
DRAFT ENERGY SERVICES AGREEMENT

by and between

SCHOOL BOARD OF ALBEMARLE COUNTY, VIRGINIA

and

AMERESCO, INC.

Dated as of September 14, 2017

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DRAFT ENERGY SERVICES AGREEMENT

THIS ENERGY SERVICES AGREEMENT (this “*Agreement*”) is entered into as of September 14, 2017, by and between School Board of Albemarle County, Virginia having its principal place of business located at 401 McIntire Road, Charlottesville, VA 22902 (“*Customer*”) and Ameresco, Inc., having its principal place of business at 111 Speen Street, Suite 410, Framingham, Massachusetts 01701 (“*Ameresco*”). The Customer and Ameresco may be collectively referred to as the “*Parties*” and individually as a “*Party*.”

WHEREAS, Customer wishes Ameresco to perform a project (“*Project*”) consisting of certain energy conservation services and installations as set forth in Attachment B (as amended and/or otherwise modified from time to time as provided herein, the “*Scope of Services*”) at Customer’s facilities described in Attachment A (the “*Property*”), and Ameresco wishes to perform such services; and

WHEREAS, Customer owns the Property.

NOW, THEREFORE, in consideration of the covenants, representations, warranties, and mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

SECTION 1 Scope of Services.

(a) Work:

- (i) Preconstruction Services:** Ameresco has performed an Investment Grade Energy Audit (“*IGA*”), also referred to as Detailed Energy Audit (“*DEA*”), of the Property, dated as of August 4, 2017, as set forth in Attachment B.

Construction Work: Upon Ameresco’s receipt of (i) the Notice To Proceed (as defined in Section 4) and (ii) evidence of immediately available funds sufficient for the payment of the Contract Cost (as defined in Section 4), Ameresco shall furnish all labor, materials and equipment and perform all work required for the completion of the Scope of Services including the installation of the energy conservation measures as set forth in Attachment B (the “*ECMs*”). Customer and Ameresco shall mutually plan the scheduling of the construction work. The construction work will be planned to minimize the interruption of the daily routine of Customer’s staff.

- (b) Disposal:** Ameresco shall (i) be responsible for disposal of all non-hazardous equipment and materials which are rendered useless and removed as a result of the installation of the ECMs and (ii) cause all lamps which are classified as hazardous wastes by the rules and regulations of the U.S. Environmental Protection Agency (40 CFR Parts 260 through 279) and PCB-contaminated ballasts, if any, which have been rendered useless and removed as a result of the installation of the ECMs to be transported and disposed of. All other existing PCB-contaminated ballasts, lamps and any other hazardous materials, however, shall remain the sole responsibility of Customer and Ameresco shall assume no liability whatsoever in connection with their removal, transportation and disposal.

(c) Asbestos and Lead Paint:

- (i) Asbestos:** The Scope of Services is predicated on the viability of the Project without Ameresco encountering or disturbing asbestos or being required to perform any asbestos abatement or taking any other action with respect to asbestos. Under no circumstances shall Ameresco be required to handle asbestos. Customer hereby represents and warrants to Ameresco that, to the best of its knowledge and belief, there is no asbestos in any area

wherein Ameresco will be performing its services hereunder. In the event that Ameresco: (A) encounters any friable or non-friable asbestos which is in the immediate vicinity of its work, (B) determines that its work will result in the disturbance of asbestos material, or (C) determines that the presence of asbestos material will impede its work, Ameresco will notify Customer of the same and Customer will, at its cost, cause the asbestos to be promptly and properly removed, enclosed, encapsulated or otherwise abated in accordance with all applicable laws, regulations and guidelines, or alternatively, Customer, at its cost, may provide written test reports showing that asbestos in such area has been properly removed, enclosed encapsulated or otherwise abated in accordance with all applicable laws. In the event that Ameresco cannot determine whether any particular material does or does not contain asbestos, Customer, upon Ameresco's written request, shall, at Customer's cost, promptly perform tests or cause tests to be performed in order to determine whether or not such material contains asbestos and/or whether there are unacceptable levels of airborne particulate material containing asbestos and provide such test reports to Ameresco. In the event Ameresco encounters asbestos which materially affects its progress of the Project, Ameresco, at its option, may demobilize and cease construction in the area affected by the presence of such asbestos until such time as Customer performs the actions required to be performed by Customer as provided herein. In the event that Customer does not promptly take action, as provided herein, or notifies Ameresco that it will not take such action, Ameresco may, at its option, either remove the affected area from the Scope of Services (and make commensurate adjustments to the rights and obligations of the Parties) or terminate this Agreement in its entirety in accordance with Section 12(a). Customer shall be responsible for all costs (including termination) incurred by Ameresco that relate to the presence of asbestos.

- (ii) **Lead Paint:** The Scope of Services is predicated upon the viability of the Project without Ameresco encountering or disturbing lead paint or being required to perform abatement or providing any notice or taking any other action with respect to lead paint. Under no circumstances, shall Ameresco be required to perform services which cause the disturbance of lead paint. Customer hereby represents and warrants to Ameresco that, to the best of its knowledge and belief, that there is no lead paint in any area wherein Ameresco will be performing its services hereunder. In the event that Ameresco encounters any paint in any area where it is to perform services hereunder, which services will involve disturbing paint and Ameresco reasonably believes that such paint may be lead paint or such services will involve disturbing paint which is in a building constructed prior to 1978, Customer, upon Ameresco's written request, will, at Customer's cost, promptly perform tests or cause tests to be performed in order to determine whether or not such paint contains lead and will provide such test reports to Ameresco. In the event that such test reports demonstrate the presence of lead paint or Ameresco reasonably believes that performing its services under this Agreement is likely to cause the disturbance of lead paint in such a manner as to require Ameresco to provide any notification or take any actions pursuant to any federal, state or local laws, rules, regulations or guidelines and Ameresco notifies Customer of the same, Customer will, in either case, at its cost, cause the lead paint to be promptly and properly removed, or otherwise abated in accordance with all applicable laws and regulations. In the event that lead paint materially affects the progress of the Project, Ameresco, at its option, may demobilize and cease construction in the area affected by the presence of lead paint until such time as Customer performs the actions required to be performed by Customer as provided herein. In the event that Customer does not promptly take action as provided herein or notifies Ameresco that it will not take such action, Ameresco may, at its option, either remove the affected area from the Scope of Services (and make commensurate adjustments to the rights and obligations of the Parties) or terminate this Agreement in its entirety in accordance with Section 12(a). Customer shall be responsible for all costs (including termination) incurred by Ameresco that relate to the presence of

lead paint.

- (d) **Maintenance and Monitoring:** Ameresco will not provide any maintenance services under this Agreement. Customer, at its expense, shall be responsible for servicing and maintaining the ECMs (and such other equipment). To the extent provided for in Attachment E Ameresco will supply such ongoing monitoring, measurement and verification services during the period specific in Attachment E at a cost to Customer as set forth in Section 4 and Attachment F.
- (e) **Compliance with Law:** Ameresco shall, at its expense, comply with and obtain all applicable licenses and permits required by federal, state and local laws in connection with (i) the installation of the ECMs. In the event that Ameresco cannot procure any such license or permit in light of a requirement that Customer is required to do so, Customer shall promptly procure the same.
- (f) **Taxes:** Customer hereby represents and warrants to Ameresco that Customer is a governmental entity and that it shall cooperate with Ameresco and provide Ameresco with all appropriate documentation so that Ameresco may establish that it does not have to pay taxes, fees and assessments or other charges of any character which may be imposed or incurred by any governmental or public authority as an incident to title to, procurement, ownership, or operation of the ECMs.
- (g) **Non-Discrimination:** Ameresco agrees not to knowingly or willfully discriminate against any employee, or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of age, sex, sexual orientation, race, disability, color, religion, national origin, Vietnam era military service or ancestry in accordance with applicable federal, state or local laws.
- (h) **Standards of Service and Comfort:** Customer shall operate the ECMs in a manner that shall provide the standards of service and comfort provided for in Attachment I.
- (i) **Installation/Specifications:** Prior to the commencement of work hereunder, Ameresco may, at its option, provide (or Customer, at its option, may reasonably request to have Ameresco provide) a sample installation of, or written specification of, any ECM to be installed (each, a “*Sample*”). Customer shall furnish its written approval or disapproval of each Sample within ten (10) business days following Customer’s receipt of Ameresco’s written notice of installation and/or delivery of such Sample. Customer’s approval of such Sample shall be in substantially the form of Attachment J. If Customer disapproves any such Sample, Ameresco shall have the right to provide a substitute specification or ECM (each, a “*Substitution*”) which conforms to the applicable specifications or is equivalent to any applicable Sample previously approved by Customer. Upon Customer’s written approval of a Substitution, Ameresco may revise the Attachments to reflect each such Substitution. If Customer does not approve or disapprove of any Sample or Substitution within ten (10) business days following Customer’s receipt of Ameresco’s written notice thereof, then Customer shall be deemed to have given its approval of such Sample or Substitution, as applicable. If, however, Customer does not approve of any Substitution, the Parties hereby agree to negotiate a mutually acceptable solution. Customer shall not unreasonably withhold, condition or delay any approval provided for herein.
- (j) **Duties, Obligations and Responsibilities of Ameresco:**
 - (i) All labor furnished under this Agreement shall be competent to perform the tasks undertaken, all materials and equipment provided shall be new and of appropriate quality and the completed work shall comply in all material respects with the requirements of this Agreement.

- (ii) Ameresco shall maintain the Project site in a reasonably clean condition during the performance of the construction work set forth in Section 1(a).
 - (iii) Ameresco shall regularly clean the Project site of all debris, trash and excess material or equipment.
 - (iv) During the construction work set forth in Section 1(a), Ameresco shall permit Customer and/or any of its representatives to enter upon the Project site to review or inspect the construction work; provided, that in each case, the Customer and/or its representatives coordinate such review or inspection with Ameresco and agree to comply with all applicable federal, state and local safety laws, rules and regulations, including, without limitation, those promulgated by the U.S. Department of Labor Occupational Safety & Health Administration.
 - (v) Ameresco will provide equipment manuals and other appropriate information regarding equipment installed hereunder to Customer at or about the time of Substantial Completion (as defined in Section 4).
- (k) **Environmental Attributes:** Customer agrees that Ameresco shall have the right to all environmental, energy, tax, financial, and electrical-related attributes, rights, credits, deductions, benefits and characteristics associated with or arising out of the transactions contemplated by this Agreement or associated with the ECMs or with the energy, capacity or electrical savings created under this Agreement, howsoever created or recognized. Customer shall provide Ameresco all reasonable assistance in perfecting its rights to such attributes, rights, deductions, credits, benefits and characteristics.

SECTION 2 Ownership of and Security Interest in the ECMs.

Ownership and title to each ECM or portion thereof shall automatically pass to Customer upon Ameresco's receipt of both (i) the executed Substantial Completion Certificate (as defined in Section 4) or the fully executed monthly invoice (including Customer's payment certification) based on the percent complete indicated on the invoice delivered pursuant to Section 4 for such ECM or portion thereof, and (ii) the infeasible payment in full of all of Customer payment obligations to Ameresco pursuant to such Substantial Completion Certificate or invoice for such installed ECM or portion thereof. Prior to satisfaction of the conditions set forth in (i) and (ii) in the previous sentence with respect to an ECM or portion thereof, title to each ECM or portion thereof and shall remain in the name of Ameresco. If, notwithstanding the intent of the Parties, Customer is deemed to hold title to any or all of the ECMs or portion thereof prior to the satisfaction of the conditions set forth in (i) and (ii) above, as security for the payment in full of the Customer's obligations with respect to each such ECM or portion thereof, Customer hereby assigns, transfers and grants to Ameresco a security interest in such ECMs. Customer hereby authorizes Ameresco to file, from time to time, Uniform Commercial Code financing statements in such jurisdictions as may be necessary to perfect and maintain its security interest in such ECMs. If requested by Ameresco, Customer agrees to execute and deliver all further instruments and documents and take all further action that may be necessary in order to create, perfect and protect Ameresco's security interest in the ECMs and hereby irrevocably appoints Ameresco as Customer's attorney-in-fact with full power to sign such instruments and documents. Upon delivery of the Substantial Completion Certificate and satisfaction of clause (ii) above for each ECM, Ameresco's interest in the related ECMs shall be released and terminated, in each case without further action on any Party's part.

SECTION 3 Financial Services.

(a) Energy Performance Contract Financing:

- (i)** Customer hereby represents that Customer intends to enter into a financing arrangement with a third party lender for payment of the Contract Cost. At Customer's request, Ameresco will assist Customer in obtaining financing for the Project, however, Customer shall be responsible for completing and closing any financing and meeting any closing conditions of a third party lender.
- (ii)** Customer agrees and acknowledges that its obligation to make the payments to Ameresco set forth in this Agreement are in no way contingent on the effectiveness of the Lease.

- (b)** The Parties anticipate that the Annual Energy Savings (determined as provided in Attachment E) guaranteed hereunder pursuant to Section 6, shall be not less than the Annual Guaranteed Savings Amount (as defined in Section 6(a)). If, prior to the funding of the financing, any (i) changes in capital costs, (ii) changes in interest rates or (iii) other events, circumstances or developments cause or may have the effect of causing the project to not meet legislative requirements, then the Parties agree to mutually and reasonably attempt to negotiate a reduction or modification of the applicable construction costs by removing components of the ECMs to be otherwise installed hereunder in order to ensure that the legislative requirements are met. If the Parties cannot agree to such reduction or modification, then Customer and Ameresco shall each have the option, exercisable upon written notice to the other Party, to terminate this Agreement. In that regard, Customer acknowledges and agrees that Ameresco has incurred and will incur further costs and expenses relating to the preconstruction services described in Section 1(a)(i). If Customer or Ameresco exercises such option to terminate this Agreement, Customer shall pay Ameresco the audit fee set forth in the IGA in recognition of such preconstruction services.

SECTION 4 Compensation and Monthly Progress Payments.

- (a)** For each month during the construction period of the Project following Customer's issuance to Ameresco of the notice to proceed substantially in the form of Attachment C (the "*Notice to Proceed*"), Customer shall make monthly progress payments to Ameresco based upon the percentage of the Project construction and equipment procurement completed at the end of each month. Ameresco shall be paid the same percentage of the Contract Cost (Attachment F) as such percentage of completion. Following the end of each month, during the construction period of the Project, Ameresco will provide to Customer an invoice together with a list in sufficient detail to reasonably identify construction and equipment procurement during such month. Within thirty (30) days after receipt of such invoice, Customer shall pay or cause to be paid to Ameresco the amount due under such invoice.
- (b)** Within thirty (30) days following each Guarantee Year (as defined in Section 6), Customer shall pay Ameresco the separate amounts provided for in Attachment F, if any, as an annual fee for monitoring, measurement and verification services performed in accordance with Attachment E for purposes of the Guarantee Reconciliation (as defined in Section 6).
- (c)** All amounts not paid to Ameresco on or before the due dates specified in Sections 4(a) and (b) shall accrue interest at the rate of twelve percent (12%) per annum for the number of days following each such due date until such time as such amount due has been paid in full. If Ameresco is prohibited by law from charging interest at the above rate but is instead limited by law to charging a maximum rate which is a lower rate, Ameresco shall charge interest at said lower rate.

- (d) Upon Substantial Completion of the installation of an ECM (or portion thereof, as applicable), Ameresco will deliver to Customer a substantial completion certificate in the form of Attachment H (the “**Substantial Completion Certificate**”). Within five (5) business days after receipt of each Substantial Completion Certificate, Customer shall complete, execute and deliver to Ameresco each such Substantial Completion Certificate. A delivery and acceptance certificate in the form of Attachment D (the “**Final Delivery and Acceptance Certificate**”) shall be executed by Customer and delivered to Ameresco within five (5) business days after the Substantial Completion of the installation of all the ECMs under this Agreement. Customer shall not unreasonably withhold, condition or delay the execution and delivery of any Substantial Completion Certificate or the Final Delivery and Acceptance Certificate. As used in this Agreement, the term “**Substantial Completion**” shall mean that the subject ECM has been installed by Ameresco, and, if such ECM is equipment, such equipment is then operating in a manner such that Customer is deriving beneficial use thereof.

SECTION 5 Term.

The term of this Agreement (the “**Term**”) shall begin on the date above first written and shall end on that date which is exactly eighteen (18) years from the first day of the month following the date of Customer’s execution of the Substantial Completion Certificate for the final ECM, unless this Agreement is terminated prior to such date, as provided for in Section 12, 14 or 32. Anything in this Agreement to the contrary notwithstanding, Customer shall not be relieved of its obligation to pay Ameresco when due all amounts which accrued prior to such termination.

SECTION 6 Guarantee of Energy Savings.

- (a) Ameresco hereby represents and warrants to Customer that the amount of the Annual Energy Savings (determined as provided in Attachment E) shall equal or exceed the “**Annual Guaranteed Savings Amount**” (as specified in Table 6(a) below), for each Guarantee Year (as defined below) of the Term (the “**Guarantee of Energy Savings**”).

Table 6(a)

Year	Guaranteed Savings
Year 1	\$705,511
Year 2	\$719,621
Year 3	\$734,014
Year 4	\$748,694
Year 5	\$763,668
Year 6	\$778,941
Year 7	\$794,520
Year 8	\$810,410
Year 9	\$826,619
Year 10	\$843,151
Year 11	\$795,984
Year 12	\$811,904

For purposes of the Guarantee of Energy Savings, the following assumptions and provisions shall apply:

- (i) Calculation of the Annual Energy Savings, inclusive of energy savings and operational and maintenance cost savings, shall be performed under, and governed by, the methods, formulas, and procedures described in Attachment E.
 - (ii) As it relates to the Annual Energy Savings and the Guarantee of Energy Savings, the term “**Guarantee Year**” shall mean the consecutive twelve (12) month period beginning with the first day of the month following the date of the Substantial Completion Certificate for the final ECM (the “**Anniversary Date**”), and each similar twelve (12) month period thereafter during the Term.
 - (iii) The unit prices, including the escalation thereof, to be used to calculate the Annual Energy Savings for the purposes of the Guarantee of Energy Savings are described in Attachment E.
 - (iv) The Guarantee of Energy Savings herein is subject to Customer maintaining the Standards of Service and Comfort set forth in Attachment I and performing its maintenance, operating and other obligations under this Agreement. If Customer fails to perform, or fails to properly perform, its obligations under this Agreement or interferes with, or permits any person to take any action which, in the reasonable opinion of Ameresco, prevents the achievement of the Annual Guaranteed Savings Amount under the Guarantee of Energy Savings, then Ameresco may equitably adjust the Annual Energy Savings during the period wherein savings were affected to reflect the same. Ameresco’s rights in this Section shall not be in limitation of any other rights it possesses under this Agreement.
- (b) Ameresco will perform and submit to Customer a guarantee reconciliation (“**Guarantee Reconciliation**”) for years as specified in Attachment E upon the later of (i) one hundred twenty (120) days after each Anniversary Date and (ii) sixty (60) days after Customer delivers to Ameresco all utility billing and other data necessary for Ameresco’s completion of the Guarantee Reconciliation. The Guarantee Reconciliation will include a calculation of the cumulative Annual Energy Savings achieved in relation to the cumulative Guaranteed Savings for the period being reconciled.
- (c) Ameresco hereby guarantees that if for any Guarantee Year during the Guarantee Period the Annual Energy Savings achieved by Customer as of any Anniversary Date, as detailed in the Guarantee Reconciliation, is less than the Annual Guaranteed Savings Amount for such Guarantee Year, then Ameresco will either (i) pay to Customer that amount (the “**Savings Shortfall**”) by which the Guaranteed Savings exceeds Annual Energy Savings, such payment to be made within sixty (60) days after the date of the Guarantee Reconciliation or, (ii) if Ameresco desires to rectify the Savings Shortfall through installation of additional ECM(s), Ameresco may provide Customer with a detailed description of such additional ECM(s) and the cost of the same, in which case, in lieu of receiving payment of the Savings Shortfall for the year in question, Customer may elect to request Ameresco to install such additional ECM(s) or modifications, at Ameresco’s sole expense and discretion, including the cost of any required energy auditing. When the Annual Energy Savings in any one Guarantee Year during the Guarantee Period exceed the Annual Guaranteed Savings Amount for such year, and are in addition to those monies due Ameresco for compensation for measurement and verification services, such excess savings shall first be applied to reimburse Ameresco for any payment Ameresco made to Customer to meet Ameresco’s guarantee for previous years in which there was a Savings Shortfall. In no event shall credit for excess savings be used to satisfy performance guarantees in future years.
- (d) In the event of early termination of this Agreement or of the measurement and verification services the Guarantee of Energy Savings will be terminated and the Annual Guaranteed Savings Amount

shall be deemed achieved for the balance of the Guarantee Period. Unless such notice of termination is given at least ninety (90) days prior to the last day of the Guarantee Year then in effect, no Guarantee Reconciliation will be produced for such Guarantee Year.

SECTION 7 Access to Property.

During the Term, Customer shall provide Ameresco, its employees, agents and subcontractors access to the Property for the purpose of fulfilling Ameresco's obligations under this Agreement. Customer shall provide mutually satisfactory rent-free space for the installation and operation of the ECMs and shall protect such equipment in the same careful manner that Customer protects its own property.

SECTION 8 Changes in Work.

- (a) The quantity, quality, dimensions, type or other characteristics of the ECMs may be changed only by written consent of Customer and Ameresco (and, where required by the Lease, the Lessor), by the execution of a change order form in the form of Attachment G (a "**Change Order Form**"). In addition, the Scope of Services may be reduced or expanded including, without limitation, the addition or reduction of other energy efficiency measures and facilities not included within the ECMs scheduled on Attachment B by the execution and delivery of a Change Order Form.
- (b) Should Ameresco encounter subsurface or latent physical conditions at the site which differ materially from those indicated in the project documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, Ameresco shall give written notice to the Customer before any such condition is disturbed or further disturbed. The Customer will promptly investigate and, if it is determined that the conditions materially differ from those which Ameresco should reasonably have been expected to discover or anticipate, the Customer shall approve such changes in the Scope of Services as are necessary. If such differing conditions cause an increase or decrease in Ameresco's cost or time of performance, the parties shall negotiate an equitable adjustment to Ameresco's cost and/or time for performance, as the case may be and a Change Order shall be issued and executed by the Customer to reflect such adjustment(s).

SECTION 9 Warranties.

Ameresco warrants that the Work and all materials and equipment to be installed in the Project will be free from defects in materials and workmanship on an ECM by ECM basis for a period of one (1) year from the date of execution of a Substantial Completion Certificate by Customer for such ECM. Any manufacturers' warranties which exceed this one (1) year period shall be assigned to Customer to the extent allowed by the manufacturer. Except as provided in this Section 9, AMERESCO MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO THE VALUE, DESIGN, AND CONDITION OR FITNESS FOR USE OR PARTICULAR PURPOSE OR MERCHANTABILITY, REGARDING THE WORK, THE EQUIPMENT, ECMS OR ANY SERVICES PROVIDED HEREUNDER.

SECTION 10 Customer Role and Responsibilities.

- (a) **Operations:** Customer shall operate the equipment installed hereunder in accordance with the manufacturers' recommendations and any supplemental procedures supplied to Customer by Ameresco.

- (b) **Maintenance:** Customer shall, at its expense, repair, operate and maintain the Property in good working order during the Term. Following the date of Substantial Completion of an ECM, Customer shall, at its expense, repair and maintain (i) the equipment and all other components which comprise the ECM and (ii) all other equipment which is attached thereto and/or is integral to the proper functioning of the ECM.
- (c) **Malfunctions:** Customer shall notify Ameresco immediately in the event of any malfunction in the operation of the ECMs or the equipment installed hereunder.
- (d) **Protection of ECM:** Except in the case of emergency, Customer shall not remove, move, alter, turn off or otherwise significantly affect the operation of the equipment installed hereunder or the operation of the ECMs, or any individual part thereof, without the prior written approval of Ameresco, which approval shall not be unreasonably withheld. After receiving Ameresco's written approval, Customer shall proceed as instructed. Customer shall act reasonably to protect the ECMs from damage or injury, if, due to an emergency, it is not reasonable to notify Ameresco before acting. Customer agrees to protect and preserve the facility envelope and the operating condition of all ECMs, mechanical systems, and other energy consuming systems located on the Property.
- (e) **Measurement System:** Customer shall not alter, move, modify or otherwise change the measurement and verification system or any component thereof without the prior written consent of Ameresco unless such action is in accordance with operating procedures provided by Ameresco.
- (f) **Adjustment to Baseline:** If, in the reasonable opinion of Ameresco, Customer does not operate, maintain, repair or otherwise protect the ECMs and/or maintain the Property in good repair and good working condition, then Ameresco may equitably adjust the baseline, as referenced in Attachment E, for any increased energy usages at the Property.
- (g) **Changes to Property or Addition of Equipment:** Customer shall notify Ameresco in writing at least thirty (30) days prior to making any change(s) to the Property that could reasonably be expected to have an effect on the energy usage at the Property including, without limitation, changes in (i) the hours, days or time of year that the Property is occupied or operated, (ii) the number of staff, faculty and students at the Property, (iii) the activities conducted at the Property and (iv) the equipment, the facilities, or the size of the Property. Customer shall notify Ameresco regarding increases, over time, in numbers and usage of "plug in" devices such as computers and printers. In the event that Ameresco receives such notification or otherwise determines that such a change has occurred, it will make the appropriate revisions to the Attachments or take such other action as may be provided for hereunder. Ameresco may also make retroactive adjustments where Customer has not provided timely notice and, in such instances, any payments made between the Parties shall be retroactively reconciled to reflect the changed baseline.
- (h) **Energy Usage Data:** If requested in writing by Ameresco, Customer shall provide to Ameresco, on a monthly basis during the Term (and in any event, within thirty (30) days of its receipt of the same), copies of all energy bills, energy usage data, and any and all other such documentation maintained by Customer, as requested by Ameresco, which is necessary for Ameresco to determine and satisfy all of its obligations under this Agreement.
- (i) **Insurance and Risk of Loss or Damage:**
Without limiting any of its obligations or liabilities under this Agreement, Customer shall, at its expense, provide and maintain at all times during the Term, sufficient insurance against the loss or theft of or damage to the ECMs, the related equipment and all components installed hereunder, for the full replacement value thereof. Customer's insurance shall be primary for any and all property damage during the performance of the work hereunder.

Customer assumes all risk of loss of or damage to the ECMs from any cause whatsoever except to the extent that such loss or damage was caused by the negligence of Ameresco. Upon damage to any item of the equipment installed hereunder or the ECMs, Customer shall promptly notify Ameresco and immediately place the same in good repair with the proceeds of any insurance received applied to the cost of such repair. If Customer determines that any item of the ECMs are lost, stolen, confiscated, destroyed or damaged beyond repair, Customer shall replace the same with like equipment in good repair in a timely fashion.

If at any time after the date of the Final Delivery and Acceptance Certificate and after Customer's complete payment to Ameresco in accordance with Section 4(a), as such amount may be modified from time to time in accordance with this Agreement, any fire, flood, other casualty, or condemnation renders a majority of the Property incapable of being occupied and renders the ECMs or the equipment installed hereunder inoperable and, in the case of a casualty, the affected portion of such ECMs or equipment is not reconstructed or restored within one hundred twenty (120) days from the date of such casualty, Ameresco and/or Customer may terminate this Agreement by delivery of a written notice to the other Party. Upon such termination, Customer shall pay Ameresco any amounts, or pro-rata portions thereof, accrued under Sections 4(b), (c), (d) and (e) and Attachment F.

- (j) **Telephone and Internet:** Customer shall be responsible for installing and maintaining telephone lines and all associated costs, including internet/Ethernet charges, for the energy management system's telephone and communication lines. Ameresco may use Customer's LAN for the purposes of the energy management system.
- (k) **Protection:** Customer shall at all times act reasonably to protect the ECMs from damage, theft or injury to the same extent and in the same manner in which it protects its other property.
- (l) **Alteration:** Customer shall not move, alter or change the ECMs in any way that causes a reduction in the level of efficiency or savings generated by any ECM or the equipment installed hereunder without obtaining Ameresco's prior written approval.
- (m) **Storage:** Customer shall provide reasonable rent free space for Ameresco and/or its subcontractors, to mobilize and store their supplies, tools and equipment during installation of the ECMs or other activities by Ameresco within the Property pursuant to this Agreement for which such storage may be required. Such storage space shall be provided with locking capacity reasonably acceptable to Ameresco. Only Ameresco and/or its subcontractors and Customer's assigned personnel shall have access to the storage.
- (n) **Fuel:** Customer shall procure and pay for all energy, fuel and other utilities for the operation of the Property
- (o) **Cooperation during Construction:** Customer acknowledges and agrees that completion of the Scope of Services is dependent on Customer's cooperation in relocating personnel, furniture and equipment or taking such other actions as may be necessary by Customer in order to prepare space for work by Ameresco. Customer agrees to take all such actions as is reasonably requested by Ameresco in a timely manner in order to allow the Scope of Work to be accomplished hereunder.

SECTION 11 Defaults by Customer and Ameresco.

- (a) Customer shall be in default under this Agreement upon the occurrence of any of the following:
 - (i) Customer fails to pay when due any amount to be paid under this Agreement and such failure continues for a period of five (5) business days after notice of overdue payment is

delivered by Ameresco to Customer; or

- (ii) any representation or warranty made by Customer in this Agreement or in any writing delivered by Customer pursuant hereto proves at any time to have been false, misleading or erroneous in any material respect as of the time when made; or
- (iii) Customer fails to perform or meet any of its required duties or obligations under this Agreement and fails to cure such failure and the effects of such failure within thirty (30) days of receipt of written notice of default, unless such failures and effects cannot be completely cured within thirty (30) days after said written notice, in which case a default shall exist only if Customer does not commence and diligently pursue to cure such failure and effects as soon as possible; or
- (iv) Customer enters or is placed in receivership, or makes an assignment for the benefit of creditors whether voluntary or involuntary, or a petition is filed by or against Customer under any bankruptcy, insolvency or similar law and such petition is not dismissed within sixty (60) days.

(b) Ameresco shall be in default under this Agreement upon the occurrence of either of the following:

- (i) Ameresco fails to perform or meet any of its required duties or obligations under this Agreement and fails to cure such failure or effects of such failure within thirty (30) days of receipt of written notice of default, unless such failure or effects of such failure cannot be completely cured within thirty (30) days after said written notice, in which case a default shall exist only if Ameresco does not commence and diligently pursue to cure such failure as soon as possible; or
- (ii) Ameresco enters into or is placed into receivership, or makes an assignment for the benefit of creditors whether voluntary or involuntary, or a petition is filed by or against Ameresco under any bankruptcy, insolvency or similar law and such petition is not dismissed within sixty (60) days.

SECTION 12 Remedies for Default.

(a) In the event Customer defaults under this Agreement, Ameresco may:

- (i) bring actions for any remedies available at law or in equity or other appropriate proceedings for the recovery of direct damages, (including amounts past due), and/or bring an action in equity for specific performance; or
- (ii) require Customer to pay (and Customer agrees that is shall pay) all out-of-pocket costs and expenses incurred by Ameresco as a result (directly or indirectly) of the event of default and/or Ameresco's exercise of its remedies under this Agreement, including, without limitation, any attorneys' fees and expenses and all costs related to the repossession, safekeeping, storage, repair, reconditioning or disposition of any ECMs; or
- (iii) without recourse to legal process, Ameresco may terminate this Agreement by delivery of written notice of termination.

(b) In the event Ameresco defaults under this Agreement, Customer may terminate this Agreement and bring an action in law for direct damages.

SECTION 13 **Dispute Resolution**

Claims, disputes, or other matters in controversy (“*Claims*”) arising out of or related to the Agreement or the Project shall be subject to mediation as a condition precedent to any and all remedies at law or in equity. If during the term of this Agreement a Claim arises concerning the Project or this Agreement, a representative from management of both Parties shall meet in person or by phone within ten (10) business days after either Party gives the other Party written notice of the Claim (the “Dispute Notice”). The Dispute Notice shall set forth in reasonable detail the aggrieved party’s position and its proposal for resolution of the Claim. If the Claim is not resolved within 30 calendar days after the first meeting of the Parties, then the Parties shall endeavor to resolve the Claim by mediation. A request for mediation shall be made in writing and delivered to the other Party. The request may be made concurrently with the filing of any and all remedies at law or in equity but, in such event, mediation shall proceed in advance of any proceedings filed in a judicial forum, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period of time by agreement of the parties or court order.

The Parties shall share the fees of the mediation equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

If the parties do not resolve the Claim through informal dispute resolution or mediation, either Party is free to pursue any other available remedy in law or at equity

SECTION 14 **Termination.**

At any time after the date of the Final Delivery and Acceptance Certificate, Customer may terminate this Agreement upon thirty (30) days prior written notice to Ameresco, provided that Customer has paid to Ameresco all amounts due, subject to Section 32, as set forth in Section 4 (including, without limitation, pro-rata portions thereof accrued under Sections 4(b), (c), (d) and (e)) and on Attachment F (other than amounts due for future performance by Ameresco).

SECTION 15 **Insurance and Bonds.**

Ameresco shall provide and maintain, at its expense, the following insurance coverage where reasonable market availability for such insurance exists:

- (a)** Workers’ Compensation and Employer’s Liability Insurance at the level required by applicable State law.
- (b)** Commercial General Liability Insurance, including contractual liability: Bodily Injury per person, \$1 million, Bodily Injury per occurrence, \$1 million; Property Damage per occurrence, \$1 million; Personal Injury per occurrence, \$1 million.
- (c)** Comprehensive Automobile Liability Insurance, including owned, non-owned and hired automotive equipment: Bodily Injury per person, \$1 million; Bodily Injury per occurrence, \$1 million; Property Damage per occurrence, \$1 million.
- (d)** Ameresco shall, after receipt of the Notice to Proceed and prior to the commencement of construction, deliver to Customer payment and performance bonds in a sum equal to the Contract Cost (the “*Payment and Performance Bonds*”) with sureties licensed by the Commonwealth of Virginia and reasonably satisfactory to Customer. Such Payment and Performance Bonds shall be in form and substance reasonably satisfactory to Customer and shall be conditioned upon the faithful performance by Ameresco, for the implementation of the ECMs. The Payment and

Performance Bonds shall only apply to the installation portion of this Agreement and shall not apply in any way to energy savings guarantees, payments or maintenance provisions, except that the performance bond shall guarantee, on an ECM by ECM basis, that the installation will be free of defective materials and workmanship for a period of twelve (12) months following execution and delivery of a Substantial Completion Certificate for such ECM.

- (e) Ameresco, shall, within thirty (30) days of the commencement of the first Guarantee Year and annually thereafter until the end of the M&V Term (as defined in Attachment E), deliver to Customer an annually renewable performance guarantee bond as defined in Virginia Code §11-34.2 in the amount of the Annual Guaranteed Savings Amount for the respective Guarantee Year.
- (f) Customer shall provide and maintain insurance as described in Section 10(i).
- (g) Ameresco shall deliver to Customer a certificate of insurance naming Customer as an additional insured party, evidencing the coverages provided under subsections (b) and (c) above, and providing Customer with at least thirty (30) days notice of cancellation.

SECTION 16 Indemnification and Limitation of Liability.

- (a) Anything in this Agreement to the contrary notwithstanding, neither Party nor its respective officers, directors, agents, employees, parent, subsidiaries or affiliates or their officers, directors, agents or employees shall be liable, irrespective of whether such claim of liability is based upon breach of warranty, tort, (including negligence, whether of any of the Parties to this Agreement or others), strict liability, contract, operation of law or otherwise, to any other Party, or its parent, subsidiaries, affiliates, officers, directors, agents, employees, successors or assigns, or their respective insureds, for incidental, indirect, punitive or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection therewith including, without limitation, claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), and increased expense of, reduction in or loss of power generation production or equipment used therefor.
- (b) Ameresco's liability in contract under this Agreement shall in all cases be limited to unmitigatable direct damages with respect to claims arising out of the performance of Ameresco's obligations under this Agreement and shall not in total exceed the sum of the payments received by Ameresco under Section 4.
- (c) Ameresco agrees to defend, indemnify and hold Customer harmless from and against any and all claims for damages arising by reason of bodily injury, death or damage to property caused by Ameresco's negligence (or the negligence of any sub-contractor hired by Ameresco) or willful misconduct. To the extent that any such damages are covered by the Commercial General Liability Insurance policy that is maintained by Ameresco, Ameresco shall not be required to indemnify Customer in excess of the actual proceeds of insurance under the policies required to be maintained by Ameresco pursuant to the requirements of this Agreement. Ameresco, however, in no event shall be obligated to indemnify Customer to the extent that such injury or damage is caused by the negligence of Customer or any entity for which Customer is legally responsible.
- (d) Customer agrees to defend, indemnify and hold harmless Ameresco, its officers, agents and employees, from and against any and all claims, liabilities, actions, demands, judgments, losses, costs, expenses (including reasonable attorneys' fees), suits, actions or damages arising by reason of bodily injury, death or damage to property sustained by any person or entity to the extent caused by or sustained as a result of the negligence or willful misconduct of Customer, its officers, agents, subcontractors or employees. Customer, however, in no event shall be obligated to defend Ameresco to the extent that such injury or damage is caused by the negligence of Ameresco or any

entity for which Ameresco is legally responsible.

SECTION 17 Agreement Interpretation and Performance.

Each Party hereto has had ample opportunity to review and comment on this Agreement. This Agreement shall be read and interpreted according to its plain meaning and an ambiguity shall not be construed against either Party. The judicial rule of construction that a document should be more strictly construed against the draftsman thereof shall not apply to any provision of this Agreement. If any provision (or part thereof) of this Agreement shall be deemed invalid or unenforceable, the remainder of the provisions of this Agreement shall continue in full force and effect to the maximum extent consistent with the intent of the Parties

The interpretation and performance of this Agreement, and the interpretation and enforcement of the rights of the Parties hereunder, shall be construed in accordance with and governed by the laws of the Commonwealth of Virginia.

SECTION 18 Privileged and Proprietary Information.

Ameresco's systems, means, cost, and methodologies of evaluating, implementing, accomplishing and determining energy savings and the terms of this Agreement for the Project shall be considered privileged and proprietary information. Customer shall use the same level of effort to protect and safeguard such information as it employs to safeguard its own confidential information. Customer shall not disclose such proprietary information without the express written consent of an officer of Ameresco unless required to do so by statute or regulation. When any request for disclosure of such information is made under any applicable freedom of information act (the "FOIA"), Customer shall provide prompt verbal and written notice to Ameresco such that Ameresco will have the opportunity to timely object under the FOIA should it desire to object to such disclosure of that information in whole or in part. In the event that Customer is required to make a filing with any agency or other governmental body, which includes such information, Customer shall notify Ameresco and cooperate with Ameresco in order to seek confidential treatment of such information included within any such filing or, if all such information cannot be protected from disclosure, to request that Customer be permitted to redact portions of such information, as Ameresco may designate, from that portion of said filing which is to be made available to the public.

SECTION 19 Severability.

Any term or provision of this Agreement that is declared invalid by any court of competent jurisdiction, shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement.

SECTION 20 Assignments and Subcontracting.

- (a) Ameresco may elect to use subcontractors and/or subconsultants in meeting its obligations hereunder.
- (b) Customer shall not assign, transfer, or otherwise dispose of, in whole or in part, this Agreement, the ECMs, or any interest therein, or sublet or lend the ECMs or permit the ECMs to be used by anyone other than Customer and Customer's employees without the prior express written consent of Ameresco provided that Customer may, without obtaining the consent of Ameresco, assign its rights in the ECMs to any financial institution, lender or investor in connection with a leasing or financing arrangement for funding of the Contract Cost.
- (c) Ameresco shall not assign this Agreement, in whole or in part, to any other party without first obtaining the written consent of Customer, which consent shall not be unreasonably withheld, conditioned or delayed. The foregoing notwithstanding, Ameresco may assign, without the prior

written consent of Customer, its (i) rights and obligations under this Agreement, in whole or in part, to any affiliated or associated company of Ameresco and (ii) rights for payments under this Agreement to any financial institution, lender or investor in connection with a leasing or financing arrangement for the ECMs. Ameresco will notify Customer ten (10) business days prior to any such assignment and Customer agrees to acknowledge receipt of such notice in writing within three (3) business days after such notice.

SECTION 21 Waiver.

The failure of either Party to require compliance with any provision of this Agreement shall not affect that Party's right to later enforce the same. It is agreed that the waiver by either Party of performance of any term of this Agreement or of any breach thereof will not be held or deemed to be a waiver by that Party of any subsequent failure to perform the same or any other term or condition of this Agreement or any breach thereof.

SECTION 22 Force Majeure.

- (a) If either Party shall be unable to carry out any part of its obligations under this Agreement (except Customer's obligation to make payments when due) due to causes beyond its control ("**Force Majeure**"), including but not limited to an act of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts of terrorism, orders or restraints of any kind of the government of the United States or any state or any of their departments agencies or officials or any other civil governmental, military or judicial authority, war, blockage, insurrection, riot, sudden action of the elements, fire, explosion, flood, earthquake, storms, drought, landslide, or explosion or nuclear emergency, this Agreement shall remain in effect but the affected Party's obligations shall be suspended for a period equal to the disabling circumstances, provided that:
- (i) the non-performing Party gives the other Party prompt written notice describing the particulars of the Force Majeure, including but not limited to the nature of the occurrence and its expected duration, and continues to furnish timely regular reports with respect thereto during the period of Force Majeure;
 - (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
 - (iii) no obligations of either Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;
 - (iv) the non-performing Party uses reasonable efforts to remedy its inability to perform; and
 - (v) the Term, at Ameresco's option, shall be extended for a period equal to the number of days that the Force Majeure prevented the non-performing Party from performing.
- (b) Any decision by Customer to close or change the use of the facilities or ECMs at the Property shall not constitute a Force Majeure excusing Customer's performance under this Agreement.

SECTION 23 Contract Documents.

- (a) Upon execution of this Agreement by both Parties, this Agreement and its Attachments shall constitute the entire Agreement between the Parties relating to the subject matter hereof, and shall supersede all proposals, previous agreements, discussions, correspondences, and all other communications, whether oral or written, between the Parties relating to the subject matter of this Agreement.

- (b) Section headings used herein are for the convenience of reference only and are not to be construed as a part of this Agreement.
- (c) This Agreement may not be modified or amended except in writing signed by the Parties.

SECTION 24 Notices.

All notices, requests, demands, claims and other communications hereunder shall be in writing. Any notice, request, demand, claim or other communication hereunder (other than regularly scheduled payments) shall be deemed properly given or made upon receipt if delivered in person or sent by electronic facsimile with regular mail follow-up, or two business days after being deposited in the mail if sent by registered or certified mail, return receipt requested, postage prepaid, or the next business day if sent by overnight delivery service, in each case, addressed as follows:

ALBEMARLE COUNTY SCHOOL BOARD
401 McIntire Road
Charlottesville, VA 22902
Attention: [TBD]

AMERESCO, INC.
111 Speen Street, Suite 410
Framingham, Massachusetts 01701
Attention: Michael Daigneault
Vice President
Facsimile: 508.661.2201
With a copy to: General Counsel

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

SECTION 25 Records.

To assist Ameresco in its performance of this Agreement, Customer shall (to the extent it has not already done so) furnish (or cause its energy suppliers and transporters to furnish) to Ameresco, upon its request, accurate and complete data (kept by Customer or Customer's energy suppliers and transporters in the regular course of their respective businesses) concerning energy usage for the existing facilities at the Property. Such records shall include, without limitation, the following data for the most current thirty-six (36) month period: (i) utility records; (ii) occupancy information; (iii) descriptions of any changes in building structure or heating, cooling or other systems or energy requirements; (iv) descriptions of all energy consuming or saving equipment used on Property; and (v) descriptions of all energy management procedures presently utilized. If requested by Ameresco, Customer shall also provide any prior energy analyses of the Property to the extent reasonably available.

SECTION 26 Representations and Warranties.

Each Party warrants and represents to the other that:

- (a) it has all requisite power, authority, licenses, permits and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
- (b) its execution, delivery and performance of this Agreement have been duly authorized by, and are in accordance with, as to Ameresco, its organic instruments and, as to Customer, by all requisite municipal, school board or other action and are not in breach of any applicable law, code or regulation;
- (c) this Agreement has been duly executed and delivered by the signatories so authorized, and constitutes its valid and binding obligation;

- (d) its execution, delivery and performance of this Agreement shall not result in a breach or violation of, or constitute a default under, any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected;
- (e) it has not received any notice of, nor to the best of its knowledge there is no, pending or threatened violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially adversely affect its ability to perform its obligations hereunder; and
- (f) the persons executing this Agreement are duly authorized to do so.
- (g) Customer represents and warrants to Ameresco that Customer has obtained all necessary governmental, legal, administrative and any other approval necessary for it to enter into this Agreement.

SECTION 27 Independent Contractor.

Nothing in this Agreement shall be construed as reserving to Customer any right to exercise any control over or to direct in any respect the conduct or management of business or operations of Ameresco. The entire control or direction of such business and operations shall be in and shall remain in Ameresco, subject only to Ameresco's performance of its obligations under this Agreement. Neither Ameresco nor any person performing any duties or engaged in any work on the Property on behalf of Ameresco shall be deemed an employee or agent of Customer. Nothing in this Section shall be deemed to be a waiver of Customer of the right to use its property. Customer and Ameresco are independent of one another and shall have no other relationship relating to or arising out of this Agreement. Neither Party shall have or hold itself out as having the right or authority to bind or create liability for the other by its intentional or negligent act or omission, or to make any contract or otherwise assume any obligation or responsibility in the name of or on behalf of the other Party.

SECTION 28 Additional Representations and Warranties of Customer.

Customer hereby warrants and represents to Ameresco that:

- (a) Customer intends to continue to use the Property in a manner reasonably similar to its present use;
- (b) Customer does not intend to make any changes to the electrical and thermal consumption characteristics of the Property from those which existed during the base period except as may have been disclosed in writing by Customer to Ameresco prior to the date of this Agreement;
- (c) Customer has provided Ameresco with all records heretofore requested by Ameresco (and, in that regard, Ameresco acknowledges that it has received base period data from Customer which appear to be complete as of the date of this Agreement) and that the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Agreement shall be, true and accurate in all material respects except as may be disclosed by Customer in writing;
- (d) Customer has not entered into any contracts or agreements for the Property with persons or entities other than Ameresco regarding the provision of the services referenced herein.
- (e) Since the date of the IGA, there has been no change, event, circumstance or development that has or could reasonably be expected to have a material adverse effect on (i) the operation or condition of the Property, (ii) the energy usage at the Property, or (iii) the ability of Customer to perform its obligations hereunder.

SECTION 29 Absence of Fraud or Collusion.

Ameresco hereby certifies, by its execution of this Agreement, that no official or employee of Customer has any pecuniary interest in this Agreement or in the expected profits to arise hereunder, and that this Agreement is made in good faith without fraud or collusion with any other person involved in the bidding process.

SECTION 30 Negligent/Wrongful Acts.

It is understood and agreed that neither Party to this Agreement shall be liable for any negligent or wrongful acts, either of commission or omission, chargeable to the other, unless such liability is imposed by law, and that this Agreement shall not be construed as seeking to either enlarge or diminish any obligation or duty owed by one Party against the other or against third parties.

SECTION 31 Further Documents and Events.

The Parties shall execute and deliver all instruments and documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement. Ameresco agrees to execute and deliver all documents reasonably required to release any lien held by Ameresco or its assignees upon the termination of this Agreement and payment of all amounts required to be paid by Customer to Ameresco pursuant to this Agreement. Customer agrees to execute and deliver all documents which may be required by an entity which provides funds for any financing contemplated herein and to cooperate with Ameresco in obtaining such funds. Customer agrees to execute and deliver all instruments and documents which may be required to obtain all licenses, permits and governmental approvals required by Ameresco for installation and operation of the ECMs . Ameresco's obligations hereunder are subject to obtaining all such required licenses, permits and governmental approvals.

SECTION 32 Non-Appropriation

(a) Customer shall take all necessary and timely action during the Term to obtain funds and maintain appropriations sufficient to satisfy its obligations under this Agreement (the “*Obligations*”) including, without limitation, providing for the Obligations in each required budget submitted to obtain applicable appropriations, using its best efforts to obtain approval of such budget, and exhausting all available reviews and appeals in order to effectuate an appropriation sufficient to satisfy the Obligations.

(b) Ameresco and Customer agree that upon the occurrence of all the events described in subparagraphs (i) through (iv) below (collectively, the “*Non-Appropriation Occurrence*”) that Customer may terminate this Agreement in accordance with this Section 32 (subject to the limitations and effect as set forth in (c) below).

(i) An authorized governmental action, or non-action, of the Board of Education of Customer, including a Board of Education to be constituted in the future, shall have resulted in the lack of an appropriation of funds sufficient to satisfy the Obligations and Customer shall have provided Ameresco a true, correct and complete copy of a document describing such action.

(ii) Customer shall have exhausted all available funds and have no funds available from any other source to satisfy the Obligations.

(iii) Customer shall have provided written notice to Ameresco of the governmental action resulting in the lack of appropriations of funds (as described in subsection (i)) within twenty (20) days of Customer's knowledge thereof.

- (iv) Customer shall have fully performed its obligations described in subsection (a) above.
- (c) If this Agreement is terminated following a Non-Appropriation Occurrence, Customer and Ameresco agree that during the Term (as would otherwise have been in effect): (i) Customer shall not purchase, lease, rent, engage the services of an agent or independent contractor or otherwise pay for the use of a system or equipment performing functions or services similar to those performed by the ECMs installed pursuant to this Agreement and (ii) if Customer receives an appropriation of funds which permits Customer to purchase, lease, rent, engage the services of an agency or independent contractor, or otherwise pay for the use of a system or equipment performing functions or services similar to those performed by the ECMs installed pursuant to this Agreement, upon receipt of such funds such other obligations shall immediately be rescinded and Customer shall satisfy the Obligations then owed to Ameresco prior to Customer’s appropriation of such funds for the purpose of paying any other payee(s).
- (d) Customer shall provide notice to Ameresco of its election to terminate no later than thirty (30) days in advance of the end of the then current Guarantee Year (determined as provided in Section 6). The termination shall become effective on the last day of said Guarantee Year. The termination of this Agreement by Customer shall release Ameresco from its obligation to provide maintenance, monitoring and training services after the effective date of termination, as well as its obligation to provide the Guarantee of Energy Savings after the termination date; provided, however, that Customer is responsible for payment for maintenance, monitoring and training services performed in accordance with the terms of this Agreement prior to the termination date and Ameresco shall remain responsible for any savings guarantee payments due Customer pursuant to Section 6(c), prior to the date of termination.

SECTION 33 Third Party Beneficiaries.

Except as may be specifically provided for in this Agreement, the Parties hereto do not intend to create any rights for, or grant any remedies to, any third party beneficiary of this Agreement.

SECTION 34 Notifications of Governmental Action - Occupational Safety and Health.

The Parties agree to notify each other as promptly as is reasonably possible upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act or any other provision of federal, state or local law rule or regulation relating in any way to the undertakings of either Party under this Agreement.

SECTION 35 References.

Unless otherwise stated all references to a particular “*Attachment*” or to “*Attachments*” are to the referenced Attachment or Attachments which are attached to this Agreement and all such referenced Attachments are incorporated by reference within this Agreement. All references herein to a Section or subsection shall refer to a Section or a subsection, as the case may be, of this Agreement unless this Agreement specifically provides otherwise.

* * * * *

IN WITNESS WHEREOF, the duly authorized officers or representatives of the Parties have set their hand on the date first written above with the intent to be legally bound.

[CUSTOMER]

AMERESCO, INC.

Michael J. Daigneault
Vice President

[Signature page to Energy Services Agreement]

**ATTACHMENT A
PROPERTY DESCRIPTION**

The following buildings, facilities, and areas, which are owned and operated by Customer, are included in the Scope of Services detailed in Attachment B:

Facility	Address
Agnor-Hurt Elementary School	3201 Berkmar Dr., Charlottesville, VA 22901
Albemarle High School	2775 Hydraulic Rd., Charlottesville, VA 22901
Baker-Butler Elementary School	2740 Proffit Road, Charlottesville, VA 22911
Broadus Wood Elementary School	185 Buck Mountain Rd., Charlottesville, VA 22936
Brownsville Elementary School	5870 Rockfish Gap Tpk, Crozet, VA 22932
Burley Middle School	901 Rose Hill Dr., Charlottesville, VA 22903
Cale Elementary School	1757 Avon St. Ext., Charlottesville, VA 22902
Crozet Elementary School	1407 Crozet Ave., Crozet, VA 22932
Greer Elementary School	190 Lambs Lane, Charlottesville, VA 22901
Henley Middle School	5880 Rockfish Gap Tpk, Cro., VA 22932
Hollymead Elementary School	2775 Powell Creek Dr., Charlottesville, VA 22911
Jack Jouett Middle School	210 Lambs Lane, Charlottesville, VA 22901
Meriwether Lewis Elementary School	1610 Owensville Rd., Charlottesville, VA 22901
Monticello High	1400 Independence Way, Charlottesville, VA 22902
Murray Elementary School	3251 Morgantown Rd., Ivy, VA 22945
Murray High School	1200 Forest St., Charlottesville, VA 22903
Scottsville Elementary School	7868 Scottsville Rd., Scottsville, VA 24590
Stone-Robinson Elementary School	958 N. Milton Rd., Charlottesville, VA 22901
Stony Point Elementary School	3893 Stony Point Rd., Keswick, VA 22947
Sutherland Middle School	2801 Powell Creek Dr., Charlottesville, VA 22911
Walton Middle School	4217 Red Hill Rd., Charlottesville, VA 22903
Western Albemarle High School	5941 Rockfish Gap Tpk., Crozet, VA 22932

ATTACHMENT B SCOPE OF SERVICES

This Attachment B provides a description of existing equipment and the ECMs and related equipment to be installed by Ameresco at the facilities scheduled on Attachment A.

This Attachment B includes by reference the IGA dated as of August 4, 2017 for the Property and submitted under separate cover.

The following table summarizes the ECMs recommended and described in the IGA that are incorporated into the Scope of Services:

Facility	Interior Lighting - Classrooms	Interior Lighting - Gyms & Cafes	Interior Lighting - all other spaces	Exterior Lighting	Lighting Controls - Classrooms	Lighting Controls - Gyms and Cafes	Lighting Controls - all other spaces	Water Conservation	Vending Machine Controls
ECM #	1a	1b	1c	2	3a	3b	3c	4	5
Agnor-Hurt Elementary School	X	X	X	X	X	X	X	X	X
Albemarle High School	X	X	X	X	X	X	X	X	X
Baker-Butler Elementary School	X	X	X	X	X	X	X	X	X
Broadus Wood Elementary School	X	X	X	X	X	X	X		X
Brownsville Elementary School	X	X	X	X	X	X	X	X	X
Burley Middle School	X	X	X	X	X		X	X	X
Cale Elementary School	X	X	X	X	X	X	X	X	X
Crozet Elementary School	X	X	X	X	X		X	X	X
Greer Elementary School	X	X	X	X	X		X	X	X
Henley Middle School	X	X	X	X	X	X	X	X	X
Hollymead Elementary School	X	X	X	X	X	X	X	X	X
Jack Jouett Middle School	X	X	X	X	X		X	X	X
Meriwether Lewis Elementary School	X	X	X	X	X		X	X	X
Monticello High	X	X	X	X	X		X	X	X
Murray Elementary School	X	X	X	X	X	X	X		X
Murray High School	X	X	X	X	X	X	X	X	X
Scottsville Elementary School	X	X	X	X	X		X		
Stone-Robinson Elementary School	X	X	X	X	X	X	X	X	X
Stony Point Elementary School	X	X	X	X	X	X	X		X
Sutherland Middle School	X	X	X	X	X	X	X	X	X
Walton Middle School	X	X	X	X	X	X	X		X
Western Albemarle High School	X	X	X	X	X		X	X	X

ATTACHMENT C

NOTICE TO PROCEED

[PLACE ON CUSTOMER LETTERHEAD]

Mr. Michael Daigneault
Vice President
Ameresco, Inc.
111 Speen Street
Framingham, MA 01701

SUBJECT: NOTICE TO PROCEED

Dear Mr. Daigneault:

In accordance with Section 1(a) of the Energy Performance Contract (the “*Contract*”) dated as of _____, 2017, by and between the Albemarle County School Board (the “*Customer*”) and Ameresco, Inc. (“*Ameresco*”), Customer hereby submits to Ameresco this Notice to Proceed in relation to the Scope of Services as defined in the Contract.

Sincerely,

By: _____
Duly Authorized Signatory

Name: _____

Title: _____

Date: _____

ATTACHMENT D

FINAL DELIVERY AND ACCEPTANCE CERTIFICATE

[PLACE ON CUSTOMER LETTERHEAD]

[DATE]

Michael Daigneault
Vice President
Ameresco, Inc.
111 Speen Street
Framingham, MA 01701

Re: Energy Performance Contract (the “*Contract*” between Ameresco, Inc. and Albemarle County School Board, Virginia, dated _____, 2017.

Dear Mr. Daigneault:

The undersigned hereby acknowledges its receipt and acceptance of all ECMs described in Attachment B of the contract referred to above that are installed and in good working condition.

Sincerely,

By: _____
Duly Authorized Signatory
Name: _____
Title: _____
Date accepted: _____

ATTACHMENT E
DETERMINATION OF ENERGY SAVINGS

Section F of the IGA is incorporated herein by reference.

Ameresco has based its verification pricing on a short-term plan with certain instantaneous measurements performed at commissioning to ensure audit savings projections are met, and on-going monitoring for the first 3 years after the Anniversary Date (the “*M&V Term*”) to assist Customer in operating at peak efficiency. Annual inspections, periodic monitoring, and Guarantee Reconciliations shall be performed during the M&V Term. After that time, no inspections, periodic monitoring services, or reconciliation reports will be provided, unless services are otherwise extended by the County, and the Annual Savings shall be deemed verified for the remainder of the M&V Term.

ATTACHMENT F

CONTRACT COST AND ANNUAL SERVICES

(a) **Contract Cost:** Customer shall pay to Ameresco, an amount equal to Seven Million Five Hundred Twenty Three Thousand Sixty Two Dollars and No Cents (\$7,523,062.00) (the “*Contract Cost*”) in accordance with the terms described in Section 4 of this Agreement. The Contract Cost includes the preconstruction services described in Section 1(a)(i) of this Agreement.

(b) **Operations and/or Maintenance:** There are no maintenance services provided by Ameresco under this Agreement.

(c) **Measurement and Verification:** The annual fees for measurement and verification services provided under this Agreement are set forth below, payable as provided in Section 4.4(b), and are in addition to the above Contract Cost.

<u>Year</u>	<u>M&V Fee</u>
1	\$32,789
2	\$33,772
3	\$34,785

ATTACHMENT G

CHANGE ORDER FORM

(Request & Agreement for change in Plans and/or Specifications and/or Contract)

Change Request No.: _____

Customer: _____

Department: _____

Project No.: _____ Contract No.: _____ Site: _____

Title: _____

I. REQUEST

Date: _____

(a) Requested by: _____

(b) Description of change: _____

II. AMERESCO'S AGREEMENT

For all costs involved in this change including extensions of time herein requested Ameresco proposes to perform the work described in accordance with the provisions of the subject Agreement and certifies that the attached cost data is accurate, complete and current, and mathematically correct.

Payment shall be made on the basis of:

(a) Predetermined lump sum total of: (add) (deduct)
\$ _____

(b) Lump sum "not-to-exceed": (add) (deduct)
\$ _____

(Max. price based on contract or negotiated unit prices)

(c) Time & Material Basis "not-to-exceed": (add) (deduct)
\$ _____

(Computed in accordance with provisions of the Contract)

Place an "X" beside selected proposal method and strike out either (add) or (deduct) whichever does not apply. If necessary, attach detailed estimates and breakdown for above in accordance with change order instruction. A claim for work performed under protest shall be submitted per (c) above.

An extension of contract time of _____ calendar days to _____ is requested.

Ameresco: _____ by: _____

Date: _____
(name and title)

(signature)

CUSTOMER APPROVAL:

Date: _____

\$ _____
Customer _____

Contract Award

Previous Additions

\$ _____

\$ _____

By: _____

\$ _____

Title: _____

\$ _____

\$ _____

Previous Deductions

Net Total

This Change

Total

ATTACHMENT H

CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT NAME & ADDRESS:

PROJECT NO.: _____
CONTRACT DATE: _____
DESCRIPTION: _____

The installation of [list each ECM being accepted with this certificate] under the Agreement has/have been reviewed and found to be substantially complete. The date of Substantial Completion of the forgoing ECM(s) is hereby established as:

SUBSTANTIAL COMPLETION DATE: _____

The date of Substantial Completion of an ECM is the date certified by Customer when such ECM is sufficiently complete in accordance with the Agreement so that Customer derives beneficial use thereof.

The Substantial Completion date set forth above is the date of commencement of applicable warranties for such ECM(s), as required by the Agreement. A list of items to be completed or corrected is identified below as punchlist items. The failure to include any items on such punchlist does not alter the responsibility of Ameresco to complete all work in accordance with the Agreement.

CONTRACTOR: Ameresco, Inc., 5200 77 Center Blvd., Suite 300, Charlotte, NC 28127

AUTHORIZED SIGNATURE: _____ **DATE:** _____
NAME: _____
(type or print)

CUSTOMER:

AUTHORIZED SIGNATURE: _____ **DATE:** _____
NAME: _____
(type or print)

PUNCHLIST ITEMS

Attach additional page(s) as necessary. Number of pages attached ____.

**ATTACHMENT I
STANDARDS OF SERVICE & COMFORT**

Space Temperatures

In general, the space temperature will be maintained as follows:

Heating Season - (Sept. - May)

Space	Maximum average temperature
Occupied	70 deg F
Unoccupied	55 deg F
Storage area requiring heat	40 deg F, except where existing use does not permit
Areas not requiring heat	Minimum temperature required to prevent damage to the facility.

Cooling Season (May - Sept.)

Space	Minimum average temperature
Occupied	75 deg F
Unoccupied	80 deg F
Storage area requiring heat	N/A
Areas not requiring heat	N/A

ATTACHMENT J

TEST INSTALLATION ACCEPTANCE LETTER

[PLACE ON CUSTOMER LETTERHEAD]

Date _____

Mr. Garrett Raper
Manager - Project Development
Ameresco, Inc.
5200 77 Center Drive, Suite 300
Charlotte, NC 28217

Re: Energy Performance Contract (the "**Contract**"); capitalized terms used and not defined herein shall have the meanings given to such terms in the Contract dated as of _____, 2017 by and between Albemarle County School Board ("**Customer**") and Ameresco, Inc. ("**Ameresco**")

Dear Mr. Raper:

Customer has reviewed samples of certain ECMs (as set forth on the list attached hereto) to be installed pursuant to the Contract. Customer hereby approves such ECMs and, if applicable, their respective lighting levels, for installation in Customer's Property located at [_____]. Ameresco and its lenders may rely upon Customer's approval herein for the purpose of procuring such ECMs to be used in the performance of the Contract.

Sincerely,

By: _____
Duly Authorized Signatory

Name: _____

Title: _____

Date: _____