIGHT, POWER AND WATER

The Client will furnish all AC electricity and water. However, the Contractor shall furnish and pay for any/all temporary conduit, wiring and piping, as may be required from the nearest available point of service and shall remove same upon completion of the Work at no cost to the Client.

7.0 SANITARY FACILITIES

The Contractor shall make arrangements with the Client for the use of sanitary facilities and shall be responsible for the cleanliness and conditions of said facilities until completion of the project. The Contractor shall remove any workman creating a nuisance on the premises from the site.

8.0 DEMOLITION AND REMODELING WORK:

The Contractor shall remove existing equipment and materials noted on the Drawings or in the Specifications to be removed or as required for the installation of new construction. Dust, noise and vibration shall be controlled and held to a minimum. Demolition work shall be coordinated and conducted in a manner that will not interfere with the normal operation of the adjacent work areas. This work shall be planned in advance with the Client.

Exhibit L-1: Site-Specific Requirements

In addition to the General Requirements, the Contractor shall conduct all operations in accordance with the following specific conditions. No smoking is allowed on site premises. Contractor shall consult with the Client about other site specific requirements and comply with all reasonable requests from the Client.

1.0 CLIENT RESPONSIBILITIES

The Contractor shall direct all questions and concerns on the following items directly to the Client Contact:

- A. Any item that affects the Contract.
- B. All items that affect the project schedule, work schedule, or hours of work.
- C. All items that affect materials handling and staging.

The Contractor shall direct all questions and concerns on the following items directly to the Client:

- A. All items involving building security.
- B. All items involving work access to a specific area.
 - This does not relieve the Contractor of detailed schedule and work plans. However, the Client will administer all discrepancies in the schedule.
- C. All items involving housekeeping and final work area clean up.

2.0 SCHEDULE

The Contractor shall provide a detailed schedule showing the type of work and the areas by building. The Client Contact will incorporate the Contractor's schedule in the project schedule. Updates of the project schedule will be the basis for the program reports. The Contractor shall consider the following items when preparing the schedule and work plans.

- A. Access
 - The Client will be open Monday through Friday. No work will be performed on weekends or off-hours without the permission of the Client.
- B. Non-office Areas
 - Non-office areas such as classrooms, hallways, lobbies and equipment rooms, will be available during the business day excepting scheduled classes or events. The Work in these areas shall not prohibit safe movement of building users.
- C. Exterior Work
 - The Client will be open Monday through Friday. No work will be performed on weekends or off-hours without the permission of the Client.
- D. Scheduling Adjustments
 - The Contractor will be required to adjust the construction schedule to accommodate both scheduled and unscheduled events.

3.0 DISPOSAL

The Contractor shall be responsible for disposal or storage of all construction waste, trash and removed equipment.

- A. Disposal Facilities
 - The Contractor must furnish all disposal facilities. Disposal in Client disposal canisters will not be permitted.
- B. Existing Equipment
 - Existing equipment removed during the retrofit must be stored in a trailer provided by contractor. The Client will establish which equipment will be placed in storage.

C. Lamp Disposal

- The Contractor shall dispose of all removed lamps in accordance with all necessary environmental regulations. The Contractor may furnish a storage trailer on Client property.

D. Ballast Disposal

- The Contractor shall dispose of all removed ballasts in accordance with all necessary environmental regulations. The Contractor shall furnish storage and containers for ballasts.

4.0 OFFICE AND STORAGE FACILITIES

The Contractor shall furnish office and storage trailers in accordance with their need and the following conditions:

- A. Office and storage trailers will be located in the designated area.
- B. All trailers shall be provided with pads and blocking to prevent damage to blacktop or grass.
- C. The Contractor's equipment, materials and waste must be enclosed and secured. Piles of material around trailers will not be permitted.
- D. The Contractor must receive all materials and equipment. Materials cannot be stored or staged at the loading dock. Parking will not be allowed at the loading dock

5.0 TELEPHONE SERVICE

The Contractors must provide for their own telephone service as required.

6.0 ELECTRIC SERVICE

The Contractor must furnish and install the electric service for the trailers as required.

7.0 RESTROOMS

The Contractor may use Client restrooms. The Contractor must furnish all restrooms outside the building.

8.0 EATING AND LUNCH AREAS

The Contractors shall be responsible for maintaining a clean, well picked up area presentable to Client occupants. "Pin-ups" or other offensive material will not be tolerated.

9.0 PARKING

Parking will be available as designated by the Client.

10.0 CLEAN-UP AND RESTORATION OF DISTURBED AREAS

The Contractor shall be responsible for cleaning all work areas.

A. Interiors

- At the end of each day or shift, the Contractor shall pick-up, sweep or vacuum the work area to prevent tracking dirt through the facility. Damage to the facility including equipment, structures or the contractor at his or her cost must restore finish.

B. Exterior

- All sidewalk and other areas must be clear of excavated material and equipment. The walk areas must be swept clean to prevent tracking into building. Excavation must be well barricaded and lit at night. The Contractor must repair any damage to blacktop, concrete or grass areas from excavation or equipment.

Exhibit M: Insurance Coverage

At all times during its performance under this Contract, Contractor shall maintain in full force and effect, the following insurances: Worker's Compensation Insurance, Commercial General Liability Insurance and Excess Liability-Umbrella, and Auto Liability Insurance. All such certificates evidencing such insurance shall name the Client as an additional insured. H&H represents that it has worker's compensation to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. H&H shall provide all such certificates to the Client prior to commencement of services or delivery of goods.

Minimum Limits Required

TYPE	Limits
Commercial General Liability	\$1,000,000 General Aggregate (applies per project) \$1,000,000 Products Aggregate \$1,000,000 Personal Injury \$1,000,000 Each Occurrence \$50,000 Fire Damage \$5,000 Medical Expense Per Person
Automobile Liability	\$1,000,000 Combined Single Limit
Excess Liability – Umbrella	\$5,000,000 Each Occurrence \$5,000,000 Aggregate

Worker's Compensation/Employers Liability Insurance

1. State: Statutory to all states the work is being performed
2. Federal: As Applicable
3. All Employees, partners, individuals, any managers on project site must be included for coverage.