

GUARANTEED SAVING AGREEMENT
FOR ENERGY SAVING IMPROVEMENT PROJECT, BETWEEN

PEORIA UNIFIED SCHOOL DISTRICT #11

Phase II Lighting

6330 W. Thunderbird Road, Glendale, Arizona 85306

AND

MIDSTATE ENERGY, LLC.

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GUARANTEED SAVINGS AGREEMENT
FOR ENERGY SAVING IMPROVEMENT PROJECT

This Guaranteed Savings Agreement for Energy Saving Improvement Project (hereinafter the "Agreement") is made and entered into this July 2, 2015 by and between MIDSTATE ENERGY, LLC. an Arizona corporation located at 1850 East Riverview Drive, Phoenix, Arizona 85034 ("MIDSTATE ENERGY, LLC.") and PEORIA UNIFIED SCHOOL DISTRICT #11 located at 6330 W. Thunderbird Road, Glendale, Arizona 85306 (the "Customer"). MIDSTATE ENERGY, LLC. and the customer may hereafter be referred to collectively as the "Parties".

WITNESSETH:

WHEREAS, Customer owns, operates, manages and control certain hereinafter designated buildings (the "Facilities"); WHEREAS, the customer and MIDSTATE ENERGY, LLC. agree that each Party will act in strict compliance with A.R.S. § 15-213.01 which is incorporated herein by reference, and any failure to so act will be a substantial breach of this Agreement; and

WHEREAS, Customer desires to reduce its energy costs with respect to energy utilization at the Facilities; and

WHEREAS, MIDSTATE ENERGY, LLC. provides services including planning, design, installation, construction, operation, measurement and verification of energy efficient measures and equipment and related services as are set forth herein; and

WHEREAS, the Parties entered into an agreement for MIDSTATE ENERGY, LLC. to perform a Final Proposal whereby MIDSTATE ENERGY, LLC. was able to determine the feasibility of performing certain energy conservation measures to the Site;

WHEREAS, a licensed, registered professional engineer, with credentials from the National Association of Energy Engineers performed an independent, third-party validation of the cost savings calculations as set forth in the proposal as required by A.R.S. § 15-213.01(H).;

WHEREAS, the Customer and MIDSTATE ENERGY, LLC. desire to enter into a guaranteed energy cost savings contract as authorized under and in strict compliance with A.R.S. § 15-213.01.

The above noted WHEREAS clauses are fully incorporated into this Agreement and as such are fully enforceable by the Parties.

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

Section 1 Scope of Services

MIDSTATE ENERGY, LLC. has implemented an energy conservation program for the Customer as more fully described in the Scope of Work in Schedule B hereto (the "Project"), which will result in certain energy savings as more fully described below and in the Schedules attached hereto. MIDSTATE ENERGY, LLC. shall be responsible for the design, engineering, construction, permits, fees, approvals, project management, installation, start-up, training, close-out, check-out, warranty, insurance, measurement, verification and clean up relative to the Project. Construction, installation and implementation of the Project will be governed by a separate construction Contract of even date between MIDSTATE ENERGY, LLC. and Customer (the "Installation Agreement"). The buildings are structures owned, maintained and/or operated by Customer, which are the subject of this Agreement and set forth in Schedule "A".

DEFINITIONS

When used in this Agreement, the following capitalized words shall have the meaning ascribed to them below:

“Baseline Period” is the period of time that defines the Baseline Usage and is representative of the facilities, operations, consumption and usage that is used as the benchmark for determining cost avoidance.

“Baseline Usage” is the calculated energy usage of the facilities prior to the implementation of the ECMs.

“Baseline Demand” is the calculated energy demand of a piece of equipment or a site prior to the implementation of the ECMs. Baseline physical conditions, such as equipment counts, nameplate data and control strategies, will typically be determined through building occupancy, energy end-use survey and plug load surveys of the Facilities.

“Cumulative Excess Verified Savings” is the total amount of Excess Verified Savings based on the results of the Measurement & Verification Plan in the Guaranteed Savings Reconciliation Report carried over to the subsequent Guarantee Periods.

“Energy and Cost Avoidance Guarantee Practices” are those practices identified in The Schedule of Savings, intended to achieve avoided costs in energy and/or operating expenses.

“Energy Costs” may include the cost of electricity and fuels to operate HVAC equipment, cogeneration system, facility mechanical and lighting systems and energy management systems and the cost of water and sewer usage, as applicable.

“ECM” the Energy Conservation Measure (ECM) is the installation of equipment or systems or modification of equipment or systems as described in Attachment B.

“Excess Verified Savings” Is the amount of Verified savings minus guaranteed Savings in the guaranteed Period.

“Facilities” shall mean those described in Attachment A.

“FEMP” shall mean the Federal Energy Management program of the U.S. Department of Energy and its Measurement and Verification Guidelines for Federal Energy Projects (DOE/GO 10096-248, February 1996, or later versions). The FEMP guidelines classify measurement and verification approaches as Option A, Option B, Option C and Option D.

“First Guarantee Period” is defined as the period beginning on the first (1st) day of the month following the date of execution of the Delivery and Acceptance Certificate (Attachment E-2) upon Substantial Completion of this project by the Customer and ending on the day prior to the first (1st) twelve-month anniversary thereof.

“Guarantee Period” is defined as the First Guarantee Period and each of the successive twelve (12) month periods commencing on the anniversary of the commencement of the First guarantee Period throughout the Term of this Agreement.

“Guarantee Savings” is defined as the amount of avoided Energy costs guaranteed to the CUSTOMER in each Guarantee Period.

“Guaranteed Savings Reconciliation Report” is defined as the process and report for determining the Verified Savings in each Guarantee Period and reconciling it to the Guaranteed Savings in the same Guarantee Period.

“IPMVP” shall mean the International Performance Measurement and Verification Protocol and its Measurement and Verification guidelines for energy savings performance contract projects. The IPMVP guidelines classify measurement and verification approaches as Option A, Option B, Option C and Option D.

“Measurement and Verification Plan” M&V Plan) is defined as the plan providing details on how the guarantee Savings will be verified.

“Term” shall be ten (10) years from acceptance.

“Verified Savings” is defined as the summation of avoided Energy costs as determined by the Measurement and Verification Plan for the Facilities in each Guarantee Period as a result of the ECMs provided by MIDSTATE ENERGY, LLC. as well as Excess Verified Savings, if any carried forward from previous years.

Section 2 Term and Termination

- 2.1 Guarantee Term. The Term of this Guarantee shall commence on the first (1st) day of the month following the date of execution of the Final Delivery and Acceptance Certificate (Attachment E-2) upon Substantial Completion of this Project by the Customer and shall terminate at the end of ten (10) years unless terminated earlier as provided for herein.

- 2.2 Guarantee Termination. Should this Agreement be terminated (including, as applicable, the Maintenance or Measurement & Verification Services) in whole or in part for any reason prior to the end of the Term, the Guaranteed Savings for the Guarantee Period in which such termination becomes effective shall be prorated as of the effective date of such termination, with a reasonable adjustment for seasonal fluctuations, if any, in Energy and Operational Costs and the guaranteed Savings for all subsequent Guarantee Periods shall be null and void.

Section 3 Savings Guarantee

3.1 Guaranteed Savings: the following table lists the amount of Guaranteed Savings resulting from the ECMs to be installed by MIDSTATE ENERGY, LLC.

Savings Guarantee. MIDSTATE ENERGY, LLC. hereby guarantees (the “Performance Guarantee”) to the Customer that the energy savings arising from the Project will meet or exceed the cost of the energy cost saving measures over the expected life, according to the manufacturer’s equipment standards of the energy cost saving measures implemented, the term of the Financial Agreement associated with the Project or ten (10) years, whichever is shortest. MIDSTATE ENERGY, LLC. further makes the guarantees required by A.R.S. § 15-213.01(J)(1-3) and as further described in Schedule C attached hereto (the Annual Performance Guarantee) within a period of ten (10) years from the Guarantee Effective Date, as defined below (the “Guarantee Term”), and all in strict compliance with A.R.S. § 15-213.01 (J)(3). MIDSTATE ENERGY, LLC. guarantees that the energy cost savings will meet or exceed the Contract Sum as set forth in Section 2(a) of the Installation Agreement. The Customer understands, acknowledges and agrees that (i) MIDSTATE ENERGY, LLC. cannot and does not guarantee utility rates, (ii) the savings guaranteed hereby will be measured as required A.R.S. § 15-213.01(J) and (iii) references to savings in dollars are based upon the blended utility rates set forth per table 3.2.5, and for purposes of this Agreement the useful life of the equipment is agreed to be ten (10) years which constitutes the Guarantee Term. The Guarantee Term is the term in which MIDSTATE ENERGY, LLC. guarantees that the cumulative energy savings will exceed the entire amount the Customer will spend on the energy savings measures in this Agreement, all pursuant to and in compliance with, A.R.S. § 15-213.01.

Table 3.1 Guaranteed Savings

| ECM | TGS \$ | Electric Savings \$ | Water TGS \$ |
|------------------------------|-----------------------|---------------------|---------------------|
| Total Savings Phase I | \$1,089,000.00 | \$771,479.00 | \$ 317,520.00 |
| Total Savings Phase II | \$177,500.00 | \$177,500.00 | \$ - |
| | | | |
| Phase I and II totals | \$1,266,500.00 | \$948,979.00 | \$317,520.00 |

3.1.1 Additional Savings. Additional energy and/or operational cost avoidance that can be demonstrated as a result of MIDSTATE ENERGY, LLC. efforts that result in no additional costs to Customer beyond the costs identified in this Agreement will be included in the guarantee Savings Reconciliation Report for the applicable Guarantee Period(s).

3.1.2 Savings Prior to Final retrofit Acceptance. All energy and operational cost avoidance realized by Customer and as calculated through the Measurement & Verification Plan that result from activities undertaken by MIDSTATE ENERGY, LLC. prior to Final Acceptance may be applied to the Verified Savings for the First Guarantee Period.

- 3.1.3 Accumulation of Savings. The Guarantee Savings in each Guarantee Period are considered satisfied if the Verified Savings for such Guarantee Period equals or exceeds the Guaranteed Savings for such Guarantee Period
- 3.1.4 Savings Shortfalls. In the event that the Verified Savings in any Guarantee Period is less than the Guaranteed Savings required for that Guarantee Period, after giving credit for any Excess Verified Savings carried forward from previous Guarantee Periods, MIDSTATE ENERGY, LLC. shall, upon receipt of written demand from Customer, compensate Customer the amount of any such shortfall, limited by the value of the guarantee, within thirty (30) calendar days. Resulting compensation shall be MIDSTATE ENERGY, LLC.'s sole liability for any shortfall in the Guarantee Savings.
- 3.2 Savings Reconciliation Documentation. MIDSTATE ENERGY, LLC. will provide customer with a Guarantee Savings Reconciliation Report after each Guarantee Period within 120 days. Customer will assist MIDSTATE ENERGY, LLC. in generating the Savings Reconciliation Report by providing MIDSTATE ENERGY, LLC. receipt thereof, together with access to relevant records relating to such Energy Costs. Customer will also assist MIDSTATE ENERGY, LLC. by permitting access to any energy billing information, maintenance records, drawings, or other data deemed necessary by MIDSTATE ENERGY, LLC. to generate the said report. Data and calculations utilized by MIDSTATE ENERGY, LLC. in the preparation of its Guarantee Savings Reconciliation Report will be made available to Customer, along with such explanations and clarifications as Customer may reasonably request. Such report shall be developed as required by A.R.S. § 15-213.01(G) with the energy costs after installation or implementation of the energy cost saving measures, as required by A.R.S. § 15-213.01(F). MIDSTATE ENERGY, LLC. will explain discrepancies between current energy usage and guaranteed energy savings (if any) and any proposed adjustments as may be allowed by A.R.S. § 15.213.01(F)(1-8).
- a. An annual energy savings guarantee reconciliation report, which will calculate annual energy savings according to the Energy Savings Methodologies defined in Schedule "C" and as required by A.R.S. § 15-213.01(J)(1-3)
- 3.2.1 Acceptance of Guarantee Savings Reconciliation Report. At the end of each Guarantee Period, Customer will have forty-five (45) days to review the Guarantee Savings Reconciliation Report and provide written notice to MIDSTATE ENERGY, LLC. of non-acceptance of the Guarantee Savings Reconciliation Report for the Guarantee Year. Failure to provide written notice within forty-five (45) days of the receipt of the Guarantee Savings Reconciliation Report shall constitute the deemed acceptance of the Report and its findings by the Customer.
- 3.2.2 Guarantee Savings Reconciliation. Verified Savings will be determined in accordance with the methodology(s), operating parameters, formulas and constants as described below and/or defined in the Measurement & Verification Plan and/or additional methodologies defined by MIDSTATE ENERGY, LLC. that may be negotiated with Customer at any time. Actual savings reduction in utility bills may vary from the Verified Savings from reasons outside of MIDSTATE ENERGY, LLC. control including but not limited to: changes in energy and other utility rates and tariffs, changes in Customer operating schedules and usage patterns, changes in Customer

loads due to addition or reductions in energy and water consuming devices, changes in weather, impacts due to the operations of ECMs, impacts due to the maintenance of ECMs maintained by Customer and additions to and/or reduction in facility space usage. For the purposes of calculating any shortfalls or excesses of Verified Savings versus Guarantee Savings, the Measurement & Verification Plan will be utilized.

- 3.2.3 Activities and Events Adversely Impacting Savings. Customer must promptly notify MIDSTATE ENERGY, LLC. of any activities know to Customer, which adversely impacts MIDSTATE ENERGY, LLC.'s ability to realize the Guarantee Savings and MIDSTATE ENERGY, LLC. shall be entitled to reduce the Guaranteed Savings by the amount of any such adverse impact to the extent that such adverse impact is beyond MIDSTATE ENERGY, LLC.'s reasonable control.
- 3.2.4 Guarantee Adjustment. MIDSTATE ENERGY, LLC.'s Guarantee Savings obligations under this Agreement are contingent upon: (1) Customer following the operations and maintenance requirements for the ECMs in accordance with the Agreement; (2) no alterations or additions being made by the Customer without prior written agreement of the Parties; (3) Customer sending all current utility bills to MIDSTATE ENERGY, LLC. within two (2) weeks after receipt; and (4) MIDSTATE ENERGY, LLC.'s ability to render services not being impaired by circumstances beyond its control. To the extent that the Customer defaults or fails to perform fully any of its obligations under this Agreement, MIDSTATE ENERGY, LLC. may, in its sole discretion, adjust the Guarantee Savings obligation; provided however, that no adjustment hereunder shall be effective unless MIDSTATE ENERGY, LLC. has first provided the Customer with written notice of Customer's default(s) or failure(s) to perform and Customer has failed to cure its default(s) or failure(s) within thirty (30) days after receipt of such notice.
- 3.2.5 Energy Rates. The base utility rates used for calculating annual cost savings are presented in Table 3.2.5 below. These rates will be escalated annually utilizing the rates indicated in Table 3.3 and applied to the ECM savings at each facility to determine annual costs savings for each guarantee period. The escalated blended utility rates will be compared to the blended utility rates calculated during each year of the Guarantee Period and higher of the floor values or the blended utility rate for the reporting period will be used to determine savings.

Table 3.2.5 Annual Escalations

| Building | Electric \$/kWh | Natural Gas \$/Therm | Water & Sewer \$/kgal |
|-----------|--------------------|-------------------------|--------------------------|
| All Sites | 3.4% | 3.4% | 3.4% |

- 3.3 Annual Utility Rate Escalation Rate. The following table show annual escalation of the blended utility rates to be used for calculating energy cost savings. The blended utility rates will increase by the following percentages each year over beginning during the implementation year.

Table 3.3 Annual Escalations

| Period | Electricity \$/kWh |
|-----------|--------------------|
| 0 | 1.00 |
| 1 | 1.00 |
| 2 | 1.034 |
| 3 | 1.034 |
| 4 | 1.034 |
| 5 | 1.034 |
| 6 | 1.034 |
| 7 | 1.034 |
| 8 | 1.034 |
| 9 | 1.034 |
| 10 | 1.034 |

3.4 Guarantee Savings. The following table lists the amount of Guarantee Savings resulting from the ECMs to be installed by MIDSTATE ENERGY, LLC.

Table 3.4 Guarantee Savings

| Year | Phase I Savings | Phase II Savings | Combined Savings |
|----------------------|----------------------|---------------------|-------------------------|
| 1 | \$ 1,089,000 | \$ 177,500 | \$ 1,266,500.00 |
| 2 | \$ 1,121,670 | \$ 183,535 | \$ 1,305,205.00 |
| 3 | \$ 1,155,320 | \$ 189,775 | \$ 1,345,095.00 |
| 4 | \$ 1,189,980 | \$ 196,228 | \$ 1,386,208.00 |
| 5 | \$ 1,225,679 | \$ 202,899 | \$ 1,428,578.00 |
| 6 | \$ 1,262,449 | \$ 209,798 | \$ 1,472,247.00 |
| 7 | \$ 1,300,323 | \$ 216,931 | \$ 1,517,254.00 |
| 8 | \$ 1,339,333 | \$ 224,307 | \$ 1,563,640.00 |
| 9 | \$ 1,379,513 | \$ 231,933 | \$ 1,611,446.00 |
| 10 | \$ 1,420,898 | \$ 239,819 | \$ 1,660,717.00 |
| TOTAL SAVINGS | \$ 12,526,049 | \$ 2,302,449 | \$ 14,828,498.00 |

Section 4 Measurement & Verification Plan

- 4.1 Measurement & Verification. MIDSTATE ENERGY, LLC. and the Customer agree that the Verified Savings will be determined using the following Measurement & Verification Plan. Through this plan, the Guarantee Savings generated by the ECMs installed in the Facilities will be verified and incorporated herein by reference.

Measurement & Verification Plan. MIDSTATE ENERGY, LLC. and the Customer agree that the Verified Savings by ECM will be determined using the following Measurement & Verification plans further described in this section. The objective of the plan is to describe how the savings generated by the ECMs installed in the Facilities will be quantified and validated. The Measurement & Verification methodologies proposed for these ECMs are based on the International Performance Measurement and Verification Protocol (IPMVP Vol. 1, January 2012).

During the term of the Agreement, MIDSTATE ENERGY, LLC. will make adjustments to energy savings due to changes in building occupancy, weather data and utility rate schedules, etc. The unit costs of energy will be applied to the energy savings calculated by this Measurement & Verification plan. Blended utility rates will be used as a basis for determining the unit cost of energy presented herein Section 3.2.5. A Guarantee Savings Reconciliation Report will be submitted to the Customer after each Guarantee Period.

- 4.2 Performance Verification services are provided utilizing the following IPMVP methodologies:

IPMVP Option A: Retrofit Isolation: Key Parameter Measurement

Savings are determined by field measuring key operating parameter(s). Parameters not selected for field measurement are estimated. Estimates can be based on historical data, manufacturer's specifications or engineering judgments which define the energy use of the ECMs affected system(s). Documentation or justification of the estimated parameter is contained within the investment grade audit.

Engineering Calculation: Contractually agreed upon savings.

The savings calculated, prepared using standard published engineering criteria and are contractually agreed upon and are considered satisfied at the contract execution.

Onsite inspections will be performed to verify that equipment installed matches specifications required to achieve expected energy savings.

Table 4.2 Measurement & Verification Description

| ECM Number and Description | M&V Option | Utility Types Affected | Pre-Implementation (Baseline) M&V | Post-Implementation M&V | Measured/ Verified Key Parameter(s) | Contractually Agreed upon variables |
|--|-------------------------|---|--|--|---|--|
| ECM 1 - Lighting Upgrades | | | | | | |
| Replace existing lamps and ballast for fixtures both inside and outside buildings. | A | Electric (kWh) | Room-by-room audit establishing fixture types, operating hours, and watts. Sample fixtures will be identified and power (kW) will be measured. | Sample fixtures previously identified in the Pre-implementation survey will be measured for power (kW) after installation. | Instantaneous Power (kW) | Hours of operation |
| ECM 2 – Data Management System | | | | | | |
| Assist customer in rate and tariff optimization, assist customer by monitoring set points in the facility, provide customer with education material that support energy reducing practices in the buildings. | Engineered Calculations | Electric (kwh) Natural Gas (therms) | Studied utility Meter pricing structure per metering sizes and KW draw, Reviewed existing rate and tariff for electricity. Calculated savings based on shifting operating schedules and rates. | Assure district is receiving proper billing levels and pricing for electric bills. Review BAS operating schedules, for deviation from existing set point and schedules | . Schedule changes that impact rate | Hours of Operation |
| ECM 3 – Water Saving Modifications – Phase I only | | | | | | |
| Installation of water saving devices such as toilets, urinals, faucets, shower heads, kitchen equipment | A | Natural Gas (CCF) Water (kGal) Sewer (kGal) | Baseline water use based on historical utility data, population data, measured sample of fixture flows, and interviews with facility personnel. | Verify new equipment is installed per design specifications and is operating as intended. Perform post-installation flow measurements on a sample of new fixtures. | Perform onsite inspections at least once annually and periodic flow measurements on a sample of fixtures to verify that equipment is in good condition and achieving expected energy savings. A Guarantee Savings Report will be submitted to the customer after each Guarantee Period. | Plumbing Occupancy and usage hours/operation. Frequent of usage, number per flushes a day and flow rates (GPF & GPM) Schedules, Water usage profiles, boiler |

4.4.1 ECM -1 Lighting

Overview of M&V Plan

The M&V plan for this ECM is based on IPMVP Option A.

Savings Verification Methodology

Under IPMVP Option A, the key parameter will be the instantaneous power in kilowatts (kW) used by each lighting fixture lamp and ballast configuration (LBC) at pre and post-retrofit conditions. The measurements will be performed on a statistically significant quantity of pre and post-retrofit fixtures. The stipulated key parameter will be hours of operation.

MIDSTATE ENERGY, LLC. utilizes a standard baseline of 2,150 annual operating hours when calculating pre and post-construction lighting energy savings calculations for educational institutions. The operating standard is based off of one of the industry's most comprehensive study which determined annual baseline hours for educational facilities. The "CT & MA Utilities 2004-2005 Lighting Hours of Use for School Buildings Baseline Study" published September 7, 2006 was prepared by RLW Analytics. Through monitoring with data loggers RLW Analytics determined that the overall estimate of 2,147 hours achieved an average representation of all lighting spaces with a relative precision of $\pm 5.9\%$. MIDSTATE ENERGY, LLC. rounded the estimate of 2,147 hours to 2,150 hours for calculation purposes. The following chart is an excerpt from the study that summarizes the baseline findings:

Table 4.4.1 Baseline Lighting Hours

| Analysis Sector | Annual Hours | Error Bound | Relative Precision | Lower Bound | Upper Bound |
|------------------------|---------------------|--------------------|---------------------------|--------------------|--------------------|
| Overall | 2,147 | 127 | 5.9% | 2,021 | 2,274 |

The number of fixtures to be selected for measurement is based the use of statistical sampling methods (described below) to ensure reasonable sample populations and confidence level (CL) in the results of the samples. MIDSTATE ENERGY, LLC. will identify the fixtures to measure pre and post implementation. MIDSTATE ENERGY, LLC. will use a confidence level (CL) of 80% with a Precision to be 20%. Based on the total LBC quantity, a total of 194 samples will be the expected sample size.

Pre-Installation Measurement & Verification Activities

A room-by-room audit was performed documenting each fixture LBC and their locations in order to establish power draw (kW) per LBC. Prior to installation of new fixtures, measurements will be taken on selected LBC samples chosen. Established Run Time Hours are assigned to the appropriate LBCs. Pre-retrofit baseline is calculated and then compared to utility information to confirm viability and establish disaggregated portion of total energy usage. The pre-retrofit baseline calculation is as follows:

Pre Retrofit baseline:

Existing Fixture Consumption x Run Time Hours = Pre-Retrofit Baseline

Post-Installation Measurement & Verification Activities

Post installation measurements will be taken on the same selected LBC measured during the Pre-installation period. Expected savings will be the difference between the Pre-Retrofit baseline and the Post-retrofit (Adjusted) baseline.

Post Retrofit calculation to determine post consumption baseline:

New Fixture Consumption x Run Time Hours = Post (Adjusted) Retrofit Baseline

The equipment installed as a part of this ECM will be inspected annually to verify that it is in place and operating as specified and that manufacturer's recommended maintenance is being performed. In addition, MIDSTATE ENERGY, LLC. will perform interviews with facility staff to determine whether the equipment remains in place and is operating as intended to provide verification of proper operation.

Any changes to building schedules and occupancy hours are the responsibility of the Customer and may result in baseline adjustments for the calculation of verified savings. MIDSTATE ENERGY, LLC. will note these changes when found and inform the Customer.

Energy consumption savings were calculated through spreadsheet calculations. The savings for this ECM are set forth in Table 4.4.1

Table 4.4.1 Savings Summary

| Lighting Retrofit | Savings |
|--------------------------|----------------|
| Electricity (kWh) | 1,479,166 |

4.4.2 ECM 2 – Data Management System (BAS)

Overview of Measurement & Verification Plan

Current utility rate structures have been studied and analyzed against individual site energy usage. The implementation of ECM's under this agreement and an agreed upon rate structure between the Customer and the utility provider will result in a lower or optimal rate.

Savings Verification Methodology

Verify that the new rate plan and structure have been set with the utility provider to obtain the required savings. Using Fuse Box and monthly verification of new rates and pricing to assure continued savings. Pre-Installation Measurement & Verification Activities

A studied was conducted to determine rate plans, structures and billing procedures from the utility company.

Post-Installation Measurement & Verification Activities

Continually monitor and verify that the new rate structure is in place and is conforming to the required savings model.

Table 4.4.2 Savings Summary

| Data Management System-N.I.C. | Savings |
|-------------------------------|---------|
| Electricity (\$) | \$000 |

4.4.4 ECM 3 - Water Upgrades

Overview of M&V Plan

Overview of M&V Plan

MIDSTATE MECHANICAL INC. will utilize IPMVP Option A for this ECM.

MIDSTATE MECHANICAL INC. will install water saving devises to reduce water usage in the facilities. The system will also reduce the gallons per flush from the present 3.5 gallons to approximately 1.6 gallons. Faucets and showerheads will also be installed with reduction devises

Savings Verification Methodology

MIDSTATE MECHANICAL INC. created a model to determine the facility water load profiles. This model was used in conjunction with water and sewer and natural gas usage history, estimated equipment usage times and interview with facility personnel to calibrate the baseline models.

The water use spreadsheet model used data from the following sources:

- Water, Sewer, and Natural Gas Usage Data from billing records
- Flow rates, gallons per flush, gallons per minute as shown in IGA
- Discussions with facility personnel (occupant usage profiles, number of occupants, schedule, average daily use)

If any of these parameters could not be determined from these sources, MIDSTATE MECHANICAL INC. determined the most likely parameter based on standard engineering practices and experience. Key parameters that affect baseline water and energy use include existing fixture flow rates, building population and DHW heating system efficiency. Building occupant data was provided by staff at PUSD

Baseline M&V Activities

Baseline audits and site observations were used for establishing the baseline sanitary water use. Characteristics of baseline sinks, lavatories and water closets were taken to confirm the assumptions that went into the spreadsheet models. Baseline fixture flow rates are based on fixture flow measurements that were taken on a representative sample of the baseline fixture types. Measurements were performed at the fixture or plumbing chase level. MIDSTATE MECHANICAL INC. used these measurements to determine the averaged fixture flow rates for the existing toilets, lavatories and water closets.

Post-Installation M&V Activities

MIDSTATE MECHANICAL INC. will perform the following verification activity:

- Post-Installation fixture flow rates are based on fixture flow measurements for a representative sample of the Post-Installation fixture types. These fixture flow rates will be set for the term of the contract as is illustrated in IGA
- Field verification that the new plumbing fixtures and controls are installed and operating in accordance with the specifications by manufacturer.

If the as-built equipment installed differs materially from the scope of work, then the models will be revised to reflect the equipment that was actually implemented. If the modification is directed by the CUSTOMER it may also require an adjustment to the guaranteed savings.

Table 4.4.1 Savings Summary

| Indoor Water Efficiency Upgrades-N.I.C. | Savings |
|--|----------------|
| Water/Sewer (kgals) | \$000 |

Section 5 Program Cost

Program cost shall include the following cost and shall constitute customers entire obligation in the agreement.

Measurement & Verification Fee: Customer shall pay MIDSTATE ENERGY, LLC. for annual measurement and verification services payable at the beginning of each performance period. Customer agrees to pay the annual Measurement & Verification fee as provided for below with respect to such agreed upon services.

Table 5.1 – Annual M&V Fee-Phase II

| Year | Program Cost |
|-------------|---------------------|
| 1 | 0 |
| 2 | 0 |
| 3 | 0 |
| 4 | 0 |
| 5 | 0 |
| 6 | 0 |
| 7 | 0 |
| 8 | 0 |
| 9 | 0 |
| 10 | 0 |

The following cash flow demonstrates the annual positive cost benefits associated with implementation of the Energy Performance Contract over the ten (10) year term. The Customer may, or may not elect to finance the cost of the project. The purpose of this preformed cash flow is to demonstrate that the guaranteed savings are more than sufficient to cover the cost of the annual repayment by PEORIA UNIFIED SCHOOL DISTRICT #11. MIDSTATE ENERGY, LLC. recognizes that having satisfied this requirement of the enabling legislation, the customer is free to fund this program at its sole discretion. THE PROFORMA IS ONLY A MODEL AND SHOULD NOT BE CONSIDERED AS THE FINAL PAYMENT OR SAVINGS REFERENCE.

Section 6 Project Proforma

| | | |
|-------------------------------|-------------|---|
| Total Project Cost | \$2,300,000 | Project Cost |
| Approximate Annual Lease Cost | \$0 | No Lease Utilized |
| Annual M&V Fee | \$0 | Annual M&V payment by district outside of lease structure |
| Anticipated rebates | \$140,975 | Annual Lease Payment plus Annual M&V payment |
| Average Annual Energy Savings | \$177,500 | Year 1 program savings |
| Total 10 Year Savings | \$2,302,449 | Annual escalation of energy savings by 3.4% |
| Net 10 Year Savings | \$2,449 | Total Net savings over 10 Year Term |

Section 7 Reserved

(Intentionally left blank)

Section 8 Mutual Representation and Warranties

The parties hereto warrant and represent to each other as follows:

- a. It is a duly organized and valid existing entity with full power and authority to consummate the transactions contemplated by this Agreement.
- b. It has received the requisite authorization from its governing body empowering it to execute, deliver and perform this Agreement, the signatories hereto are duly authorized and upon execution of this Agreement it constitutes a legal, valid and binding obligation.
- c. The execution of these documents will not violate any existing law, rule or regulation of which either party is aware nor will the execution of this Agreement violate any existing contract between either party and any third party, nor has either party received any notice from any individual, corporation or other entity, including, but not limited to, the State of Arizona or any of its departments that this Agreement potentially violates any rule, regulation, ordinance, decree in a manner that would adversely affect the ability of either party hereunder to perform its obligations hereunder.

Section 9 Events of Default

- 9.1 Events of Default by Customer. Each of the following events or conditions shall constitute an “Event of Default” by Customer:
- a. Any failure by Customer to pay MIDSTATE ENERGY, LLC. its undisputed compensation for a period of more than thirty (30) days after the date of the invoice thereof;
 - b. Any representation furnished by Customer in this Agreement which was false or misleading in any material respect when made; or
 - c. Any other material failure by Customer to perform or comply with the terms and conditions of this Agreement or the Construction Contract, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to Customer demanding that such failure to perform be cured or, if cure cannot be affected in such thirty (30) days, without commencement of a cure and subsequent completion thereof as quickly as is reasonably possible.
- 9.2 Events of Default by MIDSTATE ENERGY, LLC. Each of the following events or conditions shall constitute an “Event of Default” by MIDSTATE ENERGY, LLC.:
- a. Any representation or warranty furnished by MIDSTATE ENERGY, LLC. in this Agreement which was false or misleading in material respect when made; and
 - b. Any other material failure of MIDSTATE ENERGY, LLC. to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days, after written notice to MIDSTATE ENERGY, LLC. demanding that such failure to perform be cured or, if cure cannot be affected in such thirty (30) days, without commencement of a cure and subsequent completion thereof as quickly as is reasonably possible.

Section 10 Additional Representations and Warranties of Customer and Midstate Energy, LLC.

The Parties hereby warrant and represent the following:

- a. MIDSTATE ENERGY, LLC. will follow the Davis-Bacon Act concerning prevailing wages with respect to this Project, where applicable.
- b. Customer has provided MIDSTATE ENERGY, LLC. with all records and information heretofore requested by MIDSTATE ENERGY, LLC. and all the information in such records and any records subsequently to be provided by Customer to MIDSTATE ENERGY, LLC. will be in all respects, to the best of the Customer's knowledge, true and accurate in all material aspects except as may be conditioned by Customer in writing.
- c. Customer presently intends to continue to use the Facilities in a manner similar to the present use, except as to those changes which Customer has already disclosed to MIDSTATE ENERGY, LLC. and
- d. To the extent reasonably available, the Customer will provide MIDSTATE ENERGY, LLC. with information with respect to any existing warranties for any equipment which exists at the Facilities within ten (10) days of the execution of this Agreement.

Section 11 Severability

Any provision of this Agreement which is determined by a court to be prohibited or unenforceable, shall be ineffective as to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement provided such severance will not unjustly enrich either party or frustrate the purposes of this Agreement.

Section 12 Notices and Changes of Address

All notices and other communication under this Agreement (other than regularly scheduled payments) shall be deemed properly given upon receipt if delivered in person or sent by electronic facsimile with regular mail follow-up or sent by overnight delivery service or sent by registered mail, return receipt requested and postage prepaid, addressed as follows:

To: PEORIA UNIFIED SCHOOL DISTRICT #11
6330 W. Thunderbird Road
Glendale, Arizona 85306
Attention:

To: MIDSTATE ENERGY, LLC.
1850 East Riverview Drive
Phoenix, Arizona 85034
Attention: John Hobbes, CEO

Either Party may change such address from time to time by written notice to the other Party.

Section 13 Governing Law

This Agreement shall be governed under the laws of the State of Arizona without regard to the principles of conflicts of laws. The parties consent and submit to the exclusive jurisdiction and venue of the state and federal courts located in Maricopa County of the State of Arizona.

Section 14 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document.

Section 15 Waiver

No failure on the part of either MIDSTATE ENERGY, LLC. or Customer to exercise and no delay in exercising any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right.

Section 16 Amendment

No amendment or waiver of any provision of this Agreement or any consent to any departure by either party there from, shall in any event be effective unless the same shall be in writing and signed by the parties to this Agreement and then such amendment or waiver shall be effective only to this specific instance and for the specific purpose for which given.

Section 17 Complete Agreement

This Agreement, including Schedules “A” through “E” hereof, constitutes the entire agreement between Customer and MIDSTATE ENERGY, LLC., and it is agreed that such Schedules are integrated into and form a part of the entire Agreement.

- a. Guaranteed Savings Agreement for Energy Savings Improvement Project
- b. Installation Agreement / Construction Agreement
- c. Investment Grade Audit
- d. Performance Bond
- e. Payment Bond
- f. Insurance Certificate provided by Contractor

Section 18 Changes to the Agreement

The parties agree that changes to the Agreement can be made upon mutual written agreement to accommodate increases or changes in the scope of work in the facility or for the purpose of adding additional facilities. Such changes may involve the scope of work and may affect the energy savings, compensation to MIDSTATE ENERGY, LLC. or monitoring and verification fee.

Section 19 Contract Executory

This Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of this Agreement, and no liability on account therefore shall be incurred beyond the amount of such monies relative to the Performance Guarantee by MIDSTATE ENERGY, LLC. or amounts payable by the Customer. It is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract.

Section 20 Conflict of Interest

This Agreement may be cancelled by the Customer for conflict of interest pursuant to Arizona Revised Statutes Section 38-511, the pertinent provisions of which are incorporated herein by reference.

Section 21 Reserved

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Section 22 Immigration

As mandated by Arizona Revised Statutes 41-4401, MIDSTATE ENERGY, LLC.:

- a. Warrants MIDSTATE ENERGY, LLC. compliance with all federal immigration laws and regulations that relate to MIDSTATE ENERGY, LLC.'s employees and their compliance with Arizona Revised Statutes 23-214(A);
- b. Acknowledges that a breach of the warranty in subsection a of this section shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement; and
- c. Agrees that the Customer retains the legal right to inspect the papers of any MIDSTATE ENERGY, LLC. or subcontractor employee who works pursuant to this Agreement to ensure compliance with the warranty

Section 23 Fingerprinting Requirement

- 23.1 MIDSTATE ENERGY, LLC. and Subcontractor Employee Security Inquiries. Parties acknowledge that security measures required in this Section are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, MIDSTATE ENERGY, LLC. shall take such other measures as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare. MIDSTATE ENERGY, LLC. shall at a minimum ensure that all relevant personnel shall obtain a valid fingerprint clearance card pursuant to Title 41, Chapter 12, Article 3.1 and A.R.S. § 15-512(H).
- 23.2 Security Inquiries. MIDSTATE ENERGY, LLC. acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). MIDSTATE ENERGY, LLC. shall exercise due diligence in conducting such checks and acting to prevent individuals who may compromise the health, safety and welfare of students, staff and/or community from being on the site or Customer property. MIDSTATE ENERGY, LLC. shall perform all such security inquiries and shall make the results available to Customer for all employees considered for performing work (including supervision and oversight) under this

Agreement. Customer may make further security inquiries. Whether or not further security inquiries are made by Customer, Customer may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by MIDSTATE ENERGY, LLC. for performing work under this Agreement. Employees rejected by Customer for performing services under this Agreement may still be engaged by MIDSTATE ENERGY, LLC. for other work not involving the Customer. An employee rejected for work under this Agreement shall not be proposed to perform work under other Customer contracts or engagements without Customer's prior approval.

- 23.3 Criteria for Evaluating Security Inquiries. Once formally adopted by Customer, criteria for excluding an individual from performing work under this Agreement shall be communicated by Customer to MIDSTATE ENERGY, LLC. and used by MIDSTATE ENERGY, LLC. as a factor in making its decision. Prior to such adoption, MIDSTATE ENERGY, LLC. shall use its best judgment in making its decision using, among other criteria, applicable law, administrative regulations of federal, state and local agencies concerned with work performed under this Agreement, specific local concerns that deal with the specific work and work location(s) of the project, and standards used by Customer in evaluating its own personnel.
- 23.4 Additional Customer Rights Regarding Security Inquiries. In addition to the foregoing, Customer reserves the right to: (1) have an employee/prospective employee of MIDSTATE ENERGY, LLC. be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(0)(4); (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of MIDSTATE ENERGY, LLC.'s employees and/or prospective employees; and, (4) object, at any time and for any reason, to an employee of MIDSTATE ENERGY, LLC. performing work (including supervision and oversight) under this Agreement.
- 23.5 Terms of This Provision Applicable to all of MIDSTATE ENERGY, LLC. Contracts and Subcontracts. MIDSTATE ENERGY, LLC. shall include the terms of this provision for employee background and security checks and screening in all contracts and subcontracts for work performed under this Agreement, including supervision and oversight.
- 23.6 Materiality of Security Inquiry Provisions. The Security Inquiry provisions of this Agreement, as set forth above, are material to Customer's entry into this Agreement and any breach thereof by MIDSTATE ENERGY, LLC. may, at

Customer's option, sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Agreement. Such termination shall subject MIDSTATE ENERGY, LLC. to liability for its breach of contract.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this instrument on the date first above written.

PEORIA UNIFIED SCHOOL DISTRICT #11

MIDSTATE ENERGY, LLC.

Authorized Signature
Title:

John Hobbes
CEO

Witness

Witness

Schedule A Address of Facilities

1. Alta Loma Elementary School, 9750 N. 87th Avenue
2. Apache Elementary School, 8633 W. John Cabot Road
3. Canyon Leadership Academy, 5490 W. Paradise Lane
4. Centennial High School, 14388 N. 79th Avenue
5. Cheyenne Elementary School, 11806 N. 87th Avenue
6. Desert Harbor Elementary School, 11441 N. 55th Avenue
7. Ironwood High School, 12901 N. 63rd Avenue
8. Marshall Ranch Elementary School, 12995 N. Marshall Ranch Drive
9. Sahuaro Ranch Elementary School, 10401 N. 63rd Avenue
10. Sky View Elementary School, 8624 W. Sweetwater Avenue
11. Sundance Elementary School, 7051 W. Cholla Street

Schedule B Scope of Work

DEFINED IN THE ATTACHED Installation Agreement.

Schedule C Savings Calculations

ENERGY SAVINGS CALCULATION METHODOLOGY AND CALCULATIONS FOR PROJECT
(SEE THE ATTACHED Investment Grade Audit Section 3 Phase I)

Schedule D Maintenance and Service Requirements

(SEE THE ATTACHED ENERGY AUDIT SECTION 3)

Schedule E Reserved

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