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STATE OF NEW HAMPSHIRE  
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT  
DIVISION OF PARKS AND RECREATION

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June 15, 2016

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Executive Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Resources and Economic Development, Division of Parks and Recreation, Cannon Mountain Aerial Tramway & Ski Area to enter into a contract with Ameresco, Inc. (VC #162569), Framingham, MA, in an amount not to exceed \$5,101,447 to install and enact energy efficiency and conservation measures which include snowmaking efficiency equipment, new efficiency power usage infrastructure measures at Cannon Mountain and an energy savings guarantee agreement effective upon Governor and Executive Council approval through November 30, 2017. An energy savings guarantee agreement is included and shall commence on the first day of the calendar month following the project acceptance date. This agreement will be put in place to ensure that the estimated savings are met in order to offset the annual bonding costs (allowing for a net zero project cost). The initial agreement period will be 5 years with the option to extend for 3 more 5-year periods up to 20 years. **100% Agency Income**

**EXPLANATION**

Pursuant to RSA 21-I:19-d, the Department of Resources and Economic Development, Division of Parks and Recreation, Cannon Mountain Aerial Tramway & Ski Area (DRED) along with the Department of Administrative Services, State Energy Manager's Office (DAS), developed a Request for Proposals (RFP) #2014-165, to implement guaranteed energy conservation measures at several primary buildings at Cannon Mountain ski area and to make vast improvements to Cannon's snowmaking infrastructure and energy supply system. Specifically, the RFP requested that Energy Service Companies propose their energy saving measures for the following categories: lighting systems and controls, HVAC and plumbing measures, building controls and monitoring, motors and variable frequency drives, building envelope, equipment needs, electric distribution system and transformers, renewable energy systems, and any additional energy conservation measures.

Notification of the RFP was released to several firms within the energy solutions industry and posted on the Department of Administrative Services' Purchase and Property website on April 5, 2014. Bids were received from four Energy Service Companies.

A five member review team comprised of representatives from DAS and DRED rated each proposal using criteria established and published in the RFP. The criteria were broken down into the following areas: 50% fossil fuel and energy reductions, 5% presentation and responsiveness, 15% qualifications, experience and resources, 20% technical approach, and 10% management approach. Based on the evaluation criteria, Ameresco, Inc. (Ameresco) was the highest ranking proposal as they proposed energy saving measures that provided the greatest amount of energy reduction kBTUs. Attached is a copy of the scoring sheet from the original RFP.

As a result of the RFP, a contract under the dollar threshold requiring Governor and Executive Council approval was entered into with Ameresco to complete a Detailed Feasibility Study (DFS). Per the contract

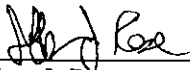
terms, Ameresco was required to conduct the DFS and guarantee a minimum of 85% of the energy and fossil fuel savings as submitted in their original proposal. During the 18-month contract, Ameresco worked with DRED to examine in great detail and quantify the energy saving initiatives that are described in detail in Exhibit 1 of the contract. DRED conducted a thorough review and evaluation of all financial and operational conditions in order to validate that the projected energy savings would be met to ensure annual bonding payoff on the project would be at no additional net cost to the State. A summary of the cost savings estimated for each Energy Conservation Measure is listed in Exhibit 5 of the contract.

This contract with Ameresco calls for the installation of 388 high efficiency / high output snow guns and three high efficiency / high output fan guns, a new booster pump house to add up to 50% more water output at a lower energy output and cost, and a new and more efficient primary power supply line and high and low voltage transformers. When these energy measures are installed, Cannon Mountain will reduce its energy consumption by approximately 33%, generating an estimated \$386,565 in energy cost savings annually. These savings are expected to fully offset the annual bonding costs, with a payback not to exceed 20 years in accordance with RSA 21-I:19-d, II (d).

This is a turnkey project with Ameresco contracting for the design, construction, installation, and commissioning of these energy initiatives, working in conjunction with Cannon's on-site management and operations team. An initial 5-year energy savings guarantee agreement is included with the option to extend up to 20 years. Ameresco and Cannon staff will develop a collaborative energy usage measurement and verification strategy, working to standardize best known practices and energy efficiency initiatives in order to continually maximize Cannon's efficiency in energy consumption.

The Attorney General's Office has reviewed and approved the contract as to form, substance, and execution.

Respectfully submitted,



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Jeffrey J. Rose  
Commissioner

<u>ConEdison</u>	FF (50%)	Presentation (5%)	Qualifications (15%)	Technical Approach (20%)	Management Approach (10%)	Total	Average Score
Mike	49.125	4.5	12.75	17.75	8	92.125	86.045
Tom	45	5	13.5	16	8.5	88	
Jeff	41	4	11	17	7	80	
Darrel	42	4	13	17	8	84	
Karen	41.5	4.25	13.35	18	9	86.1	
AVG	43.725	4.35	12.72	17.15	8.1		

<u>Trane</u>	FF (50%)	Presentation (5%)	Qualifications (15%)	Technical Approach (20%)	Management Approach (10%)	Total	Average Score
Mike	45.5	3	12.75	15.25	8	84.5	72.79
Tom	30	2.5	11	16	7.5	67	
Jeff	39	2	10	10	7	68	
Darrel	40	2	11	11	8	72	
Karen	35	3.25	11.4	15	7.8	72.45	
AVG	37.9	2.55	11.23	13.45	7.66		

<u>Ameresco</u>	FF (50%)	Presentation (5%)	Qualifications (15%)	Technical Approach (20%)	Management Approach (10%)	Total	Average Score
Mike	45.5	4.5	12.75	17.25	8	88.00	89.26
Tom	47.5	5	11	18	8.5	90.00	
Jeff	46	5	14	20	9	94.00	
Darrel	45	5	14	19	9	92.00	
Karen	38.5	4.5	13.2	17.2	8.9	82.30	
AVG	44.5	4.8	12.99	18.29	8.68		

<u>Johnson</u>	FF (50%)	Presentation (5%)	Qualifications (15%)	Technical Approach (20%)	Management Approach (10%)	Total	Average Score
Mike	37.875	4.5	12.9375	16.85	8	80.1625	79.0025
Tom	40	5	14	17	8.5	84.5	
Jeff	40	4	10	16	6	76	
Darrel	40	4	13	16	7	80	
Karen	31.5	4	13.05	17.2	8.6	74.35	
AVG	37.875	4.3	12.5975	16.61	7.62		

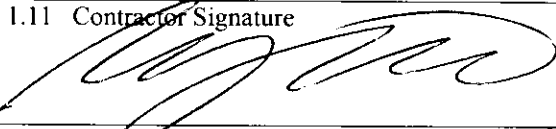
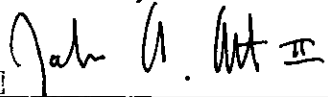
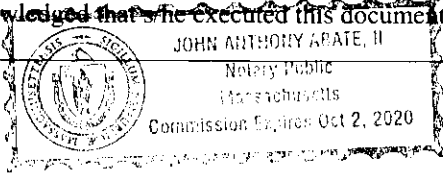
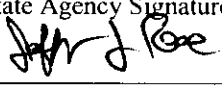

**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name Department of Resource & Economic Development		1.2 State Agency Address 172 Pembroke Rd, Concord NH 03301	
1.3 Contractor Name Ameresco, Inc.		1.4 Contractor Address 111 Speen Street, Framingham MA 01701	
1.5 Contractor Phone Number 508-661-2271	1.6 Account Number 37030000-022-35CA0319/35CA0322	1.7 Completion Date December 30, 2037	1.8 Price Limitation \$5,101,447
1.9 Contracting Officer for State Agency Jeffrey J. Rose, Commissioner		1.10 State Agency Telephone Number 603-271-2411	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Michael J. Daigneault Vice President	
1.13 Acknowledgement: State of <del>MASSACHUSETTS</del> County of <del>MIDDLESEX</del> On <u>APRIL 27, 2016</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace JOHN A. ABATE II MANAGER - CONTRACT ADMINISTRATION			
1.14 State Agency Signature  Date: <u>5/31/16</u>		1.15 Name and Title of State Agency Signatory Jeffrey J. Rose, Commissioner	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: <u>W/A</u> Director, On:			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: <u>5/31/16</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: On:			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

#### **8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

#### **9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

#### **14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

## **Exhibit A**

### **Scope of Services**

#### **Preamble.**

A. The State of New Hampshire, acting through the Department of Resources and Economic Development ("State"), engages Ameresco, Inc. ("Contractor") to perform, and the Contractor shall perform, that work or sale of goods, or both, identified and more particularly described in Exhibits 1-7 incorporated herein ("Services").

B. Contractor has performed a comprehensive assessment of the Facility and submitted a Detailed Feasibility Study to provide certain services and equipment. The Contractor shall perform the Services at the following facilities (each, a "Facility" and collectively, the "Facilities"):

- Cannon Mountain Aerial Tramway & Ski Area, 2650 Profile Rd, Franconia, NH 05380
  - Mt. Station
  - Valley Station
  - Park Headquarters
  - Ernie's Haus
  - Snowbase
  - Maintenance Building
  - Notchview Lodge
  - Peabody Lodge
  - Brookside Lodge
  - Woodshop Storage Building
  - Snowmaking Infrastructure
  - Lift Infrastructure
  - Ski Museum
  - Cold Storage
  - Beach Bath House

The Contractor's performance of the Services at the Facilities, as set forth in this Agreement, is referred to herein as the "Project".

C. The Contractor is guaranteeing that the State will realize energy cost savings during each year of the Term, as defined in Section 3.1, calculated and adjusted according to the terms of Section 10 and Exhibit 5, equal or greater than the guaranteed amounts shown in Section 7.

D. The State has accepted the Detailed Feasibility Study, dated October 9, 2015 (revised as of April 22, 2016) (the "Detailed Feasibility Study") and wishes to engage Contractor to evaluate, design, furnish, install, commission, measure and verify energy efficiency improvements to the Facility for the purpose of reducing



energy consumption and costs.

E. The work to be performed at the Facility by Contractor (the "Services") will be performed in two phases. The first phase will be a complete design, installation, commissioning, and initial measurement and verification of the Energy Conservation Measures (ECMs). The second phase will be the periodic measurement and verification of the ECMs and guarantee of energy cost savings. The second phase will also include facility staff training in the operation, maintenance, and repair of the installed ECMs. A delineation of Operation, Maintenance Services and Responsibilities for both the State and Contractor is attached as Exhibit 4.

F. This Project will be financed through a Master Lease Financing Program established by the State. A lease agreement with the financial services provider will be established for this Project.

## **1. Definitions**

**Agreement.** This Energy Savings Performance Agreement, including all appendices and exhibits attached hereto and all amendments and supplements hereto including the accepted Detailed Feasibility Study, all of which are made part hereof as though herein set forth in full.

**Baseline Energy Use.** A calculation of energy use of a building or piece of equipment for a specified period that is used to project energy use had the Project not been implemented. It is calculated by taking the energy consumption for a similar period prior to Project implementation (as recorded in the Energy Use History) and adjusting it to reflect changes for agreed upon variables, such as degree days, occupancy and building use, energy costs in accordance with a methodology set forth in Exhibit 5. Energy use savings attributable to the Project are determined in accordance with the methodology set forth in Exhibit 5.

**Certificate of ECM Acceptance.** The written Certificate of ECM Acceptance is issued by the State to the Contractor pursuant to Section 7.6 certifying that the State accepts the ECM as complete and installed in accordance with the design, equipment, implementation and commissioning standards as set forth in this Agreement.

**Certificate of Project Acceptance.** The written Certificate of Project Acceptance is issued by the State to the Contractor pursuant to Section 7.5 certifying that the State accepts the Project as complete and installed in accordance with the design, equipment, implementation and commissioning standards as set forth in this Agreement.

**Commissioning Report.** The report, required by section 7.1 of this Agreement, provided by the Contractor after installation of an ECM to verify that

the specified equipment has been properly installed, is functioning properly and with proper maintenance and operation has the potential to generate the predicted savings. The Commissioning Report includes documentation that provides a description and inventory of the installed energy efficient equipment, performance test results and estimates of energy savings.

**Compensation Schedule.** The meaning assigned to that term in Exhibit B, Paragraph 1.4.

**Conditional Nature of Agreement.** The meaning assigned to that term in Paragraph 4 of the General Terms and Conditions Form P-37.

**Contract Price.** The meaning assigned to that term in Exhibit B, Paragraph 1.1 and Exhibit 3.

**Contractor.** The Energy Services Company that is responsible to perform according to the requirements set forth in this Agreement and includes all agents, subcontractors, employees and consultants whose services are utilized by the Energy Services Company in the performance of this Agreement.

**Detailed Feasibility Study.** The meaning assigned to that term in Section D of the Preamble to this Exhibit A. Also referred to as the "Detailed Energy Audit". A survey of existing energy systems of a Facility for the purpose of proposing ECMs and verifying that the proposed ECMs have the potential to generate energy savings and meet the financial requirements within the specified term. The results of a Detailed Feasibility Study are presented in a written report that includes a methodology for the calculation of the Baseline Energy Use and a description of physical conditions, equipment counts, nameplate data and control strategies. For each ECM recommended, the Detailed Feasibility Study generally provides equipment counts, implementation costs, efficiency levels or performance characteristics of the equipment comprising the proposed ECM, on-going maintenance costs, annual energy and cost savings, the useful life of the ECM and a life-cycle cost analysis. Projected energy savings must account for interaction among recommended ECMs. See Section 4 of this document and the State RFP #2014-165 "Performance Contract for Buildings and Operations Located at Cannon Mountain Aerial Tramway & Ski Area."

**Effective Date.** The meaning assigned to that term in Section 3.1.

**Energy Conservation Measure or ECM.** Each and all of the new devices or systems; or modifications of existing systems; or revised operations and maintenance procedures; furnished, installed, and/or implemented by the Contractor for the purpose of reducing energy use and achieving the Guaranteed Savings, as described in Exhibit 1.

**Energy Conservation Measure Acceptance or ECM Acceptance.** The same meaning, used for context, as Certificate of Energy Conservation Measure Acceptance or Certificate of ECM Acceptance.

**Energy Conservation Measure Acceptance Date or ECM Acceptance Date.** The date on which the Certificate of ECM Acceptance is issued and thus Energy Conservation Measure Acceptance occurs.

**Energy Savings Performance Agreement.** This Agreement which is for an energy cost reduction project where the cost of implementing ECMs and the proposed ongoing energy services, including energy savings guarantees, and measurement and verification activities, is recovered through energy and energy-related cost savings. Financing will be provided through Third-Party Financing.

**Facility.** The meaning assigned to that term in Section B of the Preamble to this Exhibit A.

**Force Majeure.** The meaning assigned to that term in Section 12.

**Guaranteed Savings.** The annual energy savings calculated according to the method described in Exhibit 5, which Contractor guarantees will be realized by the State as a result of the Project.

**Measurement and Verification.** The process of monitoring and measuring the energy consumption of a facility or specific equipment or systems, before and after Project implementation, to determine if guaranteed or predicted energy savings are being realized.

**Project.** The energy and cost reduction program contemplated herein, pursuant to, inter alia, RSA 21-I:19 a-e.

**Project Acceptance Date or Project Acceptance.** The date on which the Certificate of Project Acceptance is issued.

**Punch List.** Uncompleted or corrective work that the Contractor is to complete or correct promptly prior to issuance of the Certificate of ECM Acceptance or the Certificate of Project Acceptance, as applicable.

**Standards of Service and Comfort.** The facility performance requirements to be maintained by the State in accordance with Section 10 and Exhibit 7.

**Study Acceptance Form.** The meaning assigned to that term in Section 4.3.

**Third Party Financing.** Project financing provided to the State by an independent financial institution.

**Total Project Cost.** All costs associated with the development and implementation of an Energy Performance Contract, including, but not limited to: Detailed Feasibility Study; ECM design, procurement and installation; construction contract bonds; interest charges; training of facility staff; Measurement and Verification; service; project management; and contractor overhead and profit.

## **2. Project Financing and Contract Bond**

**2.1** This Project is contingent upon financing being provided by the State prior to the Effective Date. The established finance rate at the time of Governor and Council review shall be used to determine whether this Project continues to meet the payback requirements by law.

**2.2** The Contractor shall furnish the State with a Contract Bond in an amount equal to 100% of the value of the Contract Price. A 100% Performance and Payment Bond is also acceptable. The Contract Bond shall be in place for the duration of phase 1 of the project. The Contractor shall bear the full expense of the Contract Bond. The requirement for the Contract Bond will terminate on the Project Acceptance Date.

The Contract Bond shall be in a form and substance satisfactory to the State. The Contract Bond shall be maintained by the Contractor in full force and effect until Project Acceptance. The Contractor or any of its sureties shall not be released from their obligations under the Contract Bond from any change or extension of time, or termination of this Contract.

The Contract Bond shall be issued by a licensed insurance company authorized to do business in the State of New Hampshire and made payable to the State of New Hampshire. The Contract Bond shall contain the Contract number and dates of performance.

The Contract Bond shall comply with RSA 447:16 and be executed by the Contractor and their Surety or Sureties, guaranteeing complete execution of the contract and all supplemental agreements pertaining thereto including the payment of all legal debts pertaining to the Project.

The State reserves the right to review the Contract Bond and to require the Contractor to substitute a more acceptable Contract Bond in such form(s) as the State deems necessary prior to acceptance of the Contract Bond.

Any Contract Bond or Payment and Performance Bond shall remain in effect until Project Acceptance Date. The Contract Bond or Payment and Performance Bond apply only 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 Contract Bond or Performance Bond, as applicable, shall guarantee that the installation will be free of defective materials and workmanship for a period of twelve (12) months following the Project Acceptance

Date (the "Warranty Period").

**2.3** The Contractor assumes all liability for damage to or loss of Equipment and material directly purchased by the Contractor prior to its installation and the related ECM Acceptance by the State.

### **3. Effective Date: Completion of Services**

**3.1** This Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Council of the State of New Hampshire approve this Agreement ("the Effective Date"), and shall continue for a period of 60 months after the first day of the month following the Project Acceptance Date, unless sooner terminated under Exhibit C of Form P-37.

**3.2** If the date for commencement in Exhibits 1 through 7 precedes the Effective Date, all services performed by Contractor between the commencement date and the Effective Date shall be performed at the sole risk of the contractor and in the event that this Agreement does not become effective, the State shall be under no obligation to pay the contractor for any costs incurred or services performed; however that if this Agreement becomes effective all costs incurred prior to the effective date shall be paid under the terms of this Agreement. All construction and ECM implementation services must be completed by the date specified for construction completion, as adjusted due to any variance between the actual Effective Date and the anticipated start date of the Services in Exhibit 6.

### **4. Detailed Feasibility Study and Report**

**4.1 Detailed Feasibility Study.** Contractor has performed a detailed feasibility energy study (the "Study") of the Facility at its sole expense. The Study has identified all feasible energy conservation, load management, building envelope, water conservation and renewable resource options for which the total savings benefits are expected to exceed implementation costs over the Term.

**4.2 Submittals.** The Contractor has furnished a written report of its findings (the "Study Report") including all of the information listed in Exhibits 1 through 7.

**4.3 Review; Acceptance.** The State has reviewed the Study Report and executed the Study Acceptance Form.

### **5. Design and/or Specifications**

**5.1** Within 14 days following Contractor's receipt of written notice of the Governor and Council's approval of this Agreement for Guaranteed Energy Savings, Contractor shall commence the design and/or specification, as

applicable, of the ECMs. Drawings and specifications for this Project shall be in compliance with all applicable laws, ordinances, rules, codes, regulations and requirements for the ECMs noted in Exhibit 1 and shall be submitted to the State for review and approval, which shall not be unreasonably withheld, conditioned or delayed. If the State does not approve or disapprove of any drawing or specification within 14 days following the State's receipt of the same from Contractor, then the State shall be deemed to have given its approval of such drawing or specification, as applicable.

**5.2** Design and specification review meetings shall be held when mutually deemed necessary and at a minimum when design drawings and specifications are 50% complete and fully complete. Contractor shall provide two complete sets of documents for State review prior to each review meeting. State shall have 14 days to review and provide comments after documents are received before each design review meeting.

**5.3** The Contractor shall not proceed with obtaining or installing any ECM until the State has given written notice that it has reviewed and accepted the design documents or specifications, as applicable, for such ECM. Such acceptance shall not be unreasonably withheld, conditioned or delayed.

**5.5** The Scope of Work, including the complete design, specification, engineering, procurement, and installation of the ECMs listed on Exhibit 1, shall be accomplished in accordance with the requirements outlined in the Detailed Feasibility Study and all provisions of this Agreement.

**5.6** The drawings and specifications prepared for this Project shall not, without the prior written approval of the State, specify or require any article, design or process which requires payment by the State of royalties for its use.

## **6. Installation**

**6.1** Within 14 days of written receipt of notice of State acceptance of the design documents or specifications, as applicable, Contractor shall commence procuring, installing and/or implementing the ECMs.

**6.2** Without relieving it of, or in any way limiting, its obligations to the State under this Agreement, the Contractor may enter into purchase orders for the purchase of materials or Equipment in accordance with the provisions of Exhibit 2.

**6.3** All Project materials and Equipment installed in the State Facility by the Contractor or its subcontractors shall become the sole property of the State after installation and upon ECM Acceptance and payment in full therefor as provided in this Agreement.

**6.4** During the installation, the Facility will be occupied. The Contractor shall perform all work with care to avoid damage to existing construction and installations. The Contractor shall make all commercially reasonable provisions as to the scheduling of work and storage of materials to minimize interferences to the extent practicable and, to the extent practicable, shall confine its operations, materials, and equipment within the immediate vicinity of the work. Contractor shall prearrange all disruptive and/or noise-producing construction activities with the State's staff so as not to unreasonably interfere with ongoing activities within the Facility. The work shall be coordinated and planned in a manner which will permit normal operation of the facility with as minimal as practicable interruptions and/or inconvenience.

**6.5** Unless otherwise specifically provided for in the design documents, all equipment, materials and articles incorporated in the work covered by this Agreement are to be new and of the specification indicated in the Detailed Feasibility Study. All work to be executed shall be of high quality and performed by skilled mechanics in a workmanlike manner. The State may require the Contractor to dismiss from the work any employee, employees, or subcontractors that the State deems incompetent, careless, insubordinate, or otherwise objectionable. The State may reject any equipment and materials if such equipment and materials are inconsistent with the final approved designs and specifications.

**6.6** The Contractor shall provide adequate, clearly marked and/or lighted barricades or warning signs at all open trenches, excavation and contract work areas for the protection of the work and safety of the public and occupants.

**6.7** Contractor shall acquire and maintain, at its own cost, any and all permits, licenses and government approvals necessary to perform the work. The State shall execute all documents which may be reasonably required for Contractor to obtain all such licenses, permits and governmental approvals required by Contractor for installation and operation of the ECM(s). Contractor's obligations hereunder are also subject to obtaining all such licenses, permits and governmental approvals as are required to perform its obligations under this Agreement.

**6.8** The Contractor shall, as directed during the progress of the work, remove and properly dispose of resultant dirt and debris and keep the premises reasonably clear. The Contractor shall take all necessary precautions during the progress of the work to protect the Facility as well as adjoining property, roadways, walkways, trees, lawns, landscape, and buildings from damage and injury and shall promptly repair any such damage to the satisfaction of the State, at no cost to the State.

**6.9** The Contractor shall be responsible for quality control during ECM installation. The Contractor shall provide a competent superintendent,

satisfactory to the State, on the work at all times that the presence of such superintendent is necessary during progress of the work with authority to act for the Contractor. The Contractor shall inspect and test all work performed to insure compliance with Agreement requirements. The Contractor shall maintain records of inspections and tests, including inspections and tests conducted by or for utility or other regulatory agencies.

**6.10** The Contractor shall provide to the State once each month during the period that design, engineering, procurement, installation, implementation and Commissioning for the ECMs are performed hereunder, brief progress reports comparing actual work progress to the planned work progress as shall be presented in the Exhibit 6 Installation Schedule for the preceding month. Such reports shall describe any difficulties encountered during the reporting period and shall include a statement of the Contractor setting forth the costs of the work during the reporting period. Progress Reports shall be submitted in duplicate no later than the 15<sup>th</sup> of each month. Progress Reports shall be in a letter format and shall include the following subjects, with appropriate explanation and discussion:

- a. Title of project.
- b. Agreement number.
- c. Period of this report.
- d. Actual Progress during reporting period.
- e. Planned progress in the future.
- f. Identification of problems.
- g. Planned solutions.
- h. Ability to meet schedule, reasons for slippage in schedule.
- i. Schedule – percentage completed and projected percentage of completion of performance by months – could be a bar chart or milestone chart.
- j. Analysis of Project cost incurred in relation to the Compensation Schedule, Exhibit 3.

The Contractor shall meet with representatives of the State upon reasonable notice to discuss any matters concerning the Project.

**6.11** In the event that unknown circumstances or conditions at a State Facility (such as the presence of asbestos, other hazardous substances or faulty wiring) are discovered after the Agreement is signed, work on the applicable ECM shall be immediately suspended until the State and the Contractor mutually determine if or how the installation work shall be completed. The Agreement may be revised by a change order to incorporate necessary changes in the scope of work, the Equipment, or the costs. As part of the Scope of Services, in addition to the certain hazardous materials abatement services which are expressly included in the Scope of Services, the Contractor shall (i) be responsible for the disposal of all non-hazardous equipment and materials which



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

**6.12** The State, and its designated representatives, may at any time and without notice, observe and inspect all Project work and materials in any of the State's facilities, subject to the Contractor's reasonable safety and security requirements.

**6.13** The Contractor and all of its Subcontractors shall follow all applicable Federal, State, and local codes; ordinances; and Health and Safety laws, as required by law.

## **7. Commissioning, Energy Conservation Measure Acceptance, Project Acceptance**

**7.1** The Contractor shall deliver to the State a written report (the "Commissioning Report") as each ECM covered by the Agreement is completed. In the Commissioning Report(s), the Contractor shall provide measurement and verification documentation, as applicable in accordance with Exhibit 5, that verifies that the specified equipment or systems have been properly installed, are functioning properly, and have the potential to generate that ECM's share of the Project's Guaranteed Savings.

**7.2** The Commissioning Report(s) shall include the results of performance tests to verify that the installed ECM(s) will operate as designed, consistent with the standards set forth in the design documents, which shall minimally conform to all applicable codes. The tests shall be conducted in accordance with the methodology prepared for each type of ECM in Exhibit 5 during the installation phase. As mutually agreed upon, the Commissioning Report(s) shall be accompanied by complete reproducible as-built record drawings that are CAD generated in .DWG format, conforming to generally accepted engineering standards of all modified or newly installed equipment including, but not limited to, architectural, mechanical, electrical, and controls, along with manufacturers' operating and repair manuals and parts lists. Manufacturer's warranties shall accompany the Commissioning Report(s) and shall be assigned to the State upon completion and ECM Acceptance.

**7.3** Within 15 business days of receiving a Commissioning Report from Contractor, the State shall review the report and inspect the ECM and either (a)

deliver to the Contractor a written Certificate of ECM Acceptance of the ECM(s) or (b) provide the Contractor with a written Punch List of corrective action the State deems necessary. If ECM(s) are rejected, the State will set forth the reasons for such rejection and the Contractor shall promptly remedy the deficiencies.

**7.4** Upon receipt of a written notice from the Contractor that the Punch List items have been completed, the State shall have ten (10) calendar days to respond. ECM Acceptance shall occur when all reasonable or undisputed Punch List work is complete, to the State's reasonable satisfaction. If the State fails to respond within the ten-calendar-day period, ECM Acceptance shall be deemed to have occurred with respect to the related ECM(s).

**7.5** Within 15 business days of submission of the final Commissioning Report, Contractor shall deliver to the State notice that the Project is completed and a request for Project Acceptance. In this notice, the Contractor shall warrant that the completed Project will produce the Guaranteed Savings, in accordance with the provisions of Exhibit 5.

**7.6** Within 15 business days of receipt of the request for Project Acceptance, the State shall either deliver to Contractor: a) a written Certificate of Project Acceptance or b), if good cause exists, a written Punch List of the corrective actions it deems necessary. In the event the State delivers a Punch List, Contractor shall promptly remedy the deficiencies. Upon receipt of a written notice from the Contractor that the Punch List items have been completed, the State shall have ten (10) calendar days to respond. Project Acceptance shall occur when all reasonable or undisputed Punch List work is complete, to the State's reasonable satisfaction. If the State fails to respond within the ten-calendar-day period, Project Acceptance shall be deemed to have occurred.

**7.7** Upon Project Acceptance by the State, and after payment in full to the Contractor, all right, title, and interest in and to all improvements and equipment constructed or installed on the premises and additions, shall vest exclusively in the State at no additional cost, free and clear of all and any liens and encumbrances created or caused by the Contractor.

**7.8** Contractor guarantees that the State will realize energy and cost savings, calculated and adjusted as set forth in Section 9 and Exhibit 5, each year for five (5) years after the Project Acceptance Date as follows:

<i>Year</i>	<i>Guaranteed Cost Savings</i>
1	\$386,565
2	\$386,565

3	\$386,565
4	\$386,565
5	\$386,565

## **8. Operations, Maintenance, Repairs, and Training**

**8.1** The Contractor's and the State's responsibilities for operation, maintenance and repair of all installed ECMs are described in Exhibit 4. Maintenance includes all labor, material, equipment, and services required and performed on a periodic basis to maintain proper functionality of equipment. Repair includes all labor, material, equipment, and services required to replace, rebuild, or restore to as-designed performance systems and equipment that have failed, are in danger of failing, or are inadequate. Required response times for repair activities shall be as described in Exhibit 4.

**8.2** The State shall perform or cause to be performed all operation, maintenance, and repairs to its unmodified pre-existing equipment necessary to realize the Guaranteed Energy Savings. Such operation, maintenance, and repairs are fully described in Exhibit 4.

**8.3** Contractor shall furnish operation and maintenance manuals and recommended spare parts lists for operations and maintenance of the ECMs and modified State equipment. Within 30 days of the Project Acceptance, Contractor shall train State personnel as needed to operate and maintain the ECM(s) in order to perform any State maintenance responsibilities required under this Agreement or in the event of emergency. Within 30 days of the end of the Term, Contractor shall train State personnel (or State's designee) as needed to operate and maintain the ECM(s) to preserve the ECM(s) energy efficiency performance.

## **9. Measurement and Verification of Energy Savings**

**9.1** The monitoring and measurement of the Energy Savings that result from the ECM(s) shall be as set forth in the Measurement and Verification Plan (M&V Plan) attached as Exhibit 5.

**9.2** The Measurement and Verification Plan shall be in accordance with concepts and definitions provided in the International Performance Measurement and Verification Protocol (IPMVP).

- a) In the event that the M&V Plan requires the use of Contractor-owned measurement equipment, Contractor shall test such meters, metering devices, and equipment in the manner and

frequency described in the M&V Plan and such testing shall be at Contractor's expense. Contractor shall give the State reasonable advance notice of all metering tests and the State shall have the right to observe such tests.

- b) If, upon testing, any measurement equipment is found to be inaccurate by more than the agreed upon level of accuracy as specified in the M&V Plan, then previous recordings of or by such equipment shall be considered inaccurate and will be corrected to an agreed upon level of accuracy as specified in the M&V plan. If the period of inaccuracy cannot be accurately determined as a basis for adjustment, then retroactive billing adjustments for errors shall be made for a period equal to one-half of the time elapsed since the previous test, but in no event more than six months. Contractor shall promptly adjust such equipment to record correctly.

**9.3** Measurement and Verification of savings shall commence on the Project Acceptance Date and shall continue for a period of five (5) years (the "M&V Term").

**9.4** The energy savings shall be determined in the manner described in Exhibit 5 Energy Savings Guarantee.

**9.5** **Reserved .**

**9.6** During the M&V Term, within 150 days following each anniversary of the Project Acceptance Date, the Contractor shall submit a verification of energy cost savings (the "Energy Cost Savings Report") in accordance with the M&V Plan detailed in Exhibit 5. The calculation shall incorporate all adjustments in energy cost savings as provided for in Exhibit 5. Should the energy savings be less than the annual Guaranteed Cost Savings, pursuant to the M&V Plan in Exhibit 5, the Contractor shall pay the State an amount equal to the difference. Said payment shall be provided to the State with the Energy Cost Savings Report. There shall be no allowance or carryover for previous year energy savings in excess of the Guaranteed Cost Savings.

## **10. Standards of Service and Comfort**

**10.1** Contractor shall design, install, and commission the ECMs to deliver the facility performance requirements described in Exhibit 7 throughout the Agreement Term.

**10.2** The Contractor's services shall be performed in a good, workmanlike manner so that the Equipment will perform consistent with the standards for heating, cooling, hot water, and lighting pursuant to Exhibit 7,

Standards of Service and Comfort.

## **11. Representations and Warranties**

**11.1** Each party hereby represents and warrants to the other that subject to the requisite approvals of Governor and Council and requisite financing and appropriation:

- 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, or are in accordance with, its organic instrument, and this Agreement has been duly executed and delivered for it by the signatories authorized, and it constitutes its legal, valid and binding obligation;
- c) its execution, delivery, and performance of this Agreement shall not result in a breach or violation of, or constitute 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; and
- d) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits, or orders which would materially and adversely affect its ability to perform hereunder.

**11.2** Contractor further represents and warrants that:

- a) it is financially capable and technically qualified to perform the Project;
- b) it is familiar with and will comply with all general and special federal, state, municipal, and local laws, ordinances, codes, and regulations, that may in any way relate to or affect the performance of this Project;
- c) the design, supervision, and workmanship furnished with respect to completing the Project shall be in accordance with sound and currently accepted construction and engineering practices for projects of this type in the State of New Hampshire; and
- d) all materials, equipment, and workmanship furnished by it and

by subcontractors in performance of the Project or any portion thereof shall be free of defects in design, material, and workmanship throughout the Warranty Period, and all such materials and equipment shall be of first-class quality and shall conform with all applicable laws, codes, specifications, standards, regulations, rules, and ordinances.

- e) Except as expressly set forth this agreement, Contractor makes no warranties or representations of any kind, whether statutory, written, oral or implied, including without limitation, warranties as to the value, design, condition or fitness for use or particular purpose or merchantability, regarding the ECMs, the equipment or any services provided hereunder.

## **12. Force Majeure**

**12.1** The term "Force Majeure" as used herein means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the party claiming Force Majeure. Force Majeure includes acts of God, labor disputes, sudden actions of the elements, actions by federal, state and municipal agencies and actions of legislative, judicial, or regulatory agencies which, in any of the foregoing cases, by exercise of due foresight such Party could not reasonably have been expected to avoid.

**12.2** If either Party documents that it is unable to perform its obligations under this Agreement because of Force Majeure, then the affected Party shall be excused from whatever performance is affected by the Force Majeure, to the extent it is affected, except as to obligations to pay money, and shall not be liable in damages or otherwise resulting from the Force Majeure, provided that:

- a) the non-performing Party provides as promptly as possible a written notice to the other Party describing the events of the Force Majeure. In no event shall notification occur later than 30 days after the non-performing Party learns of the event;
- b) the suspension of the performance is of no greater scope and of no longer duration or magnitude than is reasonably required by the Force Majeure;
- c) the non-performing Party uses all reasonable efforts to remedy its inability to perform; and
- d) as soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence, it shall give prompt written notification thereof to the other Party.

### **13. Environmental Compliance**

**13.1** Hazardous Materials shall include, without limitation, substances defined or classified as "hazardous substances," "hazardous waste," or "toxic substances" under federal, state, or local law, statute, regulation, or ordinance (collectively "Hazardous Materials"). Contractor shall fully comply with all federal, State of New Hampshire, and local laws, statutes, codes, regulations, and ordinances in effect or which shall come into effect during the Term of this Agreement regarding the generation, use, storage, handling, transportation and disposal of Hazardous Materials that Contractor is responsible for under Section 13.2 and 13.3 of this Agreement.

**13.2** As part of the Detailed Feasibility Study submitted to the State by the Contractor, Contractor has certified in writing that Contractor has a plan to coordinate all activities involving handling, transport, and disposal of any waste including Hazardous Materials that result directly from the installation of the ECMs (i.e. ballasts, bulbs) Materials that Contractor is responsible for under Section 13.2 and 13.3 of this Agreement. Hazardous material abatement and/or disposal, not previously identified in the Detailed Feasibility Study, is not included in the Services.

### **14. Personnel**

**14.1** The performance of the Services shall be carried out by the Contractor. The Contractor shall at its own expense, provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

**14.2** The Contractor shall not hire, and shall permit no subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services, to hire any person who has a contractual relationship with the State or who is a State officer or employee, elected or appointed.

**14.3** The Contracting Officer specified, or his or her successor, shall be the State's representative.

### **15. Project Suspension**

**15.1 Stop Work Order.** The State may at any time, by written stop work order to the Contractor, require the Contractor to stop all or any part of the work called for by this Agreement for a period of up to 90 calendar days after the stop work order is delivered to the Contractor, and for any further period to which the

parties may agree. Any such order shall be specifically identified as a stop work order; the Contractor shall forthwith comply with its terms and take all steps to minimize the incurrence of costs and public health and safety problems allocable to the work covered by the stop work order during the period of work stoppage. Within a period of 90 calendar days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:

- a) By written notice to the Contractor, cancel the stop work order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or
- b) Terminate the work covered by such order as provided in Exhibit C of Form P-37.

**15.2** If a stop work order issued under this section is cancelled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, if any, or a combination thereof, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

- a) The parties mutually and reasonably agree that the stop work order results in an increase in the time required for, or in the Contractor's compensation for, the performance of any part of this Agreement, and
- b) The Contractor asserts a claim for such adjustments within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify such action, the State may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

**15.3** If a stop work order is not cancelled and the work covered by such stop work order is terminated, the provisions of Section 10 of the Form P-37, as amended as set forth in Section 3 of Exhibit C, shall apply. Any partial termination of this Agreement shall constitute a Material Change (as defined in Exhibit 5) and the Contractor shall have the right to equitably recalculate the baseline and the Guaranteed Savings Amount, as provided in Section 5.5 of Exhibit 5 hereto, as a result of such Material Change

**15.4** Notwithstanding the provision of this Section, the maximum amount payable by the State to the Contractor pursuant to this Section shall not be increased or deemed to be increased except by specific written amendment hereto.



## **16. Changes**

**16.1 State Changes to Facilities or Equipment.** The State shall notify the Contractor in writing at least thirty (30) days prior to making any changes to any Facility that could reasonably be expected to affect the energy usage on the Facility, such as changes in the hours or days or time of year that the Facility is occupied or operated, the number of occupants, the activity conducted, the equipment, the building systems, the size of the Facility, etc. The State shall also notify the Contractor regarding material increases over time in numbers and usage of "plug in" devices such as computers and printers. If the Contractor receives such notification or otherwise determines that such a change has occurred, it may make appropriate adjustment to the baseline or the Guaranteed Savings. The Contractor may also make retroactive adjustments to the baseline or calculation of Guaranteed Savings if the State has not provided timely notice and any payments shall be retroactively reconciled to reflect the changed baseline.

**16.2 Emergency Situations:** The Contractor shall use its best efforts to notify the State or its designee within twenty-four (24) hours after actual knowledge of an emergency situation or other occurrence that might affect performance including:

- a) Any malfunction in the operation of the installed Equipment or any pre-existing energy-related equipment;
- b) Any interruption or alteration of the energy supply to the facilities;
- c) Any alteration or modification of the installed Equipment or its operation, and;
- d) Any other emergency situation likely to result in a Material Change.

**16.3 Proposed Closing of a Facility.** In the event a Facility is contemplated to be closed for a period of three hundred sixty-five (365) calendar days or longer, the State agrees to give the Contractor a minimum of sixty (60) calendar days' notice of the closing of such Facility. In the event of such closing, this Agreement shall be deemed terminated with respect to such Facility and any ECM(s) affecting such Facility, and the State shall pay the Contractor in accordance with Exhibit C of Form P-37. Any partial termination of this Agreement shall constitute a Material Change and the Contractor shall have the right to equitably recalculate the baseline and the Guaranteed Savings Amount, as provided in Section 5.5 of Exhibit 5 hereto, as a result of such Material Change.

#### **16.4 Modification to Baseline.**

Upon acceptance of the installation by the State and in the absence of any reported Material Changes in the Facility or in its operations, it is agreed energy consumption should not change substantially from year to year. Therefore, beginning one (1) year after installation, if energy consumption for any month increases by 15% percent or more from the energy consumption for the same month of the preceding year, the Contractor shall have the right to investigate the facilities to ascertain whether or not a Material Change has occurred which may require a change in the Baseline Energy Use data. Any resulting changes shall be subject to State approval, which shall be unreasonably withheld or delayed.

**16.5 Fire, Flood, or Other Casualty.** Any fire, flood, or other casualty, shall be deemed a Material Change, and the provisions of Section 16 hereof and its subparts shall be applicable. If the casualty renders a majority of any facility uninhabitable or unusable and the restoration or reconstruction of the affected portion is not commenced within twelve months from the date of such casualty, the Contractor shall have the option to terminate its Agreement with respect to that site by a written notice to the State. Upon such termination, the State shall pay to the Contractor in accordance with Exhibit C of Form P-37. Any partial termination of this Agreement shall constitute a Material Change and the Contractor shall have the right to equitably recalculate the baseline and the Guaranteed Savings Amount, as provided in Section 5.5 of Exhibit 5 hereto, as a result of such Material Change. The mere occurrence of a fire, flood or other casualty shall not affect, modify, impair or limit the State's obligation to make payments to the Contractor.

# Exhibit 1

## Energy Conservation Measures (ECMs)

### 1.1 ECM Matrix

The following ECM Matrix summarizes the ECMs to be installed per building as per the Detailed Feasibility Study dated 10/9/2015 (revised as of April 22, 2016) and included in Appendix B.

New Hampshire RFP 2014-165							
Energy Conservation Measures (ECMs)							
Facility	1	5	7	13	16	19	
Mt. Station	X	X	X				
Valley Station	X		X				
Park Headquarters	X	X	X				
Ernie's Haus	X	X	X				
Snowbase	X	X					
Maintenance Building	X	X	X				
Notchview Lodge	X	X	X				
Peabody Lodge	X		X				
Brookside Lodge	X		X				
Woodshop Storage Building	X						
Snowmaking Infrastructure				X	X	X	
Ski Museum	X						
Cold Storage		X					
Beach Bath House		X					

### 1.2 ECM Descriptions

The following ECM descriptions summarize the scope of work to be performed as per the Detailed Feasibility Study dated 10/9/2015 (revised as of April 22, 2016) and included in Appendix B.

#### **ECM 1: Lighting System Improvements - Interior**

Ameresco proposes to install a lighting system. Our project replaces or upgrades 926 existing fixtures and is intended to enhance the quality, consistency, and color rendering of the lighting system, while meeting all applicable codes and standards.

In addition, Ameresco proposes to install new lighting controls in a few locations at Cannon Mountain to ensure that lighting does not operate unnecessarily. Energy waste occurs when a fixture is energized but not used, and/or when illuminance exceeds what is necessary for task performance. In general, due to seasonal factors, the facilities at Cannon Mountain operate less than other commercial enterprises. Therefore, control applications with attractive return on investment periods are limited.

Ameresco proposes to install an exterior lighting system. Our project replaces or upgrades 59 exterior fixtures and is intended to enhance the quality of Cannon's lighting.

#### **ECM 5: Low Voltage Transformer Replacements**

Ameresco proposes to replace or remove thirteen (13) existing step-down transformers throughout the buildings at Cannon Mountain. All of the transformers are dry-type indoor transformers that step-down 480 volt power to 208Y/120 volt power. Ameresco proposes to replace these transformers with new premium efficiency units that are intended to reduce the electric losses and lower the cooling load of some of the equipment rooms.

#### **ECM 7: Infiltration Reductions**

Ameresco assessed all six sides of the buildings, including the attics/roofs, walls and floors and all of intersections connecting the building's assemblies. Our assessments identify locations of air leakage losses and thermal transfer – the two primary modes of energy loss in buildings. Ameresco proposes weatherization measures that save energy by reducing loads on space conditioning equipment. Tighter and better insulated buildings allow mechanical equipment to run less often and still maintain the desired interior environment. The weatherization project is intended to reduce fuel consumption, reduce utility costs and improve occupant comfort.

Weatherization measures identified which will have the most significant energy saving impact on the buildings are:

- Air Sealing Measures
- Attic Bypass Air Sealing
- Roof-Wall Intersection Air Sealing
- Exposed Wall Air Sealing
- Door Weather Stripping
- Sill Plate Air Sealing/ Insulation

#### **ECM 13: Electrical Upgrades**

Ameresco proposes to replace one of the 35 kilovolt (kV) electrical feeders that serves Cannon Mountain's secondary electrical system. The existing feeder is direct buried and has reached the end of its useful life. Ameresco proposes to trench in parallel to the existing line and install a new 35 kV electrical line. The

new line will be placed in conduit and will extend from the riser pole located in the dirt parking lot to the Valley Station Lodge. During construction of the new trench, Ameresco encourages Cannon Mountain to place any additional services (cable, control wiring, etc.) into the new trench prior to back filling. Originally, Ameresco proposed to replace two antiquated S&C switches during the Proposal Phase. One switch is located near Snowbase and the other is located in the Tram parking lot. These two S&C switches are being replaced this year by Cannon and have been removed from the scope.

The proposed electrical upgrade is intended to improve the main electrical system that in turn is intended to reduce maintenance costs, avoid future capital costs and improve system reliability.

### **ECM 16: Snow Making System Upgrades**

Ameresco proposes to upgrade the snow making system at Cannon Mountain by replacing most of the existing snow guns with new low energy equipment. The proposed strategy is to replace the existing energy intensive land based air/water guns and other similar models with tower mounted HKD low-energy tower guns. The new tower guns are intended to reduce compressed air energy use as well as the labor required to move the old land guns around the mountain. In addition to the new HKD tower mounted guns, Ameresco proposes to supply Cannon with new HKD portable air/water guns. These sled guns will complement the new HKD tower guns to allow for spot snow making as well as for snow making on trails where tower guns are not practical.

The reduced air usage is intended to allow Cannon to make more snow using the existing air and water infrastructure. It is expected that with the proposed system, Cannon will rarely, if ever, reach the air delivery limit of 21,000 CFM. Due to these reductions, Ameresco is proposing to implement a demand reduction strategy whereby at least one 600-hp Joy compressor is left off during peak periods in order to save nearly 450-kW of peak demand per month.

Ameresco proposes to replace the existing booster pump house located half way up the mountain. The existing structure will be demolished and a new structure will be built in its place. The new structure will be a 20' by 20' building and will contain two new 300 horsepower (HP) pumps with variable frequency drives. The new booster pump house is intended to provide the additional pressure necessary for snow making on higher elevations of the mountain. In addition, Ameresco will install 73 new low-energy tower snow guns on trails that couldn't be addressed in the Snowmaking ECM due to pressure issues. The trails include the upper part of Profile, Tramway, and Skylight. New air and water piping will be installed on Taft to allow for new low energy snow guns.

### **ECM 19: High Voltage Transformer Replacements**

Ameresco proposes to replace nine (9) high voltage step-down transformers throughout the Cannon Mountain Ski Area. Ameresco worked with Cannon Mountain's electrician to identify the transformers that are in need of replacement. All of the transformers are outdoor transformers that step-down

34.5 kV volt power to 480, 240, or 4160 volt power. Ameresco proposes to replace these transformers with new premium efficiency units that are intended to reduce electric losses. The new units will meet or exceed DOE standards. The new equipment is intended to provide Cannon Mountain electric energy savings and offset future capital expenditures.

## **Exhibit 2**

### **Specifications**

**2.1** The Contractor shall design, furnish, and install the Energy Conservation Measures (ECMs) as described below and in Exhibit 1.

**2.2** The Contractor is fully responsible for the conceptualization and development of all ECMs proposed. The Contractor shall present full design documents and stamped engineering drawings for review and approval by the State, in an ongoing process through project development, design, implementation, and final generation of record drawings.

**2.3** The Contractor shall provide all construction management services throughout the project. The Contractor is fully responsible for the management of all subcontractors. The Contractor shall provide a Project Manager to the project.

**2.4** The Contractor shall hold weekly, or otherwise approved by the State, construction meetings with the State and team members to review progress, schedule, problems, and issues, and to provide a look-ahead schedule for facility managers.

**2.5** The specific ECM design specifications for equipment sizing, efficiency, location and manufacturer shall be as per the Detailed Feasibility Study included in Appendix B.

#### **General Assumptions and Clarifications**

- Correction of existing code violations uncovered during the installation of the work, and not previously identified in the Detailed Feasibility Study included in Appendix B, is not included in the scope of work.
- Hazardous material abatement and/or disposal, not previously identified in the Detailed Feasibility Study included in Appendix B, is not included in the scope of work.
- The State shall provide on-site space for construction materials storage, trailers and parking.

## Exhibit 3

### Compensation Schedule

**3.1 Contract Price:** State shall pay to Ameresco, an amount equal to Five Million One Hundred One Thousand Four Hundred and Forty-Seven Dollars and No Cents (\$5,101,447.00) (the "Contract Price") in accordance with the terms described in Exhibit B of this Agreement.

**3.2 Operations and/or Maintenance:** Not applicable.

**3.3 Measurement and verification:** The cost of measurement and verification services as specified in Exhibit 5 will be paid by the State to Ameresco as a onetime upfront fee of \$114,810. This cost is included in the Contract Price detailed in Section 3.1.

**3.4 Other Annual Services:** Not applicable.

**3.5 Extended Warranty:** Not applicable.

**3.6** For each month during the construction period of the Project following the Effective Date of this agreement, State 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, less any retainage detailed in Exhibit B. Ameresco shall be paid the same percentage of the Contract Price as such percentage of completion. Following the end of each month, during the construction period of the Project, Ameresco will provide to State 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, State shall pay or cause to be paid to Ameresco the amount due under such invoice.



## **Exhibit 4**

### **Operations, Maintenance, Repairs, and Training**

The following summarizes Operation and Maintenance (O&M) responsibilities for the State and Ameresco during the service phase (also known as the 'second phase' under Exhibit A) of this project.

#### **4.1 Operations**

The State will perform all operations of installed equipment. Ameresco shall provide operations and maintenance manuals for each installed ECM to the State. The State shall operate the equipment installed hereunder in accordance with the manufacturers' recommendations, the manuals and any supplemental procedures supplied to State by Ameresco.

#### **4.2 Preventive Maintenance**

The State will perform all preventive maintenance for installed equipment to maintain operational performance throughout the Term of the contract. State shall, at its expense, repair, operate and maintain the Property in good working order during the Term. Following the Energy Conservation Measure Acceptance Date with respect to an ECM, State 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. Ameresco shall provide training, operations manuals, preventive maintenance requirements and schedules to the State.

#### **4.3 Equipment Repair and Replacement**

Subject to Ameresco's warranty obligations as expressly set forth in Section 4.4 below, the State will perform all equipment repair and replacement to maintain operational performance throughout the Term of the contract.

#### **4.4 Warranty**

Ameresco warrants that, for a period of one year after the date of the State's execution of a Certificate of ECM Acceptance for a particular ECM ("Warranty Period"), all equipment, materials and work performed with respect to such ECM shall be free from defects in material and workmanship. Ameresco shall assign to the State all manufacturer's warranties on equipment provided hereunder which exceed one year, to the extent allowed by the manufacturer. Ameresco's warranties expressly exclude any remedy for damage or defect caused by abuse, improper operation, unapproved modifications or improper repairs not performed by Ameresco.

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 OR ANY ECM.

#### **4.5 Training**

Ameresco shall provide training for all installed ECMs. The training program shall be available to all appropriate facilities staff beginning during the commissioning phase. Ameresco shall provide all necessary documentation such as service, operation, parts, and maintenance manuals, for all affected equipment. These manuals shall be thoroughly reviewed with the appropriate facilities staff. The training program shall be developed in accordance with the "Training Plan" and "Training Goal Matrix" included in Section 6 of the Detailed Feasibility Study.

## Exhibit 5

### Energy Savings Guarantee

**5.1** The methodology for determining the guaranteed energy savings as well as the applicable utility rates are detailed in Section 7 of the Detailed Feasibility Study.

**5.2** Ameresco shall complete the following energy conservation measures (ECMs) and guarantee the total energy unit savings, not per ECM, as detailed in Table 1 below. Guaranteed Cost Savings are based on the guaranteed energy unit savings multiplied by the baseline rates defined herein. This guarantee shall apply for a period of five (5) years, which period shall commence on the first day of the calendar month following the Project Acceptance Date, as defined in Exhibit A.

**Table 1: Guaranteed Energy Savings**

ECM #	ECM Name	Annual kW	Peak kWh	Off-Peak kWh	Total kWh	Propane (Gallons)	#2 Fuel Oil (Gallons)	Total Project Savings
1	Lighting System Improvements - Interior	372	36,074	100,879	136,953	(463)	(366)	\$16,721
5	Low Voltage Transformer Replacements	75	20,167	34,365	54,533	-	-	\$6,587
7	Infiltration Reductions	-	11,901	-	11,901	883	607	\$4,644
13	Electrical Upgrades	-	-	-	-	-	-	\$-
16	Snow Making System Upgrades	1,790	1,471,994	1,471,994	2,943,987	-	-	\$330,128
19	High Voltage Transformer Replacements	391	84,437	144,067	228,505	-	-	\$28,485
<b>Guaranteed Energy Savings</b>		<b>2,628</b>	<b>1,624,573</b>	<b>1,751,306</b>	<b>3,375,879</b>	<b>420</b>	<b>242</b>	<b>\$386,565</b>

**5.3** The baseline energy usage for the Facilities included in this contract is detailed in Section 1 of the Detailed Feasibility Study.

**5.4** Measurement and verification strategies are based on IPMVP Option A, Retrofit Isolation, or B, Measured Retrofit Isolation, as specified in the Performance Contract for Buildings and Operations Located at Cannon Mountain Aerial Tramway & Ski Area RFP #2014-165. Engineering calculations of the savings are based on key parameters that are measured and/or verified as well as parameters that are estimated such as historical data, industry standard engineering values, typical operating hours, or manufacturer's equipment specifications.

The standard M&V protocols are described below:

**Option A - Retrofit Isolation:** Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the energy conservation measure's (ECM) affected system(s) and/or the success of the project. Parameters not selected for field measurement are estimated. Estimates can be based on historical data, manufacturer's specifications, or engineering judgment. Documentation of the source or justification of the estimated parameter is required.

**Option B – Measured Retrofit Isolation:** Savings are determined by field measurement of all key performance parameters which define the energy use of the ECM-affected system.

The following table lists the M&V Options to be used for each ECM.

ECM #	ECM Name	IPMVP Option
1	Lighting System Improvements - Interior	A
5	Low Voltage Transformer Replacements	B
7	Infiltration Reductions	A
13	Electrical Upgrades	A
16	Snow Making System Upgrades	A
19	High Voltage Transformer Replacements	B

### **5.5 Adjustments to Baseline**

- a) If the hours of occupied operation of the Property, or any portion thereof, are materially changed subsequent to the date of this Agreement, the baseline will be equitably recalculated by Ameresco and approved in writing by the State, such approval not to be unreasonably withheld, conditioned or delayed.
- b) In the event that the type of fuel used at the Property, or any portion thereof, changes at any time during the contract period in any

manner which Ameresco reasonably believes affects the baseline and/or Ameresco's guarantee, the baseline and/or the guarantee will be equitably recalculated by Ameresco and approved in writing by the State, such approval not to be unreasonably withheld, conditioned or delayed.

- c) It is understood and agreed that the State may be subject to laws and regulations which may require the State to alter the minimum or maximum temperature at any given time and State shall comply with the same. In the event that Ameresco reasonably believes that such a change in temperature affects the baseline and/or Ameresco's guarantee, the baseline and/or the guarantee will be equitably recalculated by Ameresco and approved in writing by the State, such approval not to be unreasonably withheld, conditioned or delayed.
- d) If at any time during the Term of the Agreement additional space is planned to be occupied or is occupied or planned to be vacated or is vacated, Ameresco will, if possible, meter consumption of all energy by the space in question and make appropriate upward or downward adjustments, with the written approval of the State, such approval not to be unreasonably withheld, conditioned or delayed, to the Baseline according to these meter readings. State shall notify Ameresco at least ninety (90) days in advance of such changes and if possible six (6) months in advance for space which is to be vacated. If metering is not possible or State desires not to bear the costs of such, then the adjustments to the Baseline and/or the guarantee will be appropriately adjusted as the Parties may mutually agree in writing.
- e) During the implementation phase of this Project, Ameresco will attempt to note which energy consuming devices are not operational. In the event that the devices are repaired or retrofitted with the ECM's, Ameresco will appropriately adjust the baseline and/or the guarantee.
- f) In the event that State or persons using the Property add or remove energy consuming devices (including, but not limited to, vending machines, kilns, computers, printers and other electronic or fossil fuel consuming devices), or change the use of existing devices, which materially increase or decrease energy usage, State will inform Ameresco by written notice within thirty (30) days of becoming aware thereof, as to any such changes which could result, in aggregate or over time, in a change of total annual energy savings hereunder (collectively "Material Change"). Within a reasonable period of time following Ameresco's receipt of any such written notice from State regarding a Material Change, or within a reasonable period of time after Ameresco's learning of a Material Change by Ameresco's monitoring or other means, Ameresco shall equitably recalculate the baseline and/or the guarantee and provide

to State such recalculation for its written approval (such approval not to be unreasonably withheld, conditioned or delayed), showing Ameresco's modification of the baseline and/or the guarantee to reflect such a Material Change. Ameresco and the State agree to discuss such smaller changes on an annual basis and determine whether an adjustment to the baseline and/or the guarantee is required. Where State fails to inform Ameresco of any such change in the baseline, Ameresco may make retroactive adjustments to the baseline and/or the guarantee, subject to State's written approval (such approval not to be unreasonably withheld, conditioned or delayed), and there shall be retroactive commensurate adjustments to any payments which have been made by either Party to the other based upon an incorrect baseline or guarantee.

- g) Weather related changes. In the event the applicable weather varies from the baseline weather, adjustments to the baseline and/or the guarantee may be warranted. Weather adjustments will be based on temperature correlation factors applied against the current weather, as measured in degree-days from the nearest available NOAA weather station.

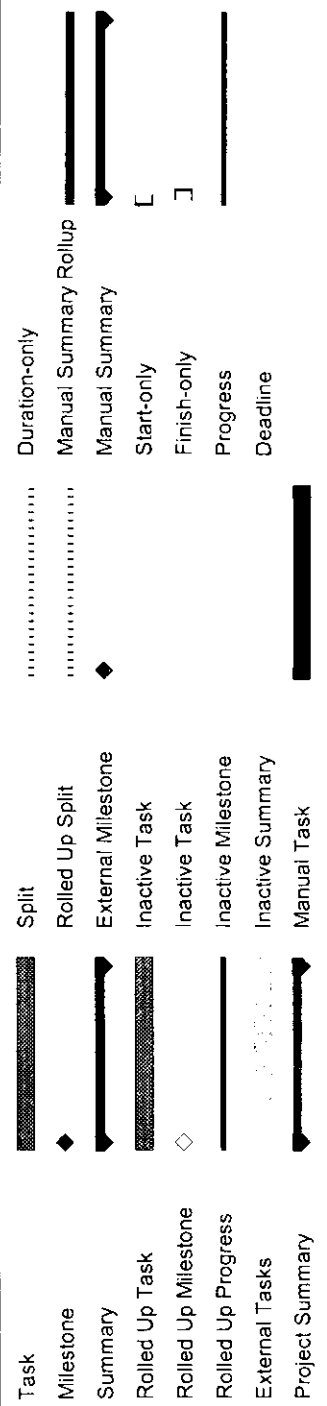
## **Exhibit 6**

### **Installation Schedule**

**6.1** The following Installation Schedule provides a general outline of the overall project schedule at the time of the execution of this contract. The installation schedule will be updated periodically throughout the construction phase in conjunction with the State.

**PRELIMINARY PROJECT SCHEDULE**  
Energy Savings Project

ID	Task Name	Duration	Start	Finish	2016				2017						
					Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4			
1	Cannon Acceptance of Audit and Contract	0 days	Fri 4/22/16	Fri 4/22/16		◆ 4/22									
2	Execute Energy Performance Contract	0 days	Wed 6/15/16	Wed 6/15/16		◆ 6/15									
3	Secure Project Financing	0 days	Wed 6/15/16	Wed 6/15/16		◆ 6/15									
4	Project Kick-off Meeting	0 days	Mon 6/27/16	Mon 6/27/16		◆ 6/27									
5	Construction Phase (required permits and gov. approvals, install, test, start-up)	310 days	Tue 6/28/16	Mon 9/4/17											
6	Project design	8 wks	Tue 6/28/16	Mon 8/22/16											
7	Equipment Procurement	16 wks	Tue 6/28/16	Mon 10/17/16											
8	ECM Implementation	60 wks	Tue 7/12/16	Mon 9/4/17											
9	Snowmaking Upgrades	20 wks	Tue 7/12/16	Mon 11/28/16											
10	Completion of Construction Phase	0 days	Mon 9/4/17	Mon 9/4/17											
11	Post M&V and Commissioning	6 wks	Tue 9/5/17	Mon 10/16/17											
12	Training of Personnel	4 wks	Tue 10/17/17	Mon 11/13/17											
13	Project Completion and Commencement of Normal Operations	0 days	Mon 11/20/17	Mon 11/20/17											◆ 11/20



Project: Cannon Mountain, NH  
Date: October 9, 2015 (revised as of April 22)



## Exhibit 7

### Standards of Service and Comfort

**7.1** In conditioned areas, average space temperatures will be maintained between 68°F dry bulb (heating) and 76°F dry bulb (cooling) during scheduled occupied periods as controlled by the space thermostats or room sensors. In no instance shall the lowest temperature in the building fall below 68°F during occupied periods. These temperature requirements shall also apply to buildings that have central cooling systems. In buildings with ventilation systems, outside air cannot be reduced below the quantities found in ASHRAE standard 62.1-2013, "Ventilation for Acceptable Indoor Air Quality." Where humidity control is available in office spaces, 20-60% relative humidity shall be maintained during periods scheduled for occupancy, or maintained at present building set points. Data centers and laboratories shall have humidity settings that meet their own standards.

**7.2** During unoccupied periods, the heating and/or cooling systems may be turned off. However, the systems must be so designed that before any high or low temperatures or humidity conditions that could damage equipment in the spaces can occur, the heating and/or cooling system will restart and control the temperature or humidity as required. In any case, temperatures must be restored to those described in 7.1 by the start of the next occupied period.

### 7.3 Standard Hours of Operation

Building	Address	Area	Base Hours of Operation
Mt. Station	260 Tramway Drive Franconia, NH 03580	6,547	9am – 5pm 7 days Summer (Late May – Mid Oct) 8:30am – 4pm Fridays, Mondays, Weekends Winter
Valley Station	Same	9,912	7:30am – 5pm 7 days when in operation
Park Headquarters	Same	6,322	7am – 5pm Monday – Friday
Ernie's Haus	Same	2,412	9am – 4pm Mon, Tues & Fri / 9am – 12pm Sat & Sun
Snowbase	Same	2,400	7am – 7pm 7 days
Maintenance Building	Same	6,000	7am – 7pm 7 days
Notchview Lodge	Same	11,220	6am – 5 pm 7 days during winter
Peabody Lodge	Same	21,068	7am – 6pm 7 days during winter
Brookside Lodge	Same	5,650	7am – 5pm 7 days during winter
Woodshop Storage Building	Same	800	7am – 5pm Monday – Friday
Snowmaking Infrastructure	Same		Nov – Feb as needed
Lift Infrastructure	Same		9am – 4pm 7 days during winter (some lifts operate weekends only)
Ski Museum	Same	800	10am – 5pm 7 days (Late May – early April)
Cold Storage	Same	3,120	Storage only
Beach Bath House	Same	1,600	Seasonal (Summer Use Only)

**7.4** Minimum lighting levels, for affected fixtures, shall be in accordance with applicable Illumination Engineering Society (IES) standards for each type of

space and activity as of the time of the ECM installation. It is recommended a sampling of light level readings be taken at various locations before considering lighting upgrade options. This will assure post-retrofit light levels will be adequate and that lighting upgrades will not be based on existing light levels which may be below or above IES standards.

**7.5** Hot water to kitchen areas will be supplied at a temperature of 120°F. Domestic hot water for bathrooms, showers and hygiene purposes shall be delivered at a temperature between 85°F and 110°F. All other domestic hot water temperature requirements must meet applicable NH plumbing code standards.

## **Exhibit B**

### **Payment Terms**

**1.1** The Contract price, method of payment, and terms of payment are identified and more particularly described in the Compensation Schedule, Exhibit 3, incorporated herein. Notwithstanding anything in this agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the price limitation indicated in the Price Limitation block on Section 1.8 of the P-37 contract form. This is the maximum Project cost allowed under the guidelines of RSA 21-I:19 a-e.

**1.2** The payment by the State of the Agreement price shall be the only, and the complete, reimbursement to the Contractor for all expenses, of whatever nature, incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the Agreement price.

**1.3** Prior to commencing the installation of any ECMs, the Contractor shall provide the State with a detailed schedule of compensation (the "Compensation Schedule") setting forth the cost of mobilization, engineering, and installation for each ECM. The Compensation Schedule shall be coordinated and consistent with the Installation Schedule attached as Exhibit 6. The Compensation Schedule will be subject to review and approval by the State. Such approval shall not be unreasonably withheld, conditioned or delayed.

**1.4** The approved Compensation Schedule will be used as the basis for applications for payments to the Contractor by the State or the State's Lessor, based upon the percentage of completion of the ECMs.

**1.5** The Contractor shall submit applications for payment in form acceptable to the State in accordance with the Compensation Schedule. All progress payments shall be subject to five (5%) percent retainage. Release of retainage shall occur with respect to each ECM within thirty (30) days following the issuance by the State of the Certificate of ECM Acceptance for such ECM.

**1.6** Upon receipt by the State or its designee of the application for payment, it shall be reviewed and, if approved, Contractor shall be paid by the State directly or through the State's Lessor. If a portion of the application for payment is in dispute, the State shall not pay any disputed portion of the application for payment until such disputed portion is resolved between the Parties.

**1.7** The Contractor will provide lien releases on the prior period

requisitions indicating that subcontractors have been paid to date, less any associated retainage, before the State is required to make additional payments for said subcontractor's work. The costs paid to the subcontractors for approved project work shall be deemed covered by the Total Project Cost to be paid by the State to the Contractor.

## Exhibit C

### Special Provisions

1. Insert the following language "***any applicable***" to 6.1:

In connection with the performance of the Services, the Vendor shall comply with ***any applicable*** statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Vendor, including, but not limited to, civil rights and equal opportunity laws.

2. Delete Paragraph 8 Event of Default/Remedies and replace it in its entirety with the following:

#### 8. Event of Default/Remedies.

**8.1 Default by the Contractor.** Any one or more of the following acts or omissions of the Contractor shall constitute an event of default unless the Contractor's actions are caused by Force Majeure hereunder, a State Event of Default (Section 8.2), or a breach by State of this Agreement ("Contractor Event of Default"):

8.1.1 Failure to pay the State the Guarantee Payment as set forth in Section 7 and Exhibit 5, and the failure continues for a period of 30 days after the State gives Contractor written notice of the failure.

8.1.2 Failure to perform or comply with any obligation imposed upon Contractor by this Agreement, such failure has an adverse effect on the State, and the failure continues for a period of 30 days after the State gives Contractor written notice of the failure, or if a remedy cannot be effected in such 30 days, without a good faith effort by Contractor to perform in that period and diligent subsequent performance to ameliorate the problem as soon as possible.

8.1.3 The Contractor provides, or has provided, false or misleading information to the State in Contractor's proposal, during negotiations, or in documents provided pursuant to this Agreement and the State has relied upon this information in entering into this Agreement and Contractor fails to correct or retract such false or misleading information and take the steps reasonably required by the State to mitigate the effects of the false or misleading information within 30 days of written notice thereof, or if a remedy cannot be effected in such 30 days, without a good faith effort by Contractor to perform in that period and diligent subsequent performance to ameliorate the problem as soon as possible.

**8.2 Default by the State.** The occurrence of one or more of the following is an Event of Default by the State unless the State's actions are caused by a Force

Majeure, a Contractor Event of Default (Section 8.1), or a breach by Contractor of this Agreement ("State Event of Default").

8.2.1 The State fails to perform or comply with any material obligation imposed upon the State by this Agreement, such failure has a material and adverse effect on Contractor, and the failure continues for a period of 30 days after Contractor gives the State written notice of the failure.

8.2.2 The State fails to make any payment or payments required under this Agreement when due and the failure continues for a period of 30 days after Contractor gives the State written notice of failure.

**8.3 Remedies upon Default; Liquidated Damages.** Upon occurrence of a Contractor Event of Default, the State may take one, or more, or all of the following actions:

8.3.1 Give the Contractor a written notice specifying the Contractor Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of receipt of the notice; and if the Contractor Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor written notice of termination.

8.3.2 Give the Contractor a written notice specifying the Contractor Event of Default and suspending all payments to be made under this Agreement until the Contractor has cured the Contractor Event of Default.

8.3.3

8.3.4 Treat the Agreement as breached and pursue any of its remedies at law and in equity.

8.3.5 Upon occurrence of a State Event of Default, the Contractor may treat the Agreement as breached and exercise any and all remedies at law and in equity.

8.3.6 Liquidated Damages. The Contractor and the State recognize that the State will suffer damages in the event the Contractor fails to complete the Project in accordance with the project schedule submitted by the Contractor and attached to the Agreement as Exhibit 6. However, it is difficult to determine the actual damages that will result. Therefore, the Contractor and the State agree that if Project Acceptance has not occurred within thirty days of the date scheduled for Project Acceptance, as shown in Exhibit 6, for any reason other than Force Majeure or any State Event of Default or any delay caused by the State or any subdivision of the State or any officer, employee, agent or contractor of the State or any such subdivision of the State or any agent, employee or contractor of any other entity which owns, manages or operates any of the Facilities, then the

Contractor shall pay the State, as liquidated damages and not as penalty, an amount equal to one twelfth of the guaranteed annual energy cost savings for each 30 days that the Project Acceptance has not occurred after the scheduled Project Acceptance date. Payments for liquidated damages are due within 30 days following each 30 day time period for which the Project Acceptance has exceeded the scheduled Project Acceptance Date.

3. Delete Paragraph 10 Termination and replace it in its entirety with the following:

## **10. Termination of Agreement**

**10.1** The State may, by written notice, terminate (without prejudice to any right or remedy of the State) performance of work under this Agreement, in whole or in part, whenever the State determines that such termination is in its best interest. The State may terminate without regard to fault and is not liable in any manner for termination. Any termination shall be effected by a notice in writing to the Contractor specifying the date upon which such termination shall become effective and the extent to which performance of the Agreement shall be terminated. Such termination shall be effective on the date and to the extent specified in said notice.

**10.2** In the event of an early termination of this Agreement for any reason other than the completion to the Services, the Contractor, after receipt of a written notice of termination and except as otherwise directed in writing by the State, shall:

- a) deliver to the Contracting Officer, not later than (15) days after the date of termination, a report ("the Termination Report") describing in detail all Services performed, and the Contract Price earned, to and including the date of termination. To the extent possible, the form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in EXHIBITS 1 through 7.
- b) stop performing work on the date and as specified in the notice of termination;
- c) place no further orders or subcontracts for materials, equipment, services, or facilities;
- d) cancel all orders or subcontracts, upon terms acceptable to the State, to the extent they relate to the performance of work terminated,
- e) assign to the State all right, title, and interest of Contractor in all

orders and subcontracts;

- f) take such action as may be necessary or as directed by the State to preserve and protect the work, project site, and any other property related to this project in which the State has an interest; and
- g) continue performance only to the extent not terminated.

**10.3** Notwithstanding the foregoing, should the notice of termination relate to only a portion of the work covered by the Agreement, The Contractor shall proceed with the completion of such portions of the work as are not terminated. The State will pay and the Contractor will accept, in full consideration for the performance and completion of the portions of the work as are not terminated, within 30 days following the effective date of such partial termination.

**10.4** Upon compliance by the Contractor with the foregoing provisions of this Section and subject to deductions for payments previously made, the State, for the portions of work terminated, shall compensate the Contractor as follows:

- a) By reimbursing Contractor for actual expenditures made with respect only to completion of Project work, including expenditures made in connection with any portion thereof that was completed prior to termination, as well as expenditures made after termination in completing those portions of the work covered by the Agreement which the Contractor was required by the notice of termination to complete. The State shall determine the allocation and amount of such expenditures.
- b) By reimbursing the Contractor for all actual Project expenditures made, with the prior written approval of the State or pursuant to a court judgment.
- c) By reimbursing the Contractor for all actual Project expenditures made after the effective date of the notice of termination resulting from or caused by the Contractor taking necessary and approved action or action prescribed by the State.
- d) By paying the Contractor a markup, not to exceed thirty percent (30%), which markup is to cover the Contractor's overhead, supervision and profit for work directly performed by the Contractor and twenty-five percent (25%) for Contractor's overhead and profit for work directly performed by a subcontractor under this Agreement.

**10.5** The sum of all amounts payable under this Section, plus the sum of all



amounts previously paid by the State under the provisions of the Agreement, shall not exceed the amount due the Contractor as set forth in Exhibit B, Payment Terms. In no event shall the Contractor be entitled to any payment for loss of anticipated profits on uncompleted work and the State shall not be liable for same.

**10.6** Termination by the State under the provisions of this Section shall be without prejudice to any claims or rights which the State may have against the Contractor. The State may retain from the amount due to the Contractor under the provisions of this Section such monies as may be necessary to satisfy any claim which the State may have against the Contractor in connection with the Agreement, provided, however, that the State's failure to retain such monies shall not be deemed a waiver of any of its rights or claims against the Contractor.

**10.7** Notwithstanding the foregoing, where the Contractor and the State can agree upon another method of determining the amount of the consideration to be paid to the Contractor under the provisions of this Section, such method, subject to the approval of the State, may, at the option of the State, be substituted for the method set forth above.

**10.8** Any partial termination of this Agreement shall constitute a Material Change and the Contractor shall have the right to equitably recalculate the baseline and the Guaranteed Savings Amount, as provided in Section 5.5 of Exhibit 5 hereto, as a result of such Material Change.

4. Insert the bold, italic language indicated below in Section 13:

The Vendor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Vendor. ***Each party shall be solely liable for payment of its portion of all claims resulting from the negligence or willful misconduct of itself or those for whom it is legally responsible.***

Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

***Except for the indemnification obligations provided in this Section 13, Contractor'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, shall in all cases be limited to an amount equal to two times the sum of the payments received by Contractor under this Agreement.***

5. Revise Paragraph 14.3 as follows:

Delete the words "no later than thirty (30) days prior to the expiration date of each of the insurance policies" from the 7th and 8th lines of Paragraph 14.3 and replace with the words "***at renewal of each of the insurance policies.***"

Add the following at the end of the final sentence of Paragraph 14.3: "***except ten (10) days for nonpayment of premium***"

6. Delete Paragraph 18 Amendment and replace it in its entirety with the following:

**18. Amendment; Modification**

**18.1** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire.

**18.2** The State may at any time, by written change order to the Contractor, adjust pricing and direct additions, deletions, and revisions to the Project work as may be necessary to ensure the continuity and purposes set forth in RSA 21-1:19a-e. If the Contractor determines that such changes affect the cost, safety, performance, efficiency, time of performance, baseline, Guarantee of Savings or any other terms of this Agreement, the Contractor shall provide the State with written notice requesting an appropriate adjustment and the parties shall negotiate the terms of the change order to the Agreement.

**18.3** The Contractor may, with at least seven (7) calendar days prior written notice, and with the approval of the State, change the installed Equipment, revise procedures, or implement other energy saving action in the facilities, provided that the standards of service set forth in the Agreement shall not be reduced. All replacement, deletions, alterations, or additions of Equipment or revisions to the procedures, including an estimated time of completion, as agreed to by the State shall be described in a supplemental schedule or schedules to be provided in writing to and approved by the State, and upon approval shall be attached to this Agreement and shall become a part hereof. Replacement, substitutions alterations or additions of Equipment shall become a part of the installed Equipment pursuant to the terms of this Agreement and must be practical and necessary to meet applicable legal standards as set forth in RSA 19-1:21 a-e. Disposition of Equipment that was replaced shall be mutually agreed to by the State and the Contractor.

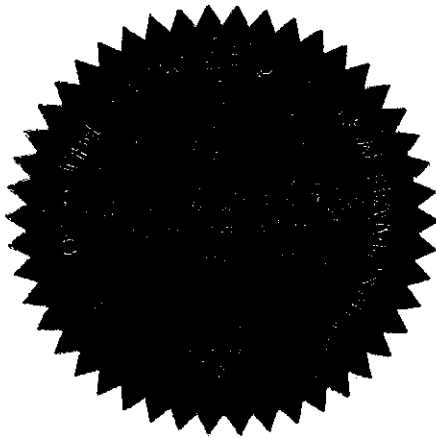
7. Insert the following language as a new section, 25 "LIMITATION ON WARRANTIES"

***Except as expressly set forth this agreement, Contractor makes no warranties or representations of any kind, whether statutory, written, oral or implied, including without limitation, warranties as to the value, design, condition or fitness for use or particular purpose or merchantability, regarding the equipment or any services provided hereunder.***

State of New Hampshire  
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that AMERESCO, INC. a(n) Delaware corporation, is authorized to transact business in New Hampshire and qualified on September 27, 2000. I further certify that all fees and annual reports required by the Secretary of State's office have been received.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 27<sup>th</sup> day of April, A.D. 2016

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State

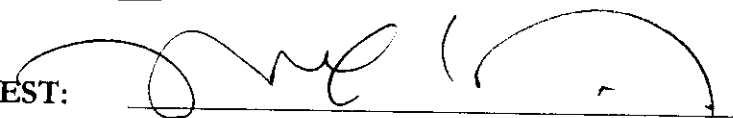
**CERTIFICATE OF INCUMBENCY**

I, **David J. Corrsin**, do hereby certify that:

1. I am the duly elected and acting Secretary of Ameresco, Inc., a corporation organized and existing under the laws of the State of Delaware.
2. As of the date hereof, **Michael J. Daigneault** is an Officer of the Corporation, holding the office of **Vice President - Development**, and is authorized to execute and deliver contracts and other obligations of the Corporation in the name and on behalf of the Corporation and to affix the Corporation's seal thereto; and
3. Any such contract or obligations executed and delivered by Michael J. Daigneault on behalf of Ameresco, Inc. shall be valid and binding upon the Corporation.

**In Witness Whereof**, I have duly executed this Certificate and affixed the seal of the Corporation hereto this 27th day of April 2016.

**A TRUE COPY:**

ATTEST:   
David J. Corrsin, Secretary  
Ameresco, Inc.

DATED: 4/27/16

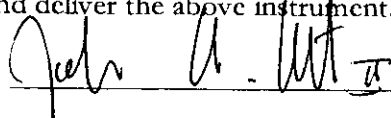


AT: 111 Speen Street, Framingham, Massachusetts 01701, USA

STATE OF: MASSACHUSETTS

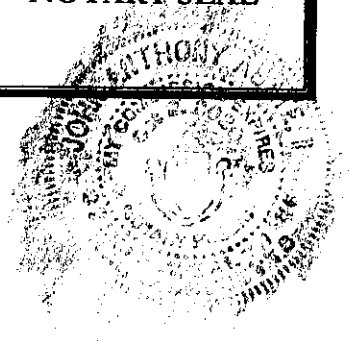
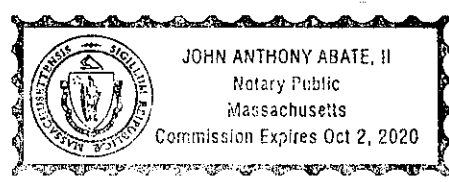
COUNTY OF: MIDDLESEX

On this the 27<sup>TH</sup> day of APRIL, 2016, before me personally appeared David J. Corrsin, who being by me duly sworn, did depose and say that he is the Secretary of Ameresco, Inc. and is authorized to execute and deliver the above instrument.

NOTARY PUBLIC: 

COMMISSION EXPIRES: OCTOBER 2, 2020

NOTARY SEAL



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/27/2016

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

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


<b>PRODUCER</b> Arthur J. Gallagher Risk Management Services, Inc. 470 Atlantic Avenue Boston, MA 02210	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 617 261-6700		FAX (A/C, No): 617-646-0400
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> Ameresco, Inc. 111 Speen Street Suite 410 Framingham, MA 01701	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A:</b> Zurich-American Insurance Compa		27855
	<b>INSURER B:</b> Nat'l Union Fire Insurance Co.		
	<b>INSURER C:</b> Steadfast Insurance Company		26387
	<b>INSURER D:</b>		
	<b>INSURER E:</b>		

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC		GLO585238803	11/30/2015	11/30/2016	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COM/PO/AGG \$4,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		BAP585238703	11/30/2015	11/30/2016	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$		8766219	11/30/2015	11/30/2016	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	WC595394502	11/30/2015	11/30/2016	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	<b>Professional Liability</b>		EOC669274305	11/30/2015	11/30/2016	\$10,000,000 agg/occ \$500,000 SIR

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
**Contractors Pollution Policy Coverage:**  
 Insurer C - policy #EOC669274305 effective 11/30/2015 - 11/30/2016  
 \$10,000,000 agg/occ  
 \$500,000 SIR  
 RE: Cannon Mountain Energy Savings Performance Agreement. The State of New Hampshire Department  
 (See Attached Descriptions)

<b>CERTIFICATE HOLDER</b> The State of New Hampshire Department of Resource & Economic Dev PO Box 1856 Concord, NH 03302-1856	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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## Energy Savings Guarantee

- Ameresco shall guarantee the total energy unit savings, not per ECM, as detailed in Table 1 below, and shall equal or exceed the Guaranteed Savings (as specified in Table 1 below), in each year of the Term.
- Guaranteed Cost Savings are based on the guaranteed energy unit savings multiplied by the baseline rates defined in the IGA.
- This guarantee shall apply for a period of five (5) years, which period shall commence on the first day of the calendar month following the Project Acceptance Date.
- Ameresco will perform and submit an annual guarantee reconciliation report

**Table 1: Guaranteed Energy Savings**

<b>Ecm #</b>	<b>ECM Name</b>	<b>Annual kW</b>	<b>Total kWh</b>	<b>Propane (Gallons)</b>	<b>#2 Fuel Oil (Gallons)</b>	<b>Total Project Savings</b>
1	Lighting System Improvements - Interior	372	136,953	(463)	(366)	\$16,721
5	Low Voltage Transformer Replacements	75	54,533	-	-	\$6,587
7	Infiltration Reductions	-	11,901	883	607	\$4,644
13	Electrical Upgrades	-	-	-	-	\$-
16	Snow Making System Upgrades	1,790	2,943,987	-	-	\$330,128
19	High Voltage Transformer Replacements	391	228,505	-	-	\$28,485
<b>Guaranteed Energy Savings</b>		<b>2,628</b>	<b>3,375,879</b>	<b>420</b>	<b>242</b>	<b>\$386,565</b>

- The baseline energy usage is based on an average of the fiscal year 2014 (FY14) and 2015 (FY15) utility data.
- Measurement and verification strategies are based on IPMVP (International Performance Measurement and Verification Protocol) Option A, Retrofit Isolation, or B, Measured Retrofit Isolation.
- Engineering calculations of the savings are based on key parameters that are measured and/or verified as well as parameters that are estimated such as historical data, industry standard engineering values, typical operating hours, or manufacturer's equipment specifications.
- Ameresco has based its verification on a short-term plan with certain instantaneous measurements performed at commissioning to ensure audit savings projections are met
- On-going monitoring over the guarantee term to assist Cannon in operating at peak efficiency.
- This approach to verification minimizes the effect of inevitable changes at the facility, while still ensuring Cannon's savings will be realized.

The standard M&V protocols are described below:

**Option A - Retrofit Isolation:** Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the energy conservation measure's (ECM) affected system(s) and/or the success of the project. Parameters not selected for field measurement are estimated. Estimates can be based on historical data, manufacturer's specifications, or engineering judgment. Documentation of the source or justification of the estimated parameter is required.

**Option B - Measured Retrofit Isolation:** Savings are determined by field measurement of all key performance parameters which define the energy use of the ECM-affected system.

The following table lists the M&V Options to be used for each ECM.

ECM #	ECM Name	IPMVP Option
1	Lighting System Improvements - Interior	A
5	Low Voltage Transformer Replacements	B
7	Infiltration Reductions	A
13	Electrical Upgrades	A
16	Snow Making System Upgrades	A
19	High Voltage Transformer Replacements	B

- **Adjustments to Baseline resulting in adjustments to the Guaranteed Energy Savings**
  - Changes in hours
  - Changes in fuels
  - Changes in laws and/or regulations
  - Changes in spaces or land
  - Changes in equipment or operations
  - Changes in weather