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**ENERGY SERVICES AGREEMENT**

**by and between**

**PINE BUSH CENTRAL SCHOOL DISTRICT**

**and**

**AMERESCO, INC.**

Dated as of July 3, 2017 8

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## TABLE OF CONTENTS

SECTION HEADING	PAGE
1. Scope of Services	4
2. Ownership of ECM	11
3. Financial Services	12
4. Compensation and Payment	13
5. Term	14
6. Guarantee of Energy Savings	14
7. Access to Property	16
8. Changes in Work	17
9. Warranties	17
10. Customer Role and Responsibilities	17
11. Defaults by Customer and Ameresco	18
12. Remedies for Defaults	19
13. Arbitration	19
14. Termination	19
15. Insurance	20
16. Indemnification	21
17. Agreement Interpretation and Performance	22
18. Privileged and Proprietary Information	22
19. Severability	22
20. Assignments and Subcontracting	22
21. Waiver	23
22. Force Majeure	23
23. Contract Documents	24
24. Notices	24
25. Records	25
26. Representations and Warranties	25
27. Independent Contractor	26
28. Additional Representation and Warranties of Customer	26
29. Absence of Fraud or Collusion	26
30. Negligent/Wrongful Acts	27
31. Further Documents and Events	27
32. Non-Appropriation	27
33. Third Party Beneficiaries	28
34. Notifications of Governmental Action - Occupational Safety and Health	28
35. References	28
36. Approval	28
Attachment A Property Description	30
Attachment B Scope of Services	31
Attachment C Notice To Proceed	32
Attachment D Final Delivery and Acceptance Certificate	33
Attachment E Determination of Energy Cost Savings	34
Attachment F Contract Cost and Annual Services	35
Attachment G [Intentionally Omitted]	37
Attachment H Maintenance Services	38
Attachment I Certificate of Substantial Completion	41
Attachment J Standards of Service	43
Attachment K Test Installation Acceptance Letter	44
Attachment L Monitoring	45

Attachment M	Extended Warranty	46
Attachment N	Form of Performance and Payment Bond	47
Attachment O	Form of Certificate of Insurance	
Attachment P	Training Protocol of Customer's Employees	
Attachment Q	Guideline On Changes to Energy Usage	
Attachment R	Pine Bush Central School District Request For Proposal	
Attachment S	Ameresco Response to District Request For Proposal	
Attachment T	Comprehensive Energy Audit:	

## ENERGY SERVICES AGREEMENT

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3, 2017, by and between Pine Bush Central School District, having its principal place of business located at 156 Route 302, Pine Bush, New York 12566 (“*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*.” July

**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 buildings described in Attachment A (the “*Property*”), and Ameresco wishes to perform such services;

**WHEREAS**, Customer owns the Property; and

**NOW, THEREFORE**, in consideration of the mutual promises and agreements contained herein, the Parties hereby agree as follows:

### Section 1. Scope of Services.

#### (a) Work:

(i) **Preconstruction Services:** Ameresco has performed a Comprehensive Energy Audit (“*CEA*”) of the Property, dated as of October 12, 2016, as set forth in Attachment B and T. The EMS audit completed during the CEA will serve as the basis of design for the EMS build-out. In addition, Ameresco will compile product specification sheets for all specified equipment based on the ECM design prepared by ECG as hereinafter provided. These documents, along with ECG’s design plans, will be submitted to the District for review and comment. Customer shall not unreasonably withhold or condition its approval of any such approval and shall, to the extent possible, furnish its written approval or disapproval of each submission within twenty (20) business days following Customer’s receipt of a complete packet. If Customer does not approve of any submission within twenty (20) business days, or any extension thereof, the Parties hereby agree to negotiate a mutually acceptable solution. Upon approval, ECG’s design plans and the other documents provided by Ameresco will constitute the “*Construction Documents*” hereunder. Customer represents and warrants that it has authorized and designated ECG Engineering, P.C. (“*ECG*”) to work with Ameresco as the Engineer of Record to perform the required completion and submission of forms, submittals, and ECM (as defined below) designs to NYSED, for an amount as specified in Attachment F, and under contract to Ameresco. The cost for such engineering services is included in the Contract Cost (as defined in Attachment F). Ameresco will also assist Customer in obtaining financial assistance from other programs such as utility rebate programs, should any exist.

(ii) **Construction Work:** Upon the occurrence of: (i) the issuance of NYSED approval for an amount of State Building Aid which the Parties agree in writing is sufficient for the purposes of the Project; (ii) the delivery by Customer to Ameresco of a Notice To Proceed (Attachment C); and (iii) Ameresco’s receipt of evidence of the funding of an escrow account pursuant to the Lease (as defined in Section 3) with funds sufficient for the payment of the Contract Cost, Ameresco shall furnish or cause to be furnished all labor, materials, tools, transportation, equipment and perform or cause the performance of all work and services required for the completion of the Scope of Services including

the installation of the energy conservation measures as set forth in Attachment B (the “*ECM’s*”). Ameresco shall be responsible for (i) all means, methods, techniques, sequences and procedures required under the Scope of Services and (ii) the control of all the keys issued to Ameresco by Customer and (iii) equipment will be identified in submittals provided by Ameresco to the Customer for approval prior to procurement in accordance with Section 1(a)(i) above. Upon completion of the construction phase, the documents will be revised as needed to reflect “As-Built” conditions, and delivered to Customer for its records. The construction work will be scheduled so as to minimize, to the extent reasonably possible, the interruption of the daily routine of Customer’s staff and students except as permitted in writing by Customer.

- (iii) **Scope of Services:** The Scope of Services, including the complete design, engineering, procurement, fabrication, installation, and commissioning of the ECM’s listed in Attachment B, shall be accomplished in accordance with the efficiency, performance, and other requirements outlined in the CEA and all of the provisions of this Agreement and the Attachments included hereto. The Scope of Services shall also include the preparation of and delivery of “as-built” documentation, applicable licenses (to the extent expressly included in the Scope of Services), maintenance manuals, warranties, employee training, copies of applicable software (to the extent expressly included in the Scope of Services) and documentation evidencing that the systems are commissioned and operating within the manufacturer’s specifications prior to issuing the Final Delivery and Acceptance Certificate. Prior to implementation of the ECM’s, Ameresco shall provide an ECM specific training plan for Customer approval, such approval not to be unreasonably withheld as outlined in Attachment P herein.
- (iv) **Audit and Inspect Records:** Ameresco at its cost shall maintain, and shall keep for a period of six (6) years after the date of final payment of all amounts under this contract, all records, and other data relating to this Contract, including records of sub consultants, Construction subcontractors, and suppliers. The Customer or the Customer’s Representative shall have the right to inspect and audit all records and other data of Ameresco, its subcontractors, sub consultants, and material suppliers relating to this Contract. Any such inspection shall be carried out at Ameresco’s place of business, following reasonable prior notice and at the Customer’s sole cost and expense.
- (b) **Disposal:** Ameresco, at its cost, shall 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 ECM’s (the “*Waste Materials*”). In addition, Ameresco shall, at its cost, 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/or the New York State Department of Environmental Conservation (6 NYCRR Parts 370 through 374-3 and 376) and PCB-contaminated ballasts, if any, which have been rendered useless and removed as a result of the installation of the ECM’s to be transported and disposed of in accordance with all applicable laws and regulations.. All other existing PCB-contaminated ballasts, lamps and any other hazardous materials, however, shall remain the responsibility of Customer and Ameresco shall assume no liability in connection with their removal, transportation and disposal. Ameresco will provide Customer documentation relating to the removal, transportation and disposal of all hazardous materials.
- (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 except where explicitly

included in the Scope of Services or where Ameresco is to perform work hereunder which will disturb friable and/or non-friable asbestos containing building material (“*ACBM*”) or materials assumed to contain friable and/or non-friable asbestos (“*ACM*”) within the buildings on the Property as identified in Customer’s 2014 Three Year AHERA Reinspection Report (“*AHERA Report*”). Customer hereby represents and warrants that it has provided to Ameresco a true, correct and complete copy of the AHERA Report. Customer hereby represents and warrants that, to the best of its knowledge and belief, there is no asbestos in any area wherein Ameresco will be performing its services hereunder other than as so identified in the AHERA Report. With the exception of ACBM and ACM identified in the AHERA Report or as explicitly included in the Scope of Services, 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 immediately 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 that 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, not otherwise identified as ACBM or ACM in the AHERA Report, 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. If such tests reveal no presence of ACBM or ACM, Ameresco shall reimburse Customer for the actual cost of such tests. Under no circumstances, shall Ameresco be required to handle asbestos which is not so identified in AHERA Report. In the event Ameresco encounters asbestos which is not so identified and 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, the Parties will agree to 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 reasonably documented costs (excluding termination) incurred by Ameresco that relate to the presence of asbestos which is not identified in the AHERA Report. The Parties agree that the Scope of Services and Contract Cost may be amended in a writing signed by each Party (on such terms and conditions mutually acceptable to each Party) to include work and services relating to 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. Customer hereby represents and warrants, 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. If such test reports demonstrate no presence of lead, Ameresco shall reimburse Customer for the actual costs of such tests. Under no circumstances, shall Ameresco be required to perform services, which cause the disturbance of lead paint. 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, the Parties will agree to 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 reasonable costs (excluding termination) incurred by Ameresco that relate to the presence of lead paint. The Parties agree that the Scope of Services and Contract Cost may be amended in a writing signed by each Party (on such terms and conditions mutually acceptable to each Party) to include work and services relating to lead paint.

- (d) **Maintenance and Monitoring:** To the extent provided for in Attachment H, Ameresco will service, maintain and monitor during the Term (as defined in Section 5) the equipment scheduled on Attachment H, at a cost to Customer as set forth in Section 4 and Attachment F. Except for the ECM's (or other equipment) which are to be maintained by Ameresco, as identified in Attachment H, Customer, at its own cost, shall be responsible for servicing and maintaining the remaining ECM's (and such other equipment). To the extent provided for in Attachment L, Ameresco will supply such ongoing monitoring services during the Term 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 ECM's, (ii) the operation and/or maintenance of the ECM's (to the extent that Ameresco agrees to perform such operations and/or maintenance services) and (iii) disposal of non-hazardous materials as described in Section 1(b). 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. Ameresco shall comply with all applicable Federal and state labor laws and pay the required prevailing wage rates for work in connection with the Project pursuant to the New York State Labor Law. Ameresco shall provide payroll certification with each invoice in accordance with Labor Law Section 220.
- (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, ownership of, or operation of the ECM's.
- (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, domestic violence, genetic predisposition, marital status, military service or ancestry in accordance with applicable Federal, New York State or local laws.

- (h) **Standards of Service and Comfort:** Customer shall operate the ECM's in a manner that shall provide the standards of service and comfort provided for in Attachment J.
- (i) **Installation/Specifications:** Prior to the commencement of work hereunder, Customer, at its option, may 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 K. 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 and confirmation from Ameresco that the substitute will not alter the agreed upon energy savings included in the project. Upon Customer's written approval of a Substitution, Ameresco shall revise the Attachments to reflect each such Substitution. . If, however, Customer does not approve of any Substitution, the Parties hereby agree to negotiate a mutually acceptable solution.
- (j) **Duties, Obligations and Responsibilities of Ameresco:**
  - (i) All labor furnished under this Agreement shall be competent qualified and licensed, if a license is required 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 and industry standards. The Parties agree that, wherever used in this Agreement, the term "industry standards" and words to that effect are not limited to the optimum practice or method to the exclusion of others, but rather refer to commonly used and reasonable practices and methods.
  - (ii) Ameresco shall maintain the Project site in a 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, Customer and/or any of its representatives may 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, as-builts and all other appropriate information and deliver all manufacturers' warranties regarding equipment installed hereunder to Customer at or about the time of Substantial Completion (as defined in Section 4).
  - (vi) At all times relevant to this Agreement, Ameresco will comply with the rules and regulations of the Commissioner of Education that govern school construction and



maintenance of school facilities (as they apply to work under this Agreement), and Customer's policies, rules, and regulations, in effect as of the date hereof, governing its facilities.

- (vii) Prior to construction, Ameresco shall deliver to Customer a schedule identifying anticipated installation dates of the ECM's including anticipated substantial completion dates and Customer shall deliver to Ameresco its written approval thereof. Subject to Force Majeure, Ameresco shall use diligent efforts to complete the Project in accordance with the approved schedule, as the same may be adjusted as provided herein.
- (viii) Ameresco shall provide written notice to the Customer of any repairs and/or upgrades that Customer must make to permit Ameresco to perform the Scope of Services, including repairs and/or upgrades to Customer's existing systems, including roofing; equipment, structural upgrade, utility upgrades and work necessary to prepare the location for the installation of ECM's that Ameresco discovers during the performance of the CEA. Ameresco shall also promptly provide written notice to the Customer of any additional repairs and/or upgrades that Customer must make to Customer's existing systems to permit Ameresco to perform the Scope of Services that are discovered during construction, and in such case, Ameresco, at its option, may demobilize and cease construction in the area affected by such conditions until Customer notifies Ameresco of its determination regarding such repairs and/or upgrades as provided herein. The Customer retains the sole authority to determine how the repairs and/or upgrades will be performed. If the Customer elects not to perform any such repairs and/or upgrades, or does not notify Ameresco of its intentions with regard thereto within thirty (30) days following Ameresco's notification thereof to the Customer, or notifies Ameresco that it will not take such action, the Parties will agree to 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 14. Customer shall be responsible for all reasonable documented costs incurred by Ameresco that relate to the foregoing conditions. The Parties agree that the Scope of Services and Contract Cost may be amended in a writing signed by each Party (on such terms and conditions mutually acceptable to each Party) to include work and services relating to any such repairs and/or upgrades.
- (ix) Ameresco shall (i) keep accurate and detailed written records of the progress of the Project during all stages of construction; (ii) maintain copies of the Project Schedule and each update thereof to reflect current conditions and provide copies to the Customer with periodic reports as to deviations from the schedule, the causes of the deviations, and the corrective action taken; and (iii) maintain at the job site a current marked set of Project drawings and specifications to facilitate the preparation of As-builts. All such records maintained by Ameresco at Ameresco's offices shall be available for review by Customer as provided in Section 1(a)(vi) hereof.
- (x) During construction, Ameresco shall provide bi-weekly progress reports to the Customer which shall include, but not be limited to, schedules of work, delays and project completion. Ameresco further agrees, upon reasonable prior notice, to meet with Customer and its engineering consultant on an as-needed basis to discuss any and all aspects of the Project.
- (xi) Ameresco will be responsible for initiating and maintaining safety precautions and programs in connection with its construction of the Project insure that all employees,

contractors and subcontractors assigned to the project attend training as may be required by any Federal, State or local agency law, rule or regulation, including compliance with OSHA 10. Ameresco shall also maintain documentation of such training and upon request, provide to the Customer copies of the documentation for the provided training. Additionally, Ameresco will insure that all employees, contractors and subcontractors assigned to the project attend on-site safety training as reasonably required by the Customer. The Customer shall supply to Ameresco for its review information on the Customer's required training. Ameresco will take precautions for the safety of, and shall provide protection to prevent damage, injury, or loss to: (i) property and Customer's employees, staff and student and employees of Ameresco and contractors and subcontractors performing work under this Agreement, (ii) Ameresco's property and other materials to be incorporated for the Project, under the care, custody, and control of Ameresco or its subcontractors, and (iii) other property at or adjacent to the Property not designated for removal, relocation, or replacement during the course of construction. Ameresco will provide proper picture ID for all personnel working on the Property. Ameresco and its contractors and subcontractors must attach a copy of proof of completion of the OSHA 10 course to the first certified payroll submitted to the Customer and on each succeeding payroll where any new or additional employee is first listed. Proof of completion may include: copies of bona fide course completion card; training roster, attendance record of other documentation from the certified trainer pending the issuance of the card.

- (xii) Ameresco shall ensure that its subcontractors shall comply with the terms of this agreement, adjusted for each subcontractor's scope of work, and, at Customer's request, shall provide the Customer a list of its subcontractors prior to the start of work.
- (xiii) As an independent contractor to the District, Ameresco will be responsible for providing, or causing to be provided by Ameresco's contractors and subcontractor(s), all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution, construction, and completion of the Work as defined in the Scope of Services and any Change Orders. Ameresco is hereby required to purchase all necessary materials and supplied for the construction of the Project in order to assure the prompt and timely delivery of the completed Work pursuant to the Project Schedule. Ameresco will also be responsible for all means, methods, techniques, sequences, and procedures employed for the construction required by the final Construction Documents. Ameresco will be responsible for the control of all keys issued by the Customer and return all said keys to the Customer at the end of the Project. Ameresco will minimize duplicating or distribution of building floor plans and drawings and will provide a list in writing of those employees, contractors and subcontractors who received such plans and drawings and how many copies. In addition, said plans will include a note in bold and large font that drawings are not to be duplicated and must be returned to Ameresco at the end of the Project. Ameresco shall provide documentation to the Customer that all copies of the plans have been accounted for
- (xiv) Ameresco will coordinate construction activities with Customer and ECG and perform the Work to minimize disruption to the District's operations at the project location. Ameresco will provide at least fifteen (15) business days' written notice to the District of any major planned utility outages that will be necessary for the construction. Ameresco will cooperate with the District in scheduling such outages, and the District agrees to provide its reasonable approval of any scheduled outage. Ameresco will provide a written safety plan to the District. Ameresco will work with the District to fix any unplanned outages that are caused by Ameresco of their contractors and subcontractors. Ameresco recognizes that time is of the essence to remedy any unplanned outage.

- (xv) Ameresco shall ensure all its employees, contractors, and subcontractors working at the Customer's site shall wear identification badges and conform to Customer's security and access to facilities, rules and regulations.
- (xvi) Ameresco will provide training to Customer personnel, equipment manuals and other appropriate information and deliver all manufacturers' warranties, operating manuals, software, as-built drawings regarding equipment installed hereunder to Customer at or after the time of Substantial Completion (as defined in Section 4) and before the issuance of a Final Delivery and Acceptance Certificate.
- (xvii) Intentionally Deleted
- (xviii) Ameresco shall perform, at a minimum, the following startup, and commissioning tasks as part of the Construction Phase Services: - Ensure and oversee the training of facility operating and maintenance personnel in equipment and systems operation. - participate and provide services in the commissioning process. Ameresco shall coordinate with its Construction subcontractors, the District and its consultants to achieve the successful commissioning of the Project systems.
- (xix) Intentionally Deleted
- (xx) Intentionally Deleted .

**Section 2. Ownership of and Security Interest in the ECM's.**

Title to each ECM and other personal property installed or incorporated into the ECM's shall at all times during the Term remain in the name of Ameresco. If, notwithstanding the intent of the Parties, Customer is deemed to hold title to the ECM's and as security for the payment in full of the Contract Cost, Customer hereby assigns, transfers and grants to Ameresco a security interest in all of the ECM's, which security interest may be revised pursuant to reasonable requirements, if any, from Customer's lease agreement to finance the Project, any such revisions to be mutually agreeable to both Ameresco and Customer's lender. Contingent upon any requirements due to Customer's lease agreement as provided in the foregoing sentence, 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 the ECM's. 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 ECM's and hereby irrevocably appoints Ameresco as Customer's attorney-in-fact with full power to sign such instruments and documents. Any provision in this Section to the contrary notwithstanding, ownership and title to an ECM shall automatically pass to Customer and Ameresco's security interest in such ECM shall be released and terminated, in each case without further action on either Party's part, upon Ameresco's receipt of both (A) the executed Substantial Completion Certificate (as defined in Section 4) for such ECM and (B) the indefeasible payment in full of all of Customer's payment obligations to Ameresco for such ECM.

## SECTION 3

### Financial Services.

**(a) Energy Performance Contract Municipal Lease and Option to Purchase Agreement:**

- (i) Customer hereby represents and warrants to Ameresco that Customer intends to enter into a lease ("*Lease*") with a third party lessor ("*Lessor*"). Customer shall not become obligated to execute such Lease nor shall Ameresco become obligated to commence construction work in accordance with Section 1(a)(ii) in the event that New York State SED approval is not obtained or New York State legislation or other legislative or regulatory developments adversely affect the amount of State Building Aid available to Customer for the Project.
- (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 projected Annual Energy Cost Savings (as defined in Attachment E) guaranteed hereunder pursuant to Section 6, shall be not less than the Guaranteed Savings (as defined in Section 6(a)). If, prior to the effectiveness of the Lease, any (i) changes in capital costs from a Scope of Services modification by the Customer or NYSED, (ii) changes in interest rates or (iii) other events, circumstances or developments cause or may have the effect of causing NYSED to not approve the Project as submitted or cause the projected Annual Energy Cost Savings to be less than the Guaranteed Savings, then the Parties agree to mutually and reasonably attempt to negotiate a reduction or modification of the Scope of Work and corresponding reduction in the contract cost by removing components of the ECM's to be otherwise installed hereunder in order to ensure 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, for any termination not due to the negligence of Ameresco or breach of its obligations, or default under Section 11 herein, Customer shall pay Ameresco upon documentation from Ameresco of its expense an amount equal to the value of the work completed to the date of the termination, which amount shall not exceed \$360,000 for documented services rendered prior to termination in recognition of such preconstruction services, as documented by personnel time logs, receipts, invoices, and such records and verification as the Customer may reasonably require. Such obligation to pay for preconstruction services shall be effective immediately upon Customer's signing of this Agreement and shall not be subject to approval per Section 36.

- (c) **Utility Demand Side Management ("DSM") and System Benefits Charge ("SBC") Programs:** Ameresco will provide Customer with copies of all rebates and/or incentives, applications and awards that Ameresco receives in connection with the services provided under this Agreement. Ameresco will guarantee Customer an amount equal to \$169,169 from rebates and/or incentives in connection with the Project, inclusive of any amounts paid directly to the Customer, over the Term. For incentives paid directly to Ameresco, Ameresco will pay such amount to Customer at the time when such rebates and/or incentives are received by Ameresco under each applicable program. Should the Project's actual rebate and/or incentives over the Term be less than the amount set forth in the first sentence of this Section, Ameresco will incur such shortfall and pay Customer the difference. All available rebates and incentives for the Project belong to Customer. Ameresco will assist the Customer in filing for and securing incentive payments available as a result of this Project from NYSERDA, DSM and SBC programs or other entity.

**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 amount of each progress payment due Ameresco less five (5) percent retainage. 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 the ECM's or portions thereof installed during that month. Within thirty (30) days after receipt of such invoice, Customer shall pay or cause to be paid to Ameresco the undisputed amount due under such invoice. Ameresco shall invoice for the retainage amounts after the date of the Substantial Completion Certificate for a particular ECM, and Customer shall pay or cause to be paid to Ameresco said undisputed amount within thirty (30) days after receipt of said invoice.
- (b) Within thirty (30) days following each successive twelve (12) month period beginning with the first day of the month following the date of the Final Delivery and Acceptance Certificate, Customer shall pay Ameresco the separate amounts provided for in Attachment F, if any, as an annual fee for monitoring services.
- (c) Within thirty (30) days following each successive twelve (12) month period beginning with the first day of the month following the date of the Final Delivery and Acceptance Certificate, Customer shall pay Ameresco the separate amounts set forth in Attachment F, if any, for maintenance (as described in Attachment H) and/or operations services, if any, as agreed by the Parties and to be performed or provided by Ameresco.
- (d) If Customer desires, and Customer and Ameresco agree, Customer may purchase an extended warranty from Ameresco on all equipment installed under this Agreement on mutually agreeable terms and conditions as set forth in Attachment F and Attachment M.
- (e) All amounts not paid to Ameresco on or before the due dates specified in Sections 4(a), (b), (c) and (d) shall accrue interest at the same rate per annum as paid to the Lessor under the Lease for the number of days following each such due date until such time as such amount due has been paid in full unless Customer has informed Ameresco of a deficiency in Ameresco's performance of the services under this Agreement, which deficiency has not been corrected. If Ameresco is prohibited by law from charging interest at said Lease 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.
- (f) Upon Substantial Completion of the installation of an ECM (or portion thereof, as applicable), Ameresco will schedule with Customer a post-installation inspection of such ECM. Upon the inspection of such ECM and determination of the satisfactory installation and operation thereof, Ameresco will deliver to Customer a substantial completion certificate in the form of Attachment I (the "*Substantial Completion Certificate*"). Ameresco shall witness all tests of the systems that are required by the Project Agreement Documents and by applicable codes and prepare reports for the Customer on system functionality. Within fifteen business days after receipt of each Substantial Completion Certificate, Customer and ECG shall either reject the Certificate in writing or approve, complete, execute and deliver to Ameresco each such Substantial Completion Certificate including a list of any punch list items that remain to be completed. After execution of the Substantial Completion Certificate and completion of punch list items, Ameresco's submittal

of all applicable licenses, operating manuals and warranties, and as-built drawings, to Customer and completion of staff training, Ameresco shall schedule a final inspection of all ECM's with Customer and ECG. If after such final inspection of the work, including the completed punch list items, and Ameresco's submittals of the items herein and conducting the staff training Customer and ECG certify that the ECM's are finally complete an acceptance certificate in the form of Attachment D (the "**Final Delivery and Acceptance Certificate**") shall be executed by Customer and ECG delivered to Ameresco within fifteen business days of said certification. Customer shall not unreasonably withhold, condition or delay (i) the scheduling of or attendance at a post-installation inspection or (ii) 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, said equipment is then fully operational such that Customer is deriving beneficial use thereof. The execution and delivery of a Substantial Completion Certificate and/or the Final Delivery and Acceptance Certificate shall not constitute a waiver of any rights or remedies Customer may exercise under this Agreement, or at law or in equity.

**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 Final Delivery and Acceptance Certificate, unless this Agreement is terminated prior to such date, as provided for in Sections 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 undisputed 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 Cost Savings (as defined in Attachment E) shall exceed the "**Guaranteed Savings**" (as specified in Table 6(a) below), in each year of the Term (the "**Guarantee of Energy Savings**").

*Table 6(a)*

Year	Guaranteed Savings
1	\$421,166
2	\$424,940
3	\$428,818
4	\$432,801
5	\$436,892
6	\$441,094
7	\$445,407
8	\$449,836
9	\$454,381
10	\$459,045
11	\$463,832
12	\$468,742
13	\$473,780
14	\$478,946
15	\$484,245
16	\$489,678
17	\$495,249

18	\$500,960
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For purposes of the Guarantee of Energy Savings, the following assumptions and provisions shall apply:

- (i) Calculation of the Annual Energy Cost Savings, inclusive of energy savings and operational and maintenance costs 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 Cost Savings and the Guarantee of Energy Savings, the term “*year*” shall mean the consecutive twelve (12) month period beginning with the first day of the month following the date of the Final Delivery and Acceptance Certificate (the “*Anniversary Date*”), and each similar twelve (12) month period thereafter. The Annual Energy Cost Savings will be measured on an annual basis, as of each Anniversary Date, and excess savings beyond the Guaranteed Savings shall not roll over from year to year.
  - (iii) The unit prices, including the escalation thereof, to be used to calculate the Annual Energy Cost 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 performing its maintenance 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 Energy Cost Savings under the Guarantee of Energy Savings, then Ameresco may, with Customer’s written consent (which consent shall not be unreasonably withheld), equitably adjust the Annual Energy Cost 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.
  - (v) The Guaranteed Savings and the Annual Energy cost savings shall not include building aid attributable to Ameresco’s work or services hereunder.
- (b) Ameresco will perform and submit to Customer a guarantee reconciliation after each Anniversary Date and within forty-five (45) days after Customer delivers to Ameresco all utility billing and other data necessary for Ameresco’s completion of such reconciliation (“*Guarantee Reconciliation*”). The Guarantee Reconciliation will calculate the Annual Energy Cost Savings achieved, measured on an annual basis in relation to the Guaranteed Savings measured for the twelve (12) month period being reconciled.
  - (c) Ameresco hereby guarantees that if the Annual Energy Cost Savings realized by Customer as of any Anniversary Date, as detailed in the Guarantee Reconciliation, is less than the Guaranteed Savings as of such Anniversary Date, then Ameresco will: (1) pay to Customer that amount by which the Guaranteed Savings exceeds the Annual Energy Cost Savings, and (2) such payment to be made within 45 days after the date of the Guarantee Reconciliation. In the event Ameresco fails to pay Customer as provided herein, and such failure continues for a period of ten (10) business days after notice of overdue payment is delivered by Customer to Ameresco, Ameresco shall be in default as described in Section 11(b), and Customer may terminate this Agreement.

**SECTION 7                    Access to Property.**

During the Term, Customer shall provide Ameresco, its employees, agents and subcontractors, including any utility which provides any payment referenced in Section 3(c), access to the Property for the purpose of fulfilling Ameresco's obligations under this Agreement. Customer shall provide mutually satisfactory space for the installation and operation of the ECM's and shall protect such equipment in the same careful manner that Customer protects its own property.

**SECTION 8                    Changes in Work. [Intentionally omitted.]**

**SECTION 9                    Warranties.**

- (a) Ameresco warrants that the design, engineering, and installation services it performs will be performed consistent with good engineering practices and that such work is warranted to be free from defects in materials and workmanship for a period of two (2) years from the date of execution of a Substantial Completion Certificate by Customer for such work. Any manufacturers' warranties which exceed this two (2) year period shall be assigned to Customer to the extent allowed by the manufacturer. Except as provided above, 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 ECM'S OR ANY SERVICES PROVIDED HEREUNDER.
- (b) Customer may purchase extended warranty coverage for equipment installed hereunder as provided in Section 4(d).

**SECTION 10                  Customer Role and Responsibilities.**

- (a) **Operations:** Customer shall operate the equipment installed hereunder in accordance with the manufacturers' written recommendations and the written procedures both supplied to Customer by Ameresco.
- (b) **Maintenance:** Customer shall, at its expense, repair and maintain the Property in good working order during the Term. Except as may otherwise be provided for in Attachment H, 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, except as noted in Section 10 (i) below.
- (c) **Malfunctions:** Customer shall notify Ameresco as soon as practicable of any malfunction in the operation of the ECM's 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 ECM's, or any individual part thereof, without the prior written approval of Ameresco, which approval shall not be unreasonably withheld and provided within 24 hours or sooner of receiving notice from the Customer. After receiving Ameresco's written approval which shall include any written instructions to Customer regarding the ECM equipment or operation thereof, Customer shall proceed as instructed. Customer shall act reasonably to protect the ECM's 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 ECM's, 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) **[Intentionally Omitted.]**
- (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 would 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 activities conducted at the Property and (iii) the equipment, the facilities, or the size of the Property. Customer shall notify Ameresco regarding material increases, over time, in numbers and usage of "plug in" devices such as computers and printers. For Customer's guidance, Ameresco shall provide a list of the types of changes to property and addition of equipment, including "plug-in" devices that may have an effect on the energy usage, attached herein as Attachment R. Ameresco shall also quantify the threshold percentage or volume necessary that could trigger an effect on the energy usage for each item listed in Attachment R. In the event that Ameresco receives such notification or otherwise determines that such a change has occurred, subject to Customer's review and written approval (such approval not to be unreasonably withheld, conditioned or delayed) it will make the appropriate revisions to the Attachments or take such other action as may be provided for hereunder. Annually, as part of the Guarantee Reconciliation, Ameresco shall notify the Customer in writing in accordance with Section 24 below of Customer's obligation to notify Ameresco of any changes that may affect energy usage.
- (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 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 ECM's, the related equipment and all components installed hereunder, for the full replacement value thereof.

After the issuance of the Substantial Completion Certificate, the Customer assumes all risk of loss of or damage to the ECM's 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 ECM's, 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 ECM's are lost, stolen, confiscated, destroyed or damaged beyond repair, and neither Customer nor Ameresco terminates this Agreement as provided in the following paragraph, Customer shall replace the same with like equipment in good repair in a timely fashion.

If at any time after the date of the Substantial Completion, or 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, any ECM is stolen, confiscated, destroyed or damaged beyond repair, or condemnation renders a majority of the Property incapable of being occupied or renders the ECM's or the equipment installed hereunder inoperable and, the affected portion of such ECM's or equipment is not reconstructed, replaced or restored within one hundred and twenty (120) days from the date of such casualty, Ameresco and/or Customer may agree to remove the affected ECM(s) and equipment from this Agreement (and make commensurate adjustments to the rights and obligations of the Parties, including without limitation, to the Guarantee of Energy Savings) or either Party may terminate this Agreement by delivery of a written notice to the other Party. Upon such termination, Customer shall pay Ameresco all undisputed 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 ECM's from damage, theft or injury to the same extent and in the same manner in which it protects its other property.
- (l) **Alteration:** Except in the case of an emergency, and in accordance with Sections 10 (b), (d) and (g) above, the Customer shall not move, alter or change the ECM's 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 which approval shall not be unreasonably withheld.
- (m) **Storage:** To the extent that the space is available, it will not interfere with Customer's operations and Customer provides written approval of the available space, the 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 ECM's or other activities by Ameresco within the Property pursuant to this Agreement for which such storage may be required, except that the Customer will not provide space for storage of flammable or hazardous materials or which requires specialized storage and handling requirements. Ameresco shall be responsible to secure and lock all such storage space. Ameresco and its subcontractors shall maintain their own insurance on such supplies, tools and equipment Only Ameresco and/or its subcontractors and Customer's assigned personnel shall have access to the storage except in the event of an emergency or fire. Ameresco shall provide written notification of all those individuals authorized to access the storage area. Customer assumes no responsibility or liability nor will Customer provide any security for the storage provided.
- (n) **Fuel:** Customer shall procure and pay for all energy and fuel for the operation of the Property.
- (o) **Filings:** Customer shall make all filings required by NYSED relating to the Project which are not made by Ameresco. Ameresco will coordinate its filings with Customer's and cooperate with Customer regarding such filings.

## **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 undisputed amount to be paid under this Agreement

and such failure continues for a period of twenty (20) 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
- (iii) Customer goes into 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 goes 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; or
- (iii) Any representation or warranty made by Ameresco in this Agreement or in any writing delivered by Ameresco pursuant hereto, proves at any time to have been false, misleading or erroneous in any material respect as of the time when made.

## **SECTION 12 Remedies for Defaults.**

During the continuance of a default under this Agreement, the non-defaulting Party 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) or (ii) without recourse to legal process, terminate this Agreement by delivery of written notice of termination.

## **SECTION 13 Arbitration.** [Intentionally omitted.]

## **SECTION 14 Termination.**

In addition to the termination right set forth in Section 12, 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 undisputed 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.**

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

- (a) Workers' Compensation and Employer's Liability Insurance at the level required by law.
- (b) Commercial General Liability Insurance, including contractual liability, including coverage for: Products and Completed Operations; contractual liability insuring the obligations assumed by Ameresco in this Agreement; Broad Form Property Damage (including Completed Operations); ; and Explosion, Collapse and Underground Hazards: Bodily Injury per occurrence, \$1 million; Property Damage per occurrence, \$1 million; Personal Injury per occurrence, \$1 million; and Excess Liability, \$6 million.
- (c) Comprehensive Automobile Liability Insurance, including owned, non-owned and hired automotive vehicles with a combined single limit of \$1 million per occurrence, and excess liability of \$5 million, covering bodily injury (including death) and property damage.
- (d) In addition to the foregoing, Ameresco shall cause ECG to provide and maintain Professional Liability Insurance covering ECG's negligent errors or omissions. The total amount of such insurance shall at a minimum equal \$2 million.
- (e) 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 State of New York and satisfactory to Customer. Such Payment and Performance Bonds shall be in form and substance as set forth in Attachment N and shall be conditioned upon the faithful performance by Ameresco, for the implementation of the ECM's. The Payments and Performance Bonds shall only apply to the installation portion of this Agreement and do not apply in any way to energy savings guarantees, payments or maintenance provisions, except that the performance bond shall guarantee that the installation will be free of defective materials and workmanship for a period of twelve (12) months following completion and acceptance of the work.
- (f) Customer shall provide and maintain insurance as described in Section 10(i).
- (g) Ameresco shall deliver to Customer prior to commencement of the work, in a form as set forth in Attachment O, a Certificate of Insurance naming Customer as an additional insured party, evidencing the coverage's provided under subsections (b) and (c) above, and providing Customer with at least thirty (30) days' notice of cancellation and any policy endorsements evidencing such additional insured status.
- (h) The insurance coverage, whether written as an occurrence or claims made basis, shall be maintained without interruption from the date of commencement of the work until the date of final payment and termination of any coverage required to be maintained after final payment. If any of the foregoing insurance coverages are required to remain in effect after final payment, an additional certificate of insurance evidencing the continuation of such coverage shall be submitted to receive the Final Delivery and Acceptance Certificate.

**SECTION 16 Indemnification.**

- (a) Except as otherwise expressly provided herein, 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 insured's, 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 for direct damages under this Agreement shall in all cases be limited to the sum of the payments received by Ameresco under Section 4. Ameresco's liability in tort (including negligence) will, in all cases, be limited to direct damages relating to physical damage to Customer's Property.
- (c) Ameresco's liability to Customer in tort (including negligence) will, in all cases, be limited to the proceeds of insurance maintained by Ameresco pursuant to the requirements of this Agreement.
- (d) Ameresco agrees to defend, indemnify and hold harmless Customer, its officers, agents and employees, from and against any and all claims, liabilities, actions, demands, judgments, losses, costs, expenses (including reasonable attorney's fees), suits or damages arising by reason of bodily injury, death or damage to property to the extent 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 five million dollars (\$5,000,000). Ameresco, however, in no event shall be obligated to indemnify Customer to the extent that any injury or damage is caused by the negligence of Customer or any individual or entity for which Customer is legally responsible.
- (e) 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, or damages arising by reason of bodily injury, death or damage to property to the extent caused by Customer's negligence or willful misconduct. To the extent that any such damages are covered by a general liability insurance policy that is maintained by Customer, Customer shall not be required to indemnify Ameresco in excess of any liability insurance policy coverages. Customer, however, in no event shall be obligated to indemnify Ameresco to the extent that any injury or damage is caused by the negligence of Ameresco or any individual or entity for which Ameresco is legally responsible.

**SECTION 17 Agreement Interpretation and Performance.**

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

State of New York. In the event of any ambiguity or conflict in meaning, the terms of this Agreement shall not be construed against the drafting Party based upon that Party's having drafted this Agreement. All lawsuits commenced under this Agreement shall be brought in the New York State Supreme Court, or other court having jurisdiction, for the County of Orange.

**SECTION 18 Privileged and Proprietary Information.**

All requests from a third party for information or documents from Ameresco, including those marked as privileged and proprietary will be processed in accordance with the Customer's Record Access Policy and FOIL (Public Officer's Law Section 87). In the event the Customer receives a FOIL Request for information and/or documents related to this Agreement, the Customer shall use best efforts to notify Ameresco of same as soon as practicable. However, if Customer fails to so notify Ameresco, such failure shall not be considered a default and/or breach of this Agreement by Customer, and may not be used by Ameresco as a basis for termination.

**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 professional sub consultants in meeting its obligations hereunder. Customer shall approve in advance (which approval shall not be unreasonably withheld, conditioned, or delayed) all subcontractors and professional sub consultants, whose contracts, in each case, exceed \$150,000. Ameresco shall ensure that its subcontractors and professional sub consultants conform to the terms and conditions of this Agreement, adjusted for each subcontractor's and sub consultant's scope of work. In the event that any subcontractors and/or professional sub consultants violates the terms of this Agreement or is deemed unfit by the Customer, the Customer may rescind its approval of such subcontractors and/or professional sub consultants.
- (b) Customer shall not assign, transfer, or otherwise dispose of, in whole or in part, this Agreement, the ECM's, or any interest therein, or sublet or lend the ECM's or permit the ECM's to be used by anyone other than Customer and Customer's employees without the prior express written consent of Ameresco (or, if applicable, the Lessor) such consent not to be unreasonably withheld, conditioned or delayed. If Customer transfers ownership or its interest in the Property, Customer shall terminate this Agreement in accordance with Section 14.
- (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; *provided, however*, that Ameresco may assign, without the prior written consent of Customer, its rights and obligations under this Agreement, in whole or in part, to any affiliated or associated company of Ameresco. Any such assignment described in the preceding sentence shall not be effective unless the assignee to whom this Agreement is assigned first agrees in writing to assume all duties and obligations of Ameresco under this Agreement. The foregoing notwithstanding, Ameresco may assign, without the prior written consent of Customer, its rights for payments under this Agreement to any financial institution, lender or investor in connection with a leasing or financing arrangement for the ECM's. 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 five (5) 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) To the extent possible, 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 if possible, continues to furnish 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) Upon the written agreement of the parties, the Term may be extended for a period equal to the number of days that the Force Majeure prevented the non-performing Party from performing.
  - (vi) If the non-performing Party claims a Force Majeure for a consecutive period of twelve (12) calendar months or longer, then either Party may terminate this Agreement, in whole or in part, without any liability to the non-performing Party as a result of such termination.
- (b) Any decision by Customer to close or change the use of the facilities or ECM's 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 (including the CEA attached as Attachment T) 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. This Agreement, the Construction

Documents, the CEA, the Pine Bush Central School District Request for Proposal attached hereto as Attachment R (the “*RFP*”) and the Ameresco Response to District Request for Proposal attached hereto as Attachment S (“*Ameresco’s Response*”) (collectively, the “Contract Documents”) constitute the entire agreement between the parties and supersede all prior oral or written statements or agreements. In the event of inconsistencies among the terms of Sections IV(A), (C) and (E) of the RFP and this Agreement, the terms of this Agreement shall govern.

- (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 five 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:

**Pine Bush Central School District**  
156 Route 302  
Pine Bush, New York 12566  
Attention:

Facsimile: 845.744.6189

**Ameresco, Inc.**  
111 Speen Street, Suite 410  
Framingham, Massachusetts 01701  
Attention: Michael J. Daigneault,  
Vice President

Facsimile: 508.661.2201

With a copy to the attention of General Counsel at the same address.

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 written 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 subject to the approval of the Customer's Board of Education;
- (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 subject to the approval of the Customer's Board of Education.
- (g) Customer represents and warrants to Ameresco that upon information and belief, the 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 to the best of its knowledge, at the time of execution of this Agreement 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 contemplate making any changes to the electrical and thermal consumption characteristics of the Property as these 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 upon information and belief, 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 installation of the energy services referenced herein, which does not include contracts or agreements for utility services, maintenance, or related engineering and legal services or in the event either Party terminates this Agreement (subject in the case of the Customer to the provisions of Section 32(c) hereof).
- (e) Since the date of the CEA, 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.
- (f) To the extent that Ameresco has submitted written requests for such and that they exist, the Customer has delivered to Ameresco complete copies of all policies, rules and regulations concerning its facilities.

**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 ECM's.

**SECTION 32            Non-Appropriation.**

- (a) This Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of this Agreement, and no liability on account therefore shall be incurred beyond the amount of such monies. This Agreement is not a general obligation of Customer. The full faith and credit of Customer is not pledged to the payment of any amount due or to become due under this Agreement. It is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purposes of this Agreement. Notwithstanding the foregoing statutory provision, Subject to said statutory limitations, 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 during the fiscal year in accordance with Section 14 (subject to said statutory limitations), effective the first day for which funds have not been appropriated. The descriptions of the following events are not intended to impose requirements beyond the current term of the presently constituted Board of Education of Customer but rather to set forth occurrences which give rise to the right of Customer to terminate this Agreement.
- (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 legally authorized 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 as a result of a Non-Appropriate Occurrence, Customer agrees, to the extent permitted by law, that Customer will not expend funds for the acquisition of services similar to those provided by Ameresco under this Agreement for a period of one hundred eighty (180) days following 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.

**SECTION 36           Approval.**

This Agreement and any written Amendment hereto is subject to approval of both the Customer's Board of Education ("Board") and, where applicable, by the Commissioner of Education of the State of New York and shall not be executory until approved by the Board and Commissioner.

\*       \*       \*       \*       \*       \*

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.


**PINE BUSH CENTRAL SCHOOL DISTRICT**

  
\_\_\_\_\_  
Authorized Signature

Name: MICHAEL PACELLA

Title: ASST. SUPT. FOR BUSINESS

**AMERESCO, INC.**

  
\_\_\_\_\_  
Michael J. Daigneault  
Vice President

**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:

<b>Facility</b>	<b>Address</b>
Pine Bush High School	156 Route 302, Pine Bush, NY
Circleville Middle School	1951 Route 302, Pine Bush, NY
Crispell Middle School	77 Maple Avenue, Pine Bush, NY
Circleville Elementary School	2000 Route 302, Pine Bush, NY
Edward J. Russell Elementary School	Holland Avenue, Pine Bush, NY
Pakanasink Elementary School	1953 Route 302, Pine Bush, NY
Pine Bush Elementary School	21 Ulsterville Road, Pine Bush, NY
Administration Building	156 Route 302, Pine Bush, NY
Warehouse	156 Route 302, Pine Bush, NY

**ATTACHMENT B**

**SCOPE OF SERVICES**

**DESCRIPTION OF THE ENERGY CONSERVATION MEASURES  
AND EQUIPMENT**

This Attachment B provides a description of existing equipment and the ECM's and related equipment to be installed by Ameresco at the facilities scheduled on Attachment A. Installation of the ECM's and the included equipment is subject to change if Ameresco discovers unforeseen conditions at the Property that render its preliminary analysis of the Property inaccurate, or significantly affect Ameresco's anticipated economic benefit or the Guarantee of Energy Savings, provided that the Parties agree to such change in writing.

This Attachment B includes by reference the CEA dated as of October 12, 2016 for the Property and included hereto as Attachment T.

The following table summarizes the ECM's recommended and described in the CEA that are specifically incorporated into the Scope of Services, it is noted that the High School will also receive the pneumatic system elimination and replacement:

Pine Bush Central School District Energy Conservation Measures (ECMs)									
Facility	Interior Lighting System Improvements	Exterior Lighting System Improvements	Pneumatic System Replacement	Solar PV Array	Infiltration Reduction	Kitchen Exhaust Hood Controls	DHW System Upgrades	Replace Bath Faucet Aerators	Unit Ventilator Replacements
1	2	3	4	5	6	7	8	9	
Pine Bush High School	X	X	X	X	X	X	X	X	X
Circleville Middle School	X	X	X	X	X			X	
Crispell Middle School	X	X	X		X			X	X
Crispell Industrial Arts	X		X						
Circleville Elementary School	X	X	X	X	X				
Pakanasink Elementary School	X	X	X		X			X	
Pine Bush Elementary School	X	X	X	X	X			X	
Russell Elementary School	X	X	X	X	X			X	
Administration/District Office	X	X	X					X	
District Storage/Central Receiving	X	X	X					X	

**ATTACHMENT C**

**NOTICE TO PROCEED**

[PLACE ON CUSTOMER LETTERHEAD]

Mr. Michael J. Daigneault  
Vice President  
Ameresco, Inc.  
111 Speen Street, Suite 410  
Framingham, MA 01701

**SUBJECT: NOTICE TO PROCEED**

Dear Mr. Daigneault:

In accordance with Section 1(a) of the Energy Services Agreement (the “*ESA*”) dated as of \_\_\_\_\_, 2017, by and between the Pine Bush Central School District (“*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 *ESA*.

Sincerely,

**PINE BUSH CENTRAL SCHOOL DISTRICT**

By: \_\_\_\_\_  
Duly Authorized Signatory  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



**ATTACHMENT D**

**FINAL DELIVERY AND ACCEPTANCE CERTIFICATE**

[PLACE ON CUSTOMER LETTERHEAD]

Mr. Michael J. Daigneault, Vice President  
Ameresco, Inc.  
111 Speen Street, Suite 410  
Framingham, Massachusetts 01701

Re: Energy Services Agreement (the “*ESA*”; capitalized terms used and not defined herein shall have the meanings given to such terms in the *ESA*) dated as of \_\_\_\_\_, 2017 by and between Pine Bush Central School District (“*Customer*”) and Ameresco, Inc. (“*Ameresco*”)

Dear Mr. Daigneault:

Customer hereby acknowledges its receipt and acceptance of all ECM’s described in Attachment B of the *ESA* which are installed and in good working condition.

Sincerely,

**PINE BUSH CENTRAL SCHOOL DISTRICT**

By: \_\_\_\_\_

Duly Authorized Signatory

Name: \_\_\_\_\_

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

Date accepted: \_\_\_\_\_

## **ATTACHMENT E**

### **DETERMINATION OF ENERGY COST SAVINGS**

Sections D and F of the Comprehensive Energy Audit is hereby incorporated herein by reference.

Ameresco certifies that measurement and verification techniques for determining cost savings will be performed in accordance with the North American Energy Measurement and Verification Protocol, March 1996, including any updates.

Ameresco further certifies that any state building aid attributable to this project has been excluded in determining the cost savings and payback period under this Agreement.

The determination of energy cost savings are limited to the cost savings calculated for that year alone and will not be augmented by any excess savings achieved over the term of this Agreement.

**ATTACHMENT F**

**CONTRACT COST AND ANNUAL SERVICES**

(a) **Contract Cost:** Customer shall pay to Ameresco, an amount equal to Seven Million Two Hundred Thirty Three Thousand Nine Hundred and Ninety Three Dollars and No Cents (\$7,233,993.00) (the “*Contract Cost*”) in accordance with the terms described in Section 4 of this Agreement. The Contract Cost includes the preconstruction services of described in Section 1(a)(i) of this Agreement. For such preconstruction services Ameresco will pay ECG Engineering a fee of \$506,380 based upon the following schedule:

- 30% upon Customer signing contract with Ameresco
- 30% upon submittal of plans, specifications, and applications to SED;
- 30% upon approval of project by SED;
- 10% upon execution of the Substantial Completion Certificate for the last ECM by the District

Each of the payments shall be made to ECG Engineering within 30 days of receipt of the invoice for payment and in no event greater than 45 days from the date of receipt of the invoice. Invoices for these services that have not been paid to ECG Engineering by Ameresco within 45 days of receipt of such invoice shall be subject to interest at the rate of 18% per annum.

As the Engineer of Record, ECG shall have only those rights to environmental, energy, tax, financial, and electrical-related attributes, rights, credits, benefits and characteristics associated with or arising out of the transactions contemplated by this EPC that would be attributable to ECG as an engineering firm, but not those that would belong to the Customer, the Owner of the Project. This shall include, but not be limited to tax filings under Internal Revenue Code Section 179D. Upon the Customer’s written authorization, ECG will be designated the sole Section 179D beneficiary.

Ameresco shall provide the Customer with a copy of its contract with ECG.

(b) **Operations and/or Maintenance and Monitoring:** The cost of monitoring and operations and maintenance services in this Agreement are as follows:

<b>Year</b>	<b>Monitoring / M&amp;V</b>	<b>Maintenance</b>	<b>Total</b>
1	\$14,621	\$22,330	\$36,950
2	\$15,059	\$23,000	\$38,059
3	\$15,511	\$23,690	\$39,201
4	N/A	\$24,400	\$24,400
5	N/A	\$25,132	\$25,132
6	N/A	\$25,886	\$25,886
7	N/A	\$26,663	\$26,663
8	N/A	\$27,463	\$27,463
9	N/A	\$28,287	\$28,287
10	N/A	\$29,135	\$29,135
11	N/A	\$30,009	\$30,009
12	N/A	\$30,910	\$30,910
13	N/A	\$31,837	\$31,837

14	N/A	\$32,792	\$32,792
15	N/A	\$33,776	\$33,776
16	N/A	\$34,789	\$34,789
17	N/A	\$35,833	\$35,833
18	N/A	\$36,908	\$36,908

(c) **Other Annual Services:** Not applicable

(d) **Extended Warranty:** Not applicable

(e) **Other Costs:** The contract amount includes the cost to install solar PV. Ameresco agrees to coordinate with Customer and its roofing company in such a manner that the performance of such ECM in no way modifies, alters, cancels, voids, and/or terminates the Customer's existing roof warranty.

**ATTACHMENT G**

**[INTENTIONALLY OMITTED]**

**ATTACHMENT H**  
**MAINTENANCE SERVICES**

The following maintenance services are included:

**ECM 4 – Solar PV Array**

Solar PV Operational and Maintenance Service Procedures for system monitoring, service response to alarms and performing annual Preventive Maintenance for the life of the installed solar PV arrays with our customers. The Operations and Maintenance Scope of Services outline included here within provides the details of the monitoring and preventive maintenance program that will be followed throughout the Term of the Agreement. Commencing at the date of Final Delivery and Acceptance.

Monitoring and analytics as well as the annual preventive maintenance program are the tools that will be used in the effort to maintain complete functionality of the system. Included in these services are the following:

- Ongoing operational monitoring of the system, alarm analysis and appropriate service response as and when required.
- Perform an Annual Preventative Maintenance (PM) Inspection
- Record inspection results on Maintenance Checklist documents highlighting any deficiencies.
- Review PM inspection documents and develop a corrective action plan for any deficiencies noted during the PM inspection and perform any required repairs in a timely manner.
- Utilize monitoring and PM program to ensure that the system/equipment is functioning correctly and operating as intended.
- Regularly review current, past, and/or reoccurring problems with equipment/system especially those affecting system production. Perform root cause analysis and develop corrective action plan(s).
- For the Term of the project. Ameresco will be responsible for the following:
  - Ameresco will provide scheduled and unscheduled maintenance on the installed equipment as part of this ECM, including all labor and parts, including equipment replacement.
  - Provide corrective maintenance of equipment to include material for replacement of failed equipment for the term of the contract.
    - applicable to the PV modules, DC/AC Power Inverters, data acquisition system components, and PV panel racking system.
    - Site inspections shall be limited to 5 corrective maintenance site inspection per year.
  - Any service or repairs due to circumstances other than normal wear and tear of the unit are not included in this Agreement. The services does not apply to equipment damage or failure due to acts of nature or vandalism.

## SOLAR O&M SCOPE OF SERVICES

<b>SERVICE SCHEDULE</b>	
<b>Service Description</b>	<b>Frequency</b>
<b><u>Data Acquisition System Monitoring (note 1)</u></b>	
○ <b>Production analytics</b>	
○ Power Generation	Daily
○ Predicted Power	Daily
○ <b>Plant alert management</b>	
○ Device reporting alarms	Daily
○ Inverter fault code alarms	Daily
○ Monthly performance alarms	Monthly
○ <b>System reports</b>	
○ Relevant metrics with preceding inspection	Semi-Annual
○ Relevant metrics with preceding year	Semi-Annual
○ Plant alarm summary	Semi-Annual
○ Corrective action summary	Annual
<b><u>Annual Preventative Maintenance Reporting</u></b>	
<b><u>REPORT DELIVERY TO SYSTEM OWNER</u></b>	<b>Frequency</b>
○ Overall system analysis	Annual
○ Annual Month by Month PV Production Report as supplied by DAS provider	Annual
○ I-V Curve Trace testing results of strings analyzed via monitoring system as possibly underperforming (providing DAS data is available)	Annual
○ System visual inspection including readily accessible roof penetrations (if applicable)	Annual
○ Thermal image scans of all readily available electrical gear	Annual
○ Thermal image scans of a representative amount or suspected problem array modules	Annual
○ Itemized list of prescribed corrective maintenance items with supporting images when applicable	Annual
○ Overview and verification of monitoring system function	Annual
<b><u>Annual Preventative Maintenance Site Visit</u></b>	
<b><u>INVERTER AREA</u></b>	<b>Frequency</b>
○ Thermal image scans of all readily available PV related gear	Annual
○ Voltage readings of AC and DC at inverter	Annual
○ Cleaning interior of inverter and cleaning of inverter filters with compressed air	Annual
○ All readily available terminations checked for torque	Annual
○ Representative Photos	Annual

o Perform Manufacturers Annual Preventive Maintenance Requirements check list	Annual
<b>ELECTRICAL INTERCONNECTION</b>	
o Visual and thermal image scan of this area where possible without shutdown to building or creating an unsafe work environment	Annual
<b>CONDUIT RUNS</b>	
o Visual inspection of PV system conduit runs	Annual
o Spot check conduit coupler, connector, straps, and strut for integrity	Annual
<b>ARRAY LOCATION(S)</b>	
<i>Visual scan of entire array with focus to individual module level noting</i>	
o Broken module glass	Annual
o Racking Damage	Annual
o Loose racking and module clamps	Annual
o Debris around or under array	Annual
o Roof damage from PV racking	Annual
o <i>Spot checks of the following array items where readily accessible</i>	Annual
o Ground bushings	Annual
o Racking Grounding	Annual
o Module grounding	Annual
o Combiner box grounding	Annual
o Module clamp torques	Annual
o DC string level testing	Annual
o I-V Curve Trace on representative or suspected problem strings	Annual
<b>String level Predicted vs. Measured</b>	
o Pmax (W)	Annual
o Vmp (V)	Annual
o Imp (A)	Annual
o Voc (V)	Annual
o Isc (A)	Annual
o Fuse continuity	Annual
o All string terminations checked for torque	Annual
o All combined output terminations checked for torque	Annual
o Irradiance and cell temperatures taken during testing	Annual
<b>MONITORING System Components</b>	
o Inspect data acquisition components and confirm software/firmware upgrades are current	Annual
o Readily accessible array location sensors checked for proper function	Annual

**Note:1** The Active Monitoring and Alert Management daily and monthly services referenced above will be performed by the installed data acquisition and analytics system. These items are provided by the analytics software automatically and can be viewed through the provided interface to the software package. Ameresco personnel will not be providing these reports directly.



**ATTACHMENT I**

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

<b>PROJECT NAME &amp; ADDRESS:</b> _____ _____ _____	<b>PROJECT NO.:</b> _____ <b>CONTRACT DATE:</b> _____ <b>DESCRIPTION:</b> _____ _____
---	--

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 punch list items. The failure to include any items on such punch list does not alter the responsibility of Ameresco to complete all work in accordance with the Agreement. Ameresco will complete and/or correct the work listed below as punch list items within 30 days after the above date of Substantial Completion.

**CONTRACTOR:** Ameresco, Inc., 111 Speen Street, Suite 410, Framingham, Massachusetts 01701

**AUTHORIZED SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
**NAME:** \_\_\_\_\_  
(type or print)

**CUSTOMER:** Pine Bush Central School District, 156 Route 302, Pine Bush, New York 12566

**AUTHORIZED SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
**NAME:** \_\_\_\_\_  
(type or print)

**ENGINEER:** ECG

**AUTHORIZED SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
**NAME:** \_\_\_\_\_  
(type or print)

**PUNCHLIST ITEMS**

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

**ATTACHMENT J**  
**STANDARDS OF SERVICE**

In general, the space temperature will be maintained as follows, in accordance with industry standards:

Heating Season - (Sept. - May)

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

Cooling Season (May - Sept.)

Space	Minimum average temperature
Occupied	<b>76 deg F</b>
Unoccupied	<b>N/A</b>
Storage area requiring heat	<b>N/A</b>
<b>Areas not requiring heat</b>	<b>N/A</b>

**ATTACHMENT K**

**TEST INSTALLATION ACCEPTANCE LETTER**

[PLACE ON CUSTOMER LETTERHEAD]

Date \_\_\_\_\_

Mr. Michael J. Daigneault  
Vice President  
Ameresco, Inc.  
111 Speen Street  
Suite 410  
Framingham, MA 01701

Re: Energy Services Agreement (the “*ESA*”; capitalized terms used and not defined herein shall have the meanings given to such terms in the ESA) dated as of \_\_\_\_\_, 2017 by and between Pine Bush Central School District (“*Customer*”) and Ameresco, Inc. (“*Ameresco*”)

Dear Mr. Daigneault:

Customer has reviewed samples of certain ECM’s (as set forth on the list attached hereto) to be installed pursuant to the ESA. Customer hereby approves such ECM’s 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 ECM’s to be used in the performance of the ESA.

Sincerely,

**PINE BUSH CENTRAL SCHOOL DISTRICT**

By: \_\_\_\_\_  
Duly Authorized Signatory

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

## ATTACHMENT L

### MONITORING

Monitoring services include services integral to the measurement and verification plan for the Guarantee of Energy Savings, and are separate from any scope of maintenance and operation included under Attachment H. Included in these monitoring services are the annual Guarantee Reconciliation as defined in Section 6.

In an effort to assist the customer in maximizing the energy savings, Ameresco will conduct annual inspections at the customer's facility. The inspection will include a review of the Energy Management System (EMS). Ameresco will review the trend data and the current temperature set-points and occupancy schedules. The EMS will be designed to automatically notify the customer when the temperature set-points and occupancy schedules are changed and are outside of or beyond the values established in the contract. Ameresco will review the notification history with the customer and will make recommendations that could improve the energy savings. The data will be used for informational purposes only, intended to aid the customer in their understanding of the system operation, and will not be used to determine energy savings.

#### **Annual Inspection Procedures (General)**

- Confirm that the system/equipment is functional and operating as intended.
- Verify that the system is being properly maintained. Review current O&M practices to ensure compliance with the contract requirements.
- Review current or past problems with the system, especially those that may affect energy savings.
- Identify any building renovations or changes in the facility operation during the past year that would affect the project performance and/or savings.

#### **Quarterly Inspection Procedures (EMS)**

- Review trend logs and compare with the standards established in the ESA.
- Review the notification history for set-points and occupancy schedules that have been modified since the last inspection.
- Recommend set-point and schedule adjustments – particularly those that do not comply with the contract standards.
- Review the basic system operation with new personnel and recommend training, if necessary.
- Review alarm history and discuss possible reasons and corrections.

Ideally, an inspection would be performed prior to the heating season to maximize the energy savings during the winter months. Ameresco shall provide the Customer written notice five days prior to its performing any onsite inspections or requesting information from the Customer.

**ATTACHMENT M**  
**EXTENDED WARRANTY**

No extended warranty coverage is included under this Agreement.

**ATTACHMENT N**  
**FORM OF PERFORMANCE AND PAYMENT BONDS**

# DRAFT AIA® Document A312™ - 2010

## Performance Bond

**CONTRACTOR:**

(Name, legal status and address)

« Ameresco, Inc.  
111 Speen Street, Suite 410  
Framingham, MA 01740 Ameresco  
Federal Solutions »« »  
« 1820 Midpark Road, Suite C  
Knoxville, TN 37921 »

**SURETY:**

(Name, legal status and principal place of business)

« Western Surety Company, a South Dakota corporation  
333 S. Wabash Ave. 41<sup>st</sup> Fl.  
Chicago, IL 60604  
  
Liberty Mutual Insurance Company, a Massachusetts corporation  
175 Berkeley Street, Boston, MA.  
02116  
  
as co-sureties »« »  
« »

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**OWNER:**

(Name, legal status and address)

« Pine Bush Central School District  
156 Route 302  
Pine Bush, New York 12566 Test-Owner\_P »« »  
« »

**CONSTRUCTION CONTRACT**

Date: « 2017 February 14, 2005 »

Amount: \$ « \$7,233,993.00 1,000,000.00 »

Description: Energy Services Agreement  
(Name and location)

« Sample »

« »

**BOND**

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond:

None

See Section 16

**CONTRACTOR AS PRINCIPAL**

Company: (Corporate Seal)

**SURETY**

Company: (Corporate Seal)

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature:

Name and « »

Title:

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(FOR INFORMATION ONLY — Name, address and telephone)

**AGENT or BROKER:**

**OWNER'S REPRESENTATIVE:**

(Architect, Engineer or other party:)

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User Notes:

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**§ 1** The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

**§ 2** If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

**§ 3** If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

**§ 4** Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

**§ 5** When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

**§ 5.1** Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

**§ 5.2** Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

**§ 5.3** Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

**§ 5.4** Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

**§ 6** If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

16.1 This Bond applies only to the installation portion of the Construction Contract and does not apply in any way to energy savings guarantees, payments or maintenance provisions, except that this Bond shall guarantee that the installation will be free of defective materials and workmanship for a period of twelve (12) months following the date of execution of a Substantial Completion Certificate (as defined in the Construction Contract) by Owner with respect to such work, as more particularly set forth in the Construction Contract.

16.2 The Surety hereby acknowledges and agrees that (i) Western Surety is the "lead" surety hereunder, notwithstanding the co-surety relationship between Western Surety and Liberty Mutual, (ii) Western Surety and Liberty Mutual are jointly and severally liable hereunder, and (iii) Western Surety and Liberty Mutual agree that Western Surety as the lead surety is empowered to be the single representative with authority to act on behalf of all co-sureties with respect to the Bond so that all correspondence and all claims under this Bond shall be sent to Western Surety.

« »

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: (Corporate Seal)

Company: (Corporate Seal)

Signature:  
Name and Title: « »  
Address: « »

Signature:  
Name and Title: « »  
Address: « »

# DRAFT AIA® Document A312™ - 2010

## Payment Bond

### CONTRACTOR:

(Name, legal status and address)

« Ameresco, Inc.  
111 Speen Street, Suite 410  
Framingham, MA 01740 Ameresco  
Federal Solutions »« »  
« 1820 Midpark Road, Suite C  
Knoxville, TN 37921 »

### SURETY:

(Name, legal status and principal place of business)

« Western Surety Company, a South Dakota corporation  
333 S. Wabash Ave. 41<sup>st</sup> Fl.  
Chicago, IL 60604  
Liberty Mutual Insurance Company, a Massachusetts corporation  
175 Berkeley Street, Boston, MA.  
02116  
as co-sureties »« »  
« »

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

Formatted: Superscript

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

### OWNER:

(Name, legal status and address)

« Pine Bush Central School District  
156 Route 302  
Pine Bush, New York 12566 Test Owner »« »  
« »

### CONSTRUCTION CONTRACT

Date: « 2017 February 14, 2005 »  
Amount: \$ « \$7,233,993.00 » « 1,000,000.00 »  
Description: Energy Services Agreement  
(Name and location)  
« Sample »  
« »

### BOND

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond:

None

See Section 18

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

### SURETY

Company: (Corporate Seal)

Signature: \_\_\_\_\_

Name and « »« »

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature: \_\_\_\_\_

Name and « »« »

Title:

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(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.



§ 16.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

«18.1 This Bond applies only to the installation portion of the Construction Contract and does not apply in any way to energy savings guarantees, payments or maintenance provisions.

18.2 The Surety hereby acknowledges and agrees that (i) Western Surety is the "lead" surety hereunder, notwithstanding the co-surety relationship between Western Surety and Liberty Mutual, (ii) Western Surety and Liberty Mutual are jointly and severally liable hereunder, and (iii) if the Owner seeks indemnification under the terms of this Bond, the Owner may seek such indemnification from Western, without the necessity of providing any notice to, or seeking indemnification separately from, Liberty Mutual. »

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

**CONTRACTOR AS PRINCIPAL**

Company:

(Corporate Seal)

**SURETY**

Company:

(Corporate Seal)

Signature:

Name and Title: « »« »

Address: « »

Signature:

Name and Title: « »« »

Address: « »

**ATTACHMENT O**  
**FORM OF CERTIFICATE OF INSURANCE**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
7/18/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher Risk Management Services, Inc. 470 Atlantic Avenue Boston MA 02210	CONTACT NAME:	
	PHONE (A/C, No, Ext): 617-261-6700	FAX (A/C, No): 617-646-0400
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : Zurich American Insurance Company		16535
INSURER B : National Union Fire Insurance Company of Pittsburg		19445
INSURER C :		
INSURER D :		
INSURER E :		
INSURER F :		

INSURED AMERINC-17  
Ameresco, Inc.  
111 Speen Street  
Suite 410  
Framingham MA 01701

COVERAGES CERTIFICATE NUMBER: 1084737105 REVISION NUMBER:  
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y		GLO585236805	11/30/2017	11/30/2018	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y		BAP585238705	11/30/2017	11/30/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			013791009	11/30/2017	11/30/2018	EACH OCCURRENCE \$ 6,000,000 AGGREGATE \$ 6,000,000 \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC595394504	11/30/2017	11/30/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Certificate holder is included as Additional Insured on the general liability policy, as per form # U-GL-1175-F CW, edition 04/13 and on the auto policy, as per form #CA 20 48, edition 02/99.

CERTIFICATE HOLDER  Pine Bush Central School District 156 Route 302 Pine Bush NY 12566	CANCELLATION  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  <i>Patrick J. Veale</i>
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## ATTACHMENT P

### TRAINING PROTOCOL FOR CUSTOMER'S EMPLOYEES

Training and orientation on the systems installed will vary depending on the complexity of the specific equipment installed for each ECM. Ameresco will provide a minimum of 40 hours of training including at least 3 classroom sessions. Training will be provided in the following levels:

1. For systems and/or equipment that are essentially direct replacements of existing equipment, and where no additional specific skills will be required to perform operations and maintenance functions, training will be limited to a general overview of the equipment installed and a review of the O&M manuals. Training will be directed to the State facilities operation and maintenance personnel. The review of the O&M manuals will provide staff with familiarity with the equipment that is installed, manufacturer's recommended maintenance procedures, and warranty information.
2. For systems/equipment that are new to the site and require some general understanding as to their function and operation, training will include a minimal amount of classroom time that will provide an overview of the technology and any specific maintenance or operations requirements. Following the classroom training, a site tour will be conducted to view the installation and operation of the equipment.
3. For systems and/or equipment that are new to the site and more complex in nature, training will consist of classroom training followed by hands-on instruction in the field. Training will be provided through a complement of Ameresco personnel, design engineers, installation contractors, and manufacturer's representatives, as necessary, and will be dictated by the complexity of the installation, participant's prior experience with the equipment that is proposed/installed and contractual obligations. In general, training will consist of the following:

#### *Explanation of the Design Concept*

- Design intent
- Energy efficiency considerations
- Seasonal modes of operation
- Emergency conditions and operation
- Comfort conditions and indoor air quality

#### *Systems Operation*

- Operation of individual components, instruction from authorized factory technicians, if required
- Physical location of critical shut-off valves, fire, smoke, and balancing dampers, relief valves, safeties, and control panels
- System operational procedures for all modes in manual and automatic modes

#### *Operation of the Control Systems*

- Sequences of Operation
- Use of Graphical User Interfaces

- Alarms and problem indicators
- Diagnostics and corrective actions

*Service and Maintenance*

- Use of the O&M manuals
- Instruction and logging procedures for lubrication
- Instruction from authorized factory technicians, where applicable
- Troubleshooting and investigation of malfunctions
- Recommended procedures for collecting, interpreting, and storing specific performance data

## ATTACHMENT Q

### GUIDELINE ON CHANGES TO ENERGY USAGE

The following list includes potential types of changes to the property and additions of equipment that may have an impact on energy usage and are to be reported to Ameresco by Customer:

- Occupied hours and scheduled operating times
- Number of occupants
- Changes in required space temperatures
- Changes in major heating or electrical system equipment, including capital plans for major renovations
- Changes in the building envelope, including expansion of building area
- Increases in plug load devices such as computers and printers

In general, Customer shall report changes in the above that result in a 5% change from the values as specified in the CEA.

**ATTACHMENT R**  
**DISTRICT'S REQUEST FOR PROPOSAL**

**ATTACHMENT S**

**AMERESCO'S RESPONSE TO REQUEST FOR PROPOSAL**



**ATTACHMENT T**

**COMPREHENSIVE ENERGY AUDIT**