

ENERGY AND UTILITIES MANAGEMENT CONSULTING
SERVICES AGREEMENT

BETWEEN

ENERGY EDUCATION, INC.

AND

SCHOOL BOARD OF SARASOTA COUNTY

Effective December 13, 2006

Arthur S. Hardy

Counsel to
School Board of Sarasota County

Adams, Lynch & Loftin, P.C.
Bedford, Texas
Counsel to
Energy Education, Inc.

TABLE OF CONTENTS

<u>Paragraph</u>	<u>Title</u>	<u>Page</u>
	Recitals and Definitions.....	5
1	Representations	6
1.1	Representations of the Company.....	6
1.2	Representations of the District.....	6
2	The Program	7
2.1	Described.....	7
2.2	Implementation of the Program by the District.....	7
3	Energy Educators/Managers	8
3.1	Selection and Training.....	8
3.2	Employment.....	9
3.3	Responsiveness of Energy Educator/Managers.....	9
4	COMPUTER SOFTWARE	10
4.1	Computer Software.....	10
4.2	The Energy Accounting System.....	10
4.3	Initial Training Period.....	10
4.4	Savings.....	12
5	Term	13
5.1	Term.....	13
5.2	Extension.....	13
5.3	Termination.....	13
6	Savings Sharing	14
6.1	The Company's Savings Share.....	14
6.2	The Company's Compensation.....	14
6.3	Additional Amount.....	14
6.4	Guarantee.....	16
7	Confidential Information	18
7.1	Specified.....	18
7.2	Requirements upon Termination.....	19

8	Miscellaneous Provisions	20
8.1	Notices.....	20
8.2	Governing Law.....	21
8.3	Entire Agreement.....	21
8.4	Severability.....	21
8.5	Enforceability.....	21
8.6	Amendment.....	22
8.7	Survival of Representations, Etc.....	22
8.8	Non-Waiver.....	22
8.9	No Third Party Beneficiaries; Binding Effect.....	22
8.10	Further Assurances.....	22
8.11	Expenses.....	22
8.12	Default.....	23
8.13	RFP Response.....	23
8.14	Fingerprinting.....	23
	 EXECUTIONS	 23
	Exhibit A - Energy Management Conservation Policy.....	24
	Exhibit B - Energy Conservation Guidelines.....	26

Glossary of Defined Terms

<u>Term</u> [<u>Paragraph where defined</u>]	<u>Page</u>
Additional Amount [Paragraph 6.3].....	15
Agreement [Recital B].....	5
base year [Paragraph 4.2].....	10
Commencement Date [Paragraph 5.1]	13
Company [Recital A].....	5
Computer Software [Paragraph 4.1].....	10
Confidential Items [Paragraph 7.1].....	18
District [Recital A].....	5
District's Costs [Paragraph 6.4].....	16
District's Net ITP Expenses [Paragraph 4.3].....	11
District's Net ITP Savings [Paragraph 4.3].....	12
EMS [Paragraph 3.1].....	9
Energy Educators/Managers [Paragraph 3.1].....	8
Initial Training Period [Paragraph 4.3].....	11
ITP Expenses [Paragraph 4.3].....	11
ITP Savings [Paragraph 4.3].....	11
Performance Year [Paragraph 4.3].....	11
Program [Recital B].....	5
Protective Measures [Paragraph 7.1].....	19
Recent Year Results [Paragraph 6.3].....	15
Request [Paragraph 7.1].....	18
Requested Confidential Information [Paragraph 7.1].....	18
Responses [Paragraph 7.1].....	18
Savings [Paragraph 4.4].....	12

Savings Share [Paragraph 6.1].....	14
Sharing Period [Paragraph 6.1].....	14
Sliding Scale Minimum Amount [Paragraph 6.3].....	15
Sliding Scale Performance Amount [Paragraph 6.3].....	15
Suspension Period [Paragraph 6.4].....	18
Term [Paragraph 5.1].....	13

**ENERGY AND UTILITIES MANAGEMENT CONSULTING
SERVICES AGREEMENT**

Recitals and Definitions

A Energy Education, Inc. (the "Company") is a Texas corporation with its principal office in Wichita Falls, Wichita County, Texas. The School Board of Sarasota County (the "District") is a duly organized corporate public entity of the State of Florida with its principal offices in Sarasota, Sarasota County, Florida.

B This writing (the "Agreement") sets forth the agreement between the Company and the District pertaining to the Company's furnishing energy (that is, electricity, gas, propane and fuel oil) and utilities (that is, water and sewer) management consulting services (the "Program") to the District.

C The Company's energy and utilities management Program has these goals:

1 To help the District conserve energy and utilities to save the non-renewable resources of the earth;

2 To help the District maintain a quality learning environment for its students, teachers and staff;

3 To help save dollars which the District can productively reinvest in its ongoing educational activities; and

4 To develop a team relationship between the Company's personnel and the District's School Board, administration, faculty and students to create an attitude within the District where every person becomes an energy and utilities saver and not just an energy and utilities user.

D The Company and the District mutually acknowledge that the District's savings pursuant to this Agreement will depend on the mutual efforts of the respective personnel of the Company and the District.

NOW THEREFORE, know all men by these presents, that for and in consideration of the mutual covenants and obligations herein provided, the sufficiency of which is hereby respectively acknowledged, the Company and the District agree:

Representations

1.1 Representations of the Company. The Company represents to the District:

1.1(a) The Company is a corporation duly organized and validly existing pursuant to the laws of the State of Texas, and the Company has the authority to enter into, and all necessary corporate actions have been taken by the Company to enter into and perform its obligations pursuant to, this Agreement which is duly binding upon the Company.

1.1(b) The Company has engaged in the business of furnishing energy and utilities management consulting services to public school districts continuously since 1986.

1.1(c) The Company has active or concluded contracts with more than 700 other public school districts across the country to provide energy and utilities management consulting services comparable to those to be furnished to the District pursuant to this Agreement.

1.1(d) The Company and each of the persons it will assign to furnish any of the energy and utilities management consulting services herein required to be provided by the Company are, and will be, respectively qualified to perform those services.

1.2 Representations of the District. The District represents to the Company:

1.2(a) The District is a duly organized and validly existing corporate public entity pursuant to the laws of the State of Florida and the District has the authority to enter into, and all necessary actions have been taken by the District to enter into and perform its obligations pursuant to, this Agreement which is duly binding upon the District.

1.2(b) The information furnished to the Company by the District and pertaining to its prior energy and utilities consumption, and upon which the Company based both its previous estimates of the District's future cost avoidance when using the Company's Program and the terms of the Company's compensation, is true, complete and correct.

2 The Program

2.1 **Described.** The Company will provide the Program to the District for its use as herein stated. The Program will be designed by the Company to obtain optimal, achievable results to reduce the District's usage of energy and utilities when the Program is substantially implemented by the District. The Program shall include the following:

2.1(a) A method provided by the Company to enable the District to use its existing computers to monitor its energy and utilities consumption as a means of reducing the District's energy and utilities expenditures;

2.1(b) Energy conservation educational materials provided by the Company to the District's Energy Educators/Managers (defined in Paragraph 3.1) that will enable the District to implement the Program so that maximum results can be achieved as quickly as possible;

2.1(c) Assistance provided by the Company to the District's administration to enable it to account for the District's energy and utilities consumption in such a way that adequate accountability for energy and utilities consumption can be developed throughout the District;

2.1(d) The necessary support and assistance provided by the Company to the District's Energy Educators/Managers so that the District and its Energy Educators/Managers may utilize the necessary computer hardware and the Computer Software (defined in Paragraph 4.1) and implement the Program; and

2.1(e) Research, training and consultation by qualified Company personnel who will be present in the District from time to time to assist the District and its Energy Educators/Managers in the implementation of the Program.

2.2 **Implementation of the Program by the District.**

2.2(a) The Company and the District shall respectively ensure that its employees and contractors understand what is expected of each of them in order to maximize energy and utilities cost avoidance for the District.

2.2(b) The District's School Board, the Superintendent and all of the District's senior management shall make an early, strong and continuing commitment to the success of the District's implementation of the Company's Program, and the District shall communicate its commitment to all of its employees, students and contractors. The District shall promptly

adopt an energy and utilities management policy which is consistent with the Program and substantially in the form of the attached **Exhibit A**; the District's administration shall promptly promulgate appropriate guidelines for such policy which are substantially in the form of the attached **Exhibit B**; and the District shall promptly commence, and then continue at its expense, to implement the Program throughout the District. The Energy Educator/Managers will not be assigned any duties or responsibilities that are unrelated to the energy management program or that limit or hinder the Energy Educator/Managers' pursuit of the program's goals for the District. The District will ensure that outside contractors, if any, involved in upgrading, remodeling or other construction at existing District facilities will comply with the Energy Conservation Guidelines, or appropriate adjustments will be made by the District's Energy Educator/Managers and Energy Education in calculating total savings hereunder. The District shall not allow or permit any energy or utilities provider or consultant, consultant or provider of energy or utilities conservation measures or any other vendor, company, firm or person to interfere with, impede or hinder the Program or its implementation in the District, including but not limited to actions or threatened actions by any such provider, vendor, company, firm or person to claim cost avoidance or savings that is cost avoidance or savings related to the Program.

3 Energy Educators/Managers

3.1 Selection and Training. The Company and the District shall together select two (2) energy educator/managers from the District's faculty or staff (the "Energy Educator/Managers"). In the event that a suitable candidate cannot be identified from the District's faculty or staff, wherever possible, candidates may be solicited from former faculty or staff members who retired from the District. The selection of the Energy Educator/Managers shall be based upon the Company's personnel guidelines and selection process, provided that such selection guidelines and process do not conflict with legal requirements that govern and control hiring by the District. Because of the Company's financial commitment and performance responsibility to your District, and our extensive experience in conducting over 800 energy educator/manager searches across the country, the Company must play the major role in this selection process, and the person selected by Energy Education and hired by the District for this important position must be acceptable to both the Company and the District. Any diminution of the Company's role in this selection process potentially can reduce the effectiveness of the District's implementation of its energy management program and invalidate the Company's guarantees for its success. The Company will be responsible for training the new Energy Educator/Managers to insure that they acquire the necessary skills to accomplish the job assignment and assist in

implementing the energy management program. As a critical part of, and in order to assist in the District's implementation of, the Company's energy management program, the District shall provide each Energy Educator/Manager with the necessary direction and authority to implement such program in and on the District's properties including directly or indirectly (in coordination with other District personnel) making adjustments to the programming of the District's energy management system (the "EMS"), including changes in the temperature settings and run times of the HVAC, boiler and all other equipment, if any, which is controlled by the District's EMS as well as each building's lighting, sewer and water usage, time clocks and thermostat settings which are not controlled by the District's EMS. This training will be accomplished in the following ways:

- a. One-on-one training in the District by the Company's personnel;
- b. Extensive professional reading materials that the Company will provide; and
- c. Attendance at seminars sponsored by the Company, including participation in user group meetings.

3.2 **Employment.** The Energy Educator/Managers will be employees of the District, and the District will be solely responsible for their salaries, fringe benefits, costs, travel and communications expense, seminar expenses, etc. In order to protect the Confidential Items (defined in Paragraph 7.1), each Energy Educator/Manager shall sign a confidentiality agreement and covenant not to compete with the Company, and the form and substance thereof must be acceptable to the Company. If any Energy Educator/Manager is terminated by the District or is unwilling or unable to continue as an Energy Educator/Manager, the Company and the District shall together select a new energy educator/manager as provided above, and the Company shall train the replacement Energy Educator/Manager at no additional cost to the District.

3.3 **Responsiveness of Energy Educator/Managers.** A very essential element in the success of the program is that each Energy Educator/Manager must be responsive to the Company's direction. However, Energy Education will not be the Energy Educator/Managers' supervisor and the District shall be responsible for conducting formal periodic evaluations of the Energy Educator/Managers' performance. It is essential that the District's Energy Educator/Managers attend both the on-site appointments scheduled by Energy Education in the district and the regular seminars and user group meetings organized and sponsored by the Company and which are usually held three times per year. This attendance is an integral part of the Energy Educator/Managers' continuing training and of the District's

implementation of the energy management program. The District shall not pay the Company any amounts for each Energy Educator/Manager's attendance at the seminars and user group meetings, but the District shall be responsible for the costs of each Energy Educator/Manager's travel, food and lodging incident to his or her attendance.

4 COMPUTER SOFTWARE

4.1 **Computer Software.** The Company will work with the District's administration to account for energy in such a way that adequate accountability for energy consumption will be developed throughout the District. This accounting will result from the District's licensing and using an energy accounting Computer Software program which is acceptable to the Company (the "Computer Software"), at a cost not to exceed Twenty Five Thousand Dollars (\$25,000), and annual renewals thereafter at a cost not to exceed Two Thousand Five Hundred Dollars (\$2,500) per year. The Company will provide District with the support and assistance necessary for District and District's Energy Educator/Managers to implement such a program of energy accountability.

4.2 **The Energy Accounting System.** Energy Education will assist the Energy Educator/Managers to collect and record the relevant data and to use the computer software to create and maintain the District's energy (that is, electricity, gas, propane and fuel oil) and utilities (that is, energy, water and sewer) consumption data in order to provide an effective monitoring system for the District's utilities consumption and costs. Such energy accounting system will require a comparison to the data of a base year (herein so called) consisting of 12 consecutive calendar months (ending on the last day of the calendar month before the District's Energy Educator/Managers actually commence performing their duties to the extent reasonably necessary to implement the energy management program) as assembled by the District's first Energy Educator/Managers and Energy Education using the computer software. While a "base year" consists of 12 consecutive calendar months, abnormal temperature conditions during the summer or winter seasons may result in inclusion of additional historical data from the 24 months preceding the established base year in order to create a statistical model that is more accurate or representative of the seasonal weather temperatures typically experienced by the District. The inclusion, if any, of such additional historical data will be made by the District's Energy Educator/Managers and Energy Education.

4.3 **Initial Training Period.** The initial training period shall begin on the Commencement Date (defined below) and end 6 months after all of the District's Energy Educator/Managers have commenced performing their duties, or on such later date as

determined by Energy Education (the "Initial Training Period"). Each consecutive performance year shall consist of 12 consecutive months (each a "Performance Year") and the first Performance Year shall begin on the first day after the end of the Initial Training Period. During the Initial Training Period the District shall pay all of: (a) the salaries and usual fringe benefits of each of its Energy Educator/Managers who is employed and acting full time in such position; (b) their travel, food and lodging expenses incurred for their attendance at the seminars and user group meetings identified above; and, (c) the purchase cost of the Computer Software program and any upgrades thereof (all of such salaries, benefits, expenses and costs are herein collectively called the "ITP Expenses"). On the Commencement Date, Company shall promptly commence performance of its obligations pursuant to this Agreement, but it shall make no charge for its services during the Initial Training Period except as specifically provided in this Agreement. If this Agreement is terminated under circumstances which require the District to pay an Additional Amount (defined in Paragraph 6.3) as provided below, the District shall also pay Company for any Savings Share (defined in Paragraph 6.1) to be computed through the date of such termination. Neither the District's Savings (as defined below and computed in the same manner as provided below for each Performance Year) during the Initial Training Period (herein called the "ITP Savings") nor its ITP Expenses shall be considered when computing the District's respective Savings and costs after the beginning of the first Performance Year for the purposes of determining the Savings Share (defined below); provided, however, (a) the District's Net ITP Savings, if any, shall be considered for the limited purpose of the guarantee as expressly set forth in Paragraph 6.4 below, and/or (b) in the event of a termination by the District during the Initial Training Period under circumstances that require the District to pay an Additional Amount as described in Paragraph 6.3 below the District's Savings shall be computed During the Initial Training period and its ITP Expenses will be considered for such period.

If at the beginning of the Initial Training Period the District promptly commences and thereafter diligently pursues its implementation of the Program until the end of the sixth Performance Year, the amount, if any, by which the District's ITP Expenses exceed the District's ITP Savings during the Initial Training Period (the "District's Net ITP Expenses") shall be considered as provided in the next sentence. If this Agreement continues through the end of the sixth Performance Year and at that time: (i) the amount of the District's Costs (defined in Paragraph 6.4) from the beginning of the first Performance Year until the end of the sixth Performance Year, on a cumulative basis, plus (ii) the amount, if any, of the District's Net ITP Expenses exceed the District's total Savings (as defined in Paragraph 4.4) from the beginning of the Initial Training Period until the end of the sixth Performance Year (and

again taking into consideration differences in the variable factors provided above), the Company will reimburse the District for the amount, if any, of such excess. The "District's Net ITP Savings" means the amount, if any, by which the District's ITP Savings exceed the District's ITP Expenses during the Initial Training Period.

4.4 **Savings.** The District's total Savings means both (the "Savings"): (i) cost avoidance in energy and utilities consumption as computed by the Computer Software; and, (ii) other cost containment or avoidances related to the Program (such as energy and utilities refunds and rebates). The Savings shall be determined by the District's Energy Educator/Managers and the Company using the Computer Software and shall be based upon variance calculations made by the Computer Software comparing energy and utilities consumption and costs in each Performance Year with those calculations by the Computer Software using actual current data and based upon the District's base year and taking into consideration differences in the variable factors of temperature, changes in energy and utilities rates, the lengths of billing periods, additional or reduced space in use by the District, usage types and times in each of the District's facilities, reasonably estimated additional loads that the District might add or reduce after the end of the base year and an assumed increased annual energy and utilities load creep of 4% of the aggregate energy and utilities consumption in the base year. Such load creep adjustment is applied individually for each performance year in comparison back to the base year, but not on a compounding basis. Further, such load creep adjustment recognizes the aggregate effect of: (a) the many additional small energy and utilities load increases each year (such as replacements with more powerful or additional computers, printers, network servers, copy machines, etc.) which cannot cost effectively be individually quantified and (b) the ongoing aging of the District's facilities and equipment. The Savings shall be determined by the District's Energy Educator/Managers and the Company using the Computer Software as stated above and shall be based on the average unit cost of each unit of energy and utilities usage that is avoided in connection with the Program. Energy Education's water conservation recommendations are a significant part of the energy management program. Accordingly and notwithstanding anything to the contrary herein, in the event the district does not substantially implement Energy Education's water conservation recommendations, cost avoidance shall be determined without comparing or otherwise including water consumption and costs.

5 Term

5.1 **Term.** This Agreement shall be for a term (with all permitted extensions thereof) commencing on December 13, 2006 ("Commencement Date") and, unless earlier terminated or appropriately extended as herein provided, ending on the due date for the payment of the Savings Share for the last quarter of the fifth performance year (the "Term").

5.2 **Extension.** If this Agreement continues until the due date for payment of the Savings Share for the last quarter of the fifth performance year and the District has fully paid the Company all amounts then due pursuant to this Agreement, the Term of this Agreement shall be extended thereafter for so long as the District desires and continues to substantially implement the Program but subject always to the provisions hereof, including without limitation, the District's continuing obligations herein regarding its return and protection of the Confidential Items during the existence of such Confidential Items (defined in Paragraph 7.1), confidential materials, concepts, copyrights and trade secrets. During such extension (and prior thereto if after the end of the Sharing Period as defined in Paragraph 6.1): (i) the District may, subject always to the provisions of Paragraphs 7.1 and 7.2, continue to use all of the Confidential Items and other materials furnished to it by the Company and may continue to implement and utilize the Program without further obligation to share Savings, or to pay compensation for the Program and (ii) when so requested by the District so long as it continues substantially to implement the Program, the Company shall review the District's monthly Computer Software reports and make consultant visits to the District periodically, as needed, and train all replacement Energy Educator/Managers selected as provided in Paragraph 3.2.

5.3 **Termination.** Either the District or the Company may terminate this Agreement upon one hundred eighty days' written prior notice to the other. At the effective date of any termination of this Agreement, the District shall pay all amounts, if any, then due to the Company, and the Company shall pay all amounts, if any, then due to the District. After all of such payments have been made, neither the Company nor the District shall thereafter have any obligation to the other pursuant to, or arising out of, this Agreement except as set forth in Paragraphs 7.1 and 7.2.

6 Savings Sharing

6.1 **The Company's Savings Share.** The sharing period is that period of time beginning with commencement of the first Performance Year and ending on the last day of the fifth Performance Year (the "Sharing Period"). At the end of each quarter-year during the Term, the District shall promptly pay the Company that amount equal to thirty-five percent (35%) of the Savings for that quarter-year (the "Savings Share").

6.2 **The Company's Compensation.** The Savings Share and the Additional Amount (defined in Paragraph 6.3), if any, shall be the Company's exclusive compensation for its performance of its obligations pursuant to this Agreement, including without limitation:

6.2(a) The services of the Company's personnel as consultants with respect to the Program;

6.2(b) The District's use of the Confidential Items in the implementation of the Program;

6.2(c) The Company's amortization of its costs related to the Program; and

6.2(d) The Company's related expenses.

6.3 **Additional Amount.** During the early part of the Term the District will receive a disproportionately large share of the benefit from the Company's Program, and the Company will incur a disproportionately large amount of the cost of its performance of this Agreement. Accordingly, the District shall pay the Company an Additional Amount (defined in this Paragraph 6.3) if at any time prior to the end of the Term this Agreement is: (i) terminated by the District for any reason except for the Company's failure to perform a material obligation pursuant to this Agreement which is not corrected within 90 days written notice by the District thereof by the District, which identifies the material obligation and the alleged failure, together with specific details supporting such allegations or (ii) terminated by the Company because of the District's failure to substantially implement the Program or to perform any other material obligation pursuant to this Agreement which is not corrected within 90 days after written notice by the Company, which identifies the material obligation and the alleged failure, together with specific details regarding such allegation. Furthermore, the Company may not claim a lack of substantial implementation by the district in connection with a termination or the guarantee where the district's failure or refusal to substantially implement the program is because of an otherwise resultant material adverse effect on the classroom learning environment, any scheduled school sponsored group

activity, or any third party activity occurring pursuant to a formal lease agreement, or on the health, safety or security of the district's students, staff, facilities or those of a bona fide lessee. The Additional Amount means an amount equal to the greater of (the "Additional Amount"): (a) Sliding Scale Minimum Amount (defined in this Paragraph 6.3) or (b) Sliding Scale Performance Amount (defined in this Paragraph 6.3). The "Sliding Scale Minimum Amount" is defined and varies as follows, if the effective date of termination is:

- (a) before or at the end of the first performance year, the Sliding Scale Minimum Amount is \$750,000.
- (b) during or at the end of the second performance year, the Sliding Scale Minimum Amount is \$675,000.
- (c) during or at the end of the third performance year, the Sliding Scale Minimum Amount is \$600,000.
- (d) during or at the end of the fourth performance year, the Sliding Scale Minimum Amount is \$525,000.
- (e) during the fifth performance year, the Sliding Scale Minimum Amount is \$450,000.

The "Sliding Scale Performance Amount" is defined and varies as follows, if the effective date of termination is:

- (i) before or at the end of the first performance year, the Sliding Scale Performance Amount is 100% of the Recent Year Results (defined in this Paragraph 6.3).
- (ii) during or at the end of the second performance year, the Sliding Scale Performance Amount is 90% of the Recent Year Results.
- (iii) during or at the end of the third performance year, the Sliding Scale Performance Amount is 80% of the Recent Year Results.
- (iv) during or at the end of the fourth performance year, the Sliding Scale Amount is 70% of the Recent Year Results.
- (v) during the fifth performance year, the Sliding Scale Performance Amount is 60% of the Recent Year Results.

The "Recent Year Results" is defined as the last four (4) quarterly Savings Share payments paid or payable to the Company prior to the effective date of such termination. In the event that this Agreement is terminated during the Initial Training Period under circumstances which require the District to pay an Additional Amount, notwithstanding anything to the contrary herein, such Additional Amount also includes an amount equal to thirty-five percent (35%) of the District's Savings for that period. If this Agreement is terminated for any reason at any time after the end of the Sharing Period, no Additional Amount shall then be payable by the District to the Company. In the event of a dispute over substantial implementation, the parties shall attempt in good faith to negotiate the dispute to a

resolution. If such dispute cannot be resolved by negotiation, the District and the Company shall then attempt to resolve the matter by voluntary, non-binding mediation that is conducted: prior to any termination of this Agreement for a lack of substantial implementation; in Sarasota County, Florida; and, by a mediator who is mutually agreeable to both parties. Such mediation may be requested by either party on written notice to the other party. The mediation shall be terminated: by the execution of a written settlement agreement by the parties; by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or by a written declaration of a party or parties to the effect that the mediation proceedings are terminated. The mediator's fees shall be borne equally by the parties.

6.4 **Guarantee.** If the District employs two [2] full-time Energy Educator/Managers to substantially devote their time and attention to energy management, and if the District substantially implements the Program:

(i) Company guarantees that at the end of each quarter-year during the first 5 Performance Years the sum of the District's Net ITP Savings, if any, plus the District's total Savings will exceed the total of the amount of the Savings Share, previously paid by the District to Company, plus the Energy Educator/Managers' salaries, their reasonable and necessary travel and lodging expenses incurred for attending the seminars and user group meetings identified above, and the District's payments to purchase the Computer Software and its periodic upgrades (such Savings Share, salaries, expenses and payments are herein together called the "District's Costs") from the beginning of the Term until the end of each quarter-year during the first 5 Performance Years respectively, each on a cumulative basis for the same period from the beginning of the Term to the end of each quarter-year during those Performance Years respectively, and taking into consideration differences in the variable factors of temperature, changes in utility rates and billing periods, additional or reduced space, usage times and additional loads that the District might add after the end of the base year; and

(ii) then, if as of the end of each quarter-year during the District's first 5 Performance Years the sum of:

(aa) the District's Net ITP Savings, if any;

plus,

(bb) the aggregate amount of the District's total Savings as identified above (and again taking into consideration differences in the variable factors as provided above) from the beginning of the first Performance Year

until the end of each of the first 5
Performance Years respectively

does not exceed the District's Costs as identified above, each on a cumulative basis for the same period from the beginning of the Term to the end of each quarter-year during those Performance Years, then the Company will reimburse the District the amount of this difference, if any, which the Company has not previously reimbursed as of the end of a prior quarter-year during a Performance Year.

The Company's aforesaid guarantees: (i) that the District's total Savings will exceed the District's Costs on a cumulative basis as of the end of each quarter-year during the first five (5) Performance Years and (ii) with respect to the District's Net ITP Expenses at the end of the sixth Performance Year, if any, shall be void if this Agreement is terminated under circumstances which require the District to pay an Additional Amount as provided above.

If Energy Education does not make any required reimbursement as of the end of any quarter-year during a Performance Year, the District shall be entitled to terminate this Agreement (without obligation to pay the Additional Amount set forth above) and to recover such difference from the Company. If the Company makes any such reimbursement, and if: (i) the District's total Savings (as identified above and again taking into consideration differences in the variable factors as provided above) as of the end of a later quarter-year during a Performance Year during the first 5 Performance Years (or through the first 6 performance years if the district has pursued implementation of the Program until the end of the sixth Performance Year) exceeds the District's Costs as identified above, each on a cumulative basis for the same period from the beginning of the Term to the end of that later quarter-year during a Performance Year respectively, or (ii) this Agreement is terminated under circumstances which require the District to pay a termination fee as provided above, the District will refund all of the prior reimbursements to the Company. Each such required reimbursement by the Company or refund by the District shall be paid without interest not later than 60 days after the results for the Performance Year to which it applies have been finalized by the District and the Company.

In the event that at any time all of the District's Energy Educator/Manager positions are not staffed with people who have been selected as provided herein, and who are employed and are on-the-job working full time without any absences for a period of more than four (4) consecutive weeks, the then current Performance Year shall be suspended as of the last day of the month immediately preceding the position(s) being unfilled or the first day of absence and shall resume on the first day of

the month after Energy Education completes the basic training for a replacement energy educator/manager(s) ("Suspension Period"). In such event, a Performance Year will not consist of twelve consecutive months; although each Performance Year will consist of twelve months. Energy Education, with input from the district, will determine when the new Energy Educator/Manager has completed his or her basic training. Furthermore, in the event of a termination during a Suspension Period that otherwise would require the district to pay a termination fee, the termination fee shall be paid by the district to Energy Education based on the then current Performance Year immediately preceding the Suspension Period. Still further, the term of the Agreement shall be extended by an additional number of months equal to the Suspension Period(s), if any.

7 Confidential Information

7.1 **Specified.** During the Term the Company shall furnish to the District, on a confidential basis, materials and concepts that are copyrighted, confidential or proprietary to, and trade secrets of, the Company, and all such materials, concepts, trade secrets and accumulated Computer Software data (the "Confidential Items", which term shall also include all the similar items furnished by the Company to the District during any extension of the Term) shall continue to be the property of the Company and shall not be reproduced or used by the District without the Company's prior written consent. During his or her employment by the District, each employee shall maintain the confidentiality of all of the Confidential Items; and none of the Confidential Items shall ever be released by the District or any of its Trustees, employees, or agents in any way to any unauthorized party or used in any manner that would violate the Company's confidentiality, copyrights or trade secrets or in any way diminish their value to the Company. All copies of any of the Confidential Items that the District or its officers, Trustees, employees, representatives, consultants, contractors, subcontractors or agents may make shall continue to be the property of the Company. Upon receipt by the District of any request, demand, or legal process, including without limitation requests for information pursuant to the Florida Public Records Act or discovery requests in connection with any legal action or proceeding (a "Request") to release or disclose any of the confidential items protected from disclosure hereunder (the "Requested Confidential Information"), the District will provide the Company with prompt written notice of such Request and of any subsequent actions which the District proposes to take in response to such Request (collectively, the "Responses"). To the extent permitted by applicable law, the District and the Company will each provide full reasonable communication and cooperation to deny the Request, and the District will: (a) cooperate fully in any attempt by the Company to formally participate in legal proceedings related to a Request; and/or (b) initiate or

participate in legal proceedings related to a Request, if requested by the Company. Notwithstanding the confidentiality obligations of the District set forth in this agreement, the District may disclose Requested Confidential Information if, and only if: (a) both, (i) in the written opinion of the District's legal counsel, no good faith basis exists in fact or in law to not disclose or release the Requested Confidential Information and the District will become liable for contempt, attorney fees, fines, or suffer other censure or penalty if it fails or refuses to disclose or release the Requested Confidential Information, and (ii) the Company notifies the District in writing that it does not wish to seek a protective order or other legally available protections or limitations (collectively, "Protective Measures") to prevent or limit disclosure or release of the Requested Confidential Information; or, (b) a court, governmental agency or other governmental authority of competent jurisdiction issues a decision that some or all of the Requested Confidential Information is required to be disclosed and is not excepted from disclosure, and the Company notifies the District that it does not want an appeal of such adverse decision in a court or other governmental authority of competent jurisdiction. The District will use its best reasonable efforts to make any permitted resulting disclosure or release of the Requested Confidential Information subject to such Protective Measures as the Company reasonably directs in writing. The Company shall indemnify and hold the District harmless from all costs and expenses, including but not limited to reasonable attorneys' fees, incurred by the District in complying with the District's obligations set forth in this paragraph, and any directive of the Company's made pursuant to this paragraph relating to Requested Confidential Information.

7.2 Requirements upon Termination. When this Agreement is terminated for any reason, the District shall promptly: (i) pay the Company all amounts due as of, or as a result of, such termination, (ii) return to the Company all of the Confidential Items and all other materials previously furnished by the Company to the District or any of its Energy Educator/Managers and all copies thereof, (iii) discontinue the position of each of the Energy Educator/Managers, provided that the district [although subject always to the requirements of subsections (ii) and (iv) of this Paragraph] is not prohibited from creating a new position(s) employing a person(s) other than any person who has been trained by the Company for the energy educator/manager position and assigning thereto the responsibility for energy conservation in the district, and (iv) cease to conduct any of the activities, or implement or utilize the Program or the materials or Confidential Items the Company has provided to the District. Furthermore, the District shall not make available to any other person or entity, in whole or in part, directly or indirectly, the Program, the Confidential Items, or any other materials previously furnished by the Company to the District.

Notwithstanding anything to the contrary in this Agreement, in the event of a termination, the District shall be entitled to undertake any energy management activities within the district as it reasonably and in good faith decides so long as those activities are based upon information which is then in the public domain (except all activities which are primarily based upon any of the Company's materials or other of the Company's confidential items which have entered the public domain as a result of the actions, or if appropriate, the lack of action, by the District or any of its prior or existing trustees, employees, consultants or agents) or which are based upon the legitimate trade secrets of some party other than the Company.

8 Miscellaneous Provisions.

8.1 **Notices.** Except where otherwise herein provided, all notices, consents and other communications required or permitted by the provisions of this Agreement to be given or sent by any party, shall be in writing and shall be deemed to be properly given to the addressee party when: (i) delivered personally to any of the hereinafter designated addressees or the named representatives thereof; (ii) mailed by prepaid certified or registered mail, (or delivered to a prepaid private delivery or messenger service), return receipt requested or (iii) sent by prepaid telephonic facsimile and promptly confirmed with a copy sent as in (i) or (ii), and in each instance addressed to such party at the respective addresses as follows:

If to the Company:

Energy Education, Inc.
908 Burnett Street
Wichita Falls, Texas 76301
Attention: William S. Spears, CEO - Founder
Telephone: 940/767-1500
FAX: 940/767-1547

with an identical copy sent concurrently and in the same manner to:

Adams, Lynch & Loftin, P.C.
1903 Central Drive, Suite 400
Bedford, Texas 76021
Attention: Neal W. Adams, Esq.
Telephone: 817/283-7742
FAX: 817/571-2947

If to the District:

School Board of Sarasota County
1960 Landings Boulevard
Sarasota, Florida 34231
Attention: Dr. Gary W. Norris, Superintendent
Telephone: 941/927-9000 ext. 31105
FAX: 941/927-2539

with an identical copy sent concurrently and in the same manner to:

Matthews, Eastmoore, Hardy, Crauwels & Garcia
1777 Main Street, Suite 500
Sarasota, Florida 34236
Telephone: 941/366-8888
FAX: 941/954-7777

The return receipt, delivery receipt, affidavit of the delivering person or acknowledging reply by such addressee by any means permitted in (i), (ii) or (iii) above, shall be deemed conclusive evidence of the proper delivery of such notice, information, consent or other communication. Any party may at any time change its respectively designated address above by giving notice thereof to the other party hereto.

8.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the applicable laws of the United States of America and venue for any litigation between Energy Education and the District arising out of this Agreement shall be in the state court(s) of Sarasota County, Florida or in the United States District Court for the Middle District of Florida if it has original or removal jurisdiction in such litigation.

8.3 Entire Agreement. This Agreement contains the entire understanding of the Company and the District with respect to the matters described herein and supersedes all prior agreements, arrangements and understandings, whether written or oral, relating to the subject matter hereof, and all of them are merged into this Agreement.

8.4 Severability. Any provision of this Agreement which is prohibited or unenforceable in whole or in part shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

8.5 Enforceability. If the scope of any provision or restriction set forth in this Agreement is too broad to permit enforcement of such provision or restriction to its full extent,

then such provision or restriction shall be enforced to the maximum extent permitted by applicable law, and, if necessary, the scope of any such provision or restriction may be judicially modified (to the extent necessary in any proceeding brought to enforce such provision or restriction) and thereafter fully enforced.

8.6 Amendment. This Agreement may only be amended by a writing that ratifies, confirms and incorporates as a part thereof the provisions of this Agreement not thereby amended. Each such amendment must be executed and delivered by both the Company and the District.

8.7 Survival of Representations, Etc. All representations, warranties, agreements and covenants contained in this Agreement shall survive the execution and delivery hereof and shall continue in full force and effect as of the date hereof until all obligations pursuant to this Agreement shall have been satisfied.

8.8 Non-Waiver. No waiver of, or failure to assert, by the Company or the District of any claim, right, benefit or remedy pursuant to this Agreement shall operate as a waiver of any other claim, right or benefit. The failure of the Company or the District at any time or times to require performance of any provision hereof shall in no manner affect that party's right at a later time to require such performance or fully to enforce the same.

8.9 No Third Party Beneficiaries; Binding Effect. This Agreement shall not confer, nor shall it give rise to, any rights to any person or entity other than the Company or the District to institute proceedings or bring any other enforcement action with respect to any provision, representation or covenant contained herein against either party to this Agreement. Each of the provisions, representations and covenants set forth in this Agreement shall be binding upon the parties hereto and shall inure solely to the benefit of, and shall be enforceable only by, each of such parties, their respective successors in interest and assigns.

8.10 Further Assurances. The Company and the District shall respectively execute and deliver to the appropriate party such other instruments and perform such other acts as may reasonably be required in order fully to perform and carry out the terms and intent of this Agreement and the activities contemplated hereby.

8.11 Expenses. Except as otherwise provided herein, each party hereto shall separately bear all expenses incurred by such party in connection with the negotiation, preparation and performance of this Agreement.

8.12 **Default.** In the event of a default by either party hereto in the performance of its obligations pursuant to this Agreement, the other party shall be entitled to all remedies available at law or in equity, and all such remedies shall be cumulative.

8.13 **RFP Response.** This agreement constitutes the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, requests, responses, offers, undertakings and agreements between the parties. This agreement may be amended or modified only by a writing executed by the duly authorized officers of the parties hereto.

8.14 **Fingerprinting.** The Company agrees that before any of its employees or agents will be permitted on school grounds while students are present, such employees or agents will be fingerprinted and have their backgrounds checked as provided in Sections 1012.32 and 1012.465, Florida Statutes. The Company's employees and agents will coordinate with the District to arrange a mutually convenient time for the District to conduct the fingerprinting. The Company will bear the cost of fingerprinting/background checks. The District has the right to refuse entry onto its school grounds to any individual whose background check does not meet the requirements of Florida Statutes.

Thus EXECUTED and EFFECTIVE as of _____, 200__.

DISTRICT:

COMPANY:

School Board of Sarasota County

Energy Education, Inc.

By: _____
Its: School Board Chair

By: _____
John Bernard, President
Sales & Marketing Division

ATTEST:

Secretary

W:\06\06107 eei\Documents\Sarasota Co SB of PF contract v.7 110706.doc

SCHOOL BOARD OF SARASOTA COUNTY
ENERGY MANAGEMENT CONSERVATION POLICY

As the School Board of Sarasota County, we believe it to be our responsibility to insure that every effort is made to conserve energy and natural resources while exercising sound financial management and providing a secure, safe and healthy environment for students, staff and visitors on all school campuses.

The implementation of this policy is the joint responsibility of the board members, administrators, teachers, students and support personnel and its success is based on cooperation at all levels.

The district will maintain accurate records of energy consumption and cost of energy and will provide information to the School Board on the goals and progress of the energy conservation program.

The principal will be accountable for energy management on his/her campus with energy audits being conducted and conservation program outlines being updated. Judicious use of the various energy systems of each campus will be the joint responsibility of the principal and head custodian to ensure that an efficient energy posture is maintained on a daily basis.

To ensure the overall success of the energy management program, the following specific areas of emphasis will be adopted:

1. Every student and employee will be expected to contribute to energy efficiency in our district. Every person will be expected to be an "energy saver" as well as an "energy consumer."

2. Effective immediately, all unnecessary lighting in unoccupied areas will be turned off. All lights not related to safety and security will be turned off when students and teachers leave school. Custodians will turn on lights only in the areas in which they are working. The location and run time of all designated security lighting will be determined by the District following consultation with Energy Education and the Chief of School Police.

3. Energy management on his/her campus will be taken into consideration as a part of the principal's annual evaluation.

4. The head custodian at each school will be responsible for a complete and total shutdown of the facility when closed each evening given local health and safety limitations.

5. Within sixty (60) days, administrative guidelines will be adopted that will be the "rules of the game" in implementing our energy program.

Whereas the School Board bears responsibility for the best use of tax dollars, and

Whereas public education can provide leadership in developing a realistic energy ethic and awareness of energy needs and costs,

Therefore, the School Board of Sarasota County directs the superintendent and/or his/her agents to develop short and long range strategies in the areas of facilities management and curriculum development dealing with energy awareness and conservation.

Adopted this _____ day of _____, 20____.

Chair
School Board
School Board of Sarasota County

Attest:

Secretary
School Board
School Board of Sarasota County

(After being officially accepted by the School Board, a signed and dated copy should be disseminated to the widest distribution possible within the district; i.e., all bulletin boards, teacher lounges, district newsletters, etc.)

SCHOOL BOARD OF SARASOTA COUNTY
ENERGY MANAGEMENT CONSERVATION GUIDELINES

Disclaimer: These guidelines are not intended to be all-inclusive. They may be modified for local conditions. These guidelines supersede all previous instructions related to building management or energy usage guidelines. It is essential that these energy guidelines be observed as outlined.

Objectives:

Eliminate energy waste

Ensure an appropriate learning environment for all students

Ensure acceptable indoor air quality per industry standards

Ensure reasonable campus safety and security guidelines are followed

Responsibilities:

Every person is expected to be an "energy saver" as well as an "energy consumer."

The teacher is responsible for implementing the guidelines during the time that he/she is present in the classroom.

The custodian is responsible for control of common areas, i.e. halls, cafeteria, etc.

Since the custodian is typically the last person to leave a building in the evening, he/she is responsible for verification of the nighttime shutdown.

The principal is responsible for the total energy usage of his/her building.

The Energy Manager performs routine audits of all facilities and communicates the audit results to the appropriate personnel.

The Energy Manager provides regular reports to Principals indicating performance with regards to energy savings.

GENERAL

All unnecessary lighting in unoccupied areas will be turned **off**. Teachers should make certain that lights are turned off when leaving the classroom when empty. Use natural lighting where appropriate.

All outside lighting shall be **off** during daylight hours.

Gym lights should not be left on unless the gym is being used.

All lights not directly related to school safety and security will be turned **off** when students and teachers leave school. Custodians will turn on lights only in the areas in which they are working.

The location and run time of all designated security lighting will be determined by the District following consultation with Energy Education and the Chief of School Police.

Refrain from turning lights on unless definitely needed. Remember that lights not only consume electricity, but also give off heat that places an additional load on the air conditioning equipment and thereby increases the use of electricity necessary to cool the room.

Classroom doors shall remain **closed** when HVAC is operating. Ensure doors between conditioned space and non-conditioned space remain closed at all times (i.e. between hallways and gym or pool area).

All exhaust fans will be turned **off** every day during unoccupied hours where it does not interfere with indoor air quality industry standards.

All office machines (copy machines, laminating equipment, etc.) shall be switched **off** each night and during unoccupied times. Fax machines should remain on.

All computers should be turned **off** each night. This includes the monitor, local printer, and speakers. Network equipment is excluded.

All capable PC's should be programmed for the "energy saver" mode using *the power management* feature. If network constraints restrict this for the PC, ensure the monitor "sleeps" after 10-minutes of inactivity.

Cooling Season Occupied Set Point:	75F
Heating Season Occupied Set Point:	72F

AIR CONDITIONING EQUIPMENT

During unoccupied times, the air conditioning equipment shall be **off**. The unoccupied period begins one-half (1/2) hour after student dismissal. It is anticipated that the temperature of the classroom will be maintained long enough to afford comfort for the period the teacher remains in the classroom after the students have left. Occupied and unoccupied run times will be designed so that relative humidity levels do not exceed 60%.

Air conditioning start times may be adjusted (depending on weather) to ensure classroom comfort when school begins.

Ceiling fans should be operated in all areas that have them during occupied hours.

Air conditioning should not be utilized in classrooms during the summer months unless the classrooms are being used for summer school or year-round school. Relative humidity levels, however, should be monitored to verify level remains below 60%.

Air conditioning may be used during the summer months by exception and if needed to support custodial specialty cleaning and maintenance operations such as but not limited to floor refinishing and carpet extraction.

HEATING EQUIPMENT

During unoccupied times, the heating equipment shall be OFF.

The unoccupied time shall begin when the students leave an area.

Ensure all domestic hot water systems are set no higher than 120F or 140F for cafeteria service (with dishwasher booster).