

## Energy Savings Contract Addendum #1

This Energy Savings Contract Addendum #1 ("**Addendum #1**") is entered into on \_\_\_\_\_, 2021 ("**Effective Date**"), by and between the Broken Arrow Public Schools (the "**District**") and Cenergistic LLC ("**Cenergistic**"), to amend that certain Energy Savings Contract by and between the District and Cenergistic with a Start Date of September 1, 2016 ("**Contract**").

**WHEREAS**, the Contract terminates pursuant to its terms on February 28, 2022 and whereas the Contract may be modified by a writing signed by the parties pursuant to Section 12(a) of the Contract; and

**WHEREAS**, the parties desire to (1) extend the term beyond February 28, 2022, (2) provide for additional services, (3) change the Performance Fee (as defined in the Contract) for the final twelve (12) months of the Contract (i.e., beginning March 1, 2021) and for the Extended Term, and (4) amend certain other provisions of the Contract.

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

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

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

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

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

"(c) **Energy Accounting Software.** The effective management of energy information is a first step to achieving positive results through accountability. Energy consumption will be accounted for by using the Energy Accounting Software, with which Cenergistic's energy consultants are knowledgeable and trained to provide support to the District. No later than 90 days after the Start Date, the District must license the Energy Accounting Software program (and pay the licensing fees) from EnergyCAP, Inc. or, if later recommended by Cenergistic to its clients, an alternative Energy Accounting Software program. Data input and maintenance will be managed and controlled, at Cenergistic's option, either by the Energy Specialist or at Cenergistic's corporate office, with District access to review all data entry."

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

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

- Dedicated assignment of Cenergistic Energy Specialist to District
- On site and remote support from Cenergistic experts and engineers

- Enhanced sustainability driven by Cenergistic proprietary software suite
- Assistance with Program promotion and public relations opportunities
- Access by District personnel to Cenergistic virtual training conferences”

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

“At the end of the Term, the Contract is extended for an additional thirty-six (36) month period (the “**Extended Term**”) such that the Contract shall terminate on February 28, 2025. Notwithstanding anything in the Contract to the contrary, each twelve (12) month period during the Extended Term shall be a Performance Year, with the first twelve (12) month period being the “Sixth Year” and so on through the “Eighth Year”. The Contract shall include eight (8) Performance Years. Further, at the expiration of the Extended Term (and any additional terms thereafter as a result of auto-renewal), the Contract shall automatically renew for an additional one (1) year period unless ninety (90) days prior written notice of non-renewal of the Contract is provided by a Party to the other Party.”

6. Amendment to Section 7(b). The first two (2) sentences of Section 7(b) are amended and restated in their entirety as follows while the remaining language in Section 7(b) remains unchanged:

“Cenergistic’s Performance Fees during the Term and the Extended Term (collectively, the “**Fee Period**”) are as follows: (A) for each month during the first four (4) Performance Years, the District shall pay Cenergistic a fee in an amount equal to 50% multiplied by the Total Savings for that month (“**Original Fee**”) and (B) for each month of the final twelve (12) months (i.e. beginning March 1, 2021) of the Term and the thirty-six (36) months during the Extended Term, the District shall pay Cenergistic the amount of Twenty-One Thousand Five Hundred Dollars (\$21,500) (“**Extended Fee**”; the Original Fee and the Extended Fee are collectively referred to as the “**Performance Fees**”). The District acknowledges and agrees that the Extended Fee amount is a discounted fee amount based on the District’s agreement to enter into this Addendum #1 for the entire Extended Term and that the amount of the Extended Fee would be higher if the District had not agreed to the length of the Extended Term. Therefore, the District agrees to pay the Work Fee to compensate Cenergistic for the work performed by Cenergistic and for the benefits received by the District (and not as a penalty) in the event a Work Fee payment obligation is triggered.”

7. Amendment to Section 8(a). The last two (2) rows of the Table in Section 8(a) are amended and restated in their entirety as follows:

Performance Years Two through Seven	An amount equal to the preceding twelve months’ Performance Fees
Performance Year Eight	The lesser of (a) the remaining Extended Fees for the Extended Term or (b) an amount equal to six Extended Fees

8. Certain References in the Contract.

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



sentence of Section 5(d)(iv), (3) second sentence of Section 7(e), (4) first sentence of Section 8(a), (5) first sentence of Section 8(b), (6) last sentence of Section 8(c), and (7) first sentence of Section 8(d).

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

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

9. Sections 9 and 10. Sections 9 and 10 of the Contract are hereby amended and restated in their entirety as follows:

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

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

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

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

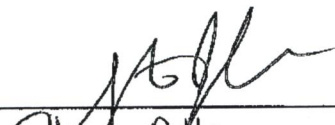
(c) Non-Solicitation. While under contract with Cenergistic and for a period of two years following the termination of this Contract, the District will not solicit, hire or retain any Cenergistic employees or contractors for employment or other work at or for the District."

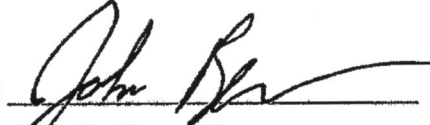
10. Deletion of Section 11. Section 11 is deleted.

11. Ratification of Contract. All other terms and conditions contained in the Contract, as modified by this Addendum #1, shall remain in full force and effect and are hereby ratified by the parties. The Parties have executed this Addendum #1 effective as of the Effective Date.

Broken Arrow Public Schools

CENERGISTIC LLC

By:   
Name: Steve Allen  
Title: BOE President  
Date: 2-8-2021

By:   
Name: John Bernard  
Title: President, Area Sales  
Date: February 8, 2021