

CITY COUNCIL MINUTES
September 12, 2011

The Honorable Council of the City of Evansville met on regular session at 5:30 p.m. on Monday, September 12, 2011 in the City Council Chambers, Room 301 Civic Center Complex, Evansville, Indiana, with President Watts presiding. The following business was conducted.

These minutes are not intended to be a verbatim transcript. Audiotapes of this meeting are on file in the City Clerk's Office.

ROLL CALL:

Present: McGinn, Mosby, Bredhold, Robinson, Friend, Adams, John, Walker, Watts.

There being nine (9) members present and zero (0) members absent and nine (9) members representing a quorum, I hereby declare this session of the Common Council officially open.

PLEDGE OF ALLEGIANCE

This evening the pledge of allegiance was led by Councilman Friend.

Fellow Councilmen and those in the audience, welcome to the September 12, 2011 meeting of the Common Council.

RECOGNITION OF SCHOOLS

TEEN ADVISORY COUNCIL

Kiersten Wytovak, Karlee Kolb, Sarah Kercher, Anna Ballard and Adrian Funke.

COUNCIL ATTORNEY

John Hamilton is City Council Attorney this evening.

SERGEANT AT ARMS

There was no Sergeant at Arms this evening.

READING AND AMENDMENT OF MINUTES

Is there a motion to approve the minutes of the August 22, 2011 meeting of the Common Council as written?

Councilman Friend moved and Councilwoman Mosby seconded the motion to approve the minutes of the regular meeting of the Common Council held August 22, 2011. Voice vote. So ordered.

REPORTS AND COMMUNICATIONS

IN YOUR September 9TH PACKET:

- *City Council Agenda for September 12, 2011 meeting.
- *Committee Meeting Schedule.
- *City Council Meeting Minutes from the August 22, 2011.
- *Ordinance F-2011-8, 9, 10, 11, 12, 13, 14 & 15.
- *Ordinance G-2011-14, 15 & 16.
- *Resolution C-2011-23 & 24.
- *New Intake Agent for the CCDF (Child Care Development Fund)
- *Schedule of Meetings in the City/County Administration Bldg. for September.

*List of Paid City Holidays for 2012.

*News Release: Parks Board Approves Guaranteed Energy Savings Performance Contract for Parks Facilities.

Councilwoman Robinson moved and Councilman Friend seconded the motion to receive, file and make these reports and communications a part of the minutes of the meeting. Voice vote. So ordered.

CONSENT AGENDA

FIRST READING OF ORDINANCES OR RESOLUTIONS

ORDINANCE G-2011-14 FINANCE FRIEND

An Ordinance fixing the salaries of every appointive officer, employee, deputy, assistant, departmental and institutional head of the City of Evansville for the Year 2012 and establishing salary administration procedures.

ORDINANCE G-2011-15 FINANCE FRIEND

An Ordinance fixing the salaries of every appointive officer, employee, deputy, assistant, departmental and institutional head of the Evansville-Vanderburgh County Levee Authority for the Year 2012 and establishing salary administration procedures.

ORDINANCE G-2011-16 PUBLIC WORKS MOSBY

An Ordinance to vacate certain public ways or public places within the City of Evansville, Indiana, commonly known as all that alley being (16) sixteen feet in width and running between and contiguous with lots 204, 205,206,207,235,236,237 and 238 of Forest Hills No. 3 Subdivision in Vanderburgh County, Indiana.

ORDINANCE F-2011-8 FINANCE FRIEND

An Ordinance of The Common Council of the City of Evansville, Indiana appropriating monies for the purpose of defraying the expenditures of departments of the City Government for the Fiscal Year beginning January1, 2012.

ORDINANCE F-2011-9 FINANCE FRIEND

An Ordinance of The Common Council of the City of Evansville, Indiana appropriating monies for the purpose of defraying the expenditures of Vanderburgh County Levee Authority for the Fiscal Year beginning January1, 2012.

ORDINANCE F-2011-10 FINANCE FRIEND

An Ordinance of The Common Council of the City of Evansville approving and adopting the 2012 Budget for the Port Authority of Evansville.

ORDINANCE F-2011-11 FINANCE FRIEND

An Ordinance of The Common Council of the City of Evansville, Indiana Fixing the Salaries of Elected Officials for the City of Evansville, Indiana for the Year 2012.

ORDINANCE F-2011-12 FRIEND

An Ordinance of The Common Council of The City of Evansville approving the annual Community Development Plan and appropriating Community Development Block Grant, Emergency Shelter/Solutions Grant, and Home Investment Partnerships Program Grant Funds. (DMD)

FINANCE COMMITTEE:

CHAIRMAN FRIEND

Councilman Friend: Mr. President, your Finance Committee met this evening to hear Ordinance F-2011-7 and Resolution C-2011-21 and both come forward with a do pass recommendation.

Councilman John moved and Councilman Friend seconded the motion to adopt the Committee Reports and move this Ordinance and Resolution to Third Reading. Voice vote. So ordered.

REGULAR AGENDA

THIRD READING OF ORDINANCES AND RESOLUTIONS

ORDINANCE G-2011-13 (amended) PUBLIC WORKS MOSBY

An Ordinance to vacate certain public right-of-way within the city of Evansville, Indiana, commonly known as a twelve-foot alley on and along the north line of Lots One and Two in Block Three of Northern Enlargement in the City of Evansville, going east for a distance of fifty-seven feet, six inches (57'6") in length.

Councilwoman Bredhold moved and Councilwoman Mosby seconded the motion to adopt Ordinance G-2011-13 as amended and call the roll.

ROLL CALL:

Ayes: M^cGinn, Bredhold.

Nays: Mosby, Robinson, Friend, Adams, John, Walker, Watts.

There being two (2) ayes and seven (7) nays Ordinance G-2011-13 as amended is hereby declared denied.

REGULAR AGENDA

THIRD READING OF ORDINANCES AND RESOLUTIONS

ORDINANCE F-2011-7 FINANCE FRIEND

An Ordinance of the Common Council of the City of Evansville authorizing transfers of appropriations, additional appropriations and repeal and re-appropriation of funds for various city funds.

Councilman John moved and Councilman Friend seconded the motion to adopt Ordinance F-2011-7 and call the roll.

ROLL CALL:

Ayes: M^cGinn, Mosby, Bredhold, Robinson, Friend, Adams, John, Walker, Watts.

There being nine (9) ayes and zero (0) nays Ordinance F-2011-7 is hereby declared adopted.

REGULAR AGENDA

THIRD READING OF ORDINANCES AND RESOLUTIONS

RESOLUTION C-2011-21 FINANCE FRIEND

A Resolution of the Common Council of the City of Evansville ratifying, confirming, authorizing and approving an agreement between the City of Evansville and the Fraternal Order of Police Evansville Lodge No. 73 Inc.

Councilman Friend moved and Councilman John seconded the motion to adopt Resolution C-2011-21 and call the roll.

ROLL CALL:

Ayes: McGinn, Mosby, Bredhold, Robinson, Friend, Adams, John, Walker, Watts.

There being nine (9) ayes and zero (0) nays Resolution C-2011-21 is hereby declared adopted.

MISCELLANEOUS BUSINESS

There will not be a City Council Meeting next Monday, September 19, 2011. The next meeting of the Common Council will be September 26, 2011 with committee meetings beginning at 5:10 p.m.

Nancy Evans, Secretary for the Animal Care and Control Commission

- Speaking about suggestions for revising the Animal Control Ordinance.

Kerry Kamp: I'm Kerry Kamp and I am the Administrative Manager for the Department of Transportation and Services. Ms Evans is the secretary for the Animal Care and Control Commission. She has been held up at her job and is not able to make it, so I'm here to discuss the situation. The Animal Care Control Commission met on September 2, 2011, to discuss the pigeon loft that was at 1201 North Villa Drive. At that time, the owners of the property and the Animal Care and Control Commission came to an agreement that the owners of the property would clean the pigeon loft weekly. They would install ventilation systems that would only run once a day, and instead of running all day long they can control it. They may be able to turn it on more than once, but it wouldn't run all day long putting the smell out to the neighborhood. They would keep the number of pigeons that they presently have, at the present population, they would not enlarge the loft. If they were to ever move, the loft would go with them or the license would not go with the new owners.

President Watts: Any questions by members of council?

Councilman Adams: If a pigeon dies can they replace it?

Kerry Kamp: That didn't come up. The only thing that came up is that they wouldn't increase the population from its current status. I would assume from your question if one dies, they could get another pigeon to replace it. I will have to find out and report back to you.

President Watts: Any other questions by members of Council?

Kerry Kamp: I would like to say that the Animal Care and Control Commission will consider coming before the Council to consider changes to the ordinance. We are meeting with them to discuss those. We will get back with you if that was to happen.

Councilman Friend: As I understand it, they are okay until we address this in the amendments.

Kerry Kamp: I'm sorry, what?

Councilman Friend: These folks with the pigeons, I guess they stay okay until this comes before us for amendments.

Kerry Kamp: The Animal Care Control Commission and the owners of the property agreed to the terms that I just said. The Animal Care Control Commission did not revoke their current license and the people that had complained, they agreed to this workable solution.

Councilman Friend: What is the timetable with these amendments?

Kerry Kamp: Here is Nancy now.

Nancy Evans: Hi, I'm Nancy Evans. I'm on the Animal Control Board. I am the secretary. Thank you for having us. We did have the meeting. I was involved in the re-writing of the ordinance with Kevin Winterheimer, Tom Hayden, and the whole thing. Putting it all together I typed up a whole lot of it and Kevin made it attorney-like. Originally whenever the most recent complaint came in and the couple came that owned the pigeon coop along with a lot of different pigeons we were concerned about setting a precedent of the grandfathering automatically. One reason for re-writing an ordinance, as I'm sure you are aware, is to try and improve quality for everyone in the community. So, we were very sensitive to recognize that in automatically saying "Sure, you can have it" because you did. We never could get a real definite.....in any of the conversations we had in the re-writing of the ordinance, never was there a conversation about the grandfathering of the pigeons, pigeon coop, distance and all of that. The grandfathering did come into play with the large animals but at no time was it ever...it had to do with the inspection, with the concern or how often, how frequent and who should inspect the facility. We were all in agreement that the pigeon racing commission or their agency self inspected much more of a higher degree than we were expecting and asking them to do so we had all agreed that by putting in there to recognize their racing as far as the cleanliness. The original complaint came in about the odor which was not founded but in that it was identified that the closeness to the nearest residence. One thing that we were trying to identify and we did ask ...I'm the one that originally asked them "What do think about being able to move it to the center to be able to help"? Well, they said it would interfere with the pigeons training or something, and then the guy said something about "well, then it would be in my back door" and I said well, if they are yours and I said I would like it. I would love to watch the pigeons do that, but I can understand, if I was a neighbor would I like that in my yard rather than their yard. With that being it was trying to find the best move for everyone because we want to make sure that we can make the community as well. We certainly didn't want to stop any of the pigeons. At the actual hearing all parties were involved. The son came in and he was a little more fired up than the parents were, they seemed to have more concern over the odor and the cleanliness because of the pigeons they can't grill out. They had all different types of photos. They are all molting right now so you are going to end up with all of the little feathers. There is a different degree but yet not in their pigeons versus the street pigeons. We did come to resolve to....in the photo scene that they did not have the best of venting and the venting was actually on the neighbors, going into their neighbors yard so that is actually where the odor would be going. Dr. Scott Thompson is our president and he asked about being able to do a passive as well as aggressive venting, to vent it through the roof as well with a fan. The owners have agreed to install some type of other venting as well as what's currently there so they don't have to run it all the time but on days or for weather conditions when there may be an odor. They then could also on the molting or whatever, send it a different direction than their neighbors. The neighbors were in agreement that that would settle their dispute. I was concerned with the son because his argument was a little more definite about not enforcing the ordinances. So I'm not sure that we have heard the end of that side, although these neighbors seemed to have come to a good conclusion, that I think

we have been able to put that to rest to find something that works for both of them without ever saying that we are grandfathering or not, because the one concern that we had is because the grandfather is over large animals, that one specific animal. We don't have that happening in a pigeon loft. How do you control and say how long and indefinite. That would be very difficult. I think of that as the neighbor, would I like it to say that an ordinance that was written to maybe improve my life, didn't. And they brought up the smoking ordinance and that type of thing, so they had some valid points. We are currently attempting to review, making some corrections and additions, per your direction of course, because it will need to come before you guys, so any help that you may want to give, is there is someone here that would like to team up with us on recommendations that you have heard from your constituents so that we can make sure we can do this in a more expedient manner than the last time with all of the re-writing, because I have been on the board since the beginning, not the beginning of time, but it may feel like that. But when we had just the shorter version it was more difficult to really put a handle in to what was best. Any questions?

President Watts: Any questions? Thank you, Nancy. A job well done. I'm glad you got things worked out and everyone's happy.

Nancy Evans: I would like to know the preference in timing on rewriting the ordinance, and how would you prefer it happen. If we got some additions or editing to be done, would you prefer that we submit them to you electronically for your review as we go along before we're ready to present it to you so you can get a feeling.

President Watts: If you get with Alberta, she can get everything to us pretty easily and I think that is probably the best way to do it.

Nancy Evans: Okay, so that we can say where we've been asked to look at this, would you like this or nay, so that we don't spend our time and effort going in those directions? Would that be good?

President Watts: She's got all our email addresses so if you would just get with her, she'll get everything to you.

Nancy Evans: We will do that.

President Watts: Thank you very much. Next, Dona Bergman. While we're waiting, D.J., I apologize. I didn't see you in the audience on the F.O.P Contract. I know those are tough, tough, things to get worked out and you're to be commended for getting things put together. I know it's a tough situation.

D.J. Thompson : I'm D.J. Thompson, President of the Fraternal Order of Police. I want to apologize first. I had to drop a kid off at soccer practice at 5:30 so that's why I was running late. You guys must be pretty well on time here. I just want to thank the council for the help they've given us also. We had a lot of individual help. We had members that talked to other members. We had members that talked to the mayor for us. We had the resolution that passed several months ago. I really think that helped. That got both sides really working at it. We're coming up on about two years from the start date till you guys completing the contract so I want to thank all of you also for the help.

President Watts: I know it's tough, but it's tough not to negotiate the contract, so good job. Sorry Dona. You're up.

Dona Bergman, Director of Evansville Department of Sustainability, Energy, and Environmental Quality (SEEQ)

- Consideration and approval of a guaranteed Energy Savings Contract between the City of Evansville on behalf of the Division of Parks and Recreation and Energy Systems Group, LLC to perform energy efficiency and renewable energy retrofits at the Division of Parks and Recreation facilities known as Parks Maintenance building, Swonder Ice Arena and C.K. Newsome Community Center.

Dona Bergman: Hello, my name is Dona Bergman. I'm the Executive Director of the Department of Sustainability, Energy, and Environmental Quality. I'm here before you this evening to ask your approval of a guaranteed energy performance contract between energy systems group of Newburgh and the Division of Parks and Recreation. This contract was approved by the Board of Parks Commissioners on September 7th. It's been reviewed by Mr. Bob Rock, Mr. David Jones, and the Bond Bank attorney, Mr. Mark Moore. The value of the project is \$1,960,403. Of that \$535,000 will come from the U.S. Department of Energy Efficiency and Conservation Block Grant Fund, and the remaining funds will be covered by the energy savings over the life of the contract. The financing will be through the Evansville Local Improvement Bond Bank at a 1.5 percent interest. It will allow the Parks Department to replace the lighting in the C.K. Newsome Community Center, the Swonder Ice Arena, and the Parks Department Maintenance building with energy efficient lighting. We'll have some significant HVAC upgrades in the C.K. Newsome Center, including the ability to change and regulate the system on line so if there is a snow day, Mr. Shaw or Mr. Boberg can get on line and take the temperature down or see what's going on. In addition, and I'm really excited about this, the project will include solar photovoltaic panels on top of the C.K. Newsome roof and the Swonder Ice Arena roof. It's the first municipal solar photovoltaic installation in the city and will be the largest in Evansville. I will entertain any questions and I respectfully ask for your approval.

President Watts: I think we all like guaranteed savings.

Dona Bergman: Yes, I do too.

President Watts: Any questions by members of council? Seeing none... Again, good job. These projects are awesome. Anyone in the audience who would like to speak either for or against this?

Jeff Day: My name is Jeff Day, 6000 Berry Lane, Evansville, Indiana. My question is, you mention these solar panels, which is the first time I knew anything about this. Are those solar panels manufactured in the United States or outside of the United States? The reason for the question is, I was just reading an article about a solar panel company in California that received 500 million dollars of stimulus money that's bankrupt.

Dona Bergman: In response, part the U.S. Department of Energy Efficiency and Conservation Block Grant is authorized through the American Re-investment and Recovery Act otherwise know as stimulus funds, and we have a requirement to use Made-in-America materials and also pay prevailing wages. I keep track of all of that. That is part of my responsibility as project manager.

Councilman John moved and Councilman Friend seconded the motion to approve to accept the guaranteed Energy Savings Contract between the City of Evansville on behalf of the Division of Parks and Recreation and Energy Systems Group, LLC. Voice vote. So ordered.

JOHN KISH – Stadium Report

John Kish: Good evening, pleasure to talk about the Ford Center report. Don't have much to say about the Stadium. The Ford Center Evansville, yes. Mr. Friend asked that I not prepare a presentation so I have not. You should have received in your packet a copy of the report and I am happy to answer any questions.

Councilman Friend: Thank you for coming tonight. One of the things in one of the paragraphs which is about the fourth paragraph down you make a mention of the 7 million dollars. Was this, we originally we had 11,887,000 dollars when Browning became involved. Then we had some demolition cost and that bumped us up to 12,641,000. Then we have 7 million allocated out. My question is was that allocated out on the number of acreage that we are using? Because it comes out to be about 55 percent?

John Kish: The 7 million dollar figure is simply something that I put in to make this report a little more usable. The earlier report I put in the range with the explanation of both ends of the range and said it was up to the lawyers and the accountants to decide. If you look at the Executive Inn property, physically most of the land actually does not go to the arena. Most of the land goes to the hotel. So if you took the land value and then the portion of the purchase price that is attributable to the demolition of the facilities on the land used by the arena, I allocated to the arena and then I just round everything. That is how I got to the 7 million dollars.

Councilman Friend: They have 754,000 dollars that was related to demolition of the tower? Does that not include the garage?

John Kish: That is the demolition of the tower and not the garage.

Councilman Friend: Who's going to be responsible for tearing that garage down?

John Kish: The garage has been torn down.

Councilman Friend: Yes it has been, who?

John Kish: The contract was between Klenck Demolition and Woodruff Hospitality LLC. Regrettably I suspect you'll hear more of that as we move forward.

Councilman Friend: What do you think the outcome of that is going to be?

John Kish: Oh I'm sure that somebody will compromise. The liability rests with Woodruff Hospitality LLC. That is very clear under the contract with Klenck. It is very clear under the contract between Woodruff and the ERC. In talking with the lawyers, I know some people have talked about mechanics liens. My belief is that you can't lien publically held property and I did a quick Google search and if I may take your time and highlight the irony of this. There is a case that talks about how you can't lien public property and it refers to a Court of Appeals case about 3 or 4 years ago. You read that case and it refers to a case many years ago involving someone

named Green and the City of Evansville. Talking about a parking garage and says you can't lien public property. Phenomenal irony there. It is my belief that they can't lien the property. Contractually it's not our responsibility. It's Woodruff's responsibility and I would hope we maintain that position.

Councilman Friend: I guess my position and I can't speak for other members on Council but I sure hate to see somebody local get caught up in this and not get paid. I hope they get to come to resolve with that.

John Kish: I think that's right, the only issue is who pays them and I suspect there some members at Woodruff Hospitality that think the other member should pay but we will leave that to them.

Councilman Friend: That's part of Kunkel's Group, isn't it? They are outside that Kunkel is no longer involved in that.

John Kish: Woodruff Hospitality is the one that has the contractual relationships. Kunkel was a member as were several others

Councilman Friend: In one of your paragraphs you indicate that as it relates to minority women and this is your MBE and WBE of 21 percent.

John Kish: That's right

Councilman Friend: What was, in the contract there was a provision in there where they get 478 thousand dollars of bonus money. Fifty thousand is related to, if they come under 95 million dollar number. That's the cost allocation. Another 175,000 of that bonus money comes from if they can get this up and going before October 1st, have it substantially completed by October 1st. And then there is another aspect of the contract which relates to having doing with a certain percentage with MBE and WBE. It's back in the page on the back of their contract.

John Kish: One of the incentives relates to MBE and WBE as well as the local participation.

Councilman Friend: Is this excess of 21 percent within that guidelines?

John Kish: Yes

Councilman Friend: So that aspect of that we see they are going to get paid that at that point in time. And I did relay that fact to you that you plan to have this up and going by October 1st?

John Kish: Substantially complete by October 1st and handling the first major event by November 1st.

Councilman Friend: Now as I understand it, the expenses are coming from the DMD and coming from the controller's office, so if anybody on Council wants to go through the exact expenditures that's who we need to see, DMD and the Controller's Office.

John Kish: Yes and we've got a very good accounting of all the bond proceeds since the 12th of May, but going back to 2009, see the Controller.

Councilman Friend: I could ask for a whole listing of every check that was cut on the project regardless of where it went to. I could see that.

John Kish: We can get you that information. I haven't seen a cancelled check in years.

Councilman Adams: John, could give us all a copy of the list of the MBW and the WBE subcontractors and their home office addresses.

John Kish: Sure, I'd be happy to.

Councilman Adams: Thank you

Councilman Friend: On the documentation we got on the pages that look like a summary sheet. Am I reading this correctly that including the FFE with a 3.2 million dollar budget the total of this project is 127,311,000?

John Kish: That's my current projection.

Councilman Friend: I remember when we talked two years ago and setting this cap that was, we did not think the FFE would be included in the 127,500,000 thousand. Is that correct?

John Kish: That's correct

Councilman Friend: And then it appears that we are.

John Kish: We are trying very hard to make that sell. Yes.

Councilman McGinn: Thank you for that. I just wanted to make sure I was reading this correctly because it looked like relatively good news.

John Kish: Yes, I think it is and this of course is one of the reasons why I just stuck the 7 million dollars there for the Executive Inn purchase rather than confuse the report with all of these ranges. Yes, I think in about a month when we hit substantial completion we will be able to have produced the project including those things that were iffy when we first discussed this two years ago. All for the projected costs and if you'll recall the idea was we would issue a bond issue and that you would have annual payments and then we would contribute from TIF and Riverboat and we have planned it so that any savings coming in under budget remains sitting in Riverboat and TIF so we are trying to expand all of the bond proceeds first. So you will see when you review ERC minutes that we are just now transferring 5.9 million dollars of TIF revenue from the 2011 appropriation from the ERC to the bond trustee to actually pay bills. At the end of the day when we come in under budget that money will be sitting in TIF and in Riverboat for other purposes.

Councilman Friend: John, on the retainages, it looks like we are getting retainages the way you explain in your letter.

John Kish: We're doing direct contact with the subcontractors. We are doing direct contracts with the construction companies and retaining in accordance of state law.

Councilman Friend: The only thing we have not retained on would be on Hunt.

John Kish: Hunt is a professional service contract we don't have retainage. They are not paid in full until sometime in March and similar with Populous we agreed to a payment schedule which does not pay them in full until sometime after substantial completion. They are not paid in full until well after substantial completion, it's not technically retainage, but we pay when we're satisfied.

Councilman Friend: On another one down the paragraph, I think it relates back to my \$100,000 I asked you about. It looks like these are just nothing but required reimbursements back to Hunt.

John Kish: Yes, and that change order moves the money amongst a couple of different categories and then security guard contract was originally thought to be a direct contract but to align the people who knew how to direct the security guards, we just made it reimbursable.

Councilman Friend: My question, when those bills come in how's the mechanism work on that? Hunt get's billed, do they pass it down to us? Is this what happens?

John Kish: Yes. They submit a monthly invoice to us along with all the other construction companies. They are due I believe the 10th of the month. We process them and have them approved by Redevelopment about the 22nd or 23rd and then I have always thought it very important for government to act like a business and pay its bills on time. That can make a big difference in your reputation. You can get a project 2 or 3 percent cheaper if they actually believe they'll get paid on time. If you submit your bill by the 10th of the month, you should get a check by the 10th of the next month. We are trying very hard to do that.

Councilman Friend: What kind of controls do we have that we know that service was actually performed? We get a bill that comes in, but do we know what systems internal control do we have knowing that really went on the project or not?

John Kish: The construction company bills are handled through Hunt. Hunt makes the call that identifies the percentage complete and the materials stored and not committed. All of the things that in the construction draw scheduler required. Hunt people look at that and I look at that for reasonableness, I couldn't tell you if it's 23 or 24 percent complete but Hunt does and they work on that and then as the project starts to reach the end where they start approaching their bid price, it gets more finely tuned.

Councilman Friend: That kind of goes to my next question I have that goes along with that is, the contract of Hunt appears to be almost a cost plus type contract. It's going to be 7.1 million or 7.2 million.

John Kish: It is a contract that provides for a fee, it provides for an incentive fee, it provides for the recovery of staff costs at a not to exceed amount and a shared savings on staff costs. And then there are reimbursable expenses, the blue prints and things.

Councilman Friend: My next question is, being the manager of the project, do you review all of their expenditures at the end of the day? Is there going to be final accounting knowing they were actually out these costs directly to this project or not? Because this is a lot of money.

John Kish: It is a lot of money. There is a line item budget for their staff costs which includes everybody's salary so it really is not a public document. Those have a biweekly payroll number so their biweekly payrolls come through. At the end of the day we will confirm we have paid the appropriate amount whether we want to pay for an audit or not is really another question. Yes we worry about getting what we paid for. Sure that's my job.

Councilman Friend: Well if it was just 100,000, but it's going to be a lot of money it looks like. Originally, I remember about 5 million with them and then it got up to about 7.2 million. Some of the add-ons you wonder about that from my experience.

John Kish: You get an invoice from Reprographics for the blue print costs you want to make sure it's blue prints for our project.

Councilman Friend: As it links to the legal fees, I appreciate you breaking this down. It appears like Bingham McHalel has received a total of 1,412,000 dollars on this project underwriting cost. Now they are not the only attorney that received money on this. Barnes and Thornburg received \$115,000 for bond issuances. We also have Terrel, Baugh, Salmon, Born, they got \$100,000. Rudolph, Fine, Porter, and Johnson got less than \$25, 000. We have it on that bank bond issuance. We had appears like Bamberger received \$11,000 of those funds. In total, looks like the total legal fees came in on this project to date of \$1,663,5433 . I'm just asking, is that reasonable in your opinion?

John Kish: Absolutely. The vast bulk of this, 1 million 3 is related to the financing transactions to bond anticipation notes and one bond issue. So you've got 180 million dollars worth of financing and contracts and compliance reports. I looked at them today, they add up to about 12 hundred pages worth of legal documents, so I think you have value for your dollar.

Councilman Friend: Looks like there are some other costs Underwriting received 90 thousand dollars. I'll have to state this, this is my concern. Did they not do the feasibility study on this, find out where the money is going to come from, originally three sources?

John Kish: They did the financial analysis throughout the project, beginning with the feasibility and ending with the bond issue. Yes, you had the same person do that report.

Councilman Friend: Being a CPA I want to talk my side of the story on this. Is it generally when we do assessment functions trying to do studies. Okay, we are getting paid for doing this, and then we get fees from another source that comes down from the bond issuances. It means my, I'm not saying this happened, but this is the appearance. It has the appearance. Is the feasibility study on target? Because I'm going to get additional funding from issuance of bonds. That normally brings up a question from our end of it. That's fine. I'm not saying the study is wrong. What I'm saying, I see that number and it brings up from my professional stand point.

John Kish: I could not tell you, Mr. Friend, whether that number includes the feasibility study work or does not.

Councilman Friend: I don't know but that's a good question to know. All total in these things Standard and Poors and all of that, do you think that's reasonable?

John Kish: Yes sir. Standard and Poors and Moody's both issued ratings on the bonds. We debated getting the third company, Fitch, to provide a rating. The last bond issues I did with the airport we provided three ratings. It was our feeling that we did not get any significant value from the third rating agency so we did not choose to make that expense. So we just did the two and those are about what it cost.

Councilman Friend: You think this helped us because we got a pretty good rating? Didn't we go to Build America First Bonds?

John Kish: You are not going to sell a bond without some sort of rating.

Councilman Friend: I agree with you. There's no question about that. So a grand total, it looks like I call it soft costs professional cost is \$1,856,098 to date. Do we see any other additional funding going on beyond this?

John Kish: Well you are still going continue to incur lawyer fees and there is a periodic report from London Witte to talk about the collections under TIF and the amounts available. There is an annual process, an annual disclosure report. All of that gets factored in.

Councilman Friend: I'm glad you brought that up. Do you see any changes in our sources revenue? Do we have any differences on that?

John Kish: No

Councilman Friend: I think everything is on board with that?

John Kish: I think we have more than adequate revenue in the two sources that are technically committed to the bonds and then Riverboat is still producing what it needs to produce. And of course food and beverage kicks in the full amount starting in 2017, but it's doing actually quite well right now. The shortfall in our sources and uses of funds is in interest earnings. We projected certain interest earnings rate for the invested bond proceeds prior to disbursement and quite frankly banks aren't paying anything on savings accounts. We'll probably have shortfall in how much interest we expected to earn.

Councilman Friend: Looks like on the other costs. I appreciate you bringing that up, this goes in with more the hotel that we have. What kind of struck me, did Bingham McHalel receive a half million dollars for that in additional to this other money?

John Kish: They did the contract negotiations and the financing work for the hotel as well, yes.

Councilman Friend: So that was on that 500 hundred dollars so were legal services total up for it was the use of the RFP which were dealing with Kunkel and with Verbel?

John Kish: No, this goes way back to the original preliminary RFP that in dealing with Browning and then the need for public support for the project. We did a preliminary RFP that received four responses. We then did a final RFP that received one response. Then we did a second final RFP and we have the two that we are considering now.

Councilman Friend: What I was going to ask about on those legal fees. When you go back to your table back here, would that be showing up in 2.5 million dollar number down in contingencies?

John Kish: I do not include in this sheet what I consider to be hotel costs.

Councilman Friend: So all of these legal fees are not in these numbers?

John Kish: No, I thought you were talking about the hotel.

Councilman Friend: No, I jumped around on you. Sorry about that. No, obviously that wouldn't be in here. As long as legal fees, accounting fees, contingencies and betterment and others. Is that where that is showing up, the \$2,500,000, on your back page?

John Kish: You could put it there if you like, but no. I believe that most of the legal fees were part of the financing transaction. Part of the bond issue. The other legal fees and I think that's about 200 and some thousand dollars are in the 750 number. There may be some legal fees that are debatable whether they are bond issue or not, in which case you can put them in miscellaneous or contingency.

Councilman Friend: Members of Council, if you recall, I think when we got into this we said the equipment was going to be out of it, the financing cost was going to be out. Correct? Remember we talked about that? So that is out of that number. Which by the way John I wanted to ask you about just for this other operating cost to be capitalized, can you give me exactly what that would be?

John Kish: Those are all of the costs of running the arena before it is open to the public. To the extent we can capitalize that and make it a bond expense. We should want to do that because that allows us to use bond proceeds to pay for and leaves TIF available for other purposes. We have no revenue at the arena and we won't have any revenue until November and there are costs. We have people's salaries and electrical bills and insurance. Those sorts of things.

Councilman Friend: On this miscellaneous other, \$750,000, do you know exactly what might be included in that?

John Kish: That includes the legal fees. There are some costs there for a final construction cleaning which in experience isn't the last final cleaning because what construction folks thinks is clean is not what the operator thinks is clean. There is 12 thousand dollars for a study we did on cellular access strategies. There are things like that. Other than legal fees, there are amounts that are pretty disparate and not all that large. We originally budgeted 1 million six for that amount, some of those costs have moved up into the Hunt Report like the electrical bill, and some of the handrail construction, that sort of thing. So it's about 750 as a nice round number to ensure that we have enough funds to cover all those miscellaneous things as they come in.

Councilman Friend: In the report that we are going to get for August, you think you could do a sidebar on that and give a break down of some of the things that are 50 thousand or greater, that might be in that number?

John Kish: I can do that, yes. I would caution, the next report is going to come out about the same week that we try to open the building. So it might be a week late because I think we want to get the thing open rather than try to go back and figure out what we spent in 2009. I will be happy to do that the following month.

Councilman Friend: The sooner the better on that. There is one thing we were asking for, copies of contracts. To let other members of the Council know, I got on the phone today with Brad Salmon. He is the council for the ERC, and Brad indicates that there are a lot contracts that are involved in all of this. mega contracts. John, what I would like to see, just give us if you can, give us a listing of everybody who signed a contract so we have kind of a listing. And whoever wants to get this and Brad is going to try to make it available that if you see a person had a contract you can go and get a copy of that.

John Kish: I was going to suggest we do that on the Ford Center sight instead of DMD sight because that page is pretty cluttered already. I'll be happy to do that.

Councilman Friend: Do you think you could get that like yesterday for us, so we can have that listed?

John Kish: I can easily give you the list. How long it takes the IT people to put them on.

Councilman Friend: I think it's something the people need to have access to. If they like to go in and see those contracts they can. It brings up a Populous contract, has anyone on the Council seen the Populous contract?

John Kish: I thought we provided that about a year ago.

Councilman Friend: As a comment on the Populous contract, which I'm trying to get my arms around, usually the larger the contract goes, usually the percentage of that goes down. You would see between 8 and 10 percent, but can you tell us this is 11.7 close to 12 percent. It works out to be about 2.7 million dollars greater than the norms I've seen my clients deal with. You follow?

John Kish: I do, and I think we've asked Populous to do some things that perhaps aren't typical for the architectural firm. We've also made a great effort to ensure that the local professional community is involved. There are a number of local architects and engineers involved as subcontractors to the Populous contract. I won't give you the percentage right off the top of my head because I don't want to be wrong, but there is a substantial percentage of local content in that contract. As you get more people in the room, the cost of keeping all of those people coordinated goes up. We could have probably saved a little money by telling Populous just go back to their office and design this and send us the design and we'll take it from there. But we thought it very important to engage the local architects and engineers including minority architects and engineers. So that increases some of the administrative effort that you have to do. Quite frankly for 127 million dollar project, I think it's well worthwhile. I compare the Populous number to the 120 sum, so it's below the 10 percent.

Councilman Friend: I'm just curious, what was it up at Indianapolis airport?

John Kish: It was close to 10 or 12. I couldn't tell you right off the top of my head. There again, we had the out-of-town specialist on airport terminals and insisted they use the local architects to perform. That increases the complexity. We had a large number of firms. In fact, at the airport the contracts were so large that we held them all so that the cash flow wasn't delayed. What we didn't want is architects submits a bill to the airport, airport pays architect, that takes 45 days. Architect takes the money, cuts a check to sub architect number one, that takes 30 days. That sub architect number two, that takes 30 days. The guy down at the end of the feeding chain is waiting 130 days for his cash. So we held some of the contracts individually. But here all of the contracts are held by Populous. We have reminded them at times that they need to hurry up and pay the people that are working for them. I'll be happy to give you the local percentages involved in that Populous fee. I think you'll be impressed with the effort that we made to include the local professionals.

Councilman Friend: Could you provide us with a listing of whose local? It's not what they receive, I just like to see who do we work with on a local basis.

John Kish: Happy to do that.

Councilman Friend: Does anybody have any questions on that?

Councilman Adams: John, you've already told us a couple of months ago and I want to be awfully sure about this, what's the annual payment to pay off this debt? Annual payment, it's 8 million something to pay off the debt?

John Kish: It's 8 million when I talk about round numbers. It's 8 point something.

Councilman Friend: Dan, it's not consistent, it will change over time. There's a kind of graduated number that goes in. I think it's 8.1 million and goes up.

John Kish: I think it's 8.1.

Councilman Adams: Goes up to what?

Councilman Friend: I think it goes up to something like 8.5 or 8.6 million if I recall. I've got it.

John Kish: That is actually a net number because under the Build America Bonds we get a rebate and that makes the next payment.

Councilman Friend: Keep in mind folks that because the way this project went down, had we started today we wouldn't have got that bump in the Build America Bonds, is that not true?

John Kish: If you started this project today, Build America Bonds and the interest rebate program don't exist. The construction cost indexes have gone up. When we bid this the construction industry was extremely hungry. They are still hungry but we got more favorable prices so I think you did some good timing.

Councilman Friend: Hey Doc, what I found out. If we would have waited, a 2 point difference would have been about a 70 million dollar additional cost over the whole life of this project.

Councilman Adams: In the San Diego project, they had a two year injunction that cost them 40 percent more for that injunction.

Councilman Friend: Yes, steel prices have gone up through the roof .

Councilman Adams: We did hit a nice time to buy.

John Kish: I would love to say that is was great management that allowed us to bring this thing in under budget. Part of the reason that we were able to do what we did is we got some very good bid prices early on, now this late bid work is right at where we estimate. If not a little higher.

Councilman Friend: Dan, your comment about the FF&E, that's right because that was not included in this budget and he has it here now. So that's 3.2 million. So if you take that out.

Councilman McGinn: There probably was some construction management that saved us a little money.

John Kish: I believed it saved you some money, absolutely.

Councilman Friend: John, we got one thing out of this. I wish I was a lawyer.

John Kish: Mr. Friend, a project like this which is 128 million dollar investment in this community only works because you're willing to make that investment. And doing that requires you to do a bond issue and if you bought a widget and I told you it was 127 million dollars plus transportation, at the end of the day I'd be billing you for the gas because the gas is what makes the truck go to bring you that widget. The lawyers are what make the bond issue go. People aren't going to loan you 127 million dollars without a lot of lawyering and accounting. That assures them that they are going to get paid back. So that's really the investment you approved and that we are delivering out here in another month.

President Watts: Any other questions by members of the Council?

Councilman Friend: I want to reiterate. I did talk to Brad Salmon, the attorney for ERC, and within the next few days he's going get together the mechanisms for the people to have access to those contracts.

John Kish: That's good, that's very good. Thank you very much, thank you for your support. I hope to see you often at the Ford Center.

Councilman Friend: By the way, have you been paid up to date?

John Kish: My accounts are current, yes.

President Watts: Mr. Day, you are up.

Jeff Day: My name is Jeff Day 6000 Berry Lane Evansville, Indiana. No doubt that my question is not appropriate for this body at this time for Mr. Kish, but I would like to know when it's appropriate. This came out very recently, that you now can buy tickets for the Seger concert online at inflated prices before they ever go public. Who is responsible for that and why?

Councilman Friend: Let me say this, I have verified that John. There's about 6 websites you can go on to. One is Broad.....

Jeff Day: I've gone to 8 websites.

Councilman Friend: Can you please let me know how that works? For me to get a front row seat, I've got to pay \$607 dollars.

John Kish: This is not my field, I don't know how you sell tickets to concerts. I do know that there are marketing mechanisms and quite frankly the Bob Seger fan club gets the opportunity to buy tickets before the general public. I don't think that should come as a surprise to anybody. That's why you join the Bob Seger fan club, and where it goes from there, quite frankly, I don't know. That's the way the ticket sales go through Ticket Master.

Councilman Friend: I think for the public's purpose, who do they need to research that, how this thing works. Because I don't know.

Councilwoman Bredhold: May I interrupt? Some of those might be scams. I would say just wait until tickets go on sale and go to Ticket Master and you'll probably be able to get your front row seat for \$70. I wouldn't accept the fact that those websites are real or that those tickets actually exist. Because I've seen those things happen with other concert tickets before.

John Kish: If somebody was betting that you give me 2 thousand dollars and I'll make sure you get a good ticket.

President Watts: Anything else under Miscellaneous Business?

Jeff Day: My comment is concerning when you are going to vote on the consolidation? At the last consolidation meeting, I was there and most of you know I asked. If any of the members of your body or the Commissioners knew what the tax rates were in these cities that were used as ideal examples of what Evansville should go to. I got the impression none of you did. So I printed out, this is not Jeff Day propaganda. This is Louisville Kentucky taxes. The Louisville tax rate for the City of Louisville is 1.25 percent income tax. However, Jefferson County then has a .75 percent tax rate. And the bus system of Louisville Kentucky has a tax rate of .2 percent. So the residents of the City of Louisville in Jefferson County pay 2.2 percent income tax compared to ours, the property taxes. I then open up and look what Evansville actual rate is. But what I did do because I figure I've got about as average a home as anybody there is. My house where it sits, and the value of the house is average, everything about us is average and the tax rate for property taxes in Jefferson County is basically the very same as here, at least my house. In Lexington Kentucky the actual income tax rate for the services of Lexington Kentucky is 2.75 percent. The property taxes again are basically the very same as mine. I do not understand why anybody thinks the citizens of Evansville want to improve our systems to match the City of Louisville or Lexington Kentucky so we can double our taxes. This is what I printed.

Councilman Friend: Jeff I need to ask you one thing. I believe in Kentucky they don't have a Constitutional stand point when it comes to property taxes. I'm just saying this because I'm not an expert over there. They don't have the 1 percent cap that we do here in Indiana and so that lays in there, I don't know, I just wonder.

Jeff Day: You are correct. But what you said is right that if anything their rate can be that much higher yet which makes them even more unfavorable for us to compare to because you are right. If you take the City areas like St Matthew's where you have a more prosperous area and this in the paperwork they are tax rates are higher. I just try to take what was the average person's property tax across the board in the City of Louisville, compared to what mine was. Because I know my house is about as average as you can get. I thank you and I'm going to make the same presentation to the Commissioners tomorrow. I just don't understand why when these people were making a presentation how wonderful everybody there thought this program was all so great. You know what, I don't believe you're going to find anybody in Evansville that wants to improve our government to the point that we justify doubling and almost tripling our income taxes. Thank you very much.

President Watts: Anything else?

UPCOMING COMMITTEE MEETINGS:

ASD COMMITTEE:

Re: Resolution C-2011-23
Date: September 26, 2011
Time: 5:10 p.m.
Notify: Ben Miller

CHAIRWOMAN ROBINSON

Interlocal Agreement with Vanderburgh County

FINANCE COMMITTEE:

Re: Ordinance F-2011-11
Date: September 26, 2011
Time: 5:15 p.m.
Notify: Jenny Collins

CHAIRMAN FRIEND

Establishing the Salaries of Elected Officials for 2012

Re: Ordinance G-2011-14
Date: September 26, 2011
Time: 5:15 p.m.
Notify: Jenny Collins

Establishing the Salaries of City Employees for 2012

Re: Ordinance G-2011-15
Date: September 26, 2011
Time: 5:15 p.m.
Notify: Jenny Collins

Establishing the Salaries of Levee Employees for 2012

Re: Ordinance F-2011-14
Date: September 26, 2011
Time: 5:15 p.m.
Notify: Jenny Collins

Repeals and Re-appropriations (Levee Authority)

Re: Ordinance F-2011-15
Date: September 26, 2011
Time: 5:15 p.m.

Repeals and Re-appropriations

Notify: Jenny Collins

Re: Ordinance F-2011-12
Date: September 26, 2011
Time: 5:20 p.m.
Notify: Jane Reel DMD

CDBG/ESG/HOME

Re: Ordinance F-2011-13
Date: September 26, 2011
Time: 5:20 p.m.
Notify: Jane Reel DMD

Repeals and Re-appropriations (DMD)

FINANCE COMMITTEE:
Re: Ordinance F-2011-8
Date: **October 17, 2011**
Time: **5:20 p.m.**
Notify: Jenny Collins

CHAIRMAN FRIEND
Approving the 2012 City Budget

Re: Ordinance F-2011-9
Date: **October 17, 2011**
Time: **5:20 p.m.**
Notify: Jenny Collins

Approving the 2012 Budget for the Levee

Re: Ordinance F-2011-10
Date: **October 17, 2011**
Time: **5:20 p.m.**
Notify: Jenny Collins

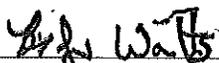
Approving the 2012 Port Authority Budget

PUBLIC WORKS COMMITTEE:
Re: Ordinance G-2011-16
Date: **October 10, 2011**
Time: **5:20 p.m.**
Notify: Jennifer Elston

CHAIRWOMAN MOSBY
Petition to vacate a 16 foot alley located in
Forest Hills No. 3 Subdivision

ADJOURNMENT

Councilwoman Robinson moved and Councilwoman Mosby seconded the motion to adjourn.
Voice vote. So ordered. Meeting adjourned at 6:45 pm.



President



Alberta Matlock, City Clerk

ROLL CALL

PLEDGE OF ALLEGIANCE

RECOGNITION OF SCHOOLS

TEEN ADVISORY COUNCIL

READING AND AMENDMENT OF MINUTES

REPORTS AND COMMUNICATIONS

CONSENT AGENDA

FIRST READING OF ORDINANCES OR RESOLUTIONS

ORDINANCE G-2011-14 FINANCE FRIEND

An Ordinance fixing the salaries of every appointive officer, employee, deputy, assistant, departmental and institutional head of the City of Evansville for the Year 2012 and establishing salary administration procedures.

ORDINANCE G-2011-15 FINANCE FRIEND

An Ordinance fixing the salaries of every appointive officer, employee, deputy, assistant, departmental and institutional head of the Evansville-Vanderburgh County Levee Authority for the Year 2012 and establishing salary administration procedures.

ORDINANCE G-2011-16 PUBLIC WORKS MOSBY

An Ordinance to vacate certain public ways or public places within the City of Evansville, Indiana, commonly known as all that alley being (16) sixteen feet in width and running between and contiguous with lots 204, 205,206,207,235,236,237 and 238 of Forest Hills No. 3 Subdivision in Vanderburgh County, Indiana.

ORDINANCE F-2011-8 FINANCE FRIEND

An Ordinance of The Common Council of the City of Evansville, Indiana appropriating monies for the purpose of defraying the expenditures of departments of the City Government for the Fiscal Year beginning January1, 2012.

ORDINANCE F-2011-9 FINANCE FRIEND

An Ordinance of The Common Council of the City of Evansville, Indiana appropriating monies for the purpose of defraying the expenditures of Vanderburgh County Levee Authority for the Fiscal Year beginning January1, 2012.

ORDINANCE F-2011-10 FINANCE FRIEND

An Ordinance of The Common Council of the City of Evansville approving and adopting the 2012 Budget for the Port Authority of Evansville.

ORDINANCE F-2011-11 FINANCE FRIEND

An Ordinance of The Common Council of the City of Evansville, Indiana Fixing the Salaries of Elected Officials for the City of Evansville, Indiana for the Year 2012.

ORDINANCE F-2011-12 **FRIEND**

An Ordinance of The Common Council of The City of Evansville approving the annual Community Development Plan and appropriating Community Development Block Grant, Emergency Shelter/Solutions Grant, and Home Investment Partnerships Program Grant Funds. (DMD)

ORDINANCE F-2011-13 **FINANCE** **FRIEND**

An Ordinance of The Common Council of The City of Evansville authorizing repeals, re-appropriations and additional appropriations of funds within a city department. (DMD)

ORDINANCE F-2011-14 **FINANCE** **FRIEND**

An Ordinance of The Common Council of The City of Evansville, Vanderburgh County Levee Authority authorizing transfers of appropriations, additional appropriations, and repeal and re-appropriation of funds for various city funds

ORDINANCE F-2011-15 **FINANCE** **FRIEND**

An Ordinance of The Common Council of The City of Evansville authorizing transfers of appropriations, additional appropriations, and repeal and re-appropriation of funds for various city funds

RESOLUTION C-2011-23 **A.S.D.** **ROBINSON**

A Resolution of the Common Council approving an Interlocal Agreement with Vanderburgh County, Indiana.

RESOLUTION C-2011-24 **COUNCIL AS A WHOLE**

A Resolution adopting a Plan of Reorganization with modifications

CONSENT AGENDA

SECOND READING OF ZONING ORDINANCE

ORDINANCE R-2011-7 **FROM APC** **C-02 TO C-1**

An Ordinance to Rezone Certain Real Estate in the City of Evansville, State of Indiana, more commonly known as 2916 E. Morgan Avenue.

REGULAR AGENDA

THIRD READING OF ZONING ORDINANCE

ORDINANCE R-2011-7 **FROM APC** **C-02 TO C-1**

An Ordinance to Rezone Certain Real Estate in the City of Evansville, State of Indiana, more commonly known as 2916 E. Morgan Avenue.

REGULAR AGENDA

SECOND READING OF ORDINANCES AND RESOLUTIONS

ORDINANCE G-2011-13 PUBLIC WORKS MOSBY

An Ordinance to vacate certain public right-of-way within the city of Evansville, Indiana, commonly known as a twelve-foot alley on and along the north line of Lots One and Two in Block Three of Northern Enlargement in the City of Evansville, going east for a distance of fifty-seven feet, six inches (57'6") in length.

ORDINANCE F-2011-7 FINANCE FRIEND

An Ordinance of the Common Council of the City of Evansville authorizing transfers of appropriations, additional appropriations and repeal and re-appropriation of funds for various city funds.

RESOLUTION C-2011-21 FINANCE FRIEND

A Resolution of the Common Council of the City of Evansville ratifying, confirming, authorizing and approving an agreement between the City of Evansville and the Fraternal Order of Police Evansville Lodge No. 73 Inc.

REGULAR AGENDA

THIRD READING OF ORDINANCES AND RESOLUTIONS

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A Resolution of the Common Council of the City of Evansville ratifying, confirming, authorizing and approving an agreement between the City of Evansville and the Fraternal Order of Police Evansville Lodge No. 73 Inc.

MISCELLANEOUS BUSINESS

There will not be a City Council Meeting next Monday, September 19, 2011. The next meeting of the Common Council will be September 26, 2011 with committee meetings beginning at 5:10 p.m.

Nancy Evans, Secretary for the Animal Care and Control Commission

- Speaking about suggestions for revising the Animal Control Ordinance.

Dona Bergman, Director of Evansville Department of Sustainability, Energy, and Environmental Quality (SEEQ)

- Consideration and approval of a guaranteed Energy Savings Contract between the City of Evansville on behalf of the Division of Parks and Recreation and Energy Systems Group, LLC to perform energy efficiency and renewable energy retrofits at the Division of Parks and Recreation facilities known as Parks Maintenance building, Swonder Ice Arena and C.K. Newsome Community Center.

ADJOURNMENT

The Honorable Council of the City of Evansville is hereby called to order. Madam Clerk, please call the roll.

ROLL CALL

<input checked="" type="checkbox"/> M ^c GINN	<input checked="" type="checkbox"/> ROBINSON	<input checked="" type="checkbox"/> JOHN
<input checked="" type="checkbox"/> MOSBY	<input checked="" type="checkbox"/> FRIEND	<input checked="" type="checkbox"/> WALKER
<input checked="" type="checkbox"/> BREHOLD	<input checked="" type="checkbox"/> ADAMS	<input checked="" type="checkbox"/> WATTS

There being 9 members present, 0 members absent, and 9 members representing a quorum, I hereby declare this session of Common Council officially opened.

PLEDGE OF ALLEGIANCE

This evening the pledge of allegiance will be led by Friend.

Fellow Councilmen and those in the audience, welcome to the September 12, 2011 meeting of the Common Council.

RECOGNITION OF SCHOOLS

Are there any students in the audience who would like to be recognized?

SCHOOL: _____
NAME: _____

SCHOOL: _____
NAME: _____

TEEN ADVISORY COUNCIL

Kiersten Wytovak ✓
Karlee Kolb ✓
Sarah Kercher ✓

AMVA Ballard ✓
Adrian Funke

COUNCIL ATTORNEY

This evening John Hanifan is City Council Attorney.

SERGEANT AT ARMS

This evening Officer _____ is our Sergeant at Arms.

READING AND AMENDMENT OF MINUTES OF PRECEDING MEETING

Is there a motion to approve the minutes of the August 22, 2011 meeting of the Common Council as written?

Councilman Friend moved and Councilman Mosby seconded the motion that the minutes of the regular meeting of the Common Council held August 22, 2011 be approved as written. Voice vote. So ordered. ✓

REPORTS AND COMMUNICATIONS

IN YOUR September 9TH PACKET:

- *City Council Agenda for September 12, 2011 meeting.
- *Committee Meeting Schedule.
- *City Council Meeting Minutes from the August 22, 2011.
- *Ordinance F-2011-8, 9, 10, 11, 12, 13, 14 & 15.
- *Ordinance G-2011-14, 15 & 16.
- *Resolution C-2011-23 & 24.
- *New Intake Agent for the CCDF (Child Care Development Fund)
- *Schedule of Meetings in the City/County Administration Bldg. for September.
- *List of Paid City Holidays for 2012.
- *News Release: Parks Board Approves Guaranteed Energy Savings Performance Contract for Parks Facilities.

ON YOUR DESK THIS EVENING:

Councilman Robinson moved and Councilman Friend

seconded the motion to receive, file and make these reports and communications a part of

the minutes of the meeting. Voice vote. So ordered.

CONSENT AGENDA

FIRST READING OF ORDINANCES OR RESOLUTIONS

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ORDINANCE F-2011-10 FINANCE FRIEND

An Ordinance of The Common Council of the City of Evansville approving and adopting the 2012 Budget for the Port Authority of Evansville.

ORDINANCE F-2011-11 FINANCE FRIEND

An Ordinance of The Common Council of the City of Evansville, Indiana Fixing the Salaries of Elected Officials for the City of Evansville, Indiana for the Year 2012.

ORDINANCE F-2011-12 FRIEND

An Ordinance of The Common Council of The City of Evansville approving the annual Community Development Plan and appropriating Community Development Block Grant, Emergency Shelter/Solutions Grant, and Home Investment Partnerships Program Grant Funds. (DMD)

CONSENT AGENDA

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ORDINANCE F-2011-7 FINANCE FRIEND

An Ordinance of the Common Council of the City of Evansville authorizing transfers of appropriations, additional appropriations and repeal and re-appropriation of funds for various city funds.

RESOLUTION C-2011-21 FINANCE FRIEND

A Resolution of the Common Council of the City of Evansville ratifying, confirming, authorizing and approving an agreement between the City of Evansville and the Fraternal Order of Police Evansville Lodge No. 73 Inc.

COMMITTEE REPORTS:

PUBLIC WORKS COMMITTEE:

CHAIRWOMAN MOSBY

Councilwoman Mosby: Mr. President, your Public Works Committee met this evening to hear Ordinance G-2011-13 as amended and comes forward with a (do pass/do not pass) recommendation. *NOT Pass*

FINANCE COMMITTEE:

CHAIRMAN FRIEND

Councilman Friend: Mr. President, your Finance Committee met this evening to hear Ordinance F-2011-7 and Resolution C-2011-21 and both come forward with a (do pass/do not pass) recommendation.

Councilman John moved and Councilman Friend seconded the motion to adopt the Committee Report and move this Ordinance to Third Reading.

Voice vote. So ordered.

REGULAR AGENDA

THIRD READING OF ORDINANCES AND RESOLUTIONS

ORDINANCE G-2011-13 (amended) PUBLIC WORKS MOSBY

An Ordinance to vacate certain public right-of-way within the city of Evansville, Indiana, commonly known as a twelve-foot alley on and along the north line of Lots One and Two in Block Three of Northern Enlargement in the City of Evansville, going east for a distance of fifty-seven feet, six inches (57'6") in length.

AS Amended

Vote on this

Is there a motion to adopt Ordinance G-2011-13 as amended and call the roll?

Councilman Bredhold moved and Councilman Mosby seconded the motion to adopt Ordinance G-2011-13 as amended and call the roll.

ROLL CALL

M^cGINN

NO ROBINSON

NO JOHN

NO MOSBY

NO FRIEND

NO WALKER

BREHOLD

NO ADAMS

NO WATTS

There being 2 Ayes and 7 Nays, Ordinance G-2011-13 as amended is hereby declared ~~ADOPTED~~ DENIED.

REGULAR AGENDA

THIRD READING OF ORDINANCES AND RESOLUTIONS

ORDINANCE F-2011-7

FINANCE

FRIEND

An Ordinance of the Common Council of the City of Evansville authorizing transfers of appropriations, additional appropriations and repeal and re-appropriation of funds for various city funds.

Is there a motion to adopt Ordinance F-2011-7 and call the roll?

Councilman John moved and Councilman Friend seconded the motion to adopt Ordinance F-2011-7 and call the roll.

ROLL CALL

✓ M^cGINN

✓ ROBINSON

✓ JOHN

✓ MOSBY

✓ FRIEND

✓ WALKER

✓ BREHOLD

✓ ADAMS

✓ WATTS

There being 9 Ayes and 0 Nays, Ordinance F-2011-7 is hereby declared
ADOPTED/~~DENIED~~.

REGULAR AGENDA

THIRD READING OF ORDINANCES AND RESOLUTIONS

RESOLUTION C-2011-21

FINANCE

FRIEND

A Resolution of the Common Council of the City of Evansville ratifying, confirming, authorizing and approving an agreement between the City of Evansville and the Fraternal Order of Police Evansville Lodge No. 73 Inc.

Is there a motion to adopt Resolution C-2011-21 and call the roll?

Councilman Friend moved and Councilman John seconded the motion to adopt Resolution C-2011-21 and call the roll.

ROLL CALL

✓ M^cGINN

✓ ROBINSON

✓ JOHN

✓ MOSBY

✓ FRIEND

✓ WALKER

✓ BREHOLD

✓ ADAMS

✓ WATTS

There being 9 Ayes and 0 Nays, Resolution C-2011-21 is hereby declared ADOPTED/~~DENIED~~.

UPCOMING COMMITTEE MEETINGS:

ASD COMMITTEE:

Re: Resolution C-2011-23
Date: September 26, 2011
Time: 5:10 p.m.
Notify: Ben Miller

CHAIRWOMAN ROBINSON

Interlocal Agreement with Vanderburgh
County

FINANCE COMMITTEE:

Re: Ordinance F-2011-11
Date: September 26, 2011
Time: 5:15 p.m.
Notify: Jenny Collins

CHAIRMAN FRIEND

Establishing the Salaries of Elected Officials
for 2012

Re: Ordinance G-2011-14
Date: September 26, 2011
Time: 5:15 p.m.
Notify: Jenny Collins

Establishing the Salaries of City Employees
for 2012

Re: Ordinance G-2011-15
Date: September 26, 2011
Time: 5:15 p.m.
Notify: Jenny Collins

Establishing the Salaries of Levee
Employees for 2012

Re: Ordinance F-2011-14
Date: September 26, 2011
Time: 5:15 p.m.
Notify: Jenny Collins

Repeals and Re-appropriations
(Levee Authority)

Re: Ordinance F-2011-15
Date: September 26, 2011
Time: 5:15 p.m.
Notify: Jenny Collins

Repeals and Re-appropriations

Re: Ordinance F-2011-12
Date: September 26, 2011
Time: 5:20 p.m.
Notify: Jane Reel DMD

CDBG/ESG/HOME

Re: Ordinance F-2011-13
Date: September 26, 2011
Time: 5:20 p.m.
Notify: Jane Reel DMD

Repeals and Re-appropriations (DMD)

FINANCE COMMITTEE:

Re: Ordinance F-2011-8

Date: **October 17, 2011**

Time: **5:20 p.m.**

Notify: Jenny Collins

CHAIRMAN FRIEND

Approving the 2012 City Budget

Re: Ordinance F-2011-9

Date: **October 17, 2011**

Time: **5:20 p.m.**

Notify: Jenny Collins

Approving the 2012 Budget for the Levee

Re: Ordinance F-2011-10

Date: **October 17, 2011**

Time: **5:20 p.m.**

Notify: Jenny Collins

Approving the 2012 Port Authority Budget

PUBLIC WORKS COMMITTEE:

Re: Ordinance G-2011-16

Date: **October 10, 2011**

Time: **5:20 p.m.**

Notify: Jennifer Elston

CHAIRWOMAN MOSBY

Petition to vacate a 16 foot alley located in
Forest Hills No. 3 Subdivision

ADJOURNMENT

Councilman Robinson moved and Councilman Mosby

seconded the motion to adjourn. Voice Vote. So Ordered.

Meeting adjourned at 6:45 p.m.

CITY COUNCIL COMMITTEE MEETING SCHEDULE

September 12, 2011

PUBLIC WORKS COMMITTEE:

Re: Ordinance G-2011-13
Date: September 12, 2011
Time: 5:05 p.m.
Notify: Herbert Hatt

CHAIRWOMAN MOSBY

Petition to vacate a 12 foot alley located in
Block Three of Northern Enlargement

FINANCE COMMITTEE:

Re: Ordinance F-2011-7
Date: September 12, 2011
Time: 5:15 p.m.
Notify: Jenny Collins

CHAIRMAN FRIEND

Transfer of funds (Water and Sewer Dept)

Re: Resolution C-2011-21
Date: September 12, 2011
Time: 5:20 p.m.
Notify: George Fithian

Approving the contract for the F.O.P.

September 26, 2011

A.S.D. COMMITTEE:

Re: Resolution C-2011-23
Date: September 26, 2011
Time: 5:10 p.m.
Notify: Ben Miller, Building Commissioner

CHAIRWOMAN ROBINSON

Interlocal Agreement with Vanderburgh County

FINANCE COMMITTEE:

Re: Ordinance F-2011-11
Date: September 26, 2011
Time: 5:15 p.m.
Notify: Jenny Collins

CHAIRMAN FRIEND

Establishing the Salaries of Elected Officials
for 2012

Re: Ordinance G-2011-14
Date: September 26, 2011
Time: 5:15 p.m.
Notify: Jenny Collins

Establishing the Salaries of City Employees
for 2012

Re: Ordinance G-2011-15
Date: September 26, 2011
Time: 5:15 p.m.
Notify: Jenny Collins

Establishing the Salaries of Levee Employees
for 2012

Re: Ordinance F-2011-14
Date: September 26, 2011
Time: 5:15 p.m.
Notify: Jenny Collins

Repeals and Re-appropriations (Levee Authority)

FINANCE COMMITTEE:

Re: Ordinance F-2011-15
Date: September 26, 2011
Time: 5:15 p.m.
Notify: Jenny Collins

Repeals and Re-appropriations

Re: Ordinance F-2011-12
Date: September 26, 2011
Time: 5:20 p.m.
Notify: Jane Reel DMD

CDBG/ESG/HOME

Re: Ordinance F-2011-13
Date: September 26, 2011
Time: 5:20 p.m.
Notify: Jane Reel DMD

Repeals and Re-appropriations (DMD)

.....
October 10, 2011
.....

PUBLIC WORKS COMMITTEE:

Re: Ordinance G-2011-16
Date: October 10, 2011
Time: 5:20 p.m.
Notify: Jennifer Elston

CHAIRWOMAN MOSBY

Petition to vacate a 16 foot alley located in
Forest Hills No. 3 Subdivision

.....
October 17, 2011
.....

FINANCE COMMITTEE:

Re: Ordinance F-2011-8
Date: October 17, 2011
Time: 5:20 p.m.
Notify: Jenny Collins

CHAIRMAN FRIEND

Approving the City Budget for the Year 2012

Re: Ordinance F-2011-9
Date: October 17, 2011
Time: 5:20 p.m.
Notify: Jenny Collins

Approving the 2012 Budget for the Levee

Re: Ordinance F-2011-10
Date: October 17, 2011
Time: 5:20 p.m.
Notify: Jenny Collins

Approving the 2012 Budget for the Port Authority

May 5, 2011

To: Mr. John Kish

From: John Friend, CPA, CVA, Finance Chair, Evansville City Council

Subject: Specific Questions concerning Arena Costs

Dear John,

In review of your most recent financial report to the Council, I have formulated some specific questions which may be easily explained. I would like for you to review and come before us in the miscellaneous portion of our next Council meeting scheduled for May 9th.

1. **PARKING:** Exclusion of \$441,000 for parking lot bought from the Hulman & Co. as reported in the Courier & Press article dated June 3, 2010 and \$306,000 Executive Inn Annex bought from Browning for staging during construction and later parking (per ERC Minutes dated March 16, 2010.) It appears Browning paid around \$195,000 for the property about 90 days before the City bought it back which has the appearance that Browning profited by \$111,000 with a ninety day hold? Please advise.
2. **EXECUTIVE INN COSTS:** In your report you indicate \$6,000,000 to \$10,900,000 Executive Inn range attributable to Arena. Isn't it closer to \$13,357,693? This number includes the \$1.5 million estimate to tear down the remaining part of the hotel (work being done currently) you indicate this cost will be deducted from the Woodruff Incentive Package; however, we have no reporting on that final package? At a minimum, with the current Executive Inn Demo Costs currently recovered by Woodruff, minimum outlay for Executive Inn is \$11,857,693 as published? This seems to be contrary to your report? According to the minutes of the ERC dated July 15, 2009, resolution 09 ERC 34 for \$35,000: and on August 4, 2009 resolution 09 ERC 41, indicates the City paid Browning's cost to evaluate this project?
3. **PROFESSIONAL FEES—OTHERS:** Concerning the reported amount of \$556,000, is this all of the reporting for 1/2 million of outlay?
4. **PROFESSIONAL FEES—LEGAL:** As shown to be zero which we know can not be accurate, is that amount in the "Others"?

5. **PROFESSIONAL FEES—INSURANCE:** Your report indicates \$425,000; however, as previously published, the amount is \$749,490. It appears that the published amount were for 2-year policies for Property/Casualty, Flood/Earthquake; Clean up pollution? In addition, as shown in the published amounts(Courier & Press 7/21/09) was the cost of \$100,000 for Insurance Consulting paid to Old National Bank? Was there any written reports presented by ONB concerning recommendations? and if so, please provide the Council.
6. **POPULOUS (Architect):** As reported in the Courier & Press on 4/22/09, there was a \$95,000,000 architect's **not-to-exceed** on the Construction Costs; and Populous' fee would be 10% of the construction costs. Your report states that hard cost are \$94,846,000, which includes \$7,172,100 of Hunt Construction. If Hunt is subtracted from the total(surely the Architect wouldn't be paid a fee on the cost of construction management? (\$87,673,900 x 10% = Populous Fee of \$8,673,900)? However, your report states that Populous will be paid \$11,300,000, the difference in fee is \$2,626,100. Please reconcile?
7. **HUNT CONSTRUCTION (Construction Manager)** According to the Courier & Press article date 10/20/09, their total contract was \$5,300,000 excluding incentives of \$500,000. As stated in your report, the hard cost is \$7,172,000, a difference of \$1,872,000? If the "Future Costs" of \$820,000 as projected or the Utility Relocation costs of \$469,000 are included, won't Hunt miss their \$95,000,000, losing the \$500,000 incentive? and considering the unexplained increase as stated above, have they already received \$1,872,000 and expect to receive the incentive as well?
8. **WOODRUFF HOSPITALITY:** Per your report, there are zero costs. As reported, the value of the incentives are \$15,000,000 dated 12/21/10. We have not seen any reporting whatsoever on the final? Please advise.

In review, please feel free to contact me at my office or cell phone if you have questions.

Sincerely,



John E. Friend, CPA, CVA
JOHN FRIEND & COMPANY, P.C.,

**GUARANTEED ENERGY SAVINGS
PERFORMANCE CONTRACT**

THIS AGREEMENT (herein sometimes "Agreement" and sometimes "Contract"), made this 13th day of September, 2011, by and between the City of Evansville, acting by and through its Board of Park Commissioners for its Division of Parks and Recreation (the "Owner"), and Energy Systems Group, LLC, an Indiana limited liability company (hereinafter called "Contractor" or "ESG"),

WITNESSETH, That:

WHEREAS, Contractor has submitted to Owner a proposal for the installation of energy related upgrades at facilities owned by Owner and located within the corporate or other limits of the Owner (herein the "Facilities"); and

WHEREAS, the Owner wishes to accept the Contractor's proposal as outlined in Exhibit A, Scope of Work (hereinafter "Project"), and the Owner and Contractor desire to enter into this Agreement in order to memorialize their respective agreements and undertakings with respect to the Project..

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto agree as follows:

1. Contract Documents. The parties hereby incorporate by reference the same as if fully set forth herein; the following documents and instruments, all of which together with this Agreement are herein referred to as the "Contract Documents":

- Exhibit A - Scope of Work
- Exhibit B - Energy Savings Guarantee and Measurement and Verification Plan
- Exhibit C - Installment Payment Contract
- Exhibit D - Project Fund Agreement

The Contract Documents also shall include any permissible change orders issued pursuant to this Agreement.

In the event there is a conflict between the provisions of this Agreement and any other Contract Document, the provisions of this Agreement shall be controlling with respect to the subject matter hereof.

The rights, duties, and obligations of the Owner and Contractor under this Agreement and under all other Contract Documents, and any rights of any third party beneficiary or any assignee of either party hereto, are subject to and conditioned upon the Contractor's deposit of those funds required to be delivered

by Contractor to the Escrow Agent for deposit into the Project Fund to be maintained under the Project Fund Agreement.

2. Scope of Project. For purposes hereof, the term "Project" shall mean and include the installation of the energy conservation measures and related upgrades ("ECM's" or "Measures"), which are defined in Exhibit A, Scope of Work, at the Owner's Facilities in the amount of \$1,096,403.

The Contractor represents and warrants (i) that the Project constitutes the installation of "energy conservation measures" as defined in I.C. 36-1-12.5-1 et seq. (herein the "Act"), and (ii) that this Agreement is a "guaranteed energy savings contract" as defined in the Act. The Contractor further represents and warrants that it is a "qualified provider" of energy conservation measures, as defined in the Act. The Contractor also represents and warrants that it has issued the report containing all data and information required by I.C. 36-1-12.5-6.

The Contractor further represents and warrants that the Project will result in (i)(a) energy savings in the total amount of \$590,340.00 and (b) operational savings as outlined in Exhibit B, Energy Savings Guarantee and Measurement and Verification Plan, in the total amount of \$20,250.00 and (ii) Annual Operation Cost Avoidance Savings in the total amount of \$64,500.00 during the first fifteen (15) year period following completion of the Project. The Contractor represents and warrants that such total savings in the amount of \$675,090.00 (herein the "Total Guaranteed Savings"), exceeds the Owner's total cost of the Project. The Contractor hereby guarantees that it will reimburse the Owner the difference between such energy and operational savings and the actual savings realized by virtue of the Project. The parties stipulate and agree that the operational savings shall be considered fully satisfied upon the Owner's Final Acceptance of the Project (as defined hereinafter). The energy savings and operational savings will be realized over a period of fifteen (15) years following completion of the Project, which term of years the Contractor represents and warrants is less than the average life expectancy of the Measures. The term of this Agreement shall extend from the date of this Agreement and shall conclude fifteen (15) years after Owner's Final Acceptance of all Measures.

3. General Obligations and Rights of Contractor. Contractor shall do all acts and provide all things necessary to perform and complete the Project properly, in a good and workmanlike manner, and in compliance with all laws and regulations. Contractor shall apply for, secure, and obtain all necessary permits and licenses which may be required in connection with the Project.

3.1 Warranty. Contractor hereby warrants to Owner that all materials furnished by Contractor, if any, and all workmanship performed by Contractor in connection with the Project,

shall be in accordance with the general industry standards of the mechanical and electrical construction industry; shall be performed in a competent, good and workmanlike manner and in compliance with the Contract Documents, and all pertinent laws, rules and regulations; and shall be free from any and all faults or defects in material and workmanship. Contractor shall promptly remedy any and all defective materials or workmanship furnished by Contractor or any subcontractor upon receipt of written notice thereof from Owner. If required by Owner, Contractor shall furnish satisfactory evidence as to kind and quality of materials and equipment used in connection with the Project.

The warranty set forth herein shall continue to be effective for a period of one (1) year following Owner's acceptance or beneficial use of each ECM, acceptance of a particular Facility, or acceptance of the Project, whichever comes first. Owner shall give Contractor written notice of all defective work, specifically detailing the deficiencies to be corrected, and Contractor shall repair or otherwise remedy such defective work in an expeditious manner.

CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. To the extent possible, Contractor shall assign to Owner all warranties that Contractor receives from its vendors and/or subcontractors for any materials or equipment, which are or are to become permanent features of the Project, which shall be in addition to the other warranties provided herein.

3.2 Approvals. Upon completion of the Project, the Contractor shall obtain all approvals of the installation of the Measures constituting the Project as required by I.C. 36-1-12.5-8.

3.3 Indemnification. Contractor shall indemnify, defend, and hold harmless Owner, the agents, officers, employees, and representatives of the Owner (herein the "Indemnified Parties") against all liability and loss including reasonable attorney's fees and expenses to the extent resulting from the negligence or willful misconduct in connection with the Project by Contractor, any subcontractor, or the agents, employees, or representatives of Contractor or any subcontractor, including any injury (including death) sustained by or any damage to the property of, any person; provided however, that Contractor shall not be responsible for any injury (including death), damage, or loss (including reasonable attorneys fees and expenses) which is caused by the sole negligence of an Indemnified Party, nor shall Contractor be held responsible for the concurrent negligence of an Indemnified Party.

Contractor shall be liable for, and agrees to indemnify, save and hold Owner, its successors and assigns, and any assignee of the Contractor, harmless from the payment of any sum of money whatsoever (including reasonable attorneys fees and expenses) on account of any laborer's, mechanic's, materialmen's or any other lien against Owner's property related to Contractor's performance of the Project, unless the lien is caused by some fault of Owner or some person or entity acting on Owner's behalf.

Fully to the extent permitted by law, Owner shall indemnify, defend and hold harmless Contractor, and the agents, officers, shareholders, directors, and employees of the Contractor and any assignee of the Contractor (herein the "Indemnified Parties") against all liability and loss including reasonable attorney's fees and expenses to the extent resulting from the negligence or willful misconduct in connection with the Project by Owner and agents, employees or representatives of Owner, including any injury (including death) sustained by or any damage to the property of, any person; provided, however, that Owner shall not be responsible for any injury (including death), damage or loss (including reasonable attorneys fees and expenses) which is caused by the sole negligence of an Indemnified Party, nor shall Owner be held responsible for the concurrent negligence of an Indemnified Party.

3.4 Bonds. Before entering upon the performance of this Agreement, the Contractor shall execute for the benefit of Owner, a good and sufficient Performance Bond and Payment Bond, in form acceptable to Owner. Each bond shall be in an amount equal to the total Contract Price (as defined below in Section 5 of this Agreement), and the provisions of Indiana Code 36-1-12-13.1 and Indiana Code 36-1-12-14, if applicable to this Project, shall become a part of the terms of such bonds.

The Performance Bond shall also be a guarantee for the repair or replacement of any portion of the Project found by the Owner to be defective to and including the date of Owner's Final Acceptance of the Project. The Payment Bond shall be a guarantee for the payment for labor, materials and equipment furnished for use in the performance of Contractor's obligations hereunder. The Performance and Payment Bond will cease effective the date of the Owner's Final Acceptance of the Project. Effective immediately after, a Maintenance Bond will be provided by Contractor for the one-year period commencing on the date of the Owner's Final Acceptance of the Project in the amount of 10% of the total Contract Price. The surety which executes the Performance Bond and Payment Bond shall waive any right to independent notice under this Agreement if the Contractor receives such notice, and consents to any extensions of time,

modification, waiver, forbearance, or change which may be made in any of the terms and conditions of the Agreement by the parties or by their successors or assigns. Notwithstanding any other provision of this Agreement or the bonds, in no event and in no manner shall coverage under the Performance Bond and Payment Bond extend to Section 3.5, Energy Savings Guarantee, as set forth in Exhibit B, Energy Savings Guarantee and Measurement and Verification Plan, or any related provisions.

3.5 Energy Savings Guarantee. The Contractor hereby agrees to annually reimburse the Owner for the difference between the annual guaranteed energy savings in the amount of \$39,356.00 and the actual annual energy savings realized by Owner in that year, as calculated in accordance with Exhibit B, Energy Savings Guarantee and Measurement and Verification Plan. The Energy Savings Guarantee shall extend for the fifteen (15) year period following Owner's Final Acceptance of the Project. As a condition precedent to commencement of the Project, Contractor shall execute and deliver the Energy Savings Guarantee in the form set forth as Exhibit B to this Agreement. The parties agree that Exhibit B, Energy Savings Guarantee and Measurement and Verification Plan shall control the rights and responsibilities of each party with respect to the Energy Savings Guarantee.

It is agreed that the operational savings are considered fully satisfied upon Owner's Final Acceptance of the Project based on the documentation and data approved by the Owner and included herein.

3.6 Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION HEREIN TO THE CONTRARY, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, SPECULATIVE, PUNITIVE, OR REMOTE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, AND DOWN TIME COST.

3.7 Insurance.

3.7.1 Obtaining Proper Insurance. Contractor shall not commence performance hereunder until (i) it has obtained and Owner has approved all insurance coverage required by this Section 3.7; and (ii) Owner has been furnished with a certificate of insurance properly evidencing and confirming that (a) Owner is an additional insured on Contractor's public liability and automobile liability policies, and (b) such insurance coverage is in effect and will not be canceled until the insurer endeavors to provide at least

thirty (30) days prior written notice to Owner, unless the cancellation is due to non-payment of premium, in which event the insurer will endeavor to provide ten (10) days prior written notice to the Owner. In the event that subcontractors are not covered by the Contractor's policies of insurance, each subcontractor shall secure policies of insurance which meet the requirements of this Section 3.7.

3.7.2 Amount of Insurance. Contractor shall take out and maintain, at its sole cost and expense, the following insurance coverage during the term of this Agreement and all other times during which Contractor, its employees, agents, or subcontractors shall be present at the Facilities, whether performing or correcting any portion of the Project:

(A) Worker's Compensation, Employer's Liability, and Occupational Disease Insurance. Statutorily required worker's compensation insurance, including employer's liability and occupational disease coverage, to the extent mandated by applicable state law, on all of Contractor's employees engaged in the Project;

(B) Public Liability. Commercial general liability insurance (including contractual, independent contractors, explosion, and product/completed operations coverages) against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than Seven Hundred Thousand Dollars (\$700,000.00) in one occurrence, and to the limit of not less than Five Million Dollars (\$5,000,000.00) annual aggregate;

(C) Automobile Liability. Automobile liability insurance against damage because of bodily injury, including death, or damage to property of others as the result of the operation of any automobile owned or hired by Contractor, with such insurance to afford protection to the limit of not less than Five Hundred Thousand Dollars (\$500,000.00) for any one person, not less than One Million Dollars (\$1,000,000.00) in respect to any one accident, and not less than One Hundred Thousand Dollars (\$100,000.00) for property damage.

4. All Risk Insurance. Prior to Contractor's commencement of performance, Owner shall provide Contractor a certificate of insurance evidencing that Owner has in place an "All Risk" insurance policy on all its Facilities that will provide coverage for all installed Measures. The All Risk policy shall be in a form acceptable to Contractor.

The certificates of insurance provided by Owner shall specify that such insurance coverages shall not be cancelled until the insurer endeavors to provide at least thirty (30) days prior written notice to Contractor, unless the cancellation is due to non-payment of premium, in which event the insurer will endeavor to provide ten (10) days prior written notice to the Contractor. Owner agrees to maintain in full force and effect the All Risk policy during the entire term of this Agreement.

4.1. Title and Risk of Loss. Risk of Loss for all equipment and materials provided by Contractor or any subcontractor shall transfer to Owner upon installation of such equipment and materials to Owner's Facilities. Title to a Measure shall vest with the Owner upon installation and approving payment to the Contractor. It is the intent of all parties that any transfer of title to Owner pursuant to this Agreement shall occur automatically without the necessity of any bill of sale, certificate of title, or other instrument of conveyance.

The Owner shall be responsible for operating and maintaining all Measures that are installed. Owner shall also be responsible for any real or personal property taxes related to the Measures.

4.2 Waiver of Subrogation. Fully to the extent permitted by law, Owner and Contractor hereby release each other and each other's employees, agents, and subcontractors from any and all liability for any loss of or damage or injury to person or property arising during the Project by reason of fire or other casualty or any other risk or cause which is or which is required to be insured against under this Agreement, regardless of cause, including the negligence of Owner or Contractor and their respective employees, agents, and subcontractors, and agree that all insurance carried by either of them shall contain a clause whereby the insurer waives its right of subrogation against the other party. Because the provisions of this paragraph are intended to preclude the assignment of any claim mentioned herein by way of subrogation or otherwise to an insurer or any other person, each party to this Agreement shall give to each insurance company which has issued to it one or more policies of insurance required by this Agreement notice of the provisions of this paragraph and have such insurance policies properly endorsed, if necessary, to prevent the invalidation of such insurance by reason of the provisions of this paragraph.

5. Contract Price and Payments.

5.1 Contract Price. In consideration of Contractor's performance of the work necessary for the completion of the Project, Contractor shall be paid the sum of One Million Ninety-Six Thousand Four Hundred Three Dollars (\$1,096,403.00) (herein the "Contract Price"), in

accordance with the provisions of (i) the Installment Payment Contract attached hereto as Exhibit A and (ii) the Project Fund Agreement (Exhibit D), which provides for payments to the Contractor from amounts deposited by the Assignee and Owner. (A portion of the Contract Price, Five Hundred Thirty-Five Thousand Dollars (\$535,000.00), shall be paid from funds provided under a Federal Energy Efficiency Conservation Block Grant award to the City of Evansville. The balance, Five Hundred Sixty-One Thousand Four Hundred Three Dollars (\$561,403.00), shall be financed under the Installment Payment Contract.) Owner's payments under the Installment Payment Contract are subject to annual appropriation by the fiscal body of the Owner and do not constitute an indebtedness of Owner within the meaning of a constitutional or statutory debt limitation.

5.2 Interest. If Owner fails to timely pay or cause to be paid any application for payment that is due, interest shall accrue on the unpaid balance at the rate of twelve percent (12%) per annum until paid, or at the highest rate allowed by law, whichever is less.

5.3. Completion and Inspection; Acceptance. When Contractor reasonably believes that an ECM, a Facility or the entire Project is complete, it shall notify the Authorized Representative of the Owner (hereinafter the "Authorized Representative") that such ECM, Facility or the entire Project, as the case may be, is ready for inspection and acceptance. Within five (5) business days following such notification, Owner shall commence to conduct such inspections as it deems necessary or appropriate in order to determine that the ECM, Facility, or the entire Project, as the case may be, is free from defects and that the installation of the ECM, Facility, or the entire Project, as the case may be, has been completed in conformity with the Contract Documents. If any aspect of the ECM, Facility, or the entire Project, as the case may be, shall be incomplete as of the date of such inspection, the Authorized Representative shall notify Contractor in writing as to the items which render the ECM, Facility, or the entire Project, as the case may be, incomplete (such writing herein referred to as the "Punch List").

Contractor shall, at its expense and without further cost to Owner, undertake to perform such work as will complete the Punch List in compliance with the Contract Documents as soon as practicable. Contractor retains the right to dispute that an item or items on the Punch List is required by the Contract Documents. If Contractor does not satisfactorily complete the Punch List by a date thirty (30) days following Owner's submission of the Punch List (herein the "Completion Date"), Owner shall have the right to order Contractor to stop any further work in respect of the particular ECM, Facility, or the entire Project, as the case may be, and Owner shall be entitled to complete the Punch List. In such event, Contractor shall be responsible for all costs incurred by

Owner in completing the Punch List and Owner shall have the right to deduct all costs from any payment then or thereafter due to Contractor. If such cost exceeds the balance of the Contract Price then or thereafter due Contractor, Contractor shall pay such excess to Owner within ten (10) days following Owner's demand therefor.

Owner will give Contractor prompt written notice of acceptance of a particular ECM, Facility, or the entire Project, as the case may be, in the form of Schedule 1 (herein the "Final Acceptance Certificate"), when the following conditions have been met:

- A. Contractor shall have completed the Punch List to Owner's reasonable satisfaction and Contractor shall have corrected any other non-conforming items or condition, if any, reported to it by Owner;
- B. Contractor shall have furnished to Owner's reasonable satisfaction, evidence that all equipment and labor costs incurred or accrued in connection with a particular ECM or Facility have been paid;
- C. Contractor shall have delivered to Owner all drawings and documents required to be furnished by Contractor pursuant to the Contract Documents; and
- D. Contractor has obtained all Approvals required by I.C. 36-1-12.5-8.

If Owner is required to complete the Punch List, the date of Final Acceptance shall be extended to the date upon which the Project is completed by Owner, or any person retained by Owner, in accordance with the Contract Documents.

5.4 Payment of the Installment Payment Contract. Owner agrees to pay to Contractor or any Assignee the payments specified in the Installment Payment Contract attached hereto as Exhibit A.

The Owner retains any and all rights to assert claims or defenses against the Contractor. All payments under the Installment Payment Contract shall be payable out of the first available funds legally available in each fiscal year. The Owner shall include in its annual budget request for each fiscal year during the term of the Installment Payment Contract, a request to include all amounts payable under the Installment Payment Contract in such fiscal year, and shall use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay the Installment Payments coming due therein.

6. Independent Contractor. It is understood and agreed by the parties hereto that Contractor shall perform the Project according to its own means and methods and shall for all purposes be an

independent contractor. All persons employed by Contractor in connection with the Project shall be paid directly by Contractor, and shall be subject to Contractor's orders and supervision.

7. Inspection; Defective Work. The Contractor shall provide sufficient, safe, and proper facilities at all times for the inspection of the work by the Authorized Representative. It shall, within forty-eight (48) hours after receiving written notice from the Authorized Representative to that effect, proceed to remove from the Facilities all materials which fail to conform to the Contract Documents.

8. Termination.

8.1 Owner's Right to Terminate. Should the Contractor fail to perform any material term or condition of the Contract Documents, the Owner shall be at liberty, after thirty (30) days written notice to the Contractor and Contractor's failure to remedy the problem within that time period, to terminate this Agreement and to enter upon the Facilities and take possession of the equipment and materials for the purpose of completing the work to be done under this Contract, to use all materials of the Contractor available for such work, and to employ any other person or persons to finish the work and to provide such additional materials therefor as may be necessary; and in case of such termination of the employment of the Contractor, the Contractor shall not be entitled to receive any further payment under this Contract until the work shall be wholly finished, at which time if the unpaid balance of the amount to be paid under the Contract shall exceed the expense incurred by the Owner in finishing the work, such excess shall be paid by the Owner to the Contractor, but if such expense shall exceed such unpaid balance, the Contractor shall pay the excess to the Owner. The expenses incurred by the Owner as herein provided, either for the furnishing of materials or for finishing the work, and any damage incurred through such fault of the Contractor shall be certified by the Owner, and payment shall be made upon such certification.

8.2 Contractor's Right to Terminate or Stop Work. Should the Owner fail to perform any material term or condition of the Contract Documents, the Contractor shall be at liberty, after thirty (30) days written notice to the Owner and Owner's failure to remedy the problem within that time period, to terminate this Agreement or stop work. If Contractor elects to stop work, Contractor shall not be required to recommence work until such time as Owner has completely remedied its breach.

9. Delays. Should the Contractor be obstructed or delayed in the prosecution or completion of the Project by the act, negligence, delay, or default of the Owner or by any other damage or act beyond the reasonable control of Contractor or any subcontractor, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of such event. If Contractor is

delayed by actions or inactions of the Owner or its agents or employees, Owner shall be required (fully to the extent permitted by law) to reimburse Contractor for its additional costs incurred as a result of such delay.

10. Contractor to Furnish Required Statements. The Contractor shall provide all statements, affidavits, waivers, and other instruments required by state or federal law or regulation or by local ordinances or rules, at such times and in the form required by said laws, regulations, ordinances, or rules, and the Contractor hereby acknowledges receipt of notice from the Owner to furnish same.

11. Nondiscrimination in Hiring Employees. The Contractor, as required by I.C. 5-16-6-1 et seq. and I.C. 22-9-1-10, shall comply with the following:

- A. The Contractor, any subcontractor, any supplier or any sub-supplier of a party to this Contract shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract with respect to his or her hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of his race, color, religion, sex, disability, national origin, or ancestry. Breach of this provision may be regarded as a material breach of this Contract.
- B. Since this Contract involves the construction, alteration, or repair of a public building or public work, then the Contractor further agrees:
 - (1) That in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not, by reason of race, religion, color, sex, national origin, or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates;
 - (2) That the Contractor, a subcontractor, or any person on his or their behalf shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, religion, color, sex, national origin, or ancestry;
- C. The Contractor or any subcontractor of the Contractor shall be required to pay for each class of work on such project a scale of wages which shall in no case be less than the common construction wages being paid in the immediate locality for such class of work. As part of this Contract, there is incorporated by reference herein the prevailing

scale of wages pursuant to The United States Department of Labor Wage Determination, Department of Energy's Energy Efficiency and Conservation Block Grant 10-004A Desk Guide 06-16-2010.

12. Miscellaneous Provisions.

12.1. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana. The provisions of the American Recovery and Reinvestment act ("ARRA") related to (1) prevailing wage requirements, (2) buy American requirements, and (3) reporting requirements shall also apply to this Agreement if Owner obtains funds from ARRA for this Project.

12.2. Notices. Unless otherwise specifically provided herein, any notice, consent, request, demand, report or statement (herein "Notice"), which is required or permitted to be given to or served upon either party hereto by the other party hereto under any of the provisions of this Agreement shall be in writing and deemed to be duly delivered when (i) personally delivered to Contractor, or personally delivered to the Authorized Representative in the case of a Notice to be given to Owner, or (ii) deposited in the United States mail, registered or certified, postage prepaid, and properly addressed as follows:

If to Owner: Daniel C. Schall II, Executive Director
City of Evansville Division of Parks and Recreation
100 E Walnut Street, Suite 100
Evansville, Indiana 47713

With a copy to: City Controller
300 Civic Center Complex
1 N.W. Martin Luther King Jr. Boulevard
Evansville, IN 47708-1833

If to Contractor: Gregory F. Collins, President
Energy Systems Group LLC
4655 Rosebud Lane
Newburgh, Indiana 47630

Either party may change its address or its designated representative for receipt of notices by submitting a notice in compliance with this Section.

If Owner has questions about billing, invoices or any other accounting or related administrative issues, it can make contact (which will not constitute Notice) with:

Dennis Perrey, Vice President / Chief Accounting Officer
Energy Systems Group, LLC
4655 Rosebud Lane
Newburgh, IN 47630
(812) 492-3726
dperrey@energysystemsgroup.com

12.3. Claims for Damages. Any claims by either party hereto for bodily injury or damage to personal property caused by any act or omission of the other party hereto or by any of such party's employees or agents or others for whose acts it is legally liable shall be made in writing to such other party within a reasonable time after the occurrence or first knowledge of such injury or damage.

12.4. Assignment. Without Contractor's prior written consent, Owner shall not: (a) assign, transfer, pledge, hypothecate, or grant any security interest in, or otherwise dispose of, this Agreement or the equipment or any interest in this Agreement or the Equipment or (b) sublet or lend the Equipment or permit the Equipment to be used by anyone other than Owner or Owner's employees.

Contractor, with the consent of the Owner, may assign its right to receive payment hereunder in whole or in part to various assignees, their agents or trustees (each and any one hereinafter referred to as an "Assignee"). Any such assignment to an Assignee may provide that Contractor or the Assignee shall act as a collection and paying agent for the holders of certificates of participation in this Agreement, if any, or may provide that a third party trustee or agent shall act as a collection and paying agent for any Assignee, provided Owner receives written notification of the name and address of the trustee or the agent and a copy of the pooling and fractionalization agency or trustee agreement, if any such Assignee shall have all of the assigned rights of Contractor under this Agreement. Subject to the foregoing, this Agreement shall inure to the benefit of and is binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto. Any assignment or reassignment of any of Contractor's right to receive payment hereunder shall be effective upon receipt by Owner of a duplicate original of the counterpart document by which the assignment or reassignment is made, disclosing the name and address of each such Assignee, and where applicable, to whom further payments hereunder should be made.

During the Agreement Term, Owner covenants that it shall keep a complete and accurate record of all assignments in form necessary to comply with the Code and the regulations, proposed or existing, from time to time promulgated thereunder. Owner agrees to acknowledge, in writing, any assignments if so requested.

Owner hereby acknowledges that the Assignee is not a manufacturer, vendor, or distributor of any equipment, that Assignee has not made and will not make any representation or warranty, express or implied, with respect to the merchantability, condition, quality, durability, design, operation, fitness for a particular purpose or suitability of the equipment, and Owner agrees to make any such claims directly against the Contractor, manufacturer and/or seller of the equipment. Owner further agrees that it shall not assert against any Assignee, Trustee, or Agent any defense, claim, counterclaim, or setoff on account of any reason whatsoever with respect to any contract payments or other amounts due hereunder or with respect to any action brought to obtain possession of the equipment pursuant to this Agreement.

By executing this Agreement, Owner consents to Contractor's assignment of Contractor's right to receive payments hereunder in whole to The Evansville Local Public Improvement Bond Bank or its assignees, their agents or trustees.

12.5. Waivers. The failure of either party hereto to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provision or the relinquishment of any such rights unless such waiver is in writing and signed by both parties.

12.6. Remedies Cumulative. Each remedy provided for by the Contract shall be cumulative and in addition to every other remedy provided for herein, by law or in equity.

Upon the occurrence of a default, hereunder, either party, or its assignee, may, at its option, exercise any right, remedy, or privilege which may be available to it under applicable law, including the right to (i) proceed by appropriate court action to enforce the terms of this Agreement, and (ii) recover damage for breach of this Agreement, provided, however, the exercise of any right, remedy or privilege shall not contravene or affect in any manner the Owner's payment obligation set forth in the Installment Payment Agreement. Notwithstanding the exercise of any right, remedy or privilege, the parties shall remain liable for all covenants and indemnities under this Agreement.

12.7. Tests. If the Contract Documents or the laws, ordinances, rules, or regulations of any public authority having appropriate jurisdiction require inspection, testing, or approval of any of the work, Contractor shall give the Authorized Representative timely notice of Contractor's

readiness for such inspection, testing, or approval and of the date thereof so that the Authorized Representative may be present to observe such inspection, testing, or approval by such public authority. Contractor shall be responsible for and pay all costs for any such inspection, testing, or approval unless otherwise provided for herein. All required licenses, permits, or certificates applicable to any such inspection, testing, or approval shall be obtained by Contractor and promptly delivered to the Authorized Representative.

12.8. Hazardous Materials. If during the performance of the services related to the Project, the presence of Hazardous Materials is discovered or reasonable suspected, Contractor shall notify Owner of such discovery or suspicion and shall be permitted to immediately cease all work which requires contact with or exposure to such hazardous materials until Owner has inspected the same and Owner has made arrangements for the removal of the same. Contractor shall be entitled to an extension of the time fixed for the completion of the work equivalent to the time required to remediate such Hazardous Material. "Hazardous Materials" includes all hazardous or toxic substances or materials as may be so designated by federal, state or local governmental entities.

12.9. Equal Employment Opportunity. The Contractor agrees that all services, facilities, activities and programs provided as part of this Contract will meet the requirements of the American's with Disabilities Act and the rules and regulations promulgated thereunder.

12.10. Minority and Women Business Enterprises. Contractor shall be subject to the provisions of 3.90.110-180 of the Evansville Municipal Code, including its best effort to include minority participation in the value of the work equal to twelve percent (12%) of the total dollar amount of the bid and women participation in the value of the work equal to seven percent (7%) of the total dollar amount of the bid.

12.11. Random Drug Testing Policy. Pursuant to Chapter 5.60 of Title 5 of the Evansville Municipal Code, the Contractor and every Sub-Contractor doing construction work on the project shall have a random drug testing program in place at the time of submission of his quote or bid which shall, at a minimum, meet the following qualifications and criteria:

- A. The Contractor shall maintain a random drug testing program, and the program shall be reduced to writing.
- B. The drug testing program shall contain at least a five (5) drug panel that tests for the following drugs: amphetamines, cocaine, opiates (92000 ng/ml), PCP, and THC.

- C. All the employees of the Contractor are subject to at least annual testing, and at least one-twelfth (1/12th) of twenty-five percent (25%) of the employer's total workforce shall be selected randomly each month for testing.
- D. The random drug testing program operated by the Contractor shall contain a progressive discipline component for employees who fail the drug test that meets at least the following minimum steps:
 - 1. The first positive test shall result in a thirty (30) day period of ineligibility for work, and upon returning to work, one (1) year of unannounced follow-up testing.
 - 2. A second positive test shall result in a ninety (90) day period of ineligibility for work and upon returning to work, one (1) year of unannounced follow-up testing.
 - 3. A third positive test shall result in a one (1) year period of ineligibility for work, and upon returning to work, one (1) year of unannounced follow-up testing.
 - 4. Any subsequent positive test shall be treated the same as a third positive test.
 - 5. At the discretion of the employer, the discipline issued above may include more severe discipline including, but not limited to, dismissal of the employee.
- E. Evidence of the Contractor's drug testing policy shall be submitted with the bid. Failure to provide evidence of the Contractor's random drug testing policy or program shall result in a rejection of the bid. Submitting false information concerning compliance with the requirements of this chapter shall result in the rejection of the bid or cancellation of the Contract if an award has been made prior to determining the information is false by the Board, Commission, or Agency. In such event, the Contractor shall be paid only for the work done prior to cancellation of the Contract.

12.12. Permits, Surveys and Compliance With Laws. The Contractor shall keep fully informed of Federal, State and Municipal laws, ordinances, regulations, codes and standards, or any other bodies having jurisdiction or authority, which in any manner may affect the conduct of the Work or the Work of any employee. The Contractor shall at all times observe and comply with all

such laws, ordinances, regulations, codes and standards. The Contractor shall protect, indemnify, and exculpate the Owner and its representatives, against any civil claim or civil liability arising from or based on the violation or any such laws, ordinances, regulations, codes and standards whether by himself or his employees, even if such violation is due wholly or in part to violation of said laws, ordinances, regulations, codes or standards by the Owner or its representatives.

The Contractor shall give all notices, and procure and pay for all permits, licenses and bonds, necessary for the prosecution of the Work, as required by Municipal, State and Federal ordinances, regulations, codes and laws, unless specifically provided otherwise in the Special Conditions or the Specifications. If the Contractor observes that the Project Drawings and Specifications are at variance with rules, codes or laws, he shall promptly notify the Owner or Engineer in writing, and any necessary changes shall be made as provided in the Contract for changes in the Work. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and gives no notice to the Owner or Engineer, Contractor shall bear all costs and damages, including, but not limited to, attorney's fees, arising from said Work.

12.13. Royalties and Patents. The Contractor shall pay all royalties and license fees for any patented product used by him or incorporated in the Work. The Contractor shall defend all suits or claims for infringement of any patent right brought against himself or the Owner, and shall save the Owner harmless from liability or loss or damage of any nature or kind, including costs, expenses and attorney's fees arising from the infringement or allegation of infringement of any patent or patent right, or because of any royalty, fee or license for the use, arrangement or operation of any tools, machinery, appliances, devices or materials which may be used by the Contractor or furnished by him in fulfillment of the requirements of this Contract.

12.14. Amendments. No amendment, supplement, or modification hereof shall be effective for any purpose unless the same is in writing and signed by both parties hereto.

12.15. Headings. The headings of sections and subsections of this Agreement are for convenience of reference only and shall not affect the meaning or construction of any provision hereof.

12.16 Entire Agreement. This Agreement, together with the Contract Documents, represents the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, representations and agreements whether written or oral.

12.17 Authority to Execute Contract. This Contract is executed by the Owner pursuant to an approval of the Board of Park Commissioners of the Owner on September 7, 2011, and the Common Council of the Owner on September 12, 2011.

CITY OF EVANSVILLE, INDIANA

By _____
Jonathan Weinzapfel

Its _____
Mayor

By _____
Jenny Collins

Its _____
Controller

ENERGY SYSTEMS GROUP, LLC

By _____
Gregory F. Collins

Its _____
President

SCHEDULE 1

ACCEPTANCE CERTIFICATE OR FINAL ACCEPTANCE CERTIFICATE

(This is a sample form and will be modified, completed and signed after installation of an ECM, Facility or the entire Project, as the case may be)

Energy Systems Group, LLC
4655 Rosebud Lane
Newburgh, IN 47630

Re: Guaranteed Energy Savings Performance Contract, dated as of September 13, 2011 (the "Agreement"), between Energy Systems Group, LLC (the "Contractor") and City of Evansville, Indiana (the "Owner").

Ladies and Gentleman:

In accordance with the Agreement, the Owner hereby certifies and represents to, and agrees with, Energy Systems Group, LLC as follows:

The ECM (or ECM's), Facility (or Facilities), or the entire Project, as the case may be, (as defined in the Agreement) have been delivered, installed, and accepted as of _____ (the "Acceptance Date").

Owner has conducted such inspection and/or testing of the ECM (or ECM's), Facility or the entire Project, as the case may be, as it deems necessary and appropriate and hereby acknowledges that it accepts the ECM (or ECM's), Facility, or the entire Project, as the case may be, for all purposes.

No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

Sincerely,

CITY OF EVANSVILLE, INDIANA

By _____
Jonathan Weinzapfel

Its _____
Mayor

By _____
Jenny Collins

Its _____
Controller

EXHIBIT A
SCOPE OF WORK

ECM 1.0 – LIGHTING IMPROVEMENTS

Energy Systems Group (ESG) has evaluated the existing lighting systems and has developed the following lighting improvement plan:

Table 1: C.K. Newsome Center

Room Name	Fix Qty	Existing Fixture Information			Retrofit Fixture Information		
		Ex Fix ID	Ex Fix Wattage	Ex Fix Usage	Ret Fix ID	Ret Fix Wattage	Ret Fix Usage
Front Entrance	2	70w-mh-can	98	4380	No retrofit 98w	98	4380
Lobby	2	40wx19-inc chandelier	760	4380	CC-19x5w-A17	95	4380
Lobby	34	65r30	65	4380	Cf-16r30	16	4380
Lobby	2	Exit/emerg-red-inc	40	8760	Exit/emerg-led-new	2	8760
Main Office	6	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	4380
Main Office	1	1x4-2l-34w	78	4380	1x4-2l-t8-25w	43	4380
Office 1	4	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	4380
Office 1	1	Ws-toggle	0	0	Ws-sensor	0	0
Office 2	4	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	3285
Office 2	1	Ws-toggle	0	0	Ws-sensor	0	0
Office 3	4	2x4-4L-34W	144	1000	2x4-2L-T8-R-HO-25W	57	750
Office 3	1	Ws-toggle	0	0	Ws-sensor	0	0
Office 4	4	2x4-4L-34W	144	1000	2x4-2L-T8-R-HO-25W	57	750
Office 4	1	Ws-toggle	0	0	Ws-sensor	0	0
Storage Room	1	4's2l-34w	78	1000	4's2l-t8-lo-25w	37	1000
Old Vault	1	Cf16w/r30	16	100	No retrofit 16w	16	100
MRR	1	2'2l vanity t12	45	2190	2'w2l-t8-lo-vanity	28	1645
MRR	1	Ws-toggle	0	0	Ws-sensor	0	0
WRR	1	2'2l vanity t12	45	2190	2'w2l-t8-lo-vanity	28	1645
WRR	1	Ws-toggle	0	0	Ws-sensor	0	0
Right Of Lobby	16	65r30	65	4380	Cf-16r30	16	4380
Right Of	1	Exit/emerg-red-	40	8760	Exit/emerg-led-	2	8760

		Existing Fixture Information			Retrofit Fixture Information		
Room Name	Fix Qty	Ex Fix ID	Ex Fix Wattage	Ex Fix Usage	Ret Fix ID	Ret Fix Wattage	Ret Fix Usage
Lobby		inc			new		
Right Of Lobby	1	Drink machines	400	8760	Vending miser	400	5256
Front Hall	18	2x4-2l-34w	72	4380	2x4-2l-t8-25w	43	4380
Conf Room	4	2x4-4L-34W	144	2190	2x4-4l-t8-25w	85	2190
Conf Room-Middle	2	2x4-4L-34W	144	2190	2x4-4l-t8-25w	85	2190
Edu Zone	4	2x4-4L-34W	144	2190	2x4-4l-t8-25w	85	2190
Hall Right Of Lobby	9	2x4-2l-34w	72	4380	2x4-2l-t8-25w	43	4380
Recording Studio	11	2x4-4L-34W	144	2190	2x4-4l-t8-25w	85	2190
WRR	1	60w-can	60	4380	Cf-13w	13	4380
WRR	4	1x4-2l-34w	78	4380	1x4-2l-t8-25w	43	3285
WRR	1	4'Vanity1L-34W	43	4380	4's1l-t8-25w	22	3285
WRR	1	Ws-toggle	0	0	Ws-ceiling	0	0
MRR	1	60w-can	60	4380	Cf-13w	13	4380
MRR	3	1x4-2l-34w	78	4380	1x4-2l-t8-25w	43	3285
MRR	1	4'Vanity1L-34W	43	4380	4's1l-t8-25w	22	3285
MRR	1	Ws-toggle	0	0	Ws-ceiling	0	0
Mop Closet	1	100w-inc-pb	100	1000	Cf-23w-sls	23	1000
Snack Bar	15	65r30	65	4380	Cf-16r30	16	4380
Snack Bar	4	60wx2-inc-wall	120	4380	Cf-13wx2	26	4380
Snack Bar	7	40wx2-inc-candelabra	80	4380	Cf-13wx2-wall-new	26	4380
Snack Bar Storage	1	1x4-2l-34w	78	100	1x4-2l-t8-lo-25w	37	100
Snack Bar Storage	1	60-a	60	100	Cf-13w	13	100
Snack Bar Storage2	1	60-a	60	100	Cf-13w	13	100
Community Room	47	2x4-4l-34w	144	2200	2x4-2L-T8-R-HO-25W	57	2200
Community Room	1	Exit/emerg-red-inc	40	8760	Exit/emerg-led-new	2	8760
Glass Office	2	2x4-4L-34W	144	2200	2x4-2L-T8-R-HO-25W	57	2200
Community Room Storage	1	60-a	60	100	Cf-13w	13	100
Gymnasium	8	2x4-4L-34W	144	2200	2x4-2L-T8-R-HO-25W	57	2200
Gymnasium	1	Drink machines	400	8760	Vending miser	400	5256
Gymnasium	24	400w mh	458	2200	2x4-6L-T8-R-HO-	222	2200

		Existing Fixture Information			Retrofit Fixture Information		
Room Name	Fix Qty	Ex Fix ID	Ex Fix Wattage	Ex Fix Usage	Ret Fix ID	Ret Fix Wattage	Ret Fix Usage
					WG-NEW-25W		
Gymnasium	2	Exit green	40	8760	Exit led new	2	8760
Gymnasium Storage	26	4'i2l-34w	78	1000	4'i2l-t8-25w	43	1000
Gymnasium Storage	1	Exit green	40	8760	Exit led new	2	8760
Hallway	11	2x4-4L-34W	144	4380	2x4-4l-t8-25w	85	4380
Youth Build Program	13	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	4380
Youth Build Program Office	2	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	4380
Youth Build Program	2	Exit green	40	8760	Exit led new	2	8760
Storage Closet	2	2x4-4L-34W	144	1000	2x4-2L-T8-R-25W	43	1000
Kitchenette	2	2x4-2l-34w	72	4380	2x4-2l-t8-25w	43	4380
Back Entrance	1	65r30	65	1000	Cf-16r30	16	1000
Storage Closet	1	4'w2l-34w	72	100	4'w2l-t8-lo-25w	37	100
Back Entrance	1	Exit/emerg-red-inc	40	8760	Exit/emerg-led-new	2	8760
Storage Closet	1	4'w2l-34w	72	100	4'w2l-t8-lo-25w	37	100
118d	10	2x4-4L-34W	144	2190	2x4-4l-t8-25w	85	2190
118d	4	100w-inc-sconce	100	2190	Cf-23w-sls	23	2190
118d Storage	1	2x4-4L-34W	144	100	2x4-2L-T8-R-25W	43	100
118c	10	2x4-4L-34W	144	2190	2x4-2L-T8-R-25W	43	2190
118c	4	100w-inc-sconce	100	2190	Cf-23w-sls	23	2190
MRR	2	1x4-2l-34w	78	4380	1x4-2l-t8-25w	43	3285
MRR	1	Ws-toggle	0	0	Ws-ceiling	0	0
MRR	1	4'Vanity1L-34W	43	4380	4's1l-t8-25w	22	3285
Mop Closet	1	100w-inc-pb	100	100	Cf-23w-sls	23	100
WRR	2	1x4-2l-34w	78	4380	1x4-2l-t8-25w	43	3285
WRR	1	Ws-toggle	0	0	Ws-ceiling	0	0
WRR	1	4'Vanity1L-34W	43	4380	4's1l-t8-25w	22	3285
Kitchen	9	4'damp2l-34w	78	4380	4'damp2l-t8-25w	43	4380
Kitchen	1	65r30	65	4380	Cf-16r30	16	4380
Kitchen	1	Exit green	40	8760	Exit led new	2	8760
118 B/A	20	2x4-4L-34W	144	2190	2x4-4l-t8-25w	85	2190

		Existing Fixture Information			Retrofit Fixture Information		
Room Name	Fix Qty	Ex Fix ID	Ex Fix Wattage	Ex Fix Usage	Ret Fix ID	Ret Fix Wattage	Ret Fix Usage
118 B/A	10	100w-inc-sconce	100	2190	Cf-23w-sls	23	2190
118 B/A	2	Exit green	40	8760	Exit led new	2	8760
118 B/A	1	Exit/emerg-red-inc	40	8760	Exit/emerg-led-new	2	8760
118 B/A Storage(2)	2	2x4-4L-34W	144	100	2x4-2L-T8-R-25W	43	100
Suite 100	8	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	4380
Suite 100	1	Exit led	3	8760	No retrofit 3w	3	8760
Suite 100 File Room	2	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	3285
Suite 100 File Room	1	Ws-toggle	0	0	Ws-sensor	0	0
Suite 100 Storage	1	100w-inc-pb	100	100	Cf-23w-sls	23	100
Storage Closet	1	100w-inc-pb	100	100	Cf-23w-sls	23	100
Office 1	2	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	3285
Office 1	1	Ws-toggle	0	0	Ws-sensor	0	0
Office 2	2	2x4-4L-t8	112	4380	2x4-2L-T8-R-HO-25W	57	3285
Office 2	1	Ws-toggle	0	0	Ws-sensor	0	0
Office 3	2	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	3285
Office 3	1	Ws-toggle	0	0	Ws-sensor	0	0
Office 4	2	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	3285
Office 4	1	Ws-toggle	0	0	Ws-sensor	0	0
Office 5	2	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	3285
Office 5	1	Ws-toggle	0	0	Ws-sensor	0	0
Kitchenette	3	2x4-4L-34W	144	2190	2x4-2L-T8-R-HO-25W	57	1645
Kitchenette	1	Ws-toggle	0	0	Ws-sensor	0	0
Kitchenette	1	Exit green	40	8760	Exit led new	2	8760
Room By Stairs	4	2x4-4L-34W	144	2190	2x4-2L-T8-R-HO-25W	57	2190
Stairs	6	65r30	65	4380	Cf-16r30	16	4380
Stairs	1	40wx19-inc-chandelier	760	4380	CC-19x5w-A17	95	4380
Hallway	11	2x4-4L-34W	144	4380	2x4-4L-t8-25w	85	4380
Hallway	3	Exit/emerg-red-	40	8760	Exit/emerg-led-	2	8760

		Existing Fixture Information			Retrofit Fixture Information		
Room Name	Fix Qty	Ex Fix ID	Ex Fix Wattage	Ex Fix Usage	Ret Fix ID	Ret Fix Wattage	Ret Fix Usage
		inc			new		
142A/B	10	2x4-4L-34W	144	2190	2x4-2L-T8-R-HO-25W	57	2190
142A/B	3	Exit green	40	8760	Exit led new	2	8760
Storage Closet	2	100w-inc-pb	100	100	Cf-23w-sls	23	100
Parks Dept	6	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	4380
Parks Dept	2	Exit green	40	8760	Exit led new	2	8760
Office	4	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	3285
Office	1	Ws-toggle	0	0	Ws-sensor	0	0
Back Entrance	2	100w-inc-can	100	4380	Cf-23w-sls	23	4380
Back Entrance	1	Exit/emerg-red-inc	40	8760	Exit/emerg-led-new	2	8760
Kitchenette	1	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	4380
Open Office	10	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	4380
Office 1	2	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	3285
Office 1	1	Ws-toggle	0	0	Ws-sensor	0	0
Office 2	2	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	3285
Office 2	1	Ws-toggle	0	0	Ws-sensor	0	0
Office 3	2	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	3285
Office 3	1	Ws-toggle	0	0	Ws-sensor	0	0
Office 4	2	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	3285
Office 4	1	Ws-toggle	0	0	Ws-sensor	0	0
Office 5	2	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	3285
Office 5	1	Ws-toggle	0	0	Ws-sensor	0	0
Office 6	2	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	3285
Office 6	1	Ws-toggle	0	0	Ws-sensor	0	0
Copy Room	2	2x4-4L-34W	144	4380	2x4-2L-T8-R-HO-25W	57	3285
Copy Room	1	Ws-toggle	0	0	Ws-sensor	0	0
Stairs	2	1x4-2l-34w	78	4380	1x4-2l-t8-25w	43	4380
Boiler Room	22	300w-inc-pb	300	2190	CF-42W-SLS-mogulebase	42	2190

		Existing Fixture Information			Retrofit Fixture Information		
Room Name	Fix Qty	Ex Fix ID	Ex Fix Wattage	Ex Fix Usage	Ret Fix ID	Ret Fix Wattage	Ret Fix Usage
Exterior	12	150W-HPS-wallpack	188	4500	80w-Induction-Wall Pack	80	4500
Exterior	2	150w-mh-ground flood	184	4500	80w-induction-ground flood	80	4500

Table 2: Swonder Ice Arena

		Existing Fixture Information			Retrofit Fixture Information		
Room Name	Fix Qty	Ex Fix ID	Ex Fix Wattage	Ex Fix Usage	Ret Fix ID	Ret Fix Wattage	Ret Fix Usage
Entrance 1&2	12	Cf-42w tbx can	42	5400	No retrofit 42W	42	5400
Info booth	14	Cf-42w tbx can	42	5400	No retrofit 42w	42	5400
Ticket booth	2	2x4-3l-t8-pb	85	5400	Relamp-3l-4't8-25w	66	5400
Lobby	4	8'p4lx4'-t8	116	5400	Relamp-4l-4't8-25w	85	5400
Lobby	5	6'p4lx3'-t8	88	5400	Relamp-4l-3't8	88	5400
Lobby	5	4'p2l-3k-t8.	58	5400	Relamp-2l-4't8-25w	43	5400
Lobby	40	Cf-42w tbx can	42	5400	No retrofit 42w	42	5400
Skate shop	7	2x4-3l-t8-pb	85	1665	Relamp-3l-4't8-25w	66	1665
Storage closet	1	4's2l-t8	58	1000	Relamp-2l-4't8-25w	43	1000
Hallway	3	2x4-3L-T8-PB	85	5400	Relamp-3L-4'T8-25W	66	5400
Conf Room	6	2x4-3l-t8-pb	85	2700	Relamp-3l-4't8-25w	66	2700
Staff lounge	6	2x4-3l-t8-pb	85	2700	Relamp-3l-4't8-25w	66	2700
Open office	12	2x4-3l-t8-pb	85	5400	Relamp-3l-4't8-25w	66	5400
Office 1	3	2x4-3l-t8-pb	85	5400	Relamp-3l-4't8-25w	66	4050
Office 1	1	Ws-toggle	0	0	Ws-sensor -bi-level	0	0
Office 2	2	2x4-3l-t8-pb	85	5400	Relamp-3l-4't8-25w	66	4050
Office 2	1	Ws-toggle	0	0	Ws-sensor -bi-level	0	0
Office 3	2	2x4-3l-t8-pb	85	5400	Relamp-3l-4't8-25w	66	4050
Office 3	1	Ws-toggle	0	0	Ws-sensor -bi-level	0	0

		Existing Fixture Information			Retrofit Fixture Information		
Room Name	Fix Qty	Ex Fix ID	Ex Fix Wattage	Ex Fix Usage	Ret Fix ID	Ret Fix Wattage	Ret Fix Usage
Office 4	2	2x4-3l-t8-pb	85	5400	Relamp-3l-4't8-25w	66	4050
Office 4	1	Ws-toggle	0	0	Ws-sensor -bi-level	0	0
Office 5	2	2x4-3l-t8-pb	85	5400	Relamp-3l-4't8-25w	66	4050
Office 5	1	Ws-toggle	0	0	Ws-sensor -bi-level	0	0
Storage closet	1	4's2l-t8	58	1000	Relamp-2l-4't8-25w	43	1000
Copy hall	2	2x4-3l-t8-pb	85	5400	Relamp-3l-4't8-25w	66	5400
RR 1&2	2	4'w2l-t8-vanity	58	2700	Relamp-2l-4't8-25w	43	2700
MRR	1	Cf-42w tbx can	42	5400	No retrofit 42w	42	5400
MRR	4	2x4-3l-t8	85	5400	Relamp-3l-4't8-25w	66	5400
WRR	1	Cf-42w tbx can	42	5400	No retrofit 42w	42	5400
WRR	5	2x4-3l-t8	85	5400	Relamp-3l-4't8-25w	66	5400
Hallway	6	Pl40wx2-wall wash track	67	5400	No retrofit 67w	67	5400
Elevator Room	1	4's2l-t8	58	1000	Relamp-2l-4't8-25w	43	1000
Com. Room	1	4's2l-t8	58	1000	Relamp-2l-4't8-25w	43	1000
Food Court	24	Cf-42w tbx can	42	5400	No retrofit 42w	42	5400
Food Court	6	Pl40wx2-wall wash track	67	5400	No retrofit 67w	67	5400
Food Court	14	8'p4lx4'-t8	116	5400	Relamp-4l-4't8-25w	85	5400
Food Court	7	6'p4lx3'-t8	88	5400	Relamp-4l-3't8	88	5400
Food Court	6	4'p2l-3k-t8.	58	5400	Relamp-2l-4't8-25w	43	5400
Food Court	4	Drink machines	400	8760	Vending miser	400	5256
Storage closet	1	4's2l-t8	58	1000	Relamp-2l-4't8-25w	43	1000
MRR	1	Cf-42w tbx can	42	5400	No retrofit 42w	42	5400
MRR	4	2x4-3l-t8	85	5400	Relamp-3l-4't8-25w	66	5400
WRR	1	Cf-42w tbx can	42	5400	No retrofit 42w	42	5400
WRR	5	2x4-3l-t8	85	5400	Relamp-3l-4't8-25w	66	5400
Concession	3	2x4-3l-t8	85	2700	Relamp-3l-4't8-	66	2700

		Existing Fixture Information			Retrofit Fixture Information		
Room Name	Fix Qty	Ex Fix ID	Ex Fix Wattage	Ex Fix Usage	Ret Fix ID	Ret Fix Wattage	Ret Fix Usage
stand					25w		
Electrical closet	2	4's2l-t8	58	1000	Relamp-2l-4't8-25w	43	1000
Electrical closet	1	8's4lx4'-t8	112	1000	Relamp-4l-4't8-25w	85	1000
Counter	2	2x4-3l-t8	85	5400	Relamp-3l-4't8-25w	66	5400
Counter	5	Cf-42w tbx can	42	5400	No retrofit 42W	42	5400
Counter	1	Drink machines	400	8760	Vending miser	400	5256
Skate Park	9	4'p2l-3k-t8.	58	5400	Relamp-2l-4't8-25w	43	5400
Skate Park	7	8'p4lx4'-t8	116	5400	Relamp-4l-4't8-25w	85	5400
Skate Ramps	22	400w mh	458	1665	2x4-6l-t8-r-ho-wg-new-25w	222	1665
Skate Ramps On Pillars	10	Cf-42wx2	84	1665	No retrofit 84w	84	1665
Sprinkler System Room	6	4's2l-t8	58	1000	Relamp-2l-4't8-25w	43	1000
Back Entrance	2	8's4lx4'-t8	112	5400	Relamp-4l-4't8-25w	85	5400
Ice Rink 1	60	350w-mh	395	3820	4'hb-8l-t5-54w-ho-wg-new	470	3820
Ice Rink 1	8	Cfhb-42wx8	336	3820	4'hb-4l-t5-54w-ho-wg-new	235	3820
Ice Rink 1 Bleachers	11	Cfhb-42wx8	336	1910	4'hb-4l-t5-54w-ho-wg-new	235	1910
Ice Rink 1	4	100w-mh-can	125	3820	No retrofit 125w	125	3820
Storage Clst 1	5	4's2l-t8	58	1910	Relamp-2l-4't8-25w	43	1910
Storage Clst 2	9	4's2l-t8	58	1910	Relamp-2l-4't8-25w	43	1910
Electrical Clst	2	4's2l-t8	58	1000	Relamp-2l-4't8-25w	43	1000
Pump Room	9	4'damp-2l-t8	56	3820	Relamp-2l-4't8-25w	43	3820
Under Bleachers Storage	2	4'w2l-t8	58	1000	Relamp-2l-4't8-25w	43	1000
Back Hall Exit	2	4'w2l-t8	58	5400	Relamp-2l-4't8-25w	43	5400
Maintenance Area	12	4'damp-2l-t8	56	5400	Relamp-2l-4't8-25w	43	5400
Maintenance	17	4's2l-t8	58	5400	Relamp-2l-4't8-	43	5400

		Existing Fixture Information			Retrofit Fixture Information		
Room Name	Fix Qty	Ex Fix ID	Ex Fix Wattage	Ex Fix Usage	Ret Fix ID	Ret Fix Wattage	Ret Fix Usage
Area					25w		
Mop Room	1	4's2l-t8	58	1000	Relamp-2l-4't8-25w	43	1000
RR	1	4'w2l-t8-vanity	58	2700	Relamp-2l-4't8-25w	43	2700
Locker Room Hallway	12	2x4-3l-t8	85	5400	Relamp-3l-4't8-25w	66	5400
Locker Room Hallway	7	4'w2l-t8	58	5400	Relamp-2l-4't8-25w	43	5400
Locker Room 3	6	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
RR LR 3&5	6	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
Locker Room 5	6	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
Locker Room 7	6	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
RR LR 7&9	6	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
Locker Room 9	6	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
Locker Room 10	6	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
RR LR 10&8	6	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
Locker Room 8	6	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
Locker Room 6	6	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
RR LR 6&4	6	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
Locker Room 4	6	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
Officials Lr West	3	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
Locker ROOM 1	10	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
Locker ROOM 2	10	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
Officials LR East	3	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
Party Room 1&2	8	2x4-3l-t8	85	1800	Relamp-3l-4't8-25w	66	1800
Party Room	8	2x4-3l-t8	85	1800	Relamp-3l-4't8-	66	1800

		Existing Fixture Information			Retrofit Fixture Information		
Room Name	Fix Qty	Ex Fix ID	Ex Fix Wattage	Ex Fix Usage	Ret Fix ID	Ret Fix Wattage	Ret Fix Usage
3&4					25w		
First Aid Room	2	2x4-3l-t8	85	2700	Relamp-3l-4't8-25w	66	2700
Lobby	2	4'w2l-t8	58	5400	Relamp-2l-4't8-25w	43	5400
EYHA Office	2	2x4-3l-t8-pb	85	5400	Relamp-3l-4't8-25w	66	5400
EYHA Office	1	Ws-toggle	0	0	Ws-sensor -bi-level	0	0
Skate Rental	11	2x4-3l-t8	85	5400	Relamp-3l-4't8-25w	66	5400
Control Room	2	2x4-3l-t8-pb	85	5400	Relamp-3l-4't8-25w	66	5400
Control Room	2	1x4-2l-t8	56	5400	Relamp-2l-4't8-25w	43	5400
Ice Rink 2	30	350w-mh	395	3820	4'hb-4l-t5-54w-ho-wg-new	235	3820
Ice Rink 2	8	Cfhb-42wx8	336	3820	4'hb-4l-t5-54w-ho-wg-new	235	3820
Ice Rink 2	8	4'w2l-t8	58	3820	Relamp-2l-4't8-25w	43	3820
Ice Rink 2 Bleachers	8	Cfhb-42wx8	336	3820	4'hb-4l-t5-54w-ho-wg-new	235	3820
Instructions Room	3	2x4-3l-t8-pb	85	1800	Relamp-3l-4't8-25w	66	1800
Instructions Room	1	Ws-toggle	0	0	Ws-sensor	0	0
Electrical Clst	4	4's2l-t8	58	1000	Relamp-2l-4't8-25w	43	1000
Storage Clst	2	4's2l-t8	58	1000	Relamp-2l-4't8-25w	43	1000
Elevator	1	4's2l-34w	78	8760	4's2l-t8-lo-25w	37	8760
2nd Floor	17	Cfhb-42wx8	336	4950	4'hb-4l-t5-54w-ho-wg-new	235	4950
2nd Floor	1	Drink machines	400	8760	Vending miser	400	5256
2nd Floor Mrr	5	2x4-3l-t8	85	2475	Relamp-3l-4't8-25w	66	2475
2nd Floor Wrr	5	2x4-3l-t8	85	2475	Relamp-3l-4't8-25w	66	2475
2nd Floor Storage	2	4's2l-t8	58	1000	Relamp-2l-4't8-25w	43	1000
Exterior Wall	17	70w-mh-wall	98	4500	No retrofit 98w	98	4500
Parking Lot	22	400w mh shbx	458	4500	200w-induction-shbx	210	4500

		Existing Fixture Information			Retrofit Fixture Information		
Room Name	Fix Qty	Ex Fix ID	Ex Fix Wattage	Ex Fix Usage	Ret Fix ID	Ret Fix Wattage	Ret Fix Usage
Parking Lot	22	175w-mv-pole light	205	4500	100w-induction-shbx	105	4500

Table 3: Parks Maintenance Building

		Existing Fixture Information			Retrofit Fixture Information		
Room Name	Fix Qty	Ex Fix ID	Ex Fix Wattage	Ex Fix Usage	Ret Fix ID	Ret Fix Wattage	Ret Fix Usage
Office	4	2x4-3l-t8	85	2860	Relamp-3l-4't8-25w	66	2860
Break Room	4	2x4-3l-t8	85	1400	Relamp-3l-4't8-25w	66	1400
MRR	1	4'w4l-34w	144	1400	4'w-4l-t8-25w	85	1400
WRR	1	4'w4l-34w	144	1400	4'w-4l-t8-25w	85	1400
Shop	22	8'i2l-95w	207	2860	8'i4lx4'-t8-r-ho-kit-25w	124	2860
Shop	2	Exit red 15wx2	30	8760	Exit led new	2	8760
Shop	1	Drink machines	400	8760	Vending miser	400	5256
Shop 2	15	8'i2l-95w	207	2860	8'i4lx4'-t8-r-ho-kit-25w	124	2860
Shop 2	4	400w mh	458	2860	8'i6lx4'-t8-r-ho-new-25w	174	2860
Shop 2	3	4'i2l-t8	58	2860	Relamp-2l-4't8-25w	43	2860
Shop 2	3	Exit red 15wx2	30	8760	Exit led new	2	8760
Parts Area	2	4'w2l-t8	58	2860	Relamp-2l-4't8-25w	43	2860
RR	1	4's2l-34w	78	2860	4's2l-t8-25w	43	2860
Old Maint Garage	8	400w mh	458	1000	No retrofit 458w	458	1000
Old Maint Garage	4	8'i2l-95w	207	1000	No retrofit 207	207	1000
Old Maint Garage RRR	1	60-a	60	1	No retrofit 60w	60	1
Exterior	5	175w-mh-wallpack	200	4500	100w-Induction-WP	105	4500

ECM 2.0 – MECHANICAL AND CONTROL UPGRADES

ECM 2.1 – Retrofit AHU-1 and AHU-3 Controls

AHU-1 and AHU-3 are multi-zone air handling units that serve different areas within the building. Zone dampers are located at the units and vary the air quantity supplied to their designated control areas. The existing zone dampers are pneumatically controlled. The scope will retrofit the air handling units to a direct digital control (DDC) electronic system that will provide more reliable control with higher accuracy and improved response time to real-time operating conditions. The inclusion of the DDC control system will also provide improved user interface for scheduling capability and higher occupant comfort.

- Retrofit eight (8) pneumatic zone damper actuators to DDC actuators
- Install new DDC zone sensors to replace existing pneumatic zone thermostats
- Retrofit pneumatic mixing damper actuators to DDC actuators
- Interconnect all new DDC actuators into the new Tridium DDC, web-based control system

ECM 2.1 – Retrofit AHU-2 Controls

AHU-2 is an air handling unit that is also controlled by the pneumatic control system. The scope will retrofit the pneumatic controls to a DDC control system.

- Retrofit three (3) pneumatic damper actuators to DDC actuators
- Install new DDC zone sensors to replace existing pneumatic zone thermostats
- Interconnect all new DDC actuators into the new Tridium DDC, web-based control system
- Perform a vibration analysis test to determine the source of vibration in the fan housing. The results will determine if the fan shaft is out of calibration, determine the weight loading on the bearings, and indicate any source of premature wear on the newer, existing bearings.
- Balance the centrifugal fans in the existing location by placing needed weighting on individual fans to equal loading on the single fan shaft, as determined by the vibration analysis test.
- Repair the grease fitting and grease line to the opposite side bearing of the drive. This will insure that proper maintenance can be performed on the air handling unit.

ECM 2.2 – Retrofit AHU-4 Controls

AHU-4 is a dual duct air distribution system that can supply cool air and warm air simultaneously. This system is highly inefficient and energy intensive. The dual duct mixing terminal boxes provide a constant supply of air to the space and mix the cool air and warm air to achieve the desired discharge air temperature. These terminal boxes are in very poor condition and the dampers do not operate effectively.

The proposed improvement to this system is to convert the dual duct air distribution system to a Variable Air Volume (VAV) system that will reduce airflow to the space during non-peak loading conditions. The VAV system will allow the fan efficiency to be maximized with the use of a variable speed drive. The system will also include the retrofit of the pneumatically controlled zone terminals to be operated from the DDC control system for more accuracy, higher response to actual space conditions and improved efficiency of the system. The DDC controllers will also be incorporated into the new Tridium web-based workstation for improved interface in scheduling capability and higher occupant comfort.

- Supply and install one (1) 50-hp variable speed drive on supply fan motor
- Retrofit twelve (12) pneumatic mixing terminal boxes to DDC VAV terminal units
- Install new DDC zone sensors to replace existing pneumatic zone thermostats
- Install a new Tridium DDC, web-based control system translator to provide a user interface and utilization of the existing Johnson Control N2 network
- Provide a new user workstation
- Re-balance and test the airflow distribution system supplied by AHU-4

ECM 2.3 – Cooling Tower Improvements

The existing cooling tower is located in a pit in the northwest corner of the building. While the overall condition of the cooling tower is acceptable and in good working order; the cooling tower fan operates at a single constant speed which creates a lack of efficient control of the condenser water temperature. The improvements proposed to maximize the energy efficiency and reduce the maintenance expenditures of the cooling tower are:

- Supply and install one (1) 40-Hp variable speed drive on tower fan motor
- Provide control interface necessary to maximize speed of fan and improve efficiency of the chilled water system.

- Provide a chemical-free treatment system on the cooling tower water to reduce the buildup of scale and control the biological contaminants in the chiller's condenser water. This technology eliminates the need for chemical treatment and reduces the frequency of the blow down, saving all the chemical costs and reducing water expenditures.
- Replace the fill valve assembly inside the cooling tower to lower the overall level of water in the tower basin to minimize potential maintenance issues.

ECM 2.4 – Boiler Control Improvements

The existing boilers are only a few years old and are in good operating condition. The boiler design consists of one condensing boiler and one non-condensing boiler. The condensing boiler is most efficient when hot water temperatures are reduced to below 140-degrees. The non-condensing boiler will operate at the higher water temperatures when the loading of the system dictates the need. In the past, the operating of these boilers were not sequenced to maximize their efficiencies and resulted in necessary equipment repairs. The project scope will resolve the past issues with these boilers and improve reliability and operational efficiency.

- Provide programming of the existing controls, boiler sequence of operation to better utilize existing boiler design
- Provide programming to limit condensing boiler running during unfavorable conditions

ECM 3.0 -- RENEWABLE TECHNOLOGIES

ECM 3.1 – C.K. Newsome Solar Photovoltaic

The roof of the CK Newsome Center is acceptable for installation of a solar photovoltaic system. The installed system will be mounted above the current location of the Department of Sustainability, Energy and Environmental Quality (SEEQ) office. The system will consist of approximately thirty (30) panels that produce a maximum of 280-watts of power, for a total of 8.4-kw of output power. The panels are approximately 40" high by 77" wide and will be mounted on an angle base to maximize the impact of the sunlight. The solar photovoltaic system will generate electricity that will be interlocked with the incoming power meter. The system will be installed with a net metering system that will reduce the amount of consumption and provide a savings in the overall utility usage.

ECM 3.2 – Swonder Ice Arena Solar Photovoltaic

The roof of the front entrance area of Swonder Ice Arena is acceptable for installation of a solar photovoltaic system. The system will consist of approximately sixty (60) panels that produce a maximum of 280-watts of power, for a total of 16.8-kw of output power. The panels are approximately 40" high by 77" wide and will be mounted on an angle base to maximize the impact of the sunlight. The solar photovoltaic system will generate electricity that will be interlocked with the incoming power meter. The system will be installed with a net metering system that will reduce the amount of consumption and provide a savings in the overall utility usage.

EXHIBIT B

ENERGY SAVINGS GUARANTEE AND MEASUREMENT AND VERIFICATION PLAN

PROJECT INFORMATION

ESCO: Energy Systems Group
4655 Rosebud Lane
Newburgh, Indiana 47630

Contact Person for M&V: Donna Wicks

Phone: 812.475.2550 **Fax:** 812.475.2554 **E-mail:** DWicks@energysystemsgroup.com

CUSTOMER: City of Evansville
Evansville Division of Parks and Recreation
100 E. Walnut Street
Evansville, IN 47713

Contact Person: Dan Schall, Director

Phone: 812-435-6141 **Fax:** 812-435-6142 **E-mail:** dschall@evansvillegov.org

M&V PLAN OVERVIEW

1.0 DEFINITIONS

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

"Acceptance of Installation" means an authorized representative of the **Evansville Division of Parks and Recreation** has inspected and accepted the ESG installed Energy Conservation Measures. And that these measures are operational and comply with contract performance requirements and specifications. The **Evansville Division of Parks and Recreation** acceptance shall not relieve ESG from responsibility for continued compliance with contract requirements during the contract term. The Acceptance of Installation shall occur after Substantial Completion.

"Approval" means the **Evansville Division of Parks and Recreation** has completed review of submittals, deliverables or administrative documents (e.g., insurance certificates, installation schedules, planned utility interruptions, etc.) and has determined that the documents conform to contract requirements. The **Evansville Division of Parks and Recreation** approval shall not relieve ESG from responsibility for complying with contract requirements.

"Energy Baseline" shall be the energy consumption and costs prior to the installation of the energy conservation measures at the facilities. The baseline will consist of all base year energy bills applicable to the meters in the project. It may also consist of any estimated usage for unmetered energy consumption.

"Energy Conservation Measure (ECM)" is defined as the installation of new equipment/facilities, modification and/or alteration of existing equipment/facilities or rate structures or revised operations and maintenance procedures intended to reduce energy consumption of facilities/energy systems, improve equipment efficiency or provide equipment that complies with existing standards.

"Energy and Operational Savings" is the sum of the Energy Savings and Operational Savings as defined herein.

"Energy Costs" shall mean charges for fuel adjustments, base services, transmission, tariffs, and distributions. The Energy Costs will normally be derived or imputed from the facility's utility bills. This method allows for updating savings calculations with changing rate schedules. In the event of a utility rate decrease, the utility rate(s) used to assign dollar cost will not drop below that of the base year.

"Facilities" shall mean those buildings and equipment from which the energy and operational cost savings will be realized.

"Final Acceptance Date" shall mean the date all of the ECMs or Measures comprising the Project (as defined in the Agreement) have been delivered, installed, and accepted by the Evansville Division of Parks and Recreation.

"First Guarantee Year" is defined as the period beginning on the first (1st) day of the month following the Final Acceptance Date and ending on the day prior to the first (1st) anniversary thereof.

"Guarantee Period" is defined as the period beginning on the first (1st) day of the First Guarantee Year and ending on the last day of the Term.

"Guarantee Year" is defined as each of the successive twelve (12) month periods commencing on the anniversary of the commencement of the First Guarantee Year throughout the Term of this Agreement.

"Guaranteed Savings" is defined as the amount of Energy and Operational Savings.

"Installation Period" is from the date of award to Final Acceptance Date.

"Operational Costs" shall include the costs associated with operating and maintaining the Facilities. Examples include the cost of inside and outside labor to repair and maintain systems and equipment, the cost of replacement parts, the cost of deferred maintenance, and the cost of new capital equipment.

"Retrofit Isolation Method" (if applicable to this Project) refers to energy audit methodologies that require pre-retrofit and post-retrofit measurements to isolate energy consumption and costs of specific facility equipment and systems impacted exclusively by this Agreement.

"Term" shall be 15 years.

"Total Guarantee Year Savings" is defined as the amount of Energy and Operational Savings realized by Facilities in each Guarantee Year as a result of the Work.

2.0 TERM AND TERMINATION

The Term of this Guarantee shall commence on the first (1st) day of the first month following the date of Final Acceptance of the Work installed pursuant to this Agreement, unless terminated earlier as provided for herein.

3.0 SAVINGS GUARANTEE

3.1 **Guarantee.** ESG guarantees to the **Evansville Division of Parks and Recreation** that the Facilities will realize in each Guarantee Year savings in Energy and Operational Costs (the "Energy and Operational Savings") collectively equal to the amounts shown on Table A below.

3.2 **Savings Report.** Within ninety (90) days following the Final Acceptance Date of the project, ESG will provide the **Evansville Division of Parks and Recreation** with a savings report ("Energy Services Guarantee Report"). The **Evansville Division of Parks and Recreation** will assist ESG in generating the Energy Services Guarantee Report by authorizing ESG to contact utility companies directly for true copies of all bills pertaining to Energy Costs and Consumption together with access to the **Evansville Division of Parks and Recreation's** relevant accounting records, and facilities to monitor any installed equipment relating to such Energy Costs, Consumptions, and Savings pertaining to the Energy Guarantee. Data and calculations utilized by ESG in the preparation of its Cost Savings Energy Services Guarantee Report will be made available to the **Evansville Division of Parks and Recreation**, along with such explanations and clarifications as the **Evansville Division of Parks and Recreation** may reasonably request. In the event that ESG is not provided immediate access to utility bills from the Utility, ESG will contact a Representative from the **Evansville Division of Parks and Recreation** to obtain this information. If there is a delay in receiving the information the ninety (90) day period will be reasonably extended to gain said access.

- 3.2.1 **Operational Savings.** Operational savings have been reviewed and accepted by the **Evansville Division of Parks and Recreation** and are described in Table A - Guaranteed Savings. Operational savings will begin to accrue on the date of completion and acceptance of each ECM.
- 3.3 **Additional Savings.** ESG may identify other Energy and Operational Savings opportunities during the construction period or during any Guarantee Year. Additional Energy and Operational Savings that can be demonstrated as a result of ESG efforts that result in no additional costs to the **Evansville Division of Parks and Recreation** beyond the costs identified in this Agreement will be included in the annual Energy Services Guarantee Report for the applicable Guarantee Year(s).
- 3.4 **Savings Prior to Final Acceptance Date.** All Energy and Operational Savings realized by the **Evansville Division of Parks and Recreation** that result from activities undertaken by ESG prior to Final Acceptance Date, including any utility rebates or other incentives earned as a direct result of the installed energy conservation measures provided by ESG, will be applied toward all savings shortfalls before payment is made. Energy savings that are achieved by the upgrades and modifications in the Agreement prior to completion of the entire retrofit project (or construction savings) will be added to the first year actual energy savings amount.
- 3.5 **Hours and Practices.** See Section 6.0 of this exhibit.
- 3.6 **Activities and Events Adversely Impacting Savings.** The **Evansville Division of Parks and Recreation** shall promptly notify ESG of any activities known to the **Evansville Division of Parks and Recreation**, which adversely impact ESG's ability to realize the Guaranteed Savings. If this type of situation occurs over the Guarantee Period ESG shall be entitled to reduce its Guaranteed Savings, or make necessary adjustments to the energy baseline in order to quantify the changes in the facility. This will allow ESG and the **Evansville Division of Parks and Recreation** to recognize and document any such

adverse impact to the extent that such adverse impact is beyond ESG's reasonable control.

4.0 SAVINGS GUARANTEE

4.1 Guaranteed Annual Savings. ESG guarantees that the Work will result in the following sum of Total Guaranteed Annual Savings over the Term as outlined in Table A. The Annual Operational Cost Avoidance Savings for this project are agreed upon and accepted by the Evansville Division of Parks and Recreation.

Table A – Guaranteed Savings

Year	Annual Option A Energy Savings	Annual Agreed Upon Energy Savings	Annual Operational Cost Avoidance Savings	Annual Utility Net Metering Savings	Total Guaranteed Annual Savings
Constr. Period	\$ - 0 -	\$ - 0 -	\$ - 0 -	\$ - 0 -	\$ - 0 -
1	\$ 26,272	\$ 13,084	\$ 4,300	\$ 1,350	\$ 45,006
2	\$ 26,272	\$ 13,084	\$ 4,300	\$ 1,350	\$ 45,006
3	\$ 26,272	\$ 13,084	\$ 4,300	\$ 1,350	\$ 45,006
4	\$ 26,272	\$ 13,084	\$ 4,300	\$ 1,350	\$ 45,006
5	\$ 26,272	\$ 13,084	\$ 4,300	\$ 1,350	\$ 45,006
6	\$ 26,272	\$ 13,084	\$ 4,300	\$ 1,350	\$ 45,006
7	\$ 26,272	\$ 13,084	\$ 4,300	\$ 1,350	\$ 45,006
8	\$ 26,272	\$ 13,084	\$ 4,300	\$ 1,350	\$ 45,006
9	\$ 26,272	\$ 13,084	\$ 4,300	\$ 1,350	\$ 45,006
10	\$ 26,272	\$ 13,084	\$ 4,300	\$ 1,350	\$ 45,006
11	\$ 26,272	\$ 13,084	\$ 4,300	\$ 1,350	\$ 45,006
12	\$ 26,272	\$ 13,084	\$ 4,300	\$ 1,350	\$ 45,006
13	\$ 26,272	\$ 13,084	\$ 4,300	\$ 1,350	\$ 45,006
14	\$ 26,272	\$ 13,084	\$ 4,300	\$ 1,350	\$ 45,006
15	\$ 26,272	\$ 13,084	\$ 4,300	\$ 1,350	\$ 45,006
Totals	\$ 394,080	\$ 196,260	\$ 64,500	\$ 20,250	\$ 675,090

The savings identified in Table A – Guaranteed Savings are derived from the following:

Annual Option "A" Energy Savings - The energy savings are accomplished by the improvements to the lighting systems in the facilities identified in the scope of work. The savings will be determined through the M&V Approach outlined in this exhibit and will result in \$ 26,272 annually.

Annual Agreed Upon Energy Savings - The energy savings are accomplished by the upgrades to the Mechanical and Control Upgrades identified in the scope of work. It is estimated and agreed upon that these savings will result in \$ 13,084 annually.

Annual Operational Cost Avoidance - The Operational Cost Avoidance Savings are accomplished by making the repairs and improvements to the mechanical systems and lighting systems. It is estimated and agreed upon that these savings will result in \$ 4,300 annually.

Annual Utility Net Metering Savings- The Utility Net Metering Savings are accomplished by providing the solar photovoltaic system installation identified in the scope of work. It is estimated and agreed upon that these savings will result in \$ 1,300 annually.

4.2 Adjustments To The Guarantee. The Guaranteed Savings will be adjusted to account for material changes, where material is defined as any change or changes that may increase or decrease the energy consumption of the Facilities by more than 1% annually, including, but not limited to the following

- a. Changes in the hours of operation of any buildings constituting any part of the Facilities.
- b. Changes in the occupancy of the buildings constituting any part of the Facilities.
- c. Changes in the structure of buildings constituting any part of the Facilities, such as architectural features or building components.
- d. Modifications or renovations to the buildings constituting any part of the Facilities, which may or may not change the conditioned space.
- e. Changes to the ECMs.
- f. Changes in utility prices and/or rate structure.
- g. Change in utility suppliers
- h. Change in the method of utility billing or purchasing with respect to the Facilities.
- i. Addition or deletion of energy consuming equipment at the site.
- j. Weather variance from base year to current year.

- k. **Evansville Division of Parks and Recreation's** failure to adhere to operating and maintenance responsibilities as defined by the equipment manufacturer.
- l. Adjustments necessary to account for lighting burnouts as documented before retrofit.
- m. New outside air ventilation needed to bring any buildings constituting any part of the Facilities up to state government code.
- n. Required increases in light levels to bring any buildings constituting any part of the Facilities up to state government code.
- o. Any condition, which affects the energy demand or consumption of Facilities, caused by **Evansville Division of Parks and Recreation** or its agents.

The **Evansville Division of Parks and Recreation** will be responsible for providing ESG notice of actual or proposed material changes to the site and its anticipated effect on energy usage and consumption. The **Evansville Division of Parks and Recreation** must notify ESG no less than thirty (30) days before a planned material change occurs, or within seventy-two (72) hours of an emergency or unplanned material change.

5.0 BASELINE UNIT ENERGY COSTS – The baseline energy costs are outlined below and were used for all calculations made under this Exhibit.

Table B – Baseline Information

Building	Energy Type	Baseline Energy Cost		
		Electric Consumption \$/kWh	Electric Demand \$/kW	Gas Consumption \$/CCF
All Parks Dept. Facilities	Electric	\$ 0.077	\$ 4.30	--
All Parks Dept. Facilities	Natural Gas	--	--	\$ 0.800

6.0 HOURS OF USE

The hours of operation for the Guarantee are available for 24 hours, 365 days per year, and were used for all calculations made in this Attachment. Specific measures, such as lighting, have separate annual hours of operation and are indicated in the scope of work. These hours were agreed upon between the **Evansville Division of Parks and Recreation** and ESG.

7.0 M&V APPROACH

IPMVP Option A (September 2010) is the approach used in the M&V process for verifying savings related to this project. Option A is being used with consideration of the characteristics of the specific ECMs, acceptable accuracy, and reasonable cost.

Option A

The verification techniques for Option A, Retrofit Isolation: Key Parameter Measurement determines savings by measuring the capacity or efficiency of a system before and after the retrofit, and multiplying the difference by agreed upon or "estimated" factors. These factors include:

- Load on the System (occupancy)
- Hours of Operation
- Engineered Associated Effects (Interactions)

Option A, Retrofit Isolation: Key Parameter Measurement is an approach designed for projects where the potential to generate savings needs to be verified, but actual savings can be estimated based on the results of the potential to generate savings verification and engineering calculations. Post-installation energy use is not measured throughout the term of the contract.

Option A, Retrofit Isolation: Key Parameter Measurement includes procedures for verifying that:

- Baseline conditions are properly defined
- Equipment and/or systems contracted to be installed have been installed
- Installed equipment/systems meet specifications
- Pre and post measurement of kW for lighting
- Installed equipment is operating and fully functional

- Installed equipment continues to operate as planned throughout the term of the contract

Lighting Retrofit Savings Calculation

ESG will take watt readings on sample fixtures before and after upgrade to ensure savings. Hours of operation for the facilities were stipulated based on discussions with the facilities team. Savings calculations will be reviewed and accepted by both parties and will be validated as required. The calculations for lighting are as follows:

Kilowatts (kW) Saved = (Pre-Retrofit kW – Post-retrofit kW)*Number of Fixtures

Kilowatt hours (kWh) Saved = Total Kilowatts Saved * Hours per Year

\$ Saved = Kilowatt Saved * Demand Cost + Kilowatt hours Saved * Consumption Cost

BASELINE ADJUSTMENTS

Proper analysis and comparison can only be achieved if the environmental and facility parameters are equal to those of the base year. Examples of factors that affect the environment and facility parameters are weather, energy rates, facility schedules, and changes in equipment. The baseline may need to be adjusted to equalize the parameters of the current year so that an accurate analysis can be performed and valid savings can be measured. In essence, the adjustment process shows what the costs and usage would have been in the base year, under the current conditions, for an 'apples to apples' comparison. These adjustments typically cover:

- Standardize for the Number of Days in a Billing Period
- Normalize the Differences in Outdoor Temperature Through Degree Days
- Changes In Facility Occupancy and Use
- Additions or Deletions of Energy Using Equipment
- Additions or Deletions of Square Footage
- Changes in Energy Prices and / or Rate Structures

Savings calculations may also be adjusted for new outside air ventilation requirements; changes in operational modes (i.e. – addition of air conditioning); and changes to comfort levels. The **Evansville Division of Parks and Recreation** will notify ESG within fifteen (15) business days of any significant changes in facility operations, occupancy levels, hours of operation, structure, equipment or any other changes that are reasonably expected to affect energy use by more than 1%. The impact of such changes on the guaranteed energy savings amount will be monitored through the energy monitoring systems and savings calculated through engineering analysis by ESG.

The consumption energy unit cost for each specific energy type is the total consumption related cost found on the respective utility bill, including charges for consumption, service, power factor, fuel adjustment, etc., divided by total consumption OR the agreed upon energy cost given in Table B – Baseline Energy Costs . Late payment charges will not be included in this calculation.

8.0 GLOBAL ASSUMPTIONS

8.1 **Energy Prices.** Either the base period utility unit cost or the current period utility unit cost, whichever is greater, will be used in determining the adjusted base period utility cost. In no case, however, shall the rate used to calculate the Guaranteed Energy Savings be lower than base year utility rate.

8.2 **Performance Period Utility Rate Adjustment Factors, if applicable.** Generally ESG is not responsible for any utility rate changes other than those defined in the post-installation energy policy. A rate adjustment factor will be applied to calculate actual savings regarding the changes of the utility rates. The actual energy cost savings will be the product of the calculated energy savings from defined rates and the utility adjustment factor when applicable. In no case, however, shall the rate used to calculate the Guaranteed Energy Savings be lower than base year utility rate.

8.3 Schedule of Verification Reporting Activities.

Item	Time for Submission	Owner's Review & Acceptance Period
Savings Report	90 days after Final Acceptance Date	* 30 days

* Owner's Acceptance becomes automatic if not provided by the end of the Owner's Review & Acceptance Period.

9.0 DOCUMENTATION FOR SECTION 179D TAX DEDUCTION

As a result of the implementation of this Project, certain tax deductions under Section 179D of the Internal Revenue Code may be available because of the energy efficient improvements to the Owner's buildings. The Owner agrees to allocate these Section 179D tax deductions to ESG to the extent such deduction arises from the technical specifications developed by ESG and the implementation of this Project.

Upon job completion, the Owner agrees to execute the required written allocation including the declaration related to this tax code provision. ESG will be responsible for preparing the declaration and all accompanying documentation for Owner's signature. ESG will be designated the Section 179D beneficiary.

10.0 ASSIGNMENT OF ENVIRONMENTAL ATTRIBUTES

As a result of the implementation of this Project, certain Environmental Attributes may be available, either now or in the future. This section specifies the process whereby the Owner will assign such Environmental Attributes to ESG.

"Environmental Attributes" means any and all credits, deductions, benefits, emission reductions, incentives, offsets, and allowances, howsoever entitled, attributable to and arising from the implementation of this Project, whether such Environmental Attributes now exist or are developed in the future. Environmental Attributes include but are not limited to: (1) Any avoided emissions of pollutants to the air, soil, or water; (2) Any avoided emissions

of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs); (3) Section 45 credits; (4) green tags; (5) renewable energy credits; and (6) The reporting rights to these avoided emissions such as White Tag Reporting Rights. Environmental Attributes also include any energy, capacity, reliability, or other energy reduction attributes that result from the implementation of this Project.

All Environmental Attributes arising from the implementation of this Project shall be owned by ESG. Owner agrees to execute all required documentation to assign all Environmental Attributes to ESG. If any filings are required with the Internal Revenue Service or some other governmental entity to obtain the benefits of the Environmental Attributes, Owner hereby instructs ESG to prepare and file such documents.

11.0 DISPUTE RESOLUTION

The M&V plan has been reviewed and accepted by **Evansville Division of Parks and Recreation**. It is the primary document for the M&V process. If a dispute arises under this M&V agreement, the parties shall promptly attempt in good faith to resolve the dispute by negotiation. If not settled by negotiation, this M&V plan will be referred to as the means to solve related disputes.

12.0 POST-INSTALLATION DATA COLLECTED

Owner will provide access to site locations at reasonable times to perform on-site tests to verify performance, changes in use, and to verify modification of facilities as necessary. ESG will not unreasonably interfere with **Evansville Division of Parks and Recreation's** operation on the site.

ESG will collect before and after construction measurements for applicable Option A ECMs. In the case of lighting, pre and post measurements will be taken on fixture kW for 5% to 10% of the total number of fixtures retrofit. This data will be used to calculate energy savings, based on agreed upon hours of operation and baseline utility rates.

All devices employed to meter electric power use shall be capable of metering continuous RMS power at accuracy of +/-1.0% actual value, over the entire load range; Metering of polyphase loads shall include independent measurement of each phase.

13.0 COST OF M&V ACTIVITIES

There is NO additional cost to the **Evansville Division of Parks and Recreation** for the one-time Savings Report.

CITY OF EVANSVILLE, INDIANA

By _____
Jonathan Weinzapfel

Its Mayor

ENERGY SYSTEMS GROUP, LLC

By _____
Gregory F. Collins

Its President

EXHIBIT C

INSTALLMENT PAYMENT CONTRACT

FOR VALUE RECEIVED, the undersigned, City of Evansville, Indiana (the "Owner"), a political subdivision as contemplated by IC 36-1-12.5, organized and existing under the laws of the State of Indiana, subject to the terms and conditions hereof, hereby promises to pay to the order of Energy Systems Group, LLC (the "Contractor") or, upon assignment to The Evansville Local Public Improvement Bond Bank, a body corporate and politic separate from the Owner in its corporate capacity (the "Bond Bank" and the "Assignee") or upon assignment by the Bond Bank to the Bond Bank's lawful assigns (also, the "Assignee"), the sum of \$561,403.00, plus interest at the rate of one and one-half percent (1.5%) per annum, in immediately available funds, in installments as set forth in Schedule A-1 attached hereto and incorporated herein by reference (the "Installment Payments" or "Payments"). Terms not otherwise defined herein shall have the meanings set forth in the Agreement; and "Owner" means the City of Evansville, the political subdivision contemplated by IC 36-1.12.5.

[1] Concurrently with the execution and delivery of this Installment Payment Contract, the Owner and the Contractor have entered into a Guaranteed Energy Savings Performance Contract (the "Agreement") for the acquisition and installation of energy conservation measures (as defined in IC 36-1-12.5) and related expenditures (collectively, the "Project").

[1a] Simultaneously with the execution and delivery of this Installment Payment Contract and the Agreement, the Contractor will assign this Installment Payment Contract to the Bond Bank as a lawful investment of the Bond Bank under IC 5-1.4-3-3.

[2] Payments hereunder are to be made to the Bond Bank, 300 Civic Center Complex, 1 N.W. Martin Luther King Jr. Boulevard, Evansville, Indiana 47708-1833, in consideration for the funding of the Project in an aggregate principal amount not to exceed \$561,404.00, as and when to complete the Project on or before January 31, 2012, into the Project Fund created by the Project Fund Agreement dated September 13, 2011, among the Contractor, the Owner and the Bond Bank (the "Project Fund Agreement").

[3] This Installment Payment Contract is issued pursuant to IC 36-1-12.5 and is entitled to the benefits and is subject to the conditions thereof. Subject to the provisions of the Agreement and the further provisions of this Installment Payment Contract, and fully to the extent permitted by law, the obligations of the Owner to make the payments required hereunder shall be absolute and unconditional without any defense or right of set-off, counterclaim, abatement, or recoupment by reason of any default by the Contractor under any other agreement between the Owner and the Contractor or out of any indebtedness or liability at any time owing to the Owner by the Contractor or for any other reason. This Installment Payment Contract is subject to annual

appropriation and is not a debt of the Owner, its Board of Public Works, its Board of Public Safety, or the Fire Department or any other person within the meaning of Article XIII of the Indiana constitution.

[4] The Owner intends to continue this Installment Payment Contract for its entire term and to pay all Installment Payments relating thereto. The person or entity in charge of preparing the Owner's budget will include in the budget request for each fiscal year the Installment Payments to become due in such fiscal year, and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay all Installment Payments coming due therein. *The parties acknowledge that appropriation for Installment Payments is a governmental function which the Owner cannot contractually commit itself in advance to perform and this Installment Payment Contract does not constitute such a commitment.* However, the Owner reasonably believes that moneys in an amount sufficient to make all Installment Payments can and will lawfully be appropriated and made available to permit the Owner's continued utilization of the energy conservation measures ("ECM's" or "Equipment") in the performance of its essential functions during the term.

[5] It is agreed by the parties hereto that any amounts remaining in the Project Fund or any other fund or account created under the Project Fund Agreement upon termination of this Installment Payment Contract and the Project Fund Agreement, and after payment in full of the Installment Payments (or provision for payment thereof having been made in accordance with the provisions of this Installment Payment Contract or the Project Fund Agreement), shall be retained by the Bond Bank; provided, however, that any amounts remaining in the Federal Grant Account in the Project Fund shall be applied and used as required by the terms of the Federal Grant (such terms are used in this Installment Payment Contract as used in the Project Fund Agreement.)

[6] The principal of this Installment Payment Contract is subject to payment as set forth in the applicable Schedule A-1.

[7] No recourse shall be had for the payment of the principal or payment price of, or interest on this Installment Payment Contract or for any claim based hereon, against any elected or appointed official, officer, director, member, employee or taxpayer, past, present, or future, of the Owner as such, either directly or through the Owner, under any constitutional provision, statute or rule of law, or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise.

[8] Fully to the extent permitted by law, (a) the Owner hereby unconditionally waives diligence, presentment, protest, notice of dishonor, and notice of default of the payment of any amount at any time payable to the Contractor under or in connection with this Installment Payment Contract; and (b) all amounts payable hereunder are payable without relief from valuation and appraisement laws.

[9] In any case where the date of payment hereunder shall not be on a Business Day, then such payment shall be made on the next succeeding Business Day with the same force and effect as if made on the date of payment hereunder.

[10] The Owner represents, covenants, and warrants for the benefit of the Contractor and the Assignee as follows:

(a) The Owner is the City of Evansville, a political subdivision under the constitution and laws of the State of Indiana, with full power and authority to enter into this Installment Payment Contract and the transactions contemplated hereby and to perform all of its obligations hereunder.

(b) The Owner has duly authorized the execution and delivery of this Installment Payment Contract by proper action by its governing body, the Common Council of the Owner, at a meeting duly called, regularly convened, and attended throughout by the requisite majority of the members thereof, and by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Installment Payment Contract.

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, a default hereunder exists at the date hereof.

(d) The Owner will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a political subdivision.

(e) The Owner has complied with such public bidding requirements as may be applicable to this Installment Payment Contract and the acquisition by the Owner of the ECM's and all replacements, repairs, restorations, modifications, and improvements thereof or thereto made pursuant to this Installment Payment Contract.

(f) The Equipment listed in each of the Schedules will be used by the Owner only for the purpose of performing essential governmental or proprietary functions of the Owner consistent with the permissible scope of the Owner's authority.

(g) Upon the written request of the Contractor, the Owner will annually provide to the Contractor the current financial statements, budgets, proofs of appropriation for the ensuing budget year, and such other reasonable financial information relating to the ability of the Owner to continue this Installment Payment Contract as may be requested by the Contractor.

(h) Reserved.

[11] The Owner is obligated only to pay such Payments under this Installment Payment Contract as may lawfully be made from funds budgeted and appropriated for that purpose during the Owner's then current budget year. Should the Owner fail to budget, appropriate, or otherwise make available funds to pay Payments under a certain Schedule(s) following the then budget year the applicable Schedule(s) shall be deemed

terminated at the end of the then current budget year. The Owner agrees to deliver notice to the Assignee of such termination at least ninety (90) days prior to the end of the then current budget year, but failure to give such notice shall not extend the term beyond such budget year year-end.

[12] The Owner shall pay the Assignee a charge on any Payment not paid on the date such payment is due at the rate of three percent (3%) per annum or the maximum amount permitted by law, whichever is less, from such date. A portion of each Payment is paid as, and represents payment of, interest, as set forth on each Schedule A-1.

[13] The Contractor shall order the Equipment, cause the Equipment to be delivered and installed at the location specified in the Agreement, and pay any and all delivery and installation costs in connection therewith. When the Equipment has been delivered and installed to the Owner's satisfaction, the Owner shall evidence acceptance of the Equipment in accordance with the Agreement.

[14] The Owner, at its own expense, will keep and maintain, or cause to be kept and maintained, the Equipment in as good operating condition as when delivered to the Owner hereunder, ordinary wear and tear resulting from proper use thereof alone excepted, and will provide all maintenance and service and make all repairs reasonably necessary for such purpose. All replacement parts and accessions shall be free and clear of all liens, encumbrances or rights of others and have a value and utility at least equal to the parts or accessions replaced. The Owner shall not make any material alterations to the Equipment without the prior written consent of the Assignee, which consent shall not be unreasonably withheld. All additions to the Equipment which are essential to its operation, or which cannot be detached without materially interfering with such operation or adversely affecting the Equipment's value and utility, shall immediately be deemed incorporated in the Equipment and subject to the terms of this Agreement as if originally leased hereunder, and subject to the security interest of the Assignee.

[15] Upon reasonable advance notice, the Assignee shall have the right to inspect the Equipment and all maintenance records with respect thereto, if any, at any reasonable time during normal business hours.

[16] Unless the Assignee consents thereto, the Owner shall keep the Equipment and the Project Fund free and clear of all liens, levies and encumbrances, except those created under this Agreement.

[17] The Owner shall be responsible for operating, maintaining, and insuring all ECM's that are installed, except as set forth in Section 3.1 of the Guaranteed Energy Savings Performance Contract, within the limitations of this provision. The Owner shall also be responsible for any real or personal property taxes related to the ECM's.

[18] During the term of this Agreement, the Owner shall, at its own expense, keep the Equipment insured against loss or damage due to fire and the risks normally included in extended coverage, malicious mischief and vandalism, for not less than the Full Insurable Value of the Equipment. As used herein, "Full

Insurable Value" means the full replacement value of the Equipment or the prepayment amount applicable to the immediately preceding payment due date as designated on Schedule A-1 of Exhibit C – Installment Payment Contract, whichever is greater. All insurance for loss or damage shall provide that losses, if any, shall be payable to the Assignee and the Owner, as their interests may appear, and the Owner shall utilize its best efforts to have all checks relating to any losses delivered promptly to the Assignee. If the Owner insures similar properties against casualty loss by self-insurance, with the Assignee's prior written consent the Owner may satisfy its obligations with respect to casualty insurance hereunder by means of a self-insurance fund reasonably acceptable to the Assignee. The Net Proceeds of the insurance required hereby shall be applied as set forth below. As used herein, "Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deduction of all expenses (including attorneys' fees) incurred in the collection of such claim or award.

[19] The Owner shall also carry public liability insurance, both personal injury and property damage, covering the Equipment in the amount as the Assignee may from time to time reasonably require on written notice to the Owner. The Assignee shall be named as an additional insured with respect to all such liability insurance. With the Assignee's prior written consent, the Owner may satisfy its obligations with respect to liability insurance hereunder by maintaining a funded self-insurance plan.

[20] The Owner shall carry worker's compensation insurance covering all employees working on, in, near or about the Equipment, or demonstrate to the satisfaction of the Assignee that adequate self-insurance is provided, and shall require any other person or entity working on, in, near or about the Equipment to carry such coverage throughout the term of this Agreement.

[21] All insurance required hereunder shall be in form and amount and with companies reasonably satisfactory to the Assignee, except as otherwise expressly provided herein. The Owner shall pay the premiums therefor and deliver to the Assignee the policies of insurance or duplicates thereof, or other evidence satisfactory to the Assignee of such insurance coverage, annually throughout the Term. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by independent instrument furnished to the Assignee, that (a) it will give the Assignee thirty (30) days' prior written notice of the effective date of any cancellation of such policy; and (b) insurance as to the interest of any additional insured or loss payee other than the Owner shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of the Owner with respect to such policy or policies.

[22] The Owner assumes all risk of loss of or damage to the Equipment from any cause whatsoever, and, fully to the extent permitted by law, no such loss of or damage to the Equipment, defect therein, or unfitness or obsolescence thereof, shall relieve the Owner of its obligation to make payments or perform any other obligations hereunder.

[23] If prior to the termination of this Agreement (1) the Equipment or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty; or (2) title to, or the temporary use of, the Equipment or any part thereof or the estate of the Owner or the Assignee in the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority; the Owner and the Assignee will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the Owner's obligations as set forth below.

[24] Provided the Equipment is not deemed to be a total loss, the Owner shall, at its expense (subject to application of the Net Proceeds), cause the prompt repair, replacement or restoration of the affected Equipment. In the event that the Equipment is totally destroyed or damaged and the Owner is unable to make arrangements satisfactory to the Assignee for the prompt replacement thereof, the Owner shall pay to the Assignee, on the payment due date next succeeding the date of such loss, the prepayment amount applicable to such payment due date plus the payment due on such date and any other amounts then payable by the Owner hereunder. Upon such payment, the term of this Agreement and the security interest of the Assignee in the Equipment shall terminate, and the Owner will acquire full and unencumbered title to the Equipment. If the Owner is not then in default hereunder, any portion of the Net Proceeds in excess of the amount required to pay in full the Owner's obligations as set forth in this sub-part (c) shall be for the account of the Owner. Fully to the extent permitted by law, the Owner agrees that if the Net Proceeds are insufficient to pay in full the Owner's obligations as set forth herein, the Owner shall make such payments to the extent of any deficiency.

[25] The Owner or the Contractor shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment, as set forth in the Agreement. In addition, the Owner agrees to comply in all respect with all applicable laws, regulations, and rulings of any legislative, executive, administrative, or judicial body; provided that the Owner may contest in good faith the validity or application of any such law, regulation, or ruling in any reasonable manner that does not, in the reasonable opinion of the Assignee, adversely affect the interest of the Assignee under this Installment Payment Contract. The Assignee shall have no responsibility or obligation to maintain, repair, or make improvements or additions to the Equipment.

[26] THE ASSIGNEE MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO AND IN NO EVENT SHALL THE ASSIGNEE BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS INSTALLMENT PAYMENT CONTRACT OR THE EXISTENCE, FURNISHING, FUNCTIONING, OR

OWNER'S USE OF ANY ITEM, PRODUCT, OR SERVICE PROVIDED FOR THIS INSTALLMENT PAYMENT CONTRACT.

[27] The Assignee's right, title, and interest in, to and under this Installment Payment Contract or under any and all the Schedules may be assigned and reassigned in whole or in part to one or more assignees or subassignees by the Assignee and, to the extent of its interest, by any registered the Owner of any lease participation certificates, without the necessity of obtaining the consent of the Owner; provided that (a) any assignment, other than an assignment to or by a registered the Owner, shall not be effective until the Owner has received written notice, signed by the assignor, of the name and address of the Assignee, and (b) any assignment to or by a registered the Owner shall not be effective until it is registered on the registration books kept by the agent for the Owner. The Owner shall retain all such notices as a register of all the Assignees (other than registered owners) and shall make all payments to the Assignee or the Assignees designated in such register or, in the case of Registered Owners to the agent. Participation certificates may be executed and delivered by the agent to Registered Owners, if any. The Owner agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, that may be reasonably requested by the Assignee or any assignee to protect its interests in the Equipment and in this Installment Payment Contract. Fully to the extent permitted by law, the Owner shall not have the right to and shall not assert against any Assignee or Registered Owner any claim, counterclaim, or other right the Owner may have against the Bond Bank or the Contractor. The Owner hereby agrees that the Assignee may, without notice to the Owner, sell, dispose, or assign this Installment Payment Contract or any particular Schedule or Schedules to this Installment Payment Contract through a certificate of participation program, pool, trust, limited partnership, or other similar entity, whereby one or more interests are created in this Installment Payment Contract, or in the Equipment listed in or the Payments under a particular Schedule or Schedules to this Installment Payment Contract.

[28] None of the Owner's right, title, and interest in, to, and under this Installment Payment Contract or under any of the Schedules hereto may be assigned or encumbered by the Owner for any reason, except if the Owner obtains the prior written consent of the Assignee. Any such assignment shall be subject to this Installment Payment Contract and the rights of the Assignee in, to, and under this Installment Payment Contract and the Equipment.

[29] To secure all obligations of the Owner hereunder, the Owner hereby grants a security interest in and to all of the Owner's right, title, and interest in and to the ECM's including substitutions and replacements thereof or thereto, and all proceeds (cash and non-cash), including the proceeds of insurance. The Owner agrees to provide such identification markings on the ECM's, in the form satisfactory to the Assignee, or the Assignee deems necessary or appropriate to give notice of the Assignee's security interest in the ECM's. In

the case of escrow funded transactions, as further security the Owner hereby grants to the Assignee, a first priority security interest in the cash and negotiable instruments from time to time comprising the Escrow Fund (as such term is defined in that certain Project Fund Agreement and all proceeds (cash or non-cash) thereof. The Owner further agrees that with respect to the ECM's and if applicable, the Escrow Fund, the Assignee shall have all of the rights and remedies of a secure party under the Uniform Commercial Code as in effect in the State of Indiana.

[30] The Owner shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, security interest, encumbrance, or claim on or with respect to the ECM's or any interest therein, without prior written consent of the Assignee, which consent shall not be reasonably withheld.

[31] Subject to the provisions of the Agreement and the further provisions of this Installment Payment Contract, any of the following events shall constitute an "Event of Default" under this Installment Payment Contract:

(a) Failure by the Owner to pay any Payment or other payment required to be paid hereunder at the time specified herein;

(b) Failure by the Owner to observe and perform any covenant, condition, or agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the Owner by the Assignee, unless the Assignee shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, the Assignee will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Owner within the applicable period and diligently pursued until the default is corrected;

(c) Any representation or warranty made by the Owner in this Installment Payment Contract, or any other document entered into in connection therewith and assigned to the Assignee, shall prove to have been false, incorrect, misleading, or breached in any material respect on the date when made;

(d) The Owner shall (i) apply for or consent to the appointment of a receiver, trustee, custodian, or liquidator of the Owner, or of all or a substantial part of the assets of the Owner, (ii) be unable, fail, or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization, or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against the Owner in any bankruptcy, reorganization or insolvency proceeding; or

(e) An order, judgment, or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian, or liquidator of the Owner of all or a substantial part of the

assets of the Owner, in each case without its application, approval, or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of thirty (30) consecutive days.

[32] Subject to the provisions of the Agreement and the further provisions of this Installment Payment Contract, and fully to the extent permitted by law, whenever any Event of Default exists, the Assignee shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to the Owner, the Assignee may declare all Payments due pursuant to the applicable Schedule(s) and other amounts payable pursuant to the applicable Schedule(s) by the Owner hereunder to the end of the then current budget year to be due; and

(b) The Assignee may take whatever action at law or in equity may appear necessary or desirable to enforce its rights as the owner of the Equipment under the applicable Schedule(s).

[33] Fully to the extent permitted by law:

(a) Upon the occurrence of an Event of Default by the Owner in the performance of any term of this Installment Payment Contract, the Owner agrees to pay to the Assignee or reimburse said party for, in addition to all other amounts due hereunder, all of the Assignee's reasonable costs of collection, including reasonable attorney's fees, whether or not suit or action is filed thereon. Any such reasonable costs shall be immediately due and payable upon written notice and demand given to the Owner, shall be secured by this Installment Payment Contract until paid and shall bear interest at the rate of three percent (3%) per annum or the maximum amount permitted by law, whichever is less.

(b) In the event suit or action is instituted to enforce any of the terms of this Installment Payment Contract, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial or on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

[34] No remedy herein conferred upon or reserved to the Assignee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Installment Payment Contract now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof; but any such right or power may be exercised from time to time and as often as may be deemed expedient. To entitle the Assignee to exercise any remedy reserved to it herein, it shall not be necessary to give any notice other than such notice as may be required herein.

[35] All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, to the parties hereto at the address

as either party hereto shall designate in writing to the other for notices to such party, and to the Bond Bank at its address as it appears in section [2] hereof.

[36] Fully to the extent permitted by law, (a) the Owner shall indemnify, protect, hold harmless, save, and keep harmless the Assignee from and against any and all liability, obligation, loss, claim, tax, and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith (including without limitation reasonable counsel fees and expenses) arising out of or as the result of (1) the ownership of any item of the Equipment, (2) the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage, or return of any item of the Equipment, (3) any accident in connection with the operation, use, condition, possession, storage, or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (4) the breach of any covenant herein or any material misrepresentation contained herein; and (b) the indemnification arising under this section [36] shall continue in full force and effect notwithstanding the full payment of all obligations hereunder.

[37] The Owner agrees to execute such other and further documents, including, without limitation, confirmatory financing statements, continuation statements, certificates of title and the like, and to take all such action as may be necessary or appropriate, from time to time, in the reasonable opinion of the Assignee to perfect, confirm, establish, reestablish, continue or complete the interests of the Assignee in this Installment Payment Contract, Schedule A-1 and like attachments, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Installment Payment Contract, Schedule A-1 and like attachments.

[38] This Installment Payment Contract and Schedule A-1 may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same document.

[39] This Installment Payment Contract shall inure to the benefit of and shall be binding upon the Assignee and the Owner and their respective successors and assigns. In the event any provision of this Installment Payment Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

[40] This Installment Payment Contract may be amended by a writing duly authorized and executed by the Assignee and the Owner.

[41] This Installment Payment Contract shall be governed by and construed in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, the Owner has caused this Installment Payment Contract to be duly executed and attested by its duly authorized officers or representatives, and the parties hereto have set their hands and seals in duplicate on this 13th day of September, 2011.

CITY OF EVANSVILLE, INDIANA

By _____
Jonathan Weinzapfel

Its _____
Mayor

By _____
Jenny Collins

Its _____
Controller

ENERGY SYSTEMS GROUP, LLC

By _____
Gregory F. Collins

Its _____
President

SCHEDULE A-1

INSTALLMENT PAYMENT SCHEDULE

Loan 9/13/2011

Interest rate: 1.50%

Payment Number	Payment Date	Principal Component	Interest Component	Total Payment	Unpaid Balance	*Optional Prepayment Amount
Loan 9/13/2011					561,403.00	
1	2/1/2012	17,678.82	3,253.06	20,931.88	543,724.18	543,724.18
2	8/1/2012	16,853.95	4,077.93	20,931.88	526,870.23	526,870.23
3	2/1/2013	16,980.35	3,951.53	20,931.88	509,889.88	509,889.88
4	8/1/2013	17,107.71	3,824.17	20,931.88	492,782.17	492,782.17
5	2/1/2014	17,236.01	3,695.87	20,931.88	475,546.16	475,546.16
6	8/1/2014	17,365.28	3,566.60	20,931.88	458,180.88	458,180.88
7	2/1/2015	17,495.52	3,436.36	20,931.88	440,685.36	440,685.36
8	8/1/2015	17,626.74	3,305.14	20,931.88	423,058.62	423,058.62
9	2/1/2016	17,758.94	3,172.94	20,931.88	405,299.68	405,299.68
10	8/1/2016	17,892.13	3,039.75	20,931.88	387,407.55	387,407.55
11	2/1/2017	18,026.32	2,905.56	20,931.88	369,381.23	369,381.23
12	8/1/2017	18,161.52	2,770.36	20,931.88	351,219.71	351,219.71
13	2/1/2018	18,297.73	2,634.15	20,931.88	332,921.98	332,921.98
14	8/1/2018	18,434.97	2,496.91	20,931.88	314,487.01	314,487.01
15	2/1/2019	18,573.23	2,358.65	20,931.88	295,913.78	295,913.78
16	8/1/2019	18,712.53	2,219.35	20,931.88	277,201.25	277,201.25
17	2/1/2020	18,852.87	2,079.01	20,931.88	258,348.38	258,348.38
18	8/1/2020	18,994.27	1,937.61	20,931.88	239,354.11	239,354.11
19	2/1/2021	19,136.72	1,795.16	20,931.88	220,217.39	220,217.39
20	8/1/2021	19,280.25	1,651.63	20,931.88	200,937.14	200,937.14
21	2/1/2022	19,424.85	1,507.03	20,931.88	181,512.29	181,512.29
22	8/1/2022	19,570.54	1,361.34	20,931.88	161,941.75	161,941.75
23	2/1/2023	19,717.32	1,214.56	20,931.88	142,224.43	142,224.43
24	8/1/2023	19,865.20	1,066.68	20,931.88	122,359.23	122,359.23
25	2/1/2024	20,014.19	917.69	20,931.88	102,345.04	102,345.04
26	8/1/2024	20,164.29	767.59	20,931.88	82,180.75	82,180.75
27	2/1/2025	20,315.52	616.36	20,931.88	61,865.23	61,865.23
28	8/1/2025	20,467.89	463.99	20,931.88	41,397.34	41,397.34
29	2/1/2026	20,621.40	310.48	20,931.88	20,775.94	20,775.94
30	8/1/2026	20,775.94	155.94	20,931.88	0.00	0.00
Totals		\$561,403.00	\$66,553.40	\$627,956.40		

* The Optional Prepayment Amount can be paid after the Installment Payment due on the same date has been paid.

EXHIBIT D

PROJECT FUND AGREEMENT

This Project Fund Agreement (this "Project Fund Agreement") made and entered into this 13th day of September, among The Evansville Local Public Improvement Bond Bank, a body corporate and politic separate from the Owner (defined below) in its corporate capacity (the "Bond Bank"), whose office is situated at 300 Civic Center Complex, 1 N.W. Martin Luther King Jr. Boulevard, Evansville, Indiana 47708-1833; Energy Systems Group, LLC, with offices at 4655 Rosebud Lane, Newburgh, Indiana 47630 (the "Contractor"); and the City of Evansville, Indiana (the "Owner").

RECITALS

- A. The Contractor and the Owner have entered into the Guaranteed Energy Savings Performance Contract dated the date of this Project Fund Agreement (the "Agreement"), pursuant to which the Contractor will design, sell, and install ECM's (defined in Section 3. D. of this Project Fund Agreement) to the Owner;
- B. The Contractor and the Owner have entered into the Installment Payment Contract dated the date of this Project Fund Agreement (the "Installment Payment Contract"), pursuant to which the Owner agreed to make Installment Payments (defined in the Installment Payment Contract) to the Owner or its assignee;
- C. On the date of this Project Fund Agreement, Bond Bank lawfully invested in the Installment Payment Contract, and in furtherance thereof, the Contractor assigned its right, title and interest in the Installment Payment Contract to Bond Bank on the date of this Project Fund Agreement;
- D. The Contractor and the Owner desire that the Bond Bank undertake the responsibility of disbursing funds to the Contractor, and Bond Bank desires to undertake that function, all in accordance with this Project Fund Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto hereby agree as follows:

1. DEFINITIONS

Assignee means Bond Bank.

Authorized Representative means the person designated by the governing body of the Owner to act as the Authorized Representative under the Agreement and this Project Fund Agreement. In the absence of a designation, Authorized Representative shall be the Mayor or his/her designee.

Closing Date means the day or days agreed upon by the Contractor and the Owner when the Contractor causes to be deposited with the Bond Bank the moneys required to be deposited pursuant to Section 3 hereof.

Project Fund means the fund established pursuant to Section 3 of this Project Fund Agreement.

Project Fund Agreement means this Project Fund Agreement and any duly authorized and executed amendment hereto.

All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

2. BOND BANK

Bond Bank will receive, hold, invest, and disburse money delivered to it in accordance with this Project Fund Agreement, and to take such other actions not inconsistent herewith as shall be necessary to accomplish the purposes of this Project Fund Agreement. Bond Bank hereby undertakes to perform such actions as are exclusively and specifically set forth in this Agreement.

3. PROJECT FUND

A. Bond Bank shall establish Project Fund No. 1 (the "Project Fund"), which shall be administered and applied by Bond Bank in accordance with this Project Fund Agreement. In the Project Fund, Bond Bank shall establish two accounts, the Investment Account No. 1 (the "Investment Account"), into which not to exceed \$561,403.00 of Bond Bank's investment moneys shall be deposited and used, and the Federal Grant Account No. 1 (the "Federal Grant Account"), into which not to exceed \$535,000.00 of Federal Grant moneys shall be deposited and used. As used in this Project Fund Agreement, Federal Grant means moneys provided under a **Federal Energy Efficiency Conservation Block Grant award to the City of Evansville**. Bond Bank shall keep this fund and such accounts separate from all other funds and moneys held by it.

B. As and when required to pay Project Costs, Authorized Representatives shall notify Bond Bank in writing of the need to deposit into the Project Fund such amount or amounts as are necessary to fund the payments required under Subsection C of this Section 3 and the estimated time therefor; provided, however, Authorized Representative shall provide or cause to be provided to Bond Bank for deposit into the Federal Grant Account Federal Grant moneys in such amount or amounts as are

necessary to pay Project Costs before Bond Bank is obligated to provide any investment moneys to pay Project Costs.

- C. Bond Bank shall pay Project Costs solely from the Project Fund within two (2) Business Days of receipt of direction from the Authorized Representative in the form of Schedule B-1 that payment should be made. In no event shall Bond Bank be obligated to disburse funds pursuant to this Section 3 more than once per calendar month. Bond Bank may conclusively rely upon information in the direction of the Authorized Representative.
- D. The following provisions shall apply to payment of the Contract Price (defined in the Agreement):

- a) Applications for Payment. Payment of the Contract Price shall be made in monthly installments based upon the Contractor's progress in completing the installation of the ECM's (defined in Section 2 of the Agreement), except that the Contractor shall be paid an advance in respect to the Contract Price in the amount of 25% of the Contract Price as the first payment, the request for which shall be submitted to Bond Bank upon the execution and delivery of this Project Fund Agreement. The Owner and the Contractor agree to submit to the Bond Bank a requisition, in the form of Schedule B-1 (the "Payment Requisition"), for the payment of such sum from the Project Fund. With respect to progress payments, the Contractor shall submit to the Authorized Representative by the first day of each month a Payment Requisition as an application for payment.

Not later than ten (10) days following the Contractor's submission of a Payment Requisition, the Authorized Representative shall advise the Contractor whether or not the Owner agrees that the Contractor is entitled to payment of the amount requested. If the Owner agrees that the amount requested is due and payable, the Owner and the Designee (which shall be defined as the person designated by the Contractor to have the authority to act for and bind the Contractor with respect to this Project) shall submit to the Bond Bank a Payment Requisition, and the amount requested shall be paid to the Contractor from the Project Fund. (The Owner and its Authorized Representative may not provide any

advice or submit any Payment Requisition as contemplated by this Subsection D of this Section 3 without the prior written approval of Bond Bank.)

In the event that the Authorized Representative shall advise the Contractor that the Owner does not concur in the amount requested for payment, the Authorized Representative and the Designee shall meet as soon as practicable in an effort to resolve such disagreement. If the Authorized Representative and the Designee are not able to agree upon the amount properly payable to the Contractor within seven (7) days following the Owner's denial of the request for payment, then the Owner and the Contractor shall submit to the Bond Bank a Payment Requisition for payment in an amount equal to seventy-five percent (75%) of the amount of the payment request in dispute. Such sum shall be payable by the Bond Bank from the Project Fund, as contemplated by the further provisions of this Section 3.

- b) Withholding of Payments. The Owner may decline to endorse a Payment Requisition if (i) the Project has not progressed according to the construction schedule due to the fault of the Contractor; (ii) the quality of the work does not conform to the requirements of the Contract Documents; or (iii) the withholding of such payment(s) is necessary to protect the Owner from loss because of (a) third party claims filed due to the Contractor's failure to make payments for labor, materials, or equipment, (b) costs, fines, or penalties incurred by the Owner due to the Contractor's failure to comply with the Agreement, or (c) reasonable belief by the Owner that the Project will not be completed by the completion date due to the fault of the Contractor.

If the Owner declines to endorse a Payment Requisition for any of the foregoing reasons, it shall notify the Contractor in writing of the reasons therefor and subject to the provisions of Section 8 of the Agreement, shall allow the Contractor thirty (30) days to cure such defects, including the cost of repairing or replacing any portion of the Project damaged or destroyed by the Contractor when correcting such problem(s).

If the Contractor fails to correct such problem(s) within the period of time stated in the above notice, and such failure is due to the fault of the Contractor and not attributable to an event of force majeure or unreasonable interference by

other contractors performing work in connection with the Facilities (defined in the Agreement), then, without prejudice to any other remedies it may have, the Owner shall have the right to correct any such problem(s) and order the Contractor to stop the Project. In such event, the Contractor shall be responsible for all costs incurred by the Owner in correcting each such problem(s) and the Owner shall have the right to deduct all such costs from any payments then or thereafter due the Contractor. If such costs exceed the balance of the payments then or thereafter due the Contractor, the Contractor shall promptly pay such excess to the Owner after receipt of an invoice from the Owner detailing such costs.

c) Final Payment. Any sums due and owing in respect of the Contract Price shall be payable to the Contractor within ten (10) calendar days after the date the Owner gives written notice of its Final Acceptance of a particular Facility, or the entire Project, as the case may be. The Owner and the Contractor shall endorse a final form of Payment Requisition directing the Bond Bank to make such payment from the Project Fund (such payment herein referred to as the "Final Payment"). Such final form of Payment Requisition shall be accompanied by the Owner's completion certificate. Acceptance of the Final Payment by the Contractor shall constitute a waiver of all claims by the Contractor for any further payment of the Contract Price or any other sum in respect of the Project.

E. Notwithstanding anything to the contrary herein, Bond Bank will not pay a Project Cost if such payment, when added to the sum total of all Project Costs theretofore paid by Bond Bank, would cause the total amount of the Project Costs to exceed \$1,096,403.00.

F. The Project Fund will terminate and any funds remaining therein, including interest earnings, if any, will be retained by Bond Bank upon occurrence of any one of the following events:

a) Bond Bank has received notice from the Contractor that the Owner is in default hereunder or under the Agreement; or

b) Bond Bank receives notice from the Contractor or the Owner that the Agreement has been terminated;

except that any funds remaining in the Federal Grant Account, including interest earnings, if any, will be applied and used as required by the terms of the Federal Grant.

G. The Project Fund will terminate and any funds remaining therein (including interest earnings, if any) will be retained by Bond Bank once the Bond Bank has received written notice from the Owner that the Final Acceptance Certificate has been executed by the Owner; except that any funds remaining in the Federal Grant Account, including interest earnings, if any, will be applied and used as required by the terms of the Federal Grant.

4. ADMINISTRATION AND INVESTMENT OF PROJECT FUND

A. The parties do not intend for moneys in the Project Fund to be held for more than one (1) Business Day; however, if moneys in the Project Fund will be held for a longer period, Bond Bank may invest such moneys in demand deposits or Qualified Investments; provided funds will be available within one (1) Business Day to make required payments when due. "Qualified Investments" are: (i) direct general obligations of the United States of America; (ii) obligations guaranteed by the United States of America; (iii) general obligations of the agencies and instrumentalities of the United States of America; (iv) repurchase agreements which are collateralized by obligations listed in clause (i), (ii) or (iii) above; (v) certificates of deposit or time or demand deposits issued by a domestic bank with assets in excess of \$50,000,000.00; and (vi) money market accounts investing in (i), (ii), (iii) or (iv) above. Qualified Investments shall be registered in the name of the Bond Bank or its agent.

B. Reserved.

C. Any income received on any investment shall be deposited into the account in the Project Fund from which such investment was made. Any profit or loss on the disposition of Qualified Investments shall be credited or charged to the account in the Project Fund from which the relevant investment was made. Bond Bank shall not be

responsible for losses on any investments made in accordance with this Project Fund Agreement.

- D. Reserved.
- E. Reserved.

5. BOND BANK LIABILITY

- A. Reserved.
- B. Reserved.
- C. Reserved.
- D. Reserved.

E. Bond Bank shall be protected and shall incur no liability for acting upon any resolution, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition, or other paper which it shall in good faith believe to be genuine, and to have been passed or signed by the proper board or person, or to have been prepared and furnished pursuant to any of the provisions of this Project Fund Agreement. Bond Bank shall be under no duty to make any investigation or inquiry as to any statement contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. Whenever in the administration of its duties under this Agreement, Bond Bank shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) hereof shall be deemed to be conclusively proved and established by the certificate of the Owner or the Contractor. The recitals, statements, and representations by the Owner and the Contractor contained in this Project Fund Agreement are not made by Bond Bank and Bond Bank does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

6. ASSIGNMENT

None of the Owner, the Contractor or the Bond Bank shall not assign its rights or duties hereunder without the express written consent of each of the other parties hereto, except that after the Project is complete, the Owner or the Bond Bank may make an assignment solely with the prior written consent of the other party hereto.

7. LIMITATION OF LIABILITY

- A. The Contractor shall not be liable to the Owner, and the Owner shall not be liable to the Contractor, with respect to any performance or failure of performance by Bond Bank of its duties hereunder.
- B. Nothing in this Project Fund Agreement, expressed or implied, is intended or shall be construed to give any person other than the Owner, the Contractor and Bond Bank any legal or equitable right, remedy or claim under or in respect of this Project Fund Agreement or any covenant, condition, or provision hereof; and all such covenants and provisions are and shall be for the sole and exclusive benefit of the Owner, the Contractor and Bond Bank.

8. MISCELLANEOUS

- A. Bond Bank shall keep complete and accurate records of all moneys received and disbursed under this Project Fund Agreement, which shall be available for inspection by the Owner and the Contractor or the agent of either of them, at reasonable times during regular business hours.
- B. Notices under this Agreement shall be deemed given if personally delivered, sent by commercial overnight delivery service, or sent by certified mail, postage prepaid, and if to the Owner or the Contractor addressed to it at the address provided in the Agreement and if to the Bond Bank addressed to it at its office set forth in the first paragraph of this Project Fund Agreement.
- C. Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into and perform this Project Fund Agreement and

has taken all necessary action to authorize the execution of this Project Fund Agreement by the persons signing it.

- D. This Project Fund Agreement shall be construed and governed in accordance with the laws of the State of Indiana.
- E. Any provision of this Project Fund Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Project Fund Agreement.
- F. This Project Fund Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Whenever in this Project Fund Agreement any party hereto is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all covenants and agreements contained in this Agreement by or on behalf of any party hereto shall bind and inure to the benefit of the lawful successors and assigns thereof whether so expressed or not.
- G. This Project Fund Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.
- H. The headings or titles in this Project Fund Agreement shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Project Fund Agreement.
- I. Bond Bank's duties and obligations are exclusively as set forth herein, and Bond Bank shall not be deemed to have knowledge of any other agreement or than the Installment Payment Agreement.
- J. Reserved.

CITY OF EVANSVILLE, INDIANA

By _____
Jonathan Weinzapfel

Its Mayor

By _____
Jenny Collins

Its Controller

ENERGY SYSTEMS GROUP, LLC

By _____
Gregory F. Collins

Its President

**THE EVANSVILLE LOCAL PUBLIC IMPROVEMENT
BOND BANK**

By _____
Sherrienne Standley

Its Chair

ATTEST:

By _____
Jenny Collins

Its Executive Director

**SCHEDULE B-1
PAYMENT REQUISITION**

September 13, 2011

The Evansville Local Public Improvement Bond Bank
300 Civic Center Complex
1 N.W. Martin Luther King Jr. Boulevard
Evansville, Indiana 47708-1833

Re: Direction to Make Disbursement from Project Fund

Ladies and Gentlemen:

Pursuant to the Project Fund Agreement dated September 13, 2011, among Energy Systems Group, LLC, as the Contractor, the City of Evansville, Indiana, as the Owner, and you, the Bond Bank, and the Installment Payment Contract dated the same date as such Project Fund Agreement, between the Contractor and the Owner, you are hereby directed to disburse from the Project Fund the amount indicated below.

As required by the Contract, the undersigned hereby certifies:

1. This is requisition number 1 from the Project Fund.
2. The name and address of the person, firm or corporation to whom the disbursement is due is as follows:

Energy Systems Group, LLC
4655 Rosebud Lane
Newburgh, IN 47630
4. The amount to be disbursed is \$274,100.75.
5. The disbursement herein requested is for an obligation properly incurred and is a proper charge against the Project Fund as a Cost of Installation, and such obligation has not been the basis of any previous disbursement.
6. Terms used in this Payment Requisition are used with the meanings ascribed to such terms in the Installment Payment Contract.

ENERGY SYSTEMS GROUP, LLC

By _____
Gregory F. Collins, President

Date September 13, 2011

Approved for
CITY OF EVANSVILLE, INDIANA

By _____
Jonathan Weinzapfel
Mayor

Date September 13, 2011

SCHEDULE B-2

ANTICIPATED PAYMENT REQUEST DRAW SCHEDULE

Start Date	Amount
September 13, 2011	25%
October 15, 2011	20%
November 15, 2011	20%
December 15, 2011	15%
January 15, 2012	10%
Final Acceptance	10%