

AGREEMENT

Fairlawn LSD Energy Project

This Agreement for Retro-Commissioning and Controls (the Project), is to be completed at the K-12 facility within the Fairlawn Local School District, and is made effective this 17th day of September, 2013, by Dynamix Energy Services, LLC (Service Provider), and The Board of Education of Fairlawn Local School District (Owner) 18800 Johnston Rd, Sidney, Ohio 45365 for the services and work described in this agreement, pursuant to the terms and conditions contained herein.

AGREEMENT

In consideration of the mutual promises contained herein and other valuable consideration, the parties agree as follows:

1. Work. The Service Provider shall furnish all the labor, services, materials, and all other things (collectively called the "Work") necessary for the timely and proper design and completion of the Project. The Service Provider shall perform the Work defined in the contract documents. In performing the Work, the Service Provider shall at all times furnish sufficient skilled workers, materials, and equipment to perform the Work, to the satisfaction of Owner and so as not to delay any part of the Project. All materials and equipment provided will be new, free from defects, and fit for the purpose for which they are intended.

2. Contract Documents. The Contract Documents consist of this Agreement, the attachments hereto, and any other drawings and documents produced by the Service Provider (together referred to in this Agreement as the "Contract Documents"). **Attachment A, "Scope of Work Outline"; Attachment B, "Energy Baseline Data"** In the event of a conflict between any of the Contract Documents, including attachments to this Agreement and the provisions of this Agreement, this Agreement shall control.

3. Design Professional. The Service Provider agrees that all design work requiring the seal of a licensed design professional shall be performed by a design professional licensed to perform such work in the State of Ohio.

4. Representatives.

a. Owner's Representative. The Owner's Representative for the Project is Keith Doseck. All correspondence, inquiries, and payment requests from the Service Provider to the Owner must be addressed to the Owner's Representative at Fairlawn Local School District 18800 Johnston Rd, Sidney, Ohio 45365.

b. Service Provider's Representative. The Service Provider's Representative for the Project is Mr. Todd Mace, 855 Grandview Ave, Suite 300, Columbus, OH 43215.

5. Term of Agreement. The parties contemplate that the entire Work to be performed will be ready for use by the Owner no later than February 3, 2014.

6. Energy Savings Guarantee. The Service Provider Guarantees that the Owner will realize a combined energy cost reduction of Fifty-eight thousand seven hundred sixty-six dollars (\$58,766) over a 12 month guarantee period following the completion of the project. The Energy Savings Guarantee is for one 12 month period. The actual combined energy savings will be calculated by taking the total 12 month energy baseline of propane and electric energy consumption of the building(s) in the project, and subtracting the actual propane and electric energy consumption

of the building(s) over the 12 month guarantee period. The actual energy consumption will be normalized to the baseline for weather and occupied days before being subtracted from the baseline year (See Attachment "B" for the Energy Baseline Data). The energy savings will be calculated using the greater of the energy baseline rates of \$1.399/gal and \$0.0972/kwh, or the actual energy rates established during the 12 month guarantee period. The appropriate energy rates will be applied to the energy savings calculation to determine the actual dollar amount of the energy savings for the single Energy Savings Guarantee period. Example: Assume a baseline propane consumption = 500 gal and the baseline electric consumption = 1,000 kwh. Assume a normalized actual propane consumption of 400 gal and a normalized electric consumption of 700 kwh. Assume the baseline energy rates were the appropriate energy rates to apply. The dollar value of the combined energy savings would be \$169.06 = [(500-400) x \$1.399] + [(1,000-700) x \$0.0972]. The Service Provider will notify the owner in writing when the Energy Guarantee period starts, following the completion of the project. At the end of the Energy Savings Guarantee period, if the actual energy savings realized by the owner is less than the Energy Savings Guarantee dollar amount, the service provider will reimburse the owner within fifteen (15) days of the end of the Energy Savings Guarantee period. In the example above, assume the Energy Guarantee dollar amount was \$200. The service provider would reimburse the owner for \$30.94 = (\$200 - \$169.06). The owner is not responsible to compensate the Service Provider for any Energy Savings dollar amount that is over the Energy Savings Guarantee dollar amount.

7. Notice of Contacts. The Service Provider shall provide the Owner a list of key personnel on the project including the Service Provider's representative in order to expedite questions that may arise during project or the Warranty period.

8. Contract Sum. The parties agree that the Contract Sum is a fixed amount for the Work defined in this agreement. The Contract Sum is Three hundred nineteen thousand dollars (\$319,000). The Owner will pay the Service Provider the Contract Sum per the draw schedule as further defined in Paragraph 17 of this Agreement. The Contract Sum includes the costs of all labor, equipment and materials, subcontracts, and the fee and expenses of the Service Provider.

9. Guarantee and Warranties.

a. Material and Workmanship Warranty. Service Provider warrants that the materials and workmanship provided by the Service Provider under this Agreement will be free from defects for a period of 12 months after Owner's acceptance of the Project, provided that the Service Provider is given prompt written notice of any defect. In addition to any other warranties, guarantees, or obligations set forth in the Contract Documents or applicable as a matter of law and not in limitation of the terms of the Contract Documents, the Service Provider warrants and guarantees that:

.1 the Owner will have good title to the Work and all Service Provider-provided material and equipment incorporated into the Work will be new. The Work will be completed using good engineering practice.

.2 the Work and all materials and equipment incorporated into the Work will be free from all defects, including any defects in the workmanship or materials;

.3 the Work and all equipment incorporated into the Work will be fit for the purpose for which they are intended; and

.4 the Work and all materials and equipment incorporated into the Work will conform in all respects to the Contract Documents, any Drawings and/or Specifications prepared by the Service Provider and as additionally required by the manufacturer's printed instructions.

Upon notice of the breach of any of the foregoing warranties or guarantees or any other warranties or guarantees under the Contract Documents, the Service Provider, in addition to any other requirements in the Contract Documents, will commence to correct such breach and all damage resulting therefrom within five (5) business days after written notice thereof, thereafter will use its best efforts to correct such breach and damage to the satisfaction of the Owner, and, except where an extension of time is granted in writing by the Owner, correct such breach and damage to the satisfaction of the Owner within thirty (30) calendar days of such notice; provided that if such notice is given after final payment hereunder, such 2-day period shall be extended to seven (7) calendar days. If the Service Provider fails to commence to correct such breach and damage, or to correct such breach and damage as provided above, the Owner, upon written notice to the Service Provider and without prejudice to any of its other rights or remedies, may correct the deficiencies. The Service Provider upon written notice to the Owner shall pay the Owner, within ten (10) calendar days after the date of such notice, all of the Owner's costs and expenses incurred in connection with or related to such correction and/or breach, including without limitation the Owner's administrative, legal, and consulting expenses and additional design professional service fees. The foregoing warranties and obligations of the Service Provider shall survive the final payment and/or termination of the Contract. If the Service Provider fails to pay the Owner any amounts due under this Warranty, the Service Provider shall pay the Owner, in addition to the amounts due, a late payment fee of one and one-half percent (1.5%) per month for each month or part thereof that the payments are not paid when due.

This Warranty does not include responsibility for repair or replacement necessitated by freezing weather, electric power failure, low voltage, burned-out main or branch fuses, low water pressure, vandalism, misuse or abuse of the system(s), requirements of governmental, regulatory or insurance agencies, or other causes beyond control of Service Provider.

If a warranty call is made at Owner's request and inspection indicates a condition which is not covered under this Agreement, Service Provider may charge Owner at the rate then in effect for such services.

The Service Provider shall, upon completion of the Work, assign to the Owner all warranties obtained or obtainable by the Service Provider from manufacturers and suppliers of equipment and materials incorporated into the Work by written instrument of assignment in form acceptable to the Owner.

10. Acceptance. Acceptance by the Owner of Work performed by Service Provider will be acknowledged upon completion of the items included in Attachment "A".

11. Breach by Service Provider; Breach by Owner.

a. Service Provider's Breach. The Service Provider's failure to perform any of its obligations under this Agreement and to proceed to commence to correct such failure within two (2) business days after written notice thereof from the Owner, or thereafter use its best efforts to correct such failure to the satisfaction of the Owner, or to correct such failure within five (5) days after written notice thereof or within such time requested by the Owner, except when an extension of time is granted in writing by the Owner, shall be a breach by the Service Provider.

Upon the occurrence of such a breach, the Owner will have the following remedies, which will be cumulative:

.1 To order the Service Provider to stop its work on the Project, in which case the Service Provider will do so immediately;

.2 To perform through others all or any part of the work remaining to be done and to deduct the cost thereof from the unpaid balance of the contract price;

.3 To terminate this Agreement and complete the Project, deducting the cost to do so from the unpaid balance of the contract price, in which case the Service Provider will not be entitled to receive any further payment until the Project is completed; and/or

.4 Any other remedies which the Owner may have at law or in equity or otherwise under the Contract Documents.

If the unpaid balance of the contract price exceeds the cost of finishing the Project, such excess will be paid to the Service Provider. If such costs exceed the unpaid contract balance, the Service Provider will pay the difference to the Owner.

b. Owner's Breach. The Owner's failure to pay the Service Provider and the Owner's failure to perform any of its obligations under the contract documents and to correct such failure within ten (10) days after written notice thereof from the Service Provider, which notice specifies the default and the necessary corrective action, shall be the only events of default of the Owner.

The Service Provider's sole and exclusive remedy for the default of the Owner, will be to submit the dispute to mediation, followed by litigation if the parties are unable to resolve the dispute as provided in Paragraph 19 of this Agreement.

12. Limitation on Liability. The Owner's total liability under this Agreement will be limited to the Contract Sum, which the Treasurer has encumbered through the certificate(s) accompanying this Agreement, as such sum may be adjusted during the course of the Project by amendment and an accompanying updated certificate(s).

13. Access to the Work. Owner shall provide Building Automation System software tool to Service Provider. Owner shall permit Service Provider free and timely access to areas and equipment to proceed with the Project and allow Service Provider to start and stop the equipment as necessary to perform required services. Owner shall permit Service Provider remote access to the Building Automation System for the duration of the project and 12 consecutive months thereafter. Service Provider agrees to coordinate times for performance of Work with the Owner, as further defined in Paragraph 15.

14. Use of Owner's Facilities. The Service Provider will ensure that neither its employees, nor any of its Subcontractors or Subcontractor's employees, regardless of tier:

- a. use the Owner's cafeteria or phones;
- b. use any tobacco products on any property owned by the Owner;
- c. use or bring any alcoholic beverages, controlled substances, or firearms on any property owned by the Owner; and
- d. use any radios, tape or compact disc players, or sound amplification equipment, except those directly related to the management of the Work, that is audible outside of the area where the Work is being performed. For purposes of this Agreement, entertainment of workers on site is NOT directly related to the management of the Work.

The Service Provider shall conspicuously post notice of the prohibitions listed in this paragraph at the Project site in the same location as O.S.H.A. notices are required to be posted and shall verbally inform all of the Service Provider's employees, and the employees of the Service Provider's Subcontractors and material men, regardless of tier, of such prohibitions. The notice should be in a form acceptable to the Owner.

The Service Provider acknowledges that the safety of the Owner's employees, students, and guests is of the utmost importance. The Service Provider will take no action that would jeopardize the safety of the Owner's employees or guests and students without the Owner's written approval and shall take no action that would interfere with any of the Owner's activities.

15. Schedule of Construction. Service Provider and Owner agree that all work required for the Project, including that of all other Service Providers and subcontractors for the Owner, if applicable, shall be performed in accordance with a mutually agreed upon schedule of construction activities prepared in advance of their commencement. Service Provider shall provide a detailed schedule of proposed activities on a facility basis, as requested by Owner. Service Provider shall be entitled to an extension of contract time in the event the Work or any part thereof is delayed by any cause beyond Service Provider's reasonable control. Such causes include, but are not limited to, acts of God or public enemy; compliance with any order, decree, or request of any government authority; acts of declared or undeclared war; sabotage; fire; floods; adverse weather conditions; explosions; accidents; riots; strikes; labor disputes, inability to obtain necessary materials or equipment from normal sources of supply; or any other cause not within the reasonable control of the Service Provider.

16. Terms of Payment. Payment will be made based on the draw schedule described in section 17. Requests for payment shall be submitted on a monthly basis. On or before the day of the month specified by the Owner, the Service Provider will submit to the Owner a payment request representing the progress of the project by building. Provided that the Service Provider's payment request has been submitted on a timely basis, the Owner will pay the Service Provider within seven (7) days after the Service Provider's payment request is received and approved by the Owner.

17. Draw Schedule.

Due Date	Invoice Date	Month	Draw Amount
11-Nov-13	4-Nov-13	0	\$47,850
9-Dec-13	2-Dec-13	1	\$90,384
6-Jan-14	30-Dec-13	2	\$90,383
3-Feb-14	27-Jan-13	3	\$90,383
			\$319,000

**Assumes Notice to Proceed or Contract Award on or before November 4, 2013*

18. State Sales and Use Tax. The Owner is a political subdivision of the State of Ohio. Materials that the Service Provider purchases for incorporation into the Project will be exempt from state sales and use taxes if the Service Provider provides a properly completed sales tax exemption certificate to the vendors or suppliers when the materials are acquired. The Owner will execute properly completed certificates on request.

19. Claims and Disputes. In the event either party has a claim against or dispute with the other party, the party with the claim or dispute shall provide written notice of such claim or dispute to

the other party prior to taking any other action to resolve such claim or dispute. The parties agree that if they are unable to resolve the claim or dispute among themselves they will mediate the dispute with an independent third party. If mediation is unsuccessful, the claim or dispute will be settled by litigation in the Court of Common Pleas for Shelby County, Ohio.

20. Indemnification. The Service Provider shall indemnify and hold harmless the Owner against any and all liabilities, damages, losses, claims, expenses, demands, suits, fines, or judgments, including reasonable attorneys' fees, costs, and expenses incidental thereto, incurred as a result of any act or omission arising out of or in conjunction with a breach of this Agreement by the Indemnifying party or in part by the negligent act of omission by the other party, its officers, directors, agents, employees, subcontractor or assignees pursuant to the terms of this Agreement and full extent as allowed by the laws of the State of Ohio..

21. Asbestos and Other Hazardous Material. In the event the Service Provider encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or other hazardous materials, which results in exposure after the use of any permissible personal protective equipment that exceeds limits established by the governmental agencies having jurisdiction over exposure to asbestos, PCB, or other hazardous materials, the Service Provider shall immediately stop Work in the area affected and report the condition to the Owner in writing. Thereafter, the Service Provider shall not resume Work until such time that testing of the affected area confirms that exposure after the use of any permissible personal protective equipment is within permissible limits. Service Provider has no obligation under this Agreement for removal of any asbestos products or other hazardous substances. The cost of removal of all asbestos products or other hazardous substances will be paid for by the owner and is outside of this agreement.

22. Instruction Manuals/As-Built Drawings/Training/Testing.

a. Instruction Manuals. A softcopy in pdf format covering the operation and maintenance of each item of equipment furnished on the project shall be prepared and provided on a USB drive by the Service Provider and submitted to the Owner.

b. As-Built Drawings. A softcopy in pdf format of as-built drawings on the project shall be prepared and provided on a USB drive by the Service Provider and submitted to the Owner.

c. Training of Owner's Personnel and Testing of Systems. The Service Provider will participate in training sessions for the Owner's maintenance personnel that are scheduled by Owner in coordination with the Service Provider. The Service Provider shall instruct the Owner's operating personnel in the proper use, care, and emergency repair of all equipment installed by it before Final Payment. The Service Provider shall call particular attention to any safety measures that should be followed. The instruction shall be adequate to train the Owner's operating personnel in the proper use, care, and emergency repair of such equipment. During the first twelve (12) months following final completion of each type of work described in Attachment A, the Service Provider, without additional compensation, will participate in tests scheduled and supervised by the Owner that test the following building systems to the extent applicable to the Service Provider's Work: air conditioning system (which shall be conducted during the first full summer following the completion of the Project or at such earlier time as scheduled by the Owner), heating system (which shall be conducted during the first full winter following the completion of the Project or at such earlier time as scheduled by the Owner), and such other systems as reasonably requested by the Owner. The Owner will be advised when the testing will be conducted and will be invited to observe. It is intended that the testing be a comprehensive series of operation tests designed to determine whether the systems are fully operational in accordance with the requirements of the Contract Documents. If it appears that any of the systems, including equipment and software, do not conform to the requirements of the Contract Documents, the Service Provider will remedy the defective and/or non-conforming work as provided in this Agreement.

23. Insurance. The Service Provider will provide insurance for worker's compensation as required by statute, general liability insurance with a coverage limit of \$1 million, and comprehensive automobile liability insurance that covers bodily injury (including death) and property damage with a combined single coverage limit of \$1 million. The Service Provider shall also maintain professional liability insurance in the minimum amount of \$1 million. The Service Provider shall maintain the foregoing coverages for not less than two (2) years after the date final payment is due. The foregoing policy limits may be provided in conjunction with an umbrella policy. The Service Provider shall require all subcontractors to provide Workers' Compensation, general liability, and automotive liability insurance with the same minimum limits specified herein. The insurance furnished by the Owner is not intended to and will not cover equipment and materials before they are physically incorporated into the Work or tools. The Service Provider shall bear the entire risk of loss with respect to tools and such equipment and materials. The Service Provider shall provide the Owner with a certificate of insurance coverage and shall have the Owner and Board members and employees of the Owner, in their individual capacities, named as additional insureds under the policies of insurance, with the exception of the professional liability insurance policy.

24. Permits. The Service Provider shall procure all permits required to execute the work in Attachment "A". The cost of such procurement, payment, and delivery are included in the Contract Sum.

25. Clean-up. The Service Provider shall remove and shall require its Subcontractors to remove all spillage and tracking resulting from the performance of the Work from streets, drives, and sidewalks in and around the Project site and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas. The Service Provider shall remove all debris from the Project site and will transport it to a disposal site authorized to accept such debris. The Service Provider shall remove any debris, mud, or deleterious material deposited on the public streets at the end of each working day, or before if directed by the Municipal Authority.

26. Assignment. The Service Provider may not assign this Agreement without the written consent of the Owner, which the Owner may withhold in its sole discretion.

27. Personnel to be Contacted in Case of an Emergency. The Service Provider shall provide to the Owner a list of names and telephone numbers of its designated employees and those of any Subcontractor to be contacted in case of emergency during non-working hours.

28. Miscellaneous.

a. Compliance with Laws and Regulations. The Service Provider, at its expense will comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Project, including, but not limited to the Federal Occupational Health and Safety Act.

b. Law and Jurisdiction. All questions regarding the validity, intention, meaning of this Agreement or any modifications of it relating to the rights and obligations of any parties will be construed and resolved under the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the Common Pleas Court of Franklin County, Ohio, and each party hereby expressly consents to the jurisdiction of such court.

c. Construction. The parties acknowledge that each party has reviewed this Agreement and the other contract documents and has voluntarily entered into this Agreement.

d. Entire Agreement. This Agreement and the other contract documents constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous oral or written agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

OWNER:
THE BOARD OF EDUCATION OF THE
FAIRLAWN LOCAL SCHOOL DISTRICT

SERVICE PROVIDER:
DYNAMIX ENERGY SERVICES, LLC

By: _____
Signature (Authorized Representative)

By:  _____
Signature (Authorized Representative)

Name (Print/Type)

TODD L. MACE

Name (Print/Type)

Title

Principal

Title

Date

9/17/13

Date

Attachment “A”

PROJECT SCOPE OF WORK OUTLINE

Dynamix Energy Services shall provide the following summary work:

- 1. Retro-Commissioning of Mechanical Systems**
- 2. Install new gymnasium lighting; one to one replacement of existing fixtures with new high bay fluorescent fixtures**
- 3. Provision for FMX (Facilities Management eXpress) software service for 1 year**
- 4. Energy Dashboard for monitoring energy use (includes installation of necessary metering equipment)**
- 5. Operational Plan to maintain energy reduction**
- 6. Measurement & Optimization of Systems during 12 month guarantee period**
- 7. All material & labor for completing the above within the Fairlawn LSD**

Attachment “B”

PROJECT ENERGY BASELINE DATA

District Baseline Year 2012 - 2013						
Month	Gas		Elec		HDD	CDD
	Usage (gal)	Cost	Usage kwh	Cost		
Jul-12	n/a	n/a	109,581	\$10,396	0	473
Aug-12	n/a	n/a	113,735	\$11,215	0	258
Sep-12	1,576	\$2,204	119,471	\$11,620	110	94
Oct-12	2,668	\$3,733	101,471	\$9,716	390	9
Nov-12	5,101	\$7,136	97,911	\$9,032	715	0
Dec-12	4,985	\$6,974	91,186	\$7,934	819	0
Jan-13	7,687	\$10,754	110,966	\$9,976	1057	0
Feb-13	10,869	\$15,206	93,757	\$9,176	959	0
Mar-13	6,549	\$9,162	96,922	\$9,364	912	0
Apr-13	2,747	\$3,843	92,768	\$9,506	377	16
May-13	1,311	\$1,834	102,065	\$10,689	107	115
Jun-13	-	-	73,779	\$8,375	11	208
Jul-13	1,033	\$1,445	n/a	n/a	3	289
Aug-13	-	-	n/a	n/a	9	259
Totals	44,526	\$62,291	1,203,612	\$117,001		

District Baseline Rates	
Gas (\$/gal)	\$1.3990
Elec (\$/kwh)	\$0.0972

District Baseline Occupied School days per year = 182

District Baseline Occupied School Hours = M-F 7:30am to 3:30pm