



First Amendment to Energy Savings Performance Contract

This First Amendment to Energy Savings Performance Contract (the “First Amendment”) is made as the 5th day of March, 2024, by and between Performance Services, Inc. (“Consultant”) and City of Deer Park, Texas (“Owner”) with respect to that certain Energy Savings Performance Contract entered into by and between Consultant and Owner, dated June 7, 2023 (the “Contract”). All capitalized terms contained herein and not otherwise defined shall have the meaning ascribed to them in the Contract.

Consultant and Owner hereby agree that the Contract shall be amended as follows:

1. The definition of “Work” contained on Page No. 1 of the Contract shall be deleted in its entirety and replaced with the following:

“The “Work” shall mean the scope of work defined in Consultant’s proposal to Owner, dated February 22, 2024 (the “Proposal”), containing the following Exhibits:

- a. Exhibit A – Investment Grade Audit;
- b. Exhibit B – Project Improvement List;
- c. Exhibit C – Measurement and Verification Plan;
- d. Exhibit D – Performance Guarantee Agreement;
- e. Exhibit E – Water Meter Testing Data;

which Exhibits shall be attached to and incorporated in the Contract.”

2. Section 4.4.1 of the Contract shall be deleted in its entirety and replaced with the following:

“The Contract Price shall be a lump sum in the amount of Nine Million Six Hundred Seventy-One Thousand Eight Hundred Ninety-Four and 00/100 Dollars (\$9,671,894.00), as illustrated on page 15 of the Proposal.”

3. Section 4.4.1.1 of the Contract shall be deleted in its entirety.
4. Section 4.9.1 shall be revised as follows:

Insert “to the extent” in the sixth line of the paragraph immediately before the phrase “arising out of”.

Delete “if caused, in whole or in part” in the eleventh line of the paragraph and insert “to the extent caused”.

5. Section 4.9.2 shall be revised as follows:



Delete "which are" in the seventh line of the introductory paragraph and insert "to the extent".

6. Insert the following as Section 4.31 Payment Terms:

"All payments made by Owner to Consultant shall be made via check. Within ten (10) days of execution of the Contract, Owner shall pay to Consultant five percent (5%) of the Contract Price as a mobilization fee and one hundred percent (100%) of the engineering for the Project, as specified in the Proposal. Thereafter, the balance of the Contract Price shall be paid to Consultant in monthly progress payments on or before the 15th of each month for the value of work completed plus the amount of materials and equipment suitably stored, either on site or off-site the previous month, less the aggregate of previous payments to Consultant. There shall be five percent (5%) retainage withheld from progress payments made under this Contract. Final payment, constituting the entire unpaid balance for the Work including retainage, shall be due 30 days after the Work described in this Contract is substantially complete, except for 150% of the value of any agreed upon punch list items remaining at that time. "Substantial Completion" is defined as the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Any amounts withheld for punch list shall be due 30 days after the punch list items are completed. "Final Completion" is defined as the stage in the progress of the Work when all punch list items are complete."

7. Insert the following as Section 4.32 Warranty:

Consultant warrants that materials and equipment furnished by Consultant will be of good quality and new; that the Work will be free from defects, and to the extent consistent with the standard of reasonable care and skill ordinarily used and exercised by contractors such as Consultant in performing work for projects of the same type, kind, nature, complexity and size as the Project covered by this Contract, and as otherwise not inherent in the quality required or permitted; and that the Work will conform to the requirements of this Contract. Consultant warrants that the Work shall be free from defects in material and workmanship arising from normal usage for a period of one (1) year from the date of Substantial Completion ("Warranty Period"). THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. During the Warranty Period, upon fourteen days (14) written notice from the Owner, Consultant shall, at its option, repair or replace the defective Work. Consultant's warranty obligations shall lapse after the running of the Warranty Period. These warranties do not extend to any Work that has been repaired by others, abused, altered, misused, or that has not been properly and reasonably maintained. Consultant shall not be responsible for damage to its work caused by others. Any



repair work necessitated by such damage caused by others will be considered as an order for extra work. Consultant will not be responsible for special, incidental, or consequential damages.

Nothing in the warranties provided herein are intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section. Upon expiration of the Warranty Period, Consultant will assign the rights to any manufacturer's warranty and all other rights against manufacturers of materials and equipment and Owner accepts such assignment for all materials and equipment incorporated into the Work. The Owner agrees that after expiration of the Warranty Period, its sole remedy for defects or failure of materials or equipment is directly against such manufacturers and waives all rights against Consultant for any defects or failures of such materials or equipment following Substantial Completion. Consultant will provide the Owner with all manufacturers' warranties upon expiration of the Warranty Period. However, Consultant's failure to do so does not waive or modify this provision.

8. Insert the following as Section 4.33 Safety:

Solely for the benefit of Owner, Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities related to safety of persons or property. Consultant 's responsibility for safety under this Section is not intended in any way to relieve any of Consultant 's subcontractors, suppliers or second or third tier subcontractors and suppliers of their own legal obligations and responsibility for complying with any applicable laws, ordinances, rules, regulations, and lawful orders of public authorities related to safety of persons or property, and for taking all necessary measures to implement and monitor reasonable safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

All other terms and provisions of the Contract shall remain in full force and effect.

“OWNER”:

CITY OF DEER PARK, TEXAS

By: _____
Printed/Title: _____

“CONSULTANT”:

PERFORMANCE SERVICES, INC.

By: _____
Printed/Title: _____