

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into by and between Vigo County School Corporation (the “School Corporation”) and Energy Systems Group, LLC (“ESG”) (the School Corporation and ESG are referred to individually as a “Party” and together as the “Settling Parties”). In consideration of the mutual promises and covenants set forth herein and the acts done or to be done under this Agreement, the Settling Parties agree as follows:

1. Each of the Settling Parties acknowledges that the following statements are true and form the basis for entering this Agreement:

A. ESG, as an energy services provider, performed improvements for the School Corporation under a series of contracts from 2000 through 2016.

B. On March 31, 2010, the School Corporation and ESG entered a “Guaranteed Energy Savings Performance Contract” (the “March 2010 Contract”).

C. On February 13, 2012, the School Corporation and ESG entered a “Guaranteed Energy Savings Performance Contract” (the “February 2012 Contract”).

D. On March 24, 2014, the School Corporation and ESG entered a “Guaranteed Energy Savings Performance Contract” (the “March 2014 Contract”).

E. On April 11, 2016, the School Corporation and ESG entered a “Guaranteed Energy Savings Performance Contract” (the “April 2016 Contract”).

F. The March 2010 Contract, the February 2012 Contract, the March 2014 Contract, and the April 2016 Contract are collectively referred to as the “Contracts,” and ranged in total contract price from approximately \$3.2 million to \$4.8 million.

G. The Contracts were let pursuant to Indiana Code § 36-1-12.5-1 et. seq. (the “Indiana Energy Savings Statute”).

H. A dispute has arisen between the Settling Parties regarding the Contracts and fees associated with the Contracts.

I. The Settling Parties have agreed to settle and compromise with respect to the dispute. ESG denies that it has any legal liability but enters into this Agreement in an effort to avoid litigation with a longstanding customer, the School Corporation.

J. The Parties believe this agreed resolution is in the best interests of their respective organizations and stakeholders.

2. **Payment.** ESG agrees to pay the School Corporation a total lump-sum payment of One Million Two Hundred Fifty Thousand Dollars and no cents (\$1,250,000.00) (the "Settlement Payment"). ESG will cause the Settlement Payment to be made, by wire transfer in accordance with the School Corporation's written instructions, within 15 days after the Effective Date. The School Corporation and ESG each will pay its own costs and attorneys' fees. The School Corporation agrees promptly to complete and provide to counsel for ESG an Internal Revenue Service Form W-9 as a condition to receiving the Settlement Payment.

3. **Release by the School Corporation.** The School Corporation, for itself and its predecessors and successors in interest, current and former Board members, officers, representatives, assigns, agents, attorneys, and insurers, and any other representatives, individuals, or entities on whose behalf the School Corporation acts or purports to act (collectively the "School Corporation Releasers"), hereby knowingly, unconditionally and irrevocably releases and discharges ESG and its predecessors and successors in interest, parent and affiliate entities, current and former members, officers, managers, employees, administrators, agents, attorneys, insurers, and any other representatives, individuals, or entities acting or purporting to act on ESG's behalf (collectively the "ESG Released Parties") from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, appeals, suits, rights, demands, costs, losses, debts, indemnification claims, contribution claims, judgments, liens, punitive damages, and expenses (including attorneys' fees and costs), of any nature whatsoever, both at law and in equity, known or unknown, including but not limited to claims

related to the Contracts and claims that were or could have been asserted against the ESG Released Parties. Notwithstanding the foregoing, the terms of this paragraph will not operate as a release of any obligation, covenant, representation, or warranty expressly stated in this Agreement.

4. **Release by ESG.** ESG, for itself and all those claiming by or on behalf of ESG or purporting to act on ESG's behalf, hereby knowingly, unconditionally and irrevocably releases and discharges the School Corporation, and its predecessors and successors in interest, current and former Board members, officers, representatives, assigns, agents, attorneys, and insurers (collectively the "School Corporation Released Parties") from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, appeals, suits, rights, demands, costs, losses, debts, indemnification claims, contribution claims, judgments, liens, punitive damages, and expenses (including attorneys' fees and costs), of any nature whatsoever, both at law and in equity, known or unknown, including but not limited to claims related to the Contracts. Notwithstanding the foregoing, the terms of this paragraph will not operate as a release of any obligation, covenant, representation, or warranty expressly stated in this Agreement.

5. **Covenant Not to Sue.** Each of the Settling Parties covenants that it will not, for itself or in any representative capacity, pursue any claim released under this Agreement in any forum. If any Party breaches this covenant, the other, non-breaching Party shall be entitled to damages, including recovery of its reasonable costs and attorneys' fees.

6. **Assignment.** The School Corporation represents and warrants that (a) no other person or entity has any interest in the claims, demands, obligations, or causes of action being fully and finally settled and released in this Agreement; (b) School Corporation has the sole right and exclusive authority to execute this Agreement and receive the Settlement Payment; and (c) School

Corporation has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action settled and released in this Agreement.

7. **Confidentiality.** To the extent permitted by law, the Settling Parties shall treat as confidential and shall not disclose to any third party (which shall not include a Party's own officers or owners or legal advisors, accountants, financial advisors, or government officials), the terms of this Agreement and any details related to the Agreement, the negotiation of this Agreement, or any discussion of facts or legal arguments related to the Contracts. The Settling Parties understand, however, that the Agreement will be considered by the School Corporation at a public meeting and that the Agreement may qualify as a public record of the School Corporation.

8. **No Admission of Liability.** The Settling Parties understand and agree that this Agreement is a compromise of the Parties' respective actual or potential claims against one another, and the consideration or performance of any act required by this Agreement is not and may not be deemed or construed as an admission of liability.

9. **No Reliance.** Each Settling Party represents and acknowledges that in executing this Agreement, such Settling Party does not rely and has not relied upon any representation or statement made by any other Settling Party or any Settling Party's attorney with regard to the subject matter, basis, or effect of this Agreement, other than those statements or promises expressly stated in this Agreement.

10. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Settling Parties and upon the respective successors, assigns, members, representatives, employees, and agents of each of the Settling Parties.

11. **Applicable Law and Forum.** This Agreement shall in all respects be interpreted, enforced, and governed under the laws of the State of Indiana, without regard to conflict-of laws

principles. The Settling Parties agree that the exclusive forum and jurisdiction for the litigation of any claim or cause of action arising out of or relating to this Agreement shall be the Commercial Courts of Indiana located in Marion County, Indiana.

12. **Construction.** This Agreement is the product of deliberation between the Settling Parties and their respective attorneys. In the event of any dispute regarding its interpretation, neither of the Settling Parties shall be considered the drafting party, and neither this Agreement as a whole nor any of its provisions shall be construed against either of the Settling Parties, and the Settling Parties expressly waive any right to assert any contrary rule of construction.

13. **Integration.** This Agreement constitutes the entire agreement between the Settling Parties and incorporates fully the Settling Parties' respective intentions to settle all claims. All representations not expressly stated herein are null and void. No modification of this Agreement will be effective unless in writing and executed by all Settling Parties.

14. **Knowledge of Terms.** The Settling Parties acknowledge, covenant and agree that (a) they have read this Agreement and understand its terms, including the legal consequences thereof, which have been explained to them by their own counsel; (b) in offering to make and in making, executing and delivering this Agreement, neither of them was acting under any duress, undue influence, misapprehension, or misrepresentation by any Settling Party or any agent, attorney or representative of any Settling Party; and (c) they have had a full and fair opportunity to investigate to their own satisfaction before entering into this Agreement the relevant facts and circumstances.

15. **Lawful Approval.** The School Corporation represents and warrants that its execution of and performance under this Agreement have been duly approved and authorized by the lawful and valid action of its Board at a public meeting following proper legal notice to the

public.

16. **Severable Provisions.** Should any provision of this Agreement be determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining parts, terms and provisions shall not be affected thereby, and such illegal, invalid or unenforceable part, term or provision will be deemed not to be part of this Agreement.

17. **Waiver.** No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, whether similar or dissimilar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Settling Party making the waiver.

18. **Execution in Counterparts.** This Agreement may be executed in multiple counterparts, either by hand or electronic signature, each of which shall constitute an original, but all of which, taken together, shall constitute one Agreement. This Agreement may be transmitted and delivered by facsimile or digitally scanned and sent by email, and such facsimile, digitally scanned or emailed signatures shall constitute original signatures that are binding upon the Settling Parties.

19. **Effective Date.** The effective date of this Agreement shall be the last date upon which it was signed by a Settling Party ("Effective Date").

In Witness Whereof, the Settling Parties have executed this Agreement on the dates indicated below.

**Vigo County School Corporation**

By: \_\_\_\_\_ on January \_\_\_\_, 2021

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**Energy Systems Group, LLC**

By: \_\_\_\_\_ on January \_\_\_\_, 2021

Printed: \_\_\_\_\_

Title: \_\_\_\_\_