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**ENERGY SERVICES AGREEMENT**

**by and between**

**MOUNT SINAI UNION FREE SCHOOL DISTRICT**

**and**

**AMERESCO, INC.**

**Dated as of JULY 23, 2025**

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## ENERGY SERVICES AGREEMENT

**THIS ENERGY SERVICES AGREEMENT**, including all attachments, exhibits, and schedules referenced herein (hereinafter "**Agreement**") is entered into as of July \_\_, 2025, by and between the Mount Sinai Union Free School District, having its principal place of business located at 118 North Country Road, Mount Sinai, New York 11766 ("**Customer**") and Ameresco, Inc., having its principal place of business at 111 Speen Street, Suite 410, Framingham, Massachusetts 01701 ("**Ameresco**"). The Customer and Ameresco may be collectively referred to as the "**Parties**" and individually as a "**Party**."

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

**WHEREAS**, Customer owns the Property where such services are to be performed and where such installations are to be installed;

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

### **SECTION 1 Scope of Services.**

#### **(a) General Provisions**

- (i) As used in this Agreement, the term "Work" means the construction and services required by the Contract Documents (as defined below), whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Ameresco to fulfill Ameresco's obligations, as described in Attachment B and otherwise set forth in the Contract Documents. The "Contract Documents" consist of this Agreement, its attachments, exhibits, schedules, and addenda referenced herein and attached hereto. The Work may constitute the whole or a part of the Project. The "Project" is the total construction of which the Work performed by Ameresco under this Agreement may be the whole or a part.
- (ii) Pursuant to 8 N.Y.C.R.R. §155.20(d), this Agreement shall not be executory until approval of the Commissioner of Education is obtained.
- (iii) Pursuant to New York Energy Law § 9-103, this Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract.

#### **(b) Work:**

- (i) **Preconstruction Services:** Ameresco has performed a Comprehensive Energy Audit ("**CEA**") of the Property, dated as of April 9, 2025, as set forth in Attachment B. Immediately following the execution and delivery of this Agreement, Ameresco will consult with Customer and, with Customer's authorization, will assist in coordinating the design and engineering services to be performed by a qualified professional engineering firm. The work to be performed by such professional engineering firm will include design and engineering services in relation to the required submissions to the New York State

Education Department (“*NYSED*”) in order to seek approval for the permissible amount of New York State Building Aid available for the Project (“*State Building Aid*”). The cost for such engineering services is included in the Contract Cost (as defined in Attachment F).

- (ii) **Construction Work:** Upon the occurrence of: (i) the issuance of NYSED approval of the Project; (ii) the delivery by Customer to Ameresco of a Notice To Proceed (as defined in Section 4); and (iii) Ameresco’s receipt of evidence of the funding of an escrow account pursuant to the Lease (as defined in Section 3) with immediately available funds sufficient for the payment of the Contract Cost, Ameresco shall furnish or cause to be furnished all labor, materials and 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 “*ECMs*”). Ameresco shall be responsible for all means, methods, techniques, and sequences. Ameresco shall perform all of the Work described in Attachment B in an efficient and expeditious manner and in accordance with all of the terms and provisions of this Agreement. Ameresco shall perform the Work in accordance with the current applicable professional standards and with the diligence and skill expected for the performance of work of the type described in Attachment B. Customer and Ameresco shall mutually plan the scheduling of the construction work. The construction work will be scheduled to minimize the interruption of the daily routine of Customer’s staff and students except as permitted in writing by Customer.
- (c) **Disposal:** Ameresco, at its cost, shall (i) be responsible for disposal of all non-hazardous equipment and materials which are rendered useless and removed as a result of the installation of the ECMs and (ii) cause all lamps which are classified as hazardous wastes by the rules and regulations of the U.S. Environmental Protection Agency (40 CFR Parts 260 through 279), batteries, and PCB-contaminated ballasts, if any, which have been rendered useless and removed as a result of the installation of the ECMs to be transported and disposed of. Construction waste (including but not limited to cardboard, metal, wood crates, plastic wiring, etc.) resulting from Ameresco’s operations hereunder shall be removed offsite by Ameresco or its subcontractors for disposal and/or recycling and Ameresco shall assume all liability in connection with their removal, handling, transportation, and/or disposal. The Customer’s name and address shall be listed on the shipping documents as the owner/generator of the waste. The transportation of waste materials will meet local regulatory requirements.
- (d) **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 as 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*”) as identified in Customer’s 2024 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 to Ameresco that, to the best of its knowledge and belief, there is no asbestos in any area wherein Ameresco will be performing its services hereunder other than as so identified in the AHERA Report. With the exception of ACBM and ACM identified in the AHERA Report, in the event that Ameresco: (A) encounters any friable or non-friable asbestos which is in the immediate vicinity of its work, (B) determines that its work will result in the disturbance of asbestos material, or (C) determines that the presence of asbestos material will impede its work, Ameresco will notify Customer of the same and

Customer will, at its cost, cause the asbestos to be promptly and properly removed, enclosed, encapsulated or otherwise abated in accordance with all applicable laws, regulations and guidelines, or alternatively, Customer, at its cost, may provide written test reports showing that asbestos in 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. Under no circumstances shall Ameresco be required to handle asbestos which is not so identified in the AHERA Report. In the event Ameresco encounters asbestos which is not so identified which materially affects its progress of the Project, Ameresco, at its option, may demobilize and cease construction in the area affected by the presence of such asbestos until such time as Customer performs the actions required to be performed by Customer as provided herein. In the event that Customer does not promptly take action, as provided herein, or notifies Ameresco that it will not take such action, Ameresco may, at its option, either remove the affected area from the Scope of Services (and make commensurate adjustments to the rights and obligations of the Parties) or terminate this Agreement in its entirety in accordance with Section 12(a). Customer shall be responsible for all costs (including termination) incurred by Ameresco that relate to the presence of asbestos 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. Under no circumstances shall Ameresco be required to perform services which cause the disturbance of lead paint. Customer hereby represents and warrants to Ameresco that, to the best of its knowledge and belief, 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. Under no circumstances shall Ameresco be required to perform services which cause the disturbance of lead. In the event that lead paint materially affects the progress of the Project, Ameresco, at its option, may demobilize and cease construction in the area affected by the presence of lead paint until such time as Customer performs the actions required to be performed by Customer as provided herein. In the event that Customer does not promptly take action as provided herein or notifies Ameresco that it will not take such action, Ameresco may, at its option, either remove the affected area from the Scope of Services (and make commensurate adjustments to the rights and obligations of the Parties)

or terminate this Agreement in its entirety in accordance with Section 12(a). Customer shall be responsible for all costs (including termination) incurred by Ameresco that relate to the presence of lead paint. 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.

- (e) **Maintenance and Monitoring:** To the extent provided for in Attachment H, Ameresco will service and maintain 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 ECMs (or other equipment) which are to be maintained by Ameresco, Customer, at its expense, shall be responsible for servicing and maintaining the ECMs (and such other equipment). To the extent provided for in Attachment E, Ameresco will supply such ongoing monitoring services during the Term at a cost to Customer as set forth in Section 4 and Attachment F.
- (f) **Compliance with Law:** Ameresco shall, at its expense, comply with and obtain all applicable licenses and permits required by federal, state and local laws in connection with (i) the installation of the ECMs and (ii) the operation and/or maintenance of the ECMs (to the extent that Ameresco agrees to perform such operations and/or maintenance services). 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, at the sole expense of Ameresco, promptly procure the same. Ameresco shall pay the required prevailing wage rates for work in connection with the Project pursuant to the New York State Labor Law. Ameresco shall comply with all applicable federal, state and municipal laws and regulations that regulate the health and safety of its workers while providing the Work, and shall take such measures as required by those laws and regulations to prevent injury and accidents to other persons on, about or adjacent to any Project site. It is understood and agreed, however, that Ameresco shall have no responsibility for elimination or abatement of health or safety hazards created or otherwise resulting from activities at any Site carried on by persons not in a contractual relationship with Ameresco, including Customer, Customer's contractors or subcontractors, Customer's tenants or Customer's visitors.
- (g) **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, except with respect to taxes on Ameresco's net income, 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 ECMs.
- (h) **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, military status, or ancestry in accordance with applicable federal, New York State or local laws.
- (i) **Standards of Service and Comfort:** Customer shall operate the ECMs in a manner that shall provide the standards of service and comfort provided for in Attachment J.
- (j) **Installation/Specifications:** Prior to the commencement of work hereunder, Ameresco may, at its option, provide (or Customer, at its option, may reasonably request to have Ameresco provide) a sample installation of, or written specification of, any ECM to be installed (each, a "**Sample**"). Customer shall furnish its written approval or disapproval of each Sample within ten (10) business days following Customer's receipt of Ameresco's written notice of installation and/or delivery of such Sample. Customer's approval of such Sample shall be in substantially the form of Attachment

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. Upon Customer’s written approval of a Substitution, Ameresco may revise the Attachments to reflect each such Substitution. If Customer does not approve or disapprove of any Sample or Substitution within ten (10) business days following Customer’s receipt of Ameresco’s written notice thereof, then Customer shall be deemed to have given its approval of such Sample or Substitution, as applicable. If, however, Customer does not approve of any Substitution, the Parties hereby agree to negotiate a mutually acceptable solution. Customer shall not unreasonably withhold, condition or delay any approval provided for herein.

**(k) Duties, Obligations and Responsibilities of Ameresco:**

- (i) All labor furnished under this Agreement shall be competent to perform the tasks undertaken, all materials and equipment provided shall be new and of appropriate quality and the completed work shall comply in all material respects with the requirements of this Agreement.
- (ii) Ameresco shall maintain the Project site in an orderly fashion and free from unnecessary accumulation of waste material or rubbish caused by its operations 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) If Ameresco damages property of others not included in the Work, Ameresco shall repair the property to its pre-existing condition at its sole expense unless Customer directs otherwise, and shall indemnify and hold harmless the Customer for any and all such damages.
- (iv) During the construction work set forth in Section 1(a), Ameresco shall permit Customer and/or any of its representatives to enter upon the Project site to review or inspect the construction work; provided, that in each case, the Customer and/or its representatives coordinate such review or inspection with Ameresco and agree to comply with all applicable federal, state and local safety laws, rules and regulations, including, without limitation, those promulgated by the U.S. Department of Labor Occupational Safety & Health Administration.
- (v) Ameresco will provide equipment manuals and other appropriate information regarding equipment installed hereunder to Customer at or about the time of Substantial Completion (as defined in Section 4).

**(l) Utility Rebates and Investment Tax Credits under the Inflation Reduction Act.**

- (i) The Parties have entered into the Agreement, in part, on the expectation that the design and implementation of the Project will equip the Customer to receive (a) utility rebates (“Rebate[s]”) and/or (b) an Investment Tax Credit (“ITC”) under the Inflation Reduction Act (“IRA”) of 2022 pursuant to Internal Revenue Code (“IRC”) Sect. 6417 (a “Direct Pay ITC”). The Rebates and the Direct Pay ITC are referred to collectively as the “Project Benefits”.
- (ii) In order for Customer to be eligible for the Direct Pay ITC pursuant to the IRC, the Customer acknowledges it will be required to timely prepare and submit certain, necessary documentation to the Internal Revenue Service (“IRS”), both at the time Ameresco begins

physical work of a significant nature on the Project as well as by or before the tax return deadline associated with the year when those portions of Ameresco's Work eligible for a Direct Pay ITC are placed in service (generally, the "ITC Recipient Obligations"). As used in this Section 1(l), the term "ITC Recipient Obligations" shall be deemed to mean all requirements necessary for Customer to be eligible for the Direct Pay ITC, other than Ameresco's compliance with the Prevailing Wage and Apprenticeship Requirements (as hereinafter defined). In addition, the Customer may be responsible for additional requirements associated with eligibility for Rebates (the "Customer Rebate Obligations" and, together with the ITC Recipient Obligations, the "Customer Project Benefit Obligations"). Ameresco shall provide all support reasonably necessary, including documentation and certifications, to enable Customer to meet the ITC Recipient Obligations, and shall not be relieved of its obligations under this Section due to failure to provide such support or timely perform its own Project responsibilities pursuant to this Agreement.

- (iii) Based on applicable laws as of the date of this Agreement and subject to Customer's faithful performance of the Customer Project Benefit Obligations, Ameresco hereby guarantees the Project will result in Rebates in the amount of \$5,700.00 (the "Guaranteed Rebate Value") and Direct Pay ITC in the amount of \$987,443.00 (the "Guaranteed ITC Value"). The Guaranteed Rebate Value and the Guaranteed ITC Value are referred to herein collectively as the "Guaranteed Project Benefits". Any positive difference between the dollar amount of the Guaranteed Project Benefits set forth herein minus the dollar amount of the actual Project Benefits received by Customer for the Project, is referred to herein as a "Guaranteed Project Benefits Shortfall". For the avoidance of doubt, Ameresco is only guarantying the Customer's receipt of the Guaranteed Rebate Value and the Guaranteed ITC Value, and not any additional amounts of Rebates or Direct Pay ITC for which Customer believes it or the Project may be eligible.
- (iv) Customer acknowledges and agrees that the Rebates and the Direct Pay ITC will be received at different times during and following the installation of the ECMs. Accordingly, determination of the final amount of Project Benefits with respect to the Project and thus the final calculation of any Guaranteed Project Benefits Shortfall, will not be possible until (i) all Rebates have been received, and (ii) either (A) Customer has received the Direct Pay ITC, (B) Customer has received written notice from the IRS or other governmental authority that Customer will not receive the Direct Pay ITC, or (C) a change in applicable federal, state or local law affecting the availability of the ITC or the Direct Pay ITC generally and/or the eligibility of the Customer or the Project for the ITC or the Direct Pay ITC, has occurred. The date on which any of the foregoing have occurred is referred to herein as the "Project Benefit Trigger Date". Within ten (10) business days following the Project Benefit Trigger Date, Customer shall notify Ameresco of the amount of Direct Pay ITC received by Customer or the occurrence of either of the eventualities set forth in subsection (ii)(B) or (ii)(C) of the second sentence of this Section 1(l)(iv). If the Customer experiences a Guaranteed Project Benefits Shortfall, for any reason other than Customer's failure to faithfully perform the Customer Project Benefit Obligations, then Ameresco will reimburse the Customer for such Guaranteed Project Benefits Shortfall in a one-time payment (the "Guaranteed Project Benefits Reimbursement") within thirty (30) days following receipt of Customer's notice. Ameresco's payment of the Guaranteed Project Benefits Reimbursement shall be Ameresco's sole obligation and liability with respect to the Project Benefits or such Guaranteed Project Benefits Shortfall. Any amount of Rebates received in excess of the Guaranteed Rebate Value shall be applied against any shortage in the Direct Pay ITC below the Guaranteed ITC Value in calculating any Guaranteed Project Benefits Shortfall. If, however, the actual Project Benefits received exceed the Guaranteed Project Benefits, then the amount of such Project Benefits surplus shall be divided equally between Ameresco and Customer. Similarly, if Ameresco pays the Guaranteed Project Benefits Reimbursement to Customer, and the

Rebates or Direct Pay ITC is subsequently issued or available for the Project and received by the Customer, then the Customer shall transfer and pay to Ameresco an amount of such Rebates or Direct Pay ITC sufficient to reimburse Ameresco for the Guaranteed Project Benefits Reimbursement within thirty (30) business days of receiving such Rebate or Direct Pay ITC. Notwithstanding the foregoing, in no event shall Customer be required to reimburse Ameresco more than the Guaranteed Project Benefits Reimbursement amount previously paid, and only if the Project Benefits are received by Customer within twenty-four (24) months following such payment.

- (v) Notwithstanding the foregoing, Ameresco reserves the right to reimburse or reduce any Guaranteed Project Benefits Shortfall by modifying its contract price, scope, and/or savings, subject to the review and final approval by the New York State Education Department, in lieu of issuing payment in order for the total Project's energy savings to continue to meet the State's payback requirements.
- (vi) If PWA Guidance is issued with respect to the Prevailing Wage and Apprenticeship Requirements after the Effective Date, or should there be any changes to the Prevailing Wage and Apprenticeship Requirements that negatively impact the Project financials, including by way of resulting in a failure to meet the requirements of NYSED or otherwise, then the Parties agree to mutually and reasonably attempt to negotiate a reduction or modification of the Scope of Work by removing components of the ECMs to be otherwise installed hereunder in order to ensure the Prevailing Wage and Apprenticeship Requirements can be 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(b)(i). If either Customer or Ameresco exercises such option to terminate this Agreement, Customer shall pay Ameresco only the actual, reasonable and properly documented costs and expenses incurred by Ameresco in performing such preconstruction services through the effective date of termination. Such costs and expenses shall include, without limitation, internal Ameresco costs for actual hours expended at reasonable and properly documented internal labor rates, not to exceed standard direct labor costs, excluding profit, overhead or administrative costs and actual expenses incurred as documented through Ameresco's accounting system as well as any subcontracted engineering, consulting or contractor services direct costs as evidenced by actual invoices. Within thirty (30) days following such termination, Ameresco shall provide Customer with a detailed accounting of all such costs, and Customer shall have a reasonable opportunity to review, verify, and approve such accounting before payment is made. In addition, Customer shall pay Ameresco any amounts then due and payable to Ameresco for portions of the Work purchased or installed by Ameresco prior to the effective date of such termination in accordance with the terms of this Agreement. Such obligation to pay for such costs shall be effective immediately upon Customer's signing of this Agreement and shall not be subject to approval per Section 36.
- (vii) For purposes of this Section:
  - a. the term "placed in service" shall mean that equipment and/or property has been placed in a condition or state of readiness and availability for a specifically designed function. This means that such equipment is installed and capable of being operated (e.g., solar panels are mounted, batteries are functional), commissioning tests have been successfully performed (proving functionality), and that the Customer has control of the asset and it is functionally capable for use.
  - b. The term "Construction, Alteration or Repair" has the meaning given to such terms for

purposes of Sections 45(b)(7) and (8) of the IRC (and Section 45Y(g)(9) and 45Y(g)(10) of the IRC) (or any similar provision under Section 48 or 48E of the IRC) and any PWA Guidance.

- c. The term “Prevailing Wage and Apprenticeship Requirements” means the requirements under Sections 45(b)(7) and 45(b)(8) of the IRC (and Section 45Y(g)(9) and 45Y(g)(10) of the IRC) (or any similar provision under Section 48 or 48E of the IRC) and any PWA Guidance that must be satisfied with respect to any Work on the Project performed by Ameresco or any of its Affiliates or any Subcontractor of any tier that constitutes Construction, Alteration or Repair to allow the Project to satisfy the requirements of Sections 45(b)(6)(B) and 45Y(a)(2)(B)(iii) of the IRC (or any similar provision under Section 48 or 48E of the IRC), in each case applying a 15% “applicable percentage” of total labor hours qualified apprentice labor hour requirement standard for purposes of Section 45(b)(8)(A) of the IRC (and any similar provision under Section 45Y, 48, or 48E of the IRC), subject to Section 45(b)(8)(B) of the IRC and the exception set forth in Section 45(b)(8)(D)(ii) of the IRC.
- d. The term “PWA Guidance” means Notice 2022-61, the final regulations set forth in T.D. 9998 and T.D. 10015 (or any then-applicable successor or predecessor guidance with respect thereto), and any guidance issued after the date hereof by the Secretary of the U.S. Department of the Treasury (including any guidance issued by the IRS) or the Department of Labor interpreting the requirements under Sections 45(b)(7) and 45(b)(8) or 45Y(g)(9) and 45Y(g)(10) of the IRC (or any similar provision under Section 48 or 48E of the IRC), as applicable.

## **SECTION 2                      Ownership of and Security Interest in the ECMs.**

Ownership and title to each ECM or portion thereof, as applicable, shall automatically pass to Customer upon Ameresco’s receipt of both (i) the executed Substantial Completion Certificate delivered pursuant to Section 4 for such ECM or portion thereof, and (ii) the indefeasible payment in full of all of Customer’s payment obligations to Ameresco pursuant to such Substantial Completion Certificate for such installed ECM or portion thereof. Prior to satisfaction of the conditions set forth in (i) and (ii) in the previous sentence with respect to an ECM or portion thereof, title to each ECM and other personal property installed or incorporated into the ECMs shall remain in the name of Ameresco. If, notwithstanding the intent of the Parties, Customer is deemed to hold title to the ECMs prior to satisfaction of the conditions set forth in (i) and (ii) of the first sentence of this Section 2, 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 ECMs. Customer hereby authorizes Ameresco to file, from time to time, Uniform Commercial Code financing statements in the State of New York as may be necessary to perfect and maintain its security interest in the ECMs. If requested by Ameresco, Customer agrees to execute and deliver all further instruments and documents and take all further action that may be necessary in order to create, perfect and protect Ameresco’s security interest in the ECMs and hereby irrevocably appoints Ameresco as Customer’s attorney-in-fact with full power to sign such instruments and documents. 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 (i) the executed Substantial Completion Certificate for such ECM and (ii) 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 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 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 by removing components of the ECMs 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, Customer shall pay Ameresco only for the actual, reasonable and properly documented costs and expenses incurred by Ameresco in performing such preconstruction services through the effective date of termination. Such costs and expenses shall include, without limitation, internal Ameresco costs for actual hours expended at reasonable and properly documented internal labor rates, not to exceed standard direct labor costs, excluding profit, overhead or administrative costs and actual expenses incurred as documented through Ameresco's accounting system as well as any subcontracted engineering, consulting or contractor services direct costs as evidenced by actual invoices. Within thirty (30) days following such termination, Ameresco shall provide Customer with a detailed accounting of all such costs, and Customer shall have a reasonable opportunity to review, verify, and approve such accounting before payment is made. 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 DSM Programs: Ameresco will assist the Customer in filing for and securing incentive payments available as a result of this Project. Any amounts paid by electric or gas utilities or any other entity to the Customer or Ameresco as demand side management or other rebates or incentives in connection with this Project will be applied for the purposes of this Project.

#### **SECTION 4 Compensation and Monthly Progress Payments.**

- (a) For each month during the construction period of the Project following Customer's issuance to Ameresco of the notice to proceed substantially in the form of Attachment C (the "*Notice to Proceed*"), Customer shall make monthly progress payments to Ameresco based upon the percentage of the Project construction and equipment procurement completed at the end of each month. Ameresco shall be paid the same percentage of the Contract Cost as such percentage of completion. Following the end of each month, during the construction period of the Project, Ameresco will provide to Customer an invoice together with a list in sufficient detail to reasonably identify construction and equipment procurement during such month. Within thirty (30) days after receipt of such invoice, Customer shall pay or cause to be paid to Ameresco the amount due under such invoice.
- (b) Within thirty (30) days following each 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) All amounts not paid to Ameresco five (5) business days after the due dates specified in Sections 4(a), (b), (c) and (d) shall accrue interest at the rate of eighteen percent per annum (18%) for the number of days following each such due date until such time as such amount due has been paid in full. If Ameresco is prohibited by law from charging interest at said 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.
- (e) Upon Substantial Completion of the installation of an ECM (or portion thereof, as applicable), Ameresco will deliver to Customer a substantial completion certificate in the form of Attachment I (the "**Substantial Completion Certificate**"). Within five (5) business days after receipt of each Substantial Completion Certificate, Customer shall complete, execute and deliver to Ameresco each such Substantial Completion Certificate. A delivery and acceptance certificate in the form of Attachment D (the "**Final Delivery and Acceptance Certificate**") shall be executed by Customer and delivered to Ameresco within five (5) business days after the Substantial Completion of the installation of all the ECMs under this Agreement. Customer shall not unreasonably withhold, condition or delay the execution and delivery of any Substantial Completion Certificate or the Final Delivery and Acceptance Certificate. As used in this Agreement, the term "**Substantial Completion**" shall mean that the subject ECM has been installed by Ameresco, and, if such ECM is equipment, such equipment is then operating in a manner such that Customer is deriving beneficial use thereof. Customer shall not unreasonably withhold or delay the execution and delivery of any Substantial Completion Certificate or the Final Delivery and Acceptance Certificate.

**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 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 equal or 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	\$ 522,825
2	\$ 528,858
3	\$ 534,989

4	\$ 541,221
5	\$ 547,555
6	\$ 553,994
7	\$ 560,539
8	\$ 567,193
9	\$ 573,957
10	\$ 580,834
11	\$ 587,826
12	\$ 594,934
13	\$ 602,162
14	\$ 609,511
15	\$ 616,984
16	\$ 624,583
17	\$ 632,310
18	\$ 640,169

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 cost savings, shall be performed under, and governed by, the methods, formulas, and procedures described in Attachment E.
  - (ii) As it relates to the Annual Energy 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.
  - (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 shall not include building aid attributable to Ameresco’s work or services hereunder.
- (b) Ameresco will perform and submit to Customer a guarantee reconciliation (“*Guarantee Reconciliation*”) upon the later of (i) one hundred twenty (120) days after each Anniversary Date and (ii) sixty (60) days after Customer delivers to Ameresco all utility billing and other data necessary for Ameresco’s completion of such Guarantee Reconciliation. The Guarantee Reconciliation will include a calculation of the cumulative Annual Energy Cost Savings achieved in relation to the cumulative Guaranteed Savings for the 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 pay to Customer that amount by which the Guaranteed Savings exceeds the Annual Energy Cost Savings, such payment to be made within sixty (60) days after the date of the Guarantee Reconciliation.

**SECTION 7                    Access to Property.**

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

**SECTION 8                    [Intentionally omitted.]**

**SECTION 9                    Warranties.**

- (a) Subject to Section 2 hereof, Ameresco warrants that Customer shall receive good and clear title to all the equipment and materials furnished to Customer pursuant to this Agreement. Ameresco further warrants that the design, engineering, installation services it performs will be free from defects in materials and workmanship (excluding normal wear and tear) arising from normal usage on an ECM by ECM basis for a period of one (1) year from the date of Substantial Completion of such ECM. Any manufacturers' warranties which exceed this one (1) year period shall be assigned to Customer to the extent allowed by the manufacturer. This section does not apply in any way to the Savings Guarantee. 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 EQUIPMENT, ECMS OR ANY SERVICES PROVIDED HEREUNDER.

**SECTION 10                  Customer Role and Responsibilities.**

- (a) **Operations:** Customer shall operate the equipment installed hereunder in accordance with the manufacturers' recommendations and any supplemental procedures supplied to Customer by Ameresco.
- (b) **Maintenance:** Customer shall, at its expense, repair, operate and maintain the Property in good working order during the Term. 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.
- (c) **Malfunctions:** Customer shall notify Ameresco immediately in the event of any defect, fault, or malfunction in the operation of the ECMs or the equipment installed hereunder.
- (d) **Protection of ECM:** Except in the case of emergency, Customer shall not remove, move, alter, turn off, or otherwise significantly affect the operation of the equipment installed hereunder or the operation of the ECMs, or any individual part thereof, without the prior written approval of Ameresco, which approval shall not be unreasonably withheld. After receiving Ameresco's written approval, Customer shall proceed as instructed. Customer shall act reasonably to protect the ECMs from damage or injury, if, due to an emergency, it is not reasonable to notify Ameresco before

acting. Customer agrees to protect and preserve the facility envelope and the operating condition of all ECMs, mechanical systems, and other energy consuming systems located on the Property.

- (e) **Measurement System:** Customer shall not alter, move, modify or otherwise change the measurement and verification system or any component thereof without the prior written consent of Ameresco unless such action is in accordance with operating procedures provided by Ameresco.
- (f) **Adjustment to Baseline:** If, in the reasonable opinion of Ameresco, Customer does not reasonably operate, maintain, repair or otherwise protect the ECMs and/or maintain the Property in good repair and good working condition, then Ameresco may equitably adjust the baseline, as referenced in Attachment E, for any increased energy usages at the Property.
- (g) **Changes to Property or Addition of Equipment:** Customer shall notify Ameresco in writing at least thirty (30) days prior to making any change(s) to the Property that could reasonably be expected to have an effect on the energy usage at the Property including, without limitation, changes in (i) the hours, days or time of year that the Property is occupied or operated, (ii) the number of staff[, faculty and students] at the Property, (iii) the activities conducted at the Property and (iv) the equipment, the facilities, or the size of the Property. Customer shall notify Ameresco regarding increases, over time, in numbers and usage of “plug in” devices such as computers and printers. In the event that Ameresco receives such notification or otherwise determines that such a change has occurred, it will make the appropriate revisions to the Attachments or take such other action as may be provided for hereunder. Ameresco may also make, subject to Customer’s review and written approval (which approval shall not be unreasonably withheld), retroactive adjustments where Customer has not provided timely notice and, in such instances, any payments made between the Parties shall be retroactively reconciled to reflect the changed baseline.
- (h) **Energy Usage Data:** If requested in writing by Ameresco, Customer shall provide to Ameresco, on a monthly basis during the Term (and in any event, within thirty (30) days of its receipt of the same), copies of all energy bills, energy usage data, and any and all other such documentation maintained by Customer, as requested by Ameresco, which is necessary for Ameresco to determine and satisfy all of its obligations under this Agreement.
- (i) **Insurance and Risk of Loss or Damage:** Without limiting any of its obligations or liabilities under this Agreement, Customer shall, at its expense, provide and maintain at all times during the Term, sufficient insurance against the loss or theft of or damage to the ECMs, the related equipment and all components installed hereunder, for the full replacement value thereof. Customer’s insurance shall be primary for any and all property damage during the performance of the work hereunder.

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

If at any time after the date of the Final Delivery and Acceptance Certificate and after Customer’s complete payment to Ameresco in accordance with Section 4(a), as such amount may be modified from time to time in accordance with this Agreement, any fire, flood, other casualty, or condemnation renders a majority of the Property incapable of being occupied and renders the ECMs or the equipment installed hereunder inoperable and, in the case of a casualty, the affected portion of such ECMs or equipment is not reconstructed or restored within one hundred twenty (120) days

from the date of such casualty, Ameresco and/or Customer may terminate this Agreement by delivery of a written notice to the other Party. Upon such termination, Customer shall pay Ameresco all 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 any energy management system that may be included in the Scope of Services.
- (k) **Protection:** Customer shall at all times act reasonably to protect the ECMs from damage, theft or injury to the same extent and in the same manner in which it protects its other property.
- (l) **Alteration:** Customer shall not move, alter or change the ECMs in any way that causes a reduction in the level of efficiency or savings generated by any ECM or the equipment installed hereunder without obtaining Ameresco's prior written approval which shall not be unreasonably withheld.
- (m) **Storage:** Customer shall provide reasonable rent free space for Ameresco and/or its subcontractors, to mobilize and store their supplies, tools and equipment during installation of the ECMs or other activities by Ameresco within the Property pursuant to this Agreement for which such storage may be required. Such storage space shall be provided with locking capacity reasonably acceptable to Ameresco. Only Ameresco and/or its subcontractors and Customer's assigned personnel shall have access to the storage. Customer assumes no responsibility nor will Customer provide any additional 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 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 amount to be paid under this Agreement and such failure continues for a period of ten (10) business days after notice of overdue payment is delivered by Ameresco to Customer; or
  - (ii) any representation or warranty made by Customer in this Agreement or in any writing delivered by Customer pursuant hereto proves at any time to have been false, misleading or erroneous in any material respect as of the time when made; or
  - (iii) Customer fails to perform or meet any of its required duties or obligations under this Agreement and fails to cure such failure and the effects of such failure within thirty (30) days of receipt of written notice of default, unless such failures and effects cannot be completely cured within thirty (30) days after said written notice, in which case a default shall exist only if Customer does not commence and diligently pursue to cure such failure and effects as soon as possible; or
  - (iv) Customer 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)** 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; 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.

**SECTION 12 Remedies for Defaults.**

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

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

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

- (i)** bring actions for any remedies available at law or in equity or other appropriate proceedings for the recovery of direct damages and/or bring an action in equity for specific performance; or
- (ii)** require Ameresco to pay, and Ameresco agrees that it shall pay, all out-of-pocket costs and expenses incurred by Customer as a direct or indirect result of the event of default and/or Ameresco's actions under this Agreement, including, without limitation, reasonable attorneys' fees and expenses and all reasonable out of pocket costs related to hiring or engaging a new contractor to perform the Work. Ameresco agrees that such costs and expenses shall be paid within thirty (30) days following demand therefor by the Customer.
- (iii)** Without recourse to the legal process, terminate this Agreement by delivery of written notice of termination to Ameresco. In the event of such termination, Ameresco shall cease the performance of Work and shall make no further commitments with respect

thereto and shall reduce insofar as possible the amount of outstanding commitments, including through termination of subcontracts containing provisions therefor.

### **SECTION 13                    Dispute Resolution**

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

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

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

### **SECTION 14                    Termination.**

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

Customer specifically reserves the right to terminate this Agreement upon the reasonable determination of Customer and the Customer’s engineer of record of excessive Project schedule lapses or delays not arising from any Force Majeure or any delay caused by Customer or any employee or other contractor of Customer. Such termination right is exercisable upon thirty (30) days’ prior notice to Ameresco. Any such notice of termination shall be void and of no further force and effect if Ameresco corrects the issue causing the Project schedule lapse or delay and commences performance of the Work within such 30-day period. Customer also reserves the right to deny schedule extensions for Project completion beyond those to which the parties agreed upon the initial execution of this Agreement, if applicable, for any delay not caused by Force Majeure or the acts or omissions of Customer or any employee or contractor of Customer.

### **SECTION 15                    Insurance and Bonds.**

Ameresco shall provide and maintain, at its expense, the following minimum insurance coverage:

1. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, Ameresco hereby agrees to effectuate the naming of the District as an Additional Insured on Ameresco’s insurance policies, except for professional liability, workers’ compensation and N.Y. State Disability insurance.
2. The policy naming the District as an Additional Insured shall:

a. Be an insurance policy from an A.M. Best A- rated or better insurer, licensed and admitted to conduct business in New York State. A New York licensed and admitted insurer is required.

b. State that the organization's coverage shall be primary and non-contributory coverage for the District, its Board, employees and volunteers including a waiver of subrogation in favor of the District for all coverages including Workers Compensation.

c. Additional insured status for General Liability coverage shall be provided by standard or other endorsements that extend coverage to the District/BOCES for on-going operations (CG 20 38 or equivalent) and products and completed operations (CG 20 37 or equivalent). The decision to accept an endorsement rest solely with the District. A completed copy of the endorsements must be attached to the Certificate of Insurance to include General Liability, Auto Liability and Umbrella/Excess coverages.

3. a. The certificate of insurance must describe all services provided by Ameresco (e.g., roofing, carpentry or plumbing) that are covered by the liability policies.

b. At the District's request, Ameresco shall provide a copy of the declaration page of the liability and umbrella/excess policies with a list of endorsements and forms. If requested, the contractor will provide a copy of the policy endorsements and forms.

c. There will be no coverage restrictions and/or exclusions involving New York State Labor Law statutes or gravity related injuries.

d. No policies containing escape clauses or exclusions contrary to the Owner's interests will be accepted.

e. A fully completed New York Construction Certificate of Liability Insurance Addendum (ACORD 855 2014/15) must be included with the certificates of insurance. For any "Yes" answers on Items G through L on this Form- additional details must be provided in writing. Policy exclusions may not be accepted.

4. Ameresco agrees to indemnify the District for applicable deductibles and self-insured retentions.

5. Minimum Required Insurance:

a. Commercial General Liability Insurance  
\$1,000,000 per Occurrence/\$2,000,000 Aggregate  
\$2,000,000 Products and Completed Operations  
\$1,000,000 Personal and Advertising Injury  
\$100,000 Fire Damage  
\$10,000 Medical Expense  
The general aggregate shall apply on a per-project basis.

b. Owners Contractors Protective (OCP) Insurance  
For projects less than or equal to \$1,000,000 and/or work on 1 story (10 feet) only;  
\$1,000,000 per occurrence, \$2,000,000 aggregate with the District/BOCES as the Named Insured.

For projects greater than \$1,000,000 and/or work over 1 story (10 feet); \$2,000,000 per occurrence, \$4,000,000 aggregate with the District/BOCES as the Named Insured.

The OCP Policy must be with a NYS licensed and admitted carrier.

The District will be the Named Insured on OCP Policies. There will be no Additional Insureds on any OCP Policies.

Ameresco shall not be required to procure the OCP Insurance as set forth in this subdivision 5(b) if it provides equivalent coverage to the District under a per project general liability policy.

c. Automobile Liability

\$1,000,000 combined single limit for owned, hired, borrowed and non-owned motor vehicles.

d. Workers' Compensation and NYS Disability Insurance

Statutory Workers' Compensation (C-105.2 or U-26.3); and NYS Disability Insurance (DB-120.1) for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable. A person seeking an exemption must file a CE-200 Form with the state. The form can be completed and submitted directly to the WC Board online.

e. Builder's Risk

Must be purchased and maintained by the Owner to include interest of the Owner, Contractor, Subcontractors and Sub subcontractors jointly. The limit must reflect the total completed value (all material and labor costs) and provide coverage for fire, lightning, explosion, extended coverage, vandalism, malicious mischief, windstorm, hail and/or flood. Coverage will remain in effect until the Owner is the only entity that has an insurable interest in the property.

f. Umbrella/Excess Insurance

\$5,000,000 each Occurrence and Aggregate for general construction and no work at elevation (1 story or 10 feet) and project values less than or equal to \$1,000,000.

\$10,000,000 each Occurrence and Aggregate for high-risk construction, work at elevation (>1 story or 10 feet) and project values greater than \$1,000,000.

Umbrella/Excess coverage shall be on a follow-form basis or provide broader coverage over the General Liability and Auto Liability coverages.

6. Ameresco acknowledges that failure to obtain such insurance on behalf of the District constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the District. The contractor is to provide the District with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work. The failure of the District to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any rights held by the District.

7. Subcontractors are subject to the same coverage requirements as stated above with limits commensurate to the scope of work performed and must submit same to the District for approval prior to the start of any work.

8. In the event the General Contractor fails to obtain the required certificates of insurance from the Subcontractor and a claim is made or suffered, the General Contractor shall indemnify, defend, and hold harmless the District, its Board, employees and volunteers from any and all claims for which the required insurance would have provided coverage. This indemnity obligation is in addition to any other indemnity obligation provided in the Contract.

#### ADDITIONAL REQUIREMENTS ASBESTOS, LEAD ABATEMENT AND/OR HAZARDOUS MATERIALS

##### Contractor's Pollution Liability Insurance

\$2,000,000 per occurrence/\$2,000,000 aggregate, including products and completed operations. Such

insurance shall include coverage for Ameresco's operations including, but not limited to, removal, replacement, enclosure, encapsulation and/or disposal of asbestos, or any other hazardous material, along with any related pollution events, including coverage for third-party liability claims for bodily injury, property damage and clean-up costs. If a retroactive date is used, it shall pre-date the inception of the Contract.

If Ameresco is using motor vehicles for transporting hazardous materials, Ameresco shall maintain pollution liability broadened coverage (ISO Endorsement CA 9948 or CA 01 12), as well as proof of MCS 90. Coverage shall fulfill all requirements of these specifications and shall extend for a period of three (3) years following acceptance by the District of the Certificate of Completion.

**Professional Liability Insurance**

\$1,000,000 per claim/\$2,000,000 aggregate for professional acts of the Contractor performed under the Contract with the District.

- (9) 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 reasonably satisfactory to Customer. Such Payment and Performance Bonds shall be in form and substance reasonably satisfactory to Customer and shall be conditioned upon the faithful performance by Ameresco, for the implementation of the ECMs. The 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.
- (10) Customer shall provide and maintain insurance as described in Section 10(i).

**SECTION 16 Indemnification.**

- (a) Notwithstanding anything in this Agreement to the contrary, neither Party nor its respective officers, directors, agents, employees, parent, subsidiaries or affiliates or their officers, directors, agents or employees shall be liable to any other Party, or its parent, subsidiaries, affiliates, officers, directors, agents, employees, successors or assigns, or their respective insureds, for any incidental, indirect, punitive or consequential damages, connected with or resulting from performance or non-performance of this Agreement (irrespective of whether such claim of liability is based upon breach of warranty, strict liability, tort, contract, operation of law or otherwise) 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), or increased expense of, reduction in or loss of power generation production or equipment used therefor.
- (b) Ameresco's total aggregate liability for any and all injuries, damages, claims, losses, expenses or claim expenses (including attorney's fees) arising out of this Agreement from all causes or any causes, regardless of the legal theory under which liability is imposed, shall in all cases be limited to the sum of the payments received by Ameresco under Section 4. Such causes shall include, but not be limited to, Ameresco's negligence, errors, omissions, strict liability, breach of contract, warranty, breach of warranty or any indemnified claims.
- (c) Ameresco agrees to indemnify and hold Customer, its Board of Education, officers, employees, and agents, harmless from and against any and all third party claims and resulting damages, losses, and expenses of whatever nature (including reasonable attorneys' fees), including those for

personal injury, death or damage to property, to the extent caused by Ameresco's negligence or willful misconduct. In no event, however, shall Ameresco be obligated to indemnify Customer to the extent that any such injury or damage is caused by the negligence of Customer or any entity for which Customer is legally responsible.

- (d) Customer agrees to indemnify and hold harmless Ameresco, its officers, agents, and employees, from and against any and all third party claims, damages, losses, and expenses including but not limited to reasonable attorneys' fees caused by Customer's negligence or willful misconduct. In no event, however, shall Customer be obligated to indemnify Ameresco to the extent that such damage is caused by the negligence of Ameresco or any entity for which Ameresco is legally responsible.
- (e) This indemnification section shall survive the termination or expiration of this Agreement.

**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.

**SECTION 18 Privileged and Proprietary Information.**

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

**SECTION 19 Severability.**

Any term or provision of this Agreement that is declared invalid by any court of competent jurisdiction, shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement, and such term automatically will be amended so that it is valid, legal and enforceable to the maximum extent permitted by applicable law, but as close to the parties' original intent as is permissible.

**SECTION 20 Assignments and Subcontracting.**

- (a) Ameresco may use subcontractors and/or subconsultants in meeting its obligations hereunder and as set forth in Attachment F.
- (b) Customer shall not assign, transfer, or otherwise dispose of, in whole or in part, this Agreement, the ECMs, or any interest therein, or sublet or lend the ECMs or permit the ECMs to be used by

anyone other than Customer and Customer's employees without the prior express written consent of Ameresco (or, if applicable, the Lessor) such consent not to be unreasonably withheld, conditioned or delayed. If Customer transfers ownership of its interest in the Property, this Agreement shall terminate automatically.

- (c) Ameresco shall not assign this Agreement, in whole or in part, to any other party without first obtaining the written consent of Customer, which consent shall not be unreasonably withheld, conditioned, or delayed. The foregoing notwithstanding, Ameresco may assign, without the prior written consent of Customer, its (i) rights and obligations under this Agreement, in whole or in part, to any affiliated or associated company of Ameresco and (ii) rights for payments under this Agreement to any financial institution, lender or investor in connection with a leasing or financing arrangement for the ECMs. Ameresco will notify Customer ten (10) business days prior to any such assignment, and Customer agrees to acknowledge receipt of such notice in writing within 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, pandemic, epidemic, quarantine, war, blockage, insurrection, riot, sudden action of the elements, fire, explosion, flood, earthquake, storms, drought, landslide, or explosion or nuclear emergency, this Agreement shall remain in effect but the affected Party's obligations shall be suspended for a period equal to the disabling circumstances, provided that:
  - (i) the non-performing Party gives the other Party prompt written notice describing the particulars of the Force Majeure, including but not limited to the nature of the occurrence and its expected duration, and continues to furnish timely regular reports with respect thereto during the period of Force Majeure;
  - (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
  - (iii) no obligations of either Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;
  - (iv) the non-performing Party uses reasonable efforts to remedy its inability to perform; and
  - (v) the Term shall be extended for a period equal to the number of days that the Force Majeure prevented the non-performing Party from performing. 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 ECMs at the Property shall not constitute a Force Majeure excusing Customer's performance under this Agreement.

**SECTION 23 Contract Documents.**

- (a) Upon execution of this Agreement by both Parties, this Agreement and its Attachments (including the CEA attached as a part of Attachment B) shall constitute the entire Agreement between the Parties relating to the subject matter hereof, and shall supersede all proposals, previous agreements, discussions, correspondences, and all other communications, whether oral or written, between the Parties relating to the subject matter of this Agreement.
- (b) Section headings used herein are for the convenience of reference only and are not to be construed as a part of this Agreement.
- (c) This Agreement may not be modified or amended except in writing signed by the Parties.

**SECTION 24 Notices.**

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

**[CUSTOMER]**

Mount Sinai Union Free School District  
118 North Country Road,

Mount Sinai, New York 11766  
Attention: Superintendent of Schools  
Dr. Christine Criscione

**Ameresco, Inc.**

111 Speen Street, Suite 410

Framingham, MA 01701  
Attention: Peter Christakis  
President – East USA &  
Greece; Project Risk

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

**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. Neither Ameresco nor any person performing any duties or engaged in any work on the Property on behalf of Ameresco will be eligible for any employee benefits whatsoever relative to this Agreement, including but not limited to, social security, New York State Worker's Compensation, unemployment insurance, New York State Employee' Retirement System, health or dental insurance, malpractice insurance, or the like. Nothing in this Section shall be deemed to be a waiver of Customer of the right to use its property. Customer and Ameresco are independent of one another and shall have no other relationship relating to or arising out of this Agreement. Neither Party shall have or hold itself out as having the right or authority to bind or create liability for the other by its intentional or negligent act or omission, or to make any contract or otherwise assume any obligation or responsibility in the name of or on behalf of the other Party.

**SECTION 28                      Additional Representations and Warranties of Customer.**

Customer hereby warrants and represents to Ameresco that:

- (a) Customer intends to continue to use the Property in a manner reasonably similar to its present use;
- (b) Customer does not intend to make any changes to the electrical and thermal consumption characteristics of the Property from those which existed during the base period except as may have been disclosed in writing by Customer to Ameresco prior to the date of this Agreement;
- (c) Customer has provided Ameresco with all records heretofore requested by Ameresco (and, in that regard, Ameresco acknowledges that it has received base period data from Customer which appear to be complete as of the date of this Agreement) and that the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Agreement shall be, true and accurate in all material respects except as may be disclosed by Customer in writing;
- (d) Customer has not entered into any contracts or agreements for the Property with persons or entities other than Ameresco regarding the provision of the services referenced herein.
- (e) Since the date of the 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.

**SECTION 29                   Absence of Fraud or Collusion.**

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

**SECTION 30                   Negligent/Wrongful Acts.**

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

**SECTION 31                   Further Documents and Events.**

The Parties shall execute and deliver all instruments and documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement. Ameresco agrees to execute and deliver all documents reasonably required to release any lien held by Ameresco or its assignees upon the termination of this Agreement and payment of all amounts required to be paid by Customer to Ameresco pursuant to this Agreement. Customer agrees to execute and deliver all documents which may be required by an entity which provides funds for any financing contemplated herein and to cooperate with Ameresco in obtaining such funds. Customer agrees to execute and deliver all instruments and documents which may be required to obtain all licenses, permits and governmental approvals required by Ameresco for installation and operation of the ECMs. Customer agrees that Ameresco shall have the right to all environmental, energy, tax, financial, and electrical-related attributes, rights, credits, benefits and characteristics associated with or arising out of the transactions contemplated by this Agreement or associated with the ECMs or with the energy, capacity or other electrical savings created under this Agreement, howsoever created or recognized in the United States, any political subdivision thereof or any foreign jurisdiction (other than dollar savings realized by Customer from reductions in Customer's energy use or other operating costs). Customer shall provide Ameresco all reasonable assistance in perfecting its rights to such attributes, rights,

credits, benefits and characteristics. Ameresco's obligations hereunder are subject to obtaining all such required licenses, permits and governmental approvals.

**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, Customer hereby covenants and agrees to the following:
- (i) Customer shall not engage any other party to perform the services described herein, or services similar to those described herein, during the Term.
  - (ii) 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 in accordance with Section 14 (subject to said statutory limitations), effective as of the first day of fiscal year (July 1 through June 30) 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 source to satisfy the Obligations.
  - (iii) Customer shall have provided written notice to Ameresco of the governmental action resulting in the lack of appropriations of funds (as described in subsection (i)) within twenty (20) days of Customer's knowledge thereof.
  - (iv) Customer shall have fully performed its obligations described in subsection (a) above.
- (c) If this Agreement is terminated following a Non-Appropriation Occurrence, Customer and Ameresco agree that during the Term (as would otherwise have been in effect): (i) Customer shall not purchase, lease, rent, engage the services of an agent or independent contractor or otherwise pay for the use of a system or equipment performing functions or services similar to those

performed by the ECMs installed pursuant to this Agreement and (ii) if Customer receives an appropriation of funds which permits Customer to purchase, lease, rent, engage the services of an agency or independent contractor, or otherwise pay for the use of a system or equipment performing functions or services similar to those performed by the ECMs installed pursuant to this Agreement, upon receipt of such funds such other obligations shall immediately be rescinded and Customer shall satisfy the Obligations then owed to Ameresco prior to Customer's appropriation of such funds for the purpose of paying any other payee(s).

**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 is subject to approval by the Commissioner of Education of the State of New York and shall not be executory until approved by the 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.

**MOUNT SINAI UNION FREE SCHOOL  
DISTRICT**

  
Authorized Signature

Name: Nicholas DeVito

Title: Board President

**AMERESCO, INC.**

*Peter Christakis*

\_\_\_\_\_  
Peter Christakis  
President - East USA & Greece; Project  
Risk

**ATTACHMENT A**

**PROPERTY DESCRIPTION**

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

Facility	Address
Mount Sinai High School	110 North County Road, Mount Sinai, NY, 11766
Mount Sinai Middle School	114 North County Road, Mount Sinai, NY, 11766
Mount Sinai Elementary School	118 North County Road, Mount Sinai, NY, 11766

**ATTACHMENT B**

**SCOPE OF SERVICES**

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

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

This Attachment B includes by reference the CEA dated as of April 9, 2025 for the Property and submitted under separate cover.

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

Mount Sinai Energy Conservation Measures (ECMs)	Lighting System Improvements	Integrated and New Energy Management Systems	Pneumatic to DDC Conversion	Infiltration Reductions	Solar PV Array – Roof Mount	Transformer Replacements	Walk-in Fridge & Freezer Controls	Fuel Oil to Natural Gas Conversion
<b>Facility</b>	<b>1</b>	<b>2.1</b>	<b>2.3</b>	<b>4</b>	<b>6.1</b>	<b>8</b>	<b>9</b>	<b>14.2</b>
Mount Sinai High School	X	X	X	X	X	X	X	
Mount Sinai Middle School	X	X	X	X	X	X	X	
Mount Sinai Elementary School	X	X		X	X		X	X

**ATTACHMENT C**

**NOTICE TO PROCEED**

[PLACE ON CUSTOMER LETTERHEAD]

Mr. Peter Christakis  
President – East USA & Greece; Project Risk  
Ameresco, Inc.  
111 Speen Street, Suite 410  
Framingham, MA 01701

**SUBJECT: NOTICE TO PROCEED**

Dear Mr. Christakis:

In accordance with Section 1(a) of the Energy Services Agreement (the “*ESA*”) dated as of \_\_\_\_\_, 20\_\_, by and between the [CUSTOMER] (“*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,

[CUSTOMER]

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

**ATTACHMENT D**  
**FINAL DELIVERY AND ACCEPTANCE CERTIFICATE**

[PLACE ON CUSTOMER LETTERHEAD]

Mr. Peter Christakis, President – East USA & Greece; Project Risk  
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 \_\_\_\_\_, 20\_\_ by and between [CUSTOMER] (“*Customer*”) and Ameresco, Inc. (“*Ameresco*”)

Dear Mr. Christakis:

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

Sincerely,

[CUSTOMER]

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

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

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

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

## **ATTACHMENT E**

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

Section F of the Comprehensive Energy Audit dated April 9, 2025 is hereby incorporated herein by reference. These services will be provided for the first three (3) years of the guarantee period at no cost to the Customer, subject to extension as provided in Attachment F.

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.

## ATTACHMENT F

### CONTRACT COST AND ANNUAL SERVICES

(a) **Contract Cost:** Customer shall pay to Ameresco, an amount equal to \$ Ten Million, Two Hundred Seventy-Five Thousand, Five Hundred Twelve and No Cents (\$10,275,512) (the "**Contract Cost**") in accordance with the terms described in Section 4 of this Agreement. The Contract Cost includes the preconstruction services described in Section 1(a)(i) of this Agreement.

(b) **Operations and/or Maintenance:** Not applicable.

(c) **Monitoring:** The cost of monitoring and operations and maintenance services in this Agreement are:

M&V costs for the first three years, post construction, are included in the total project cost. The cost for M&V for the first 3 years is \$70,381.

At Customer's election, monitoring services shall be provided by Ameresco for years 4 through 18 of the Term at the following cost:

Year	Monitoring Cost
1	\$0
2	\$0
3	\$0
4	\$25,844
5	\$25,844
6	\$25,844
7	\$25,844
8	\$25,844
9	\$25,844
10	\$25,844
11	\$25,844
12	\$25,844
13	\$25,844
14	\$25,844
15	\$25,844
16	\$25,844
17	\$25,844
18	\$25,844

(d) **Other Annual Services:** Not applicable.



**ATTACHMENT G**

**[INTENTIONALLY OMITTED]**

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

**NO MAINTENANCE SERVICES ARE INCLUDED.**

**ATTACHMENT I**

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

**PROJECT NAME & ADDRESS:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PROJECT NO.:** \_\_\_\_\_  
**CONTRACT DATE:** \_\_\_\_\_  
**DESCRIPTION:** \_\_\_\_\_  
\_\_\_\_\_

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

**SUBSTANTIAL COMPLETION DATE:** \_\_\_\_\_

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

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

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

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

**CUSTOMER:**

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

**PUNCHLIST ITEMS**

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

**ATTACHMENT J**  
**STANDARDS OF SERVICE & COMFORT**

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

Heating Season - (Sept. - May)

Space	Maximum average temperature
Occupied	68 deg F
Unoccupied	50 deg F
Storage area requiring heat	40 deg F, except where existing use does not permit
Areas not requiring heat	Minimum temperature required to prevent damage to the facility

Cooling Season (May - Sept.)

Space	Minimum average temperature
Occupied	76 deg F
Unoccupied	N/A
Storage area requiring cooling	N/A
Areas not requiring cooling	N/A

**ATTACHMENT K**

**TEST INSTALLATION ACCEPTANCE LETTER**

[PLACE ON CUSTOMER LETTERHEAD]

Date \_\_\_\_\_

Mr. Peter Christakis  
President – East USA & Greece; Project Risk  
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 \_\_\_\_\_, 20\_\_ by and between [CUSTOMER] (“*Customer*”) and Ameresco, Inc. (“*Ameresco*”)

Dear Mr. Christakis:

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

Sincerely,

**[CUSTOMER]**

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

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

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

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