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State of New Hampshire  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
OFFICE OF THE COMMISSIONER  
25 Capitol Street – Room 120  
Concord, New Hampshire 03301

Charles M. Arlinghaus  
Commissioner  
(603)-271-3201

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Assistant Commissioner  
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Deputy Commissioner  
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October 30, 2018

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Administrative Services to enter into a contract with Ameresco, Inc., Framingham, MA, vendor code #162569, to perform a detailed investment grade audit. The cost of the investment grade audit is \$10,500. The contract will be effective upon Governor and Council approval and end on May 31, 2019. **57% Transfer from Other Agencies, 9% Fish & Game, 5% Federal Funds, 17% Highway Funds, 10% Agency Income, 2% Other Funds**

Funding is available in the accounts as follows:

Agency	Account Number	Title	Amount
Department of Administrative Services – Court Facilities	10-014-1415-2045-20450000-048-500226	Contractual Maint. Bldg & Grounds	\$5,900
Fish & Game Department	20-075-7535-2160-21600000-048-500226	Contractual Maint. Bldg & Grounds	\$1,100
Employment Security	10-027-2700-8040-80400000-048-500226	Contractual Maint. Bldg & Grounds	\$700
Department of Transportation	10-096-9600-3048-30480000-048-500226	Contractual Maint. Bldg & Grounds	\$1,800
Department of Natural & Cultural Resources	10-035-3500-3720-37200000-048-500226	Contractual Maint. Bldg & Grounds	\$1,000

**EXPLANATION**

The Department of Administrative Services developed a Request for Proposals to implement guaranteed energy conservation measures at twenty-nine state owned buildings located in the NH Seacoast Region. The twenty-nine buildings are:

<u>Agency / Facility Name</u>	<u>Agency / Facility Name</u>	<u>Agency / Facility Name</u>
<b>Department of Administrative Services – Court Facilities</b>	<b>Fish &amp; Game Department</b>	<b>Department of Transportation</b>
Dover Circuit Court	(GBR01) Great Bay Depot	District 6 - District Office
Portsmouth Circuit Courthouse	(GBR02) Great Bay Discovery Center	District 6 - Shed 605
Rochester Circuit Courthouse	(GBR03) Great Bay Gregg Conservation Center	District 6 - Shed 606
Rockingham Superior Courthouse	(PMH01) Powder Mill Hatchery Residence	District 6 - Shed 607
<b>Employment Security</b>	(PMH02) Powder Mill Hatchery Garage	District 6 - Shed 609
Portsmouth Employment Security	(PMH03) Powder Mill Hatchery	District 6 - Shed 610
Somersworth Employment Security	(PMH04) Powder Mill Hatchery Brown Building	District 6 - Shed 612
<b>Department of Natural &amp; Cultural Resources</b>	(PMH05) Powder Mill Hatchery Utility	Mechanical Services Satellite Garage - No. Hampton
(ODN01) Science Center	(PMH06) Powder Mill Hatchery Power House	Turnpikes - Hampton Maintenance - 7015
(HMB03) South Beach Maintenance Garage	(REG3-01) Region 3 Office	
(HMS05) North Beach Bathhouse		
(WAL01) Wallis Sands Beach Bathhouse		

These buildings were targeted as part of a regional pilot for this type of project. These savings will be utilized to offset the cost of the measures with a payback of less than 20 years. In accordance with RSA 21-I:19-d the cost of the energy and fossil fuel reduction improvements must be financed within 20 years from guaranteed energy cost savings through a performance contract and requires no upfront capital from the State.

Notification of the RFP was released to several firms within the industry. The RFP was also posted on the Department of Administrative Services web site. Bids were received from three Energy Service Companies of which two were compliant. The RFP requested that the Energy Service Companies propose their energy and fossil fuel saving measures for the following categories: lighting systems and controls, building automated control systems, HVAC, premium efficiency motors and variable frequency drives, building envelope, water conservation, domestic hot water systems and renewable energy systems. In accordance with Executive Order 2016-3 state agencies are required to reduce fossil fuel usage by 30 percent from the base year of 2005 by 2020. A project such as this one makes progress towards this goal without investment from the capital budget.

A five member review team comprised of representatives from Department of Administrative Services, Employment Security, Fish & Game Department, Department of Natural & Cultural Resources, and the Department of Transportation (collectively referred to

as "the State") rated each proposal using criteria established and published in the RFP. The criteria were broken down into the following areas: 20% energy reductions, 5% presentation and responsiveness, 10% qualifications, experience and resources, 35% technical approach, 20% project cost and 10% management approach. Based on the evaluation criteria, Ameresco, Inc. was chosen as the highest ranking proposal. Attached is a copy of the consensus-based scoring. Ameresco, Inc. proposed the lowest cost for the investment grade audit and had the lowest markup percentages in its proposal.

The development of an energy saving performance contract requires an initial investment grade audit that provides more detailed information needed to negotiate and finalize the energy saving performance contract and determine whether the State will enter into a guaranteed energy performance project with Ameresco, Inc. If the detailed investment grade audit fails to come within 15% of Ameresco, Inc., original bid proposal's projected energy savings, there will be no charge to the State. If the detailed investment grade audit recommendations fall within 15% of the original bid proposal and the project goes forward, the cost of the detailed investment grade audit will be included in the performance contract costs. However, should the detailed investment grade audit fall within 15% and should for any reason the State decides not to go forward, the State will be obligated to pay Ameresco, Inc., \$10,500. Authorization is requested to pay Ameresco, Inc., in the unlikely event that the State is unable to go forward with a guaranteed energy saving performance contract. If the detailed investment grade audit falls within the established criteria, the State fully intends to proceed with a guaranteed energy saving performance contract that will be subject to Governor and Council approval.

Based on the foregoing, I am respectfully recommending approval of the contract with Ameresco, Inc.

Respectfully submitted,



Charles Arlinghaus  
Commissioner

<i>Ameresco</i>	Technical Approach		Energy Savings		Project Cost		Qualifications, Experience and Resources		Management Approach		Presentation / Responsiveness to RFP		Total	Average Score
	35%		20%		20%		10%		10%		5%			
	Sarah Lineberry	95	33.25	95	19	100	20	95	9.5	90	9	100	5	95.75
Seth Prescott	85	29.75	95	19	100	20	91	9.1	88	8.8	91	4.55	91.2	
Rick Fink	89	31.15	95	19	100	20	85	8.5	87	8.7	84	4.2	91.55	
Arlene Allen	93	32.55	95	19	100	20	92	9.2	94	9.4	90	4.5	94.65	
Richard Lavers	94	32.9	95	19	100	20	100	10	100	10	80	4	95.9	
<b>Average</b>	<b>81.9</b>		<b>19</b>		<b>20</b>		<b>9.26</b>		<b>9.18</b>		<b>4.45</b>			

<i>conEdison Solutions</i>	Technical Approach		Energy Savings		Project Cost		Qualifications, Experience and Resources		Management Approach		Presentation / Responsiveness to RFP		Total	Average Score
	35%		20%		20%		10%		10%		5%			
	Sarah Lineberry	89	31.15	100	20	80	16	90	9	84	8.4	90	4.5	89.05
Seth Prescott	83	29.05	100	20	80	16	89	8.9	82	8.2	90	4.5	86.65	
Rick Fink	84	29.4	100	20	80	16	91	9.1	86	8.6	86	4.3	87.4	
Arlene Allen	92	32.2	100	20	80	16	94	9.4	94	9.4	95	4.75	91.75	
Richard Lavers	94	32.9	100	20	80	16	100	10	100	10	80	4	92.9	
<b>Average</b>	<b>89.9</b>		<b>20</b>		<b>16</b>		<b>9.28</b>		<b>8.92</b>		<b>4.41</b>			

Name	Agency	Division/Bureau	Job Title
Sarah Lineberry	Department of Administrative Services	Plant & Property Management - Court Facilities	Administrator of Court Facilities
Seth Prescott	Department of Natural & Cultural Resources	Office of the Commissioner	Design Development and Maintenance Section
Rick Fink	Fish & Game Department	Facilities and Lands Division	Facilities and Lands Division Chief
Arlene Allen	Department of Transportation	Bureau of Environment	Special Environmental Projects Manager
Richard Lavers	Employment Security Department	Employment Security	Deputy Commissioner

Attachment C - Form P-37

RFP #2019-211

Subject: Performance Contract for 29 state-owned facilities in the Seacoast Region, NH

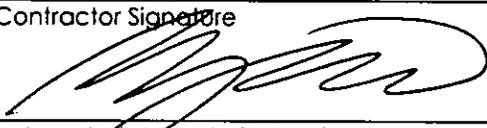
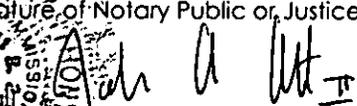
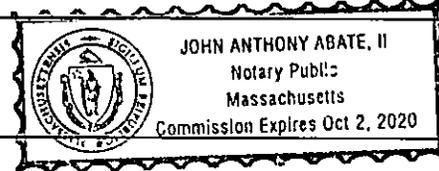
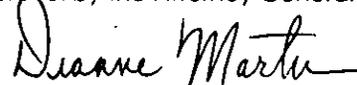
**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**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 Administrative Services		1.2 State Agency Address 25 Capitol Street 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 Multiple	1.7 Completion Date May 31, 2019	1.8 Price Limitation \$10,500
1.9 Contracting Officer for State Agency Donald Perrin		1.10 State Agency Telephone Number (603) 271-7774	
1.11 Contractor Signature 		1.11 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 <del>Nov. 1, 2018</del> , 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 agreement in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace 			
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 		1.15 Name and Title of State Agency Signatory Charles Arlinghaus, Commissioner Department of Administrative Services	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: 11/2/18			
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

Contractor Initials MJD  
Date 11/1/18

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.

## Agreement to Perform an Investment Grade Audit

AGREEMENT, entered into as of November 1, 2018, by and between Ameresco, Inc. ("Contractor" or "Vendor") a corporation with a principal place of business at 111 Speen Street, Suite 410, Framingham, MA 01701 and the Department of Administrative Services ("State") a department of the State of New Hampshire with a principal place of business at 25 Capitol Street, Concord, NH (individually, a "Party" or collectively, the "Parties").

Now, therefore, in consideration of these premises and the mutual promises herein expressed, State and Contractor agree as follows:

### **BASIS:**

The basis for this Agreement is:

Department of Administrative Services (hereinafter called "the State") owns 29 facilities in the Seacoast Region, NH (hereinafter called "the Facilities"). State desires to improve the energy efficiency of certain facilities that it owns and occupies by means of an energy performance contract. The State has solicited competitive proposals, evaluated Contractor's response, and wishes to engage Contractor to conduct an Investment Grade Audit of the facilities to determine whether the State should proceed with an energy reduction project by means of an energy performance contract.

Contractor has made a preliminary assessment of the Facility and submitted a proposal in response to a State issued RFP, to provide certain services and equipment. The Contractor provides services and other measures designed to reduce energy consumption or energy costs. The Contractor is willing to guarantee that the State will realize energy cost savings during each year of the term of an energy performance contract, calculated and adjusted according to accepted terms.

The work to be performed at the Facility by Contractor (the "Project") will identify the Measures to be installed and other services, if any, to be provided by Contractor.

#### 1. DEFINITIONS:

**Baseline Energy Use.** A calculation of energy uses of a building or piece of equipment over a specified period used to project energy use had the project not been implemented.

**Energy Conservation Measures (ECM).** A measure to reduce energy use or costs, such as the installation of equipment or systems, or modification of equipment or systems, or revised operation and maintenance procedures.

**Guaranteed Performance.** The annual energy unit and cost savings, which the Contractor guarantees will be realized by the State as a result of the Project, will be calculated in accordance with the methodology (i.e., the International Performance Measurement and Verification Protocol (IPMVP) Options A and B) described in the original RFP and agreed to by Contractor in its RFP response. The Parties agree that the final M&V Plan will be negotiated and mutually agreed to during the development of the IGA. Excess annual energy units and cost savings obtained by the State beyond the Contractor's annual guarantee cannot be used as a credit by the Contractor in any previous or subsequent years of the contract term and will not be applied for any shortfall in

guaranteed energy units or cost savings during the contract term. Each Group must meet the 17 year payback requirement on its own. Measures must be easily separated by building for ease of calculating loan repayments. All energy and cost savings derived from the implementation of this project will be retained by the State.

Energy unit savings will be the basis of the performance guarantee and guaranteed cost savings are extrapolated from the energy unit savings and baseline utility costs. Since energy costs fluctuate, the Contractors must meet the guaranteed annual energy unit savings as a requirement of the performance guarantee. In no instance will guaranteed cost savings be used as the sole condition for meeting the performance guarantee. Further, as required in NH RSA 21-1:19-d (f), "Any energy performance contract should require the contractor to include all energy efficiency improvement in selected buildings that are calculated to recover all costs within 17 years from the date of project implementation at existing energy prices. The contract shall require that the public utility or energy services provider be repaid only to the extent of energy cost savings guaranteed by the contractor to accrue over the term of the contract."

**Investment Grade Audit.** A survey of existing energy systems of a Facility for the purpose of proposing Energy Conservation Measures (ECMs) and verifying that the proposed ECMs are guaranteed to generate energy consumption and cost savings and meet the financial requirements within seventeen years. The results of an Investment Grade Audit 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 Investment Grade Audit generally provides equipment counts, implementation costs, efficiency levels or performance characteristics of the equipment comprising the proposed ECMs, 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 Energy Conservation Measures. See Section 3 and the State RFP #2019-211 "Energy Performance Contracting Services for 29 state-owned facilities in the Seacoast Region, NH." The results of the Investment Grade Audit are presented in a written report.

**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. The International Measurement and Verification Protocols will be used to measure and monitor all installed ECMs.

**Project.** An energy and energy-related cost reduction program that may include design, engineering, procurement, installation of equipment, ongoing maintenance, measurement and verification, and other services.

**Total Project Cost.** All costs associated with the development and implementation of an energy performance contract, which may include, but are not limited to: the comprehensive energy audit; ECM design, procurement and installation; financing fees; construction contract bonds; interest charges; training of facility staff; measurement and verification; equipment operation and maintenance; project management; the energy performance guarantee; and Contractor overhead and profit.

2. The Contractor shall perform an Investment Grade Audit of the following facilities:

<b>Agency</b>	<b>Facility Name</b>
<b>Court Facilities</b>	Dover Circuit Court
	Portsmouth Circuit Courthouse
	Rochester Circuit Courthouse
	Rockingham Superior Courthouse
<b>EMPLOYMENT SECURITY DEPT</b>	Portsmouth Employment Security
	Somersworth Employment Security
<b>FISH AND GAME DEPT</b>	(GBR01) Great Bay Depot
	(GBR02) Great Bay Discovery Center
	(GBR03) Great Bay Gregg Conservation Center
	(PMH01) Powder Mill Hatchery Residence
	(PMH02) Powder Mill Hatchery Garage
	(PMH03) Powder Mill Hatchery
	(PMH04) Powder Mill Hatchery Brown Building
	(PMH05) Powder Mill Hatchery Utility
	(PMH06) Powder Mill Hatchery Power House
	(REG3-01) Region 3 Office
<b>NATURAL &amp; CULT RESOURCES DEPT</b>	(ODN01) Science Center
	(HMB03) South Beach Maintenance Garage
	(HMS05) North Beach Bathhouse
	(WAL01) Wallis Sands Beach Bathhouse
<b>TRANSPORTATION DEPT</b>	District 6 - District Office
	District 6 - Shed 605
	District 6 - Shed 606
	District 6 - Shed 607
	District 6 - Shed 609
	District 6 - Shed 610
	District 6 - Shed 612
	Mechanical Services Satellite Garage - No. Hampton
<b>Turnpikes</b>	Turnpikes - Hampton Maintenance - 7015

The Contractor shall gather and analyze information and data and propose a project to the State in a comprehensive energy audit report that would reduce the State's expenses for energy, water and related operations. The Investment Grade Audit shall be conducted at the Contractor's own expense, subject to the Exhibit B payment terms. The Contractor shall conduct an on-site survey of the facilities and shall interview appropriate State personnel to learn the operating characteristics of the facilities and the existing equipment and systems therein.

The Investment Grade Audit shall identify all feasible energy conservation, load management, building envelope, water conservation; and renewable resource options for which the total cost savings benefits are expected to exceed implementation costs, including financing, over the term. The comprehensive energy audit shall also address the following options specifically identified by the State:

- Building Automated Control Systems
- Building Envelope
- Domestic Hot Water Systems
- Electric Distribution System and Transformers
- Equipment e.g. Compressors
- Heating, Ventilation and Air Conditioning
- Lighting Systems and Controls, including exterior lighting
- Plug-Load Control
- Premium Efficiency Motors and Variable Frequency Drives
- Renewable Energy
- Water Conservation
- Additional Measures

3. Contractor shall certify in writing that Contractor has a plan to coordinate all activities involving handling, transport, and disposal of hazardous materials, including asbestos, affected by the installation of Measures under this Agreement. Provided; however, that the State will enter directly into contracts with third parties for necessary handling, transport or disposal of hazardous materials (other than for mercury-containing lamps and PCB-containing ballasts) discovered by Contractor, as a part of such plan. If no hazardous materials are involved or affected, Contractor shall so assert.

The Investment Grade Audit shall present a detailed analysis and discussion of the Contractor's proposed ECMs at the State's facilities. It shall include a methodology for the calculation of the baseline energy use and a description of physical conditions, equipment counts, lighting audits, nameplate data, and control strategies prior to project implementation.

For each measure recommended, the Investment Grade Audit shall provide equipment counts, implementation costs, efficiency levels or performance characteristics of the equipment comprising the proposed measure, on-going maintenance costs, annual energy and cost savings, and the useful life of the measure. Projected energy savings must account for interaction among recommended measures.

There shall be a separate section in the comprehensive energy audit report for each building and an executive summary which lists all proposed ECMs with the implementation cost, estimated energy cost savings, useful life of the equipment, and the simple payback for each measure.

The report shall incorporate the following format:

**Changes from the Original Proposal** – provide a complete description of what changes have occurred from the original proposal to the completed Investment Grade Audit and explain why these changes were necessary. Include at a minimum for each ECM:

- Changes in quantities of equipment or fixtures,
- Changes in installation or equipment costs,
- Changes in equipment type and/or specifications,

- Changes in the implementation timeline, and
- Changes in the scope of work.

**Measure Descriptions** – provide a complete description of each proposed measure, which will include at a minimum:

- The proposed upgrade, replacement, or operational change;
- Existing equipment and fixture inventories;
- Waste recycling measures;
- Quantities, and make and model of all proposed new equipment;
- Interface between the proposed measure and existing equipment; and
- A cost and savings summary (Form E-2) and savings guarantees

**Operation and Maintenance Services and Responsibilities** – provide a complete description of the maintenance services that the Contractor will provide and a complete description of any maintenance actions for which the State will retain responsibility.

- Operation services to be performed by the Contractor
- Operation services to be performed by the State
- Training Services to be performed by the Contractor
- Maintenance services to be performed by the Contractor
- Maintenance to be performed by the State
- Repair response times and agreements

**Measurement and Verification Plan** – document the methods that will be used to calculate energy savings and convert them to cost savings, including the baseline that savings will be measured against and any provisions for modifying the baseline. Information to be provided includes:

- an energy baseline and the methodology used for the calculation of baseline energy consumption;
- the International Performance Measurement and Verification Protocol method to measure energy savings for each conservation measure and/or energy type after ECMs have been installed;
- the method to verify ECM compliance with requirements of standards of service and comfort;
- the method of determining guaranteed energy unit and cost savings and compliance with standards of service and comfort annually throughout the Term;
- the utility rate schedules to be used for calculating energy cost savings; and
- A clearly defined performance guarantee which indicates energy unit savings will be the basis of the guarantee and that guaranteed cost savings are extrapolated from the energy unit savings and baseline utility costs. Also include an outline of the process for reimbursing the state for any shortfall in the energy unit savings guarantee. In no instance will guaranteed cost savings be used as the sole condition for meeting the performance guarantee.

To establish the baseline, provide supporting documentation on:

- building physical condition;

- hours of use or occupancy;
- area of conditioned space;
- area of unconditioned space;
- inventory of energy consuming equipment or systems;
- energy consuming equipment operating conditions and loads; and
- standards of service and comfort observed (e.g. light levels and temperatures).

Describe the manner in which the Contractor shall secure the energy performance guarantee.

**Installation Schedule** – provide for each measure, a proposed implementation schedule with the following milestones:

- Design completed
- Permits
- Submittals (plans and specifications)
- Equipment/material acquisition
- Mobilization
- Installation
- Clean up
- Startup/testing, commissioning, initial Measurement and Verification
- Final inspection and project acceptance
- Post installation submittals
- Periodic Measurement and Verification, annual true-ups
- Training

**Subcontractor and Equipment Vendor/Brand Schedules** - provide a list of subcontractors (or possible subcontractors), and equipment brands and vendors.

**Compensation Schedule** – The Compensation Schedule should indicate any progress payments for construction through Project Acceptance and any regular payments after Project Acceptance for ongoing monitoring, operating, and maintenance services, if applicable.

**Environmental Impact** – Provide projected annual greenhouse gas reduction quantities for the total project based on the guaranteed energy savings. Utilize the following conversion coefficients in determining the gas reduction quantities for the type of energy indicated.

**Electricity Savings (MM = 1 million, 3.412 MMBtu/MWh)**

Carbon Dioxide	244.52 lb/MMBtu	834.31 lb/MWh
Sulfur Dioxide	0.53 lb/MMBtu	1.80 lb/MWh
Nitrous Oxides	0.21 lb/MMBtu	0.73 lb/MWh

**Source: NH DAS, 2013**

**#2 Oil (Sulfur content 0.5%, M =1 million, 0.139 MMBtu/gal)**

Carbon Dioxide	161.27 lb/MMBtu	22.38 lb/gal
Sulfur Dioxide	1.022 lb/MMBtu	0.142 lb/gal
Nitrous Oxides	0.00187 lb/MMBtu	0.00026 lb/gal

**Natural Gas (MM = 1 million, 0.1 MMBtu/therm (100 ft<sup>3</sup>))**

Carbon Dioxide	116.98 lb/MMBtu	11.70 lb/therm
Sulfur Dioxide	0.00059 lb/MMBtu	0.000082 lb/therm
Nitrous Oxides	0.0022 lb/MMBtu	0.0003 lb/therm

**Propane (MM = 1 million, 0.09101 MMBtu/gal)**

Carbon Dioxide	139.05 lb/MMBtu	12.65 lb/gal
Sulfur Dioxide	0.0006 lb/MMBtu	0.00009 lb/gal
Nitrous Oxides	0.006 lb/MMBtu	0.0009 lb/gal

**Sources:**

**EIA (2012). Voluntary Reporting of Greenhouse Gases Program Fuel Emission Coefficients.**

**EPA (2011). AP-42, Fifth Edition, Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources.**

**Standards of Service and Comfort for the State facilities shall be as follows:**

In conditioned areas, space temperatures will be maintained between 68°F and 76°F dry bulb (please consult with each agency about range) during the heating season and scheduled occupied periods. 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 62.1-2016, "Ventilation for Acceptable Indoor Air Quality." Where 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 shall have humidity settings that meet their own standards.

**STANDARD HOURS OF OPERATION**

<b>Agency/Building</b>	<b>Street</b>	<b>City</b>	<b>Zip Code</b>	<b>Square Footage</b>	<b>Usage Type</b>	<b>Area</b>	<b>Base Hours of Operation</b>
<b>Court Facilities</b>							
Dover Circuit Court	25 St. Thomas St.	Dover	03820-3780	24,000	Courthouse	All	M-F 8:00 AM - 4:00 PM
						Housekeeping	M-F 6:00 AM - 8:00 AM
Portsmouth Circuit Courthouse	111 Parrott Avenue	Portsmouth	03801-4402	19,291	Courthouse	All	M-F 8:00 AM - 4:00 PM
						Housekeeping	M-F 4:00 AM - 8:00 AM
Rochester Circuit Courthouse	76 North Main Street	Rochester	03867-1905	11,000	Courthouse	All	M-F 8:00 AM - 4:00 PM
						Housekeeping	S-TH - 4:00 AM - 8:00 AM
Rockingham Superior Courthouse	10 Route 125	Brentwood	03833-6202	100,000	Courthouse	All	M-F 8:00 AM - 4:00 PM
						Housekeeping	M-F 4:00 AM - 8:00 AM

<b>EMPLOYMENT SECURITY DEPT</b>							
Portsmouth Employment Security	2000 Lafayette Rd.	Portsmouth	03801-5673	7,500	Office	All	M-F 8:00 AM - 4:30 PM
						Housekeeping	T,TH,F 4:30 PM-5:30 PM
Somersworth Employment Security	6 Marsh Brook Drive	Somersworth	03878-	10,000	Office	All	M-F 8:00 AM - 4:30 PM
						Housekeeping	T,TH,F 4:30 PM-5:30 PM
<b>FISH AND GAME DEPT</b>							
(GBR01) Depot	69 Depot Road	Greenland	03840-	1,500	Office	All	M-F 9:00 am - 4:00pm
(GBR02) Discovery Center	89 Depot Road	Greenland	03840-	6,031	Other - Education	All	M-F 9:00 am - 4:00pm
(GBR03) Gregg Conservation Center	91 Depot Road	Greenland	03840-	6,720	Other - Education	All	M-F 9:00 am - 4:00pm
(PMH01) Residence	287 Meetinghouse Road	New Durham	03855-	1,025	Single Family Home	All	M-F 7:30 am - 4:00pm
(PMH02) Garage	287 Meetinghouse Road	New Durham	03855-	3,150	Other - Technology/Science	All	M-F 7:30 am - 4:00pm
(PMH03) Hatchery	287 Meetinghouse Road	New Durham	03855-	902	Other - Technology/Science	All	M-F 7:30 am - 4:00pm
(PMH04) Brown Building	288 Merrymeeting Road	New Durham	03855-	1,560	Warehouse - Non-refrigerated	All	M-F 7:30 am - 4:00pm
(PMH05) Utility	288 Merrymeeting Road	New Durham	03855-	1,708	Other - Utility	All	M-F 7:30 am - 4:00pm
(PMH06) Power House	288 Merrymeeting Road	New Durham	03855-	330	Energy/Power Station	All	M-F 7:30 am - 4:00pm
(REG3-01) Office	225 Main Street	Durham	03824-	6,500	Office	All	M-F 8:00 am - 4:00pm
<b>NATURAL &amp; CULT RESOURCES DEPT</b>							
(ODN01) Science Center	Odiorne Point State Park	Rye	03870-	15,940	Other - Education	All	Feb 16th - Oct 31st Every day 8:00 AM - 5:00 PM Nov 1st - Feb 15th Every day 8:00 AM - 4:00 PM
(HMB03) South Beach Maintenance Garage	30 State Park Road	Hampton	03843-	3,840	Maintenance Garage/admin	All	M-F 8:00 AM - 5:00 PM
(HMS05) North Beach Bathhouse	920 Ocean Blvd.	Hampton	03843-	1,859	Beach Bathhouse	All	24 hours / 7 days a week
(WAL01) Wallis Sands Beach Bathhouse	1050 Ocean blvd	Rye	03870	4,584	Beach Bathhouse	All	(May - Aug) Every day

							8:00 AM - 5:00 PM
<b>TRANSPORTATION DEPT</b>							
District 6 - District Office	271 Main Street	Durham	03824-	5,546	Office	All	M-F 6:00 AM - 4:00 PM
District 6 - Shed 605	65 Pinkham Road	Lee	03824-	3,009	Other - Public Services	All	M-F 6:30 AM - 3:00 PM
District 6 - Shed 606	50 Gerrish Road	Dover	03820-	5,000	Other - Public Services	All	M-F 6:30 AM - 3:00 PM
District 6 - Shed 607	Route 27	Exeter	03833-	6,000	Other - Public Services	All	M-F 6:30 AM - 3:00 PM
District 6 - Shed 609	Route 108	Newfields	03856-	4,795	Other - Public Services	All	M-F 6:30 AM - 3:00 PM
District 6 - Shed 610	Route 1	Rye	03870-	3,120	Other - Public Services	All	M-F 6:30 AM - 3:00 PM
District 6 - Shed 612	143 South Road	North Hampton	03862-	2,891	Other - Public Services	All	M-F 6:30 AM - 3:00 PM
Mechanical Services Satellite Garage - No. Hampton	147 South Road	North Hampton	03862-	5,675	Repair Services (vehicle, etc.)	All	M-F 6:30 AM - 3:00 PM
<b>Turnpikes</b>							
Turnpikes - Hampton Maintenance - 7015	I-95	Hampton	03843-	12,740	Other - Public Services	All	M-F 7:00 AM - 3:30 PM

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 the 68°F - 76°F range by the start of the next occupied period.

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.

Minimum lighting levels shall be in accordance with applicable Illumination Engineering Society (IES) standards for each type of space and activity as of the time of the Measure 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.

The key personnel assigned responsibility for the conduct of the comprehensive energy audit shall be identified in writing prior to the commencement of the comprehensive energy audit, and shall be subject to the approval of the State. Proposed changes in the key personnel also shall be subject to State approval.

The State agrees to allow the Contractor access to its facilities during normal working hours for the purpose of gathering information required for the Investment Grade Audit and to cooperate with the Contractor in providing timely, complete, accurate, and pertinent information. If it has not

already done so, the State shall furnish, or cause its energy suppliers to furnish, accurate and complete data concerning energy usage for the facilities for a recent 24-month period.

The Contractor agrees that this Investment Grade Audit shall be completed and delivered to the State within 24 weeks of the signing of this Agreement by both parties.

Within 15 business days of receipt of the Investment Grade Audit, the State may request in writing additional information about any proposed measures. In such event the Contractor agrees to provide, at no additional cost to the State, detailed engineering and financial calculations and to identify all assumptions and inputs underlying the recommended ECMs and services. The Contractor will submit the requested information within 15 business days of receipt of the request from the State. Upon receipt of the information from the Contractor, the State may, within 5 days of receipt of the initial response from the Contractor, request additional information about the recommended program. The Contractor shall have 10 days to respond to the second and any subsequent requests for information, and the State shall have 10 days to respond. These requests for information may involve attempts to resolve deficiencies in or material objections to the proposed Project. This process may continue until (a) the parties resolve the deficiencies and objections and the State accepts the comprehensive energy audit report; (b) the State and the Contractor mutually select an acceptable engineering firm to decide whether the recommended ECMs are feasible and the proposed costs and savings are reasonable; or (c) either party decides to pursue its legal rights in an appropriate forum. The State shall not be responsible for expenses incurred by the Contractor for providing additional information needed to clarify, review or modify the Investment Grade Audit after the initial presentation by the Contractor.

This Agreement in no way binds the State or the Contractor to enter into any future agreement for any purpose.

This Agreement shall become effective and binding upon approval by the New Hampshire Governor and Executive Council pursuant to RSA 4:15.

## EXHIBIT B

### Payment Terms

1. The Investment Grade Audit shall be conducted at the Contractor's own expense, subject to Paragraph 3 below.
2. The Contractor shall be solely responsible for any and all costs incurred by the Contractor for work performed by the Contractor in preparation of the Investment Grade Audit prior to the Governor and Executive Council approval of this agreement. The State shall have no obligation to reimburse the Contractor for its expenses relating to the work performed in the preparation of the Investment Grade Audit prior to approval by the Governor and Executive Council.
3. If the State elects not to proceed after accepting the Contractor's Investment Grade Audit, or if the State and Contractor cannot agree on the contents or manner of incorporation of the Investment Grade Audit within 30 days after its submission, then this Agreement shall terminate and the State shall pay the Contractor \$10,500 as compensation for the preparation of the Investment Grade Audit, unless:
  - a. The Investment Grade Audit does not comply with the terms of the Agreement,
  - b. The total energy savings set forth in the Investment Grade Audit are less than 85% of the total energy savings proposed by the Contractor in its proposal, unless the quantity and scope of ECMs changes as a result of changes such as the following: different building operating assumptions provided by the State, addition or removal of ECMs from the project scope by the State, or changes in financial parameters as noted in item 3. c. below,
  - c. The net financial benefit set forth in the Investment Grade Audit is less than 85% of the net financial benefit proposed by Contractor in its proposal, unless changes in financial assumptions occur relative to those made in the RFP response, including factors such as the following: interest rate, finance term, energy rates, added M&V or O&M requirements, changes in building codes, added costs for scope not providing additional energy savings such capital improvements or architectural enhancements, and extended or phased construction schedule, or
  - d. An agreement between the Contractor and the State that provides for an alternative compensation arrangement.

In these events, the State shall have no obligation to reimburse the Contractor for the cost of preparing the Investment Grade Audit and may use any information contained in the report or implement any of its recommendations with no cost or obligation to the Contractor. All such documents prepared or furnished by Contractor pursuant to this Agreement are instruments of service. Such documents are not intended or represented to be suitable for reuse by the State or others on extensions of the proposed project or on any other project. Any reuse without written verification or adaptation for the specific purpose intended will be at the State's sole risk and without liability or legal exposure to Contractor, or to Contractor's independent professional associated or consultants. In addition, Contractor does not assume responsibility to the State for (i) any anticipated energy savings projections, or (ii) any claims relating to or arising from the installation of any recommendations contemplated by the work contained herein if the State selects another firm for the design and implementation of the ECMs or chooses to implement the ECMs with its own forces.

4. Payment shall be paid within thirty (30) days after receipt of invoice. Said payment shall be made by means of a check mailed to the address in Paragraph 1.4 of this contract. Upon such payment, the Investment Grade Audit shall be the property of the State.

5. If the total energy savings set forth in the Investment Grade Audit are within 15% of the Contractor's original proposal and the State enters into a Performance Contract with the Contractor based on the State's "Model Agreement for Guaranteed Energy Performance," the cost of the Investment Grade Audit shall be included in the cost of the Performance Contract.

## Exhibit C

### Special Provisions

Insert the following word “applicable” to 6.1

In connection with the performance of the Services, the Contractor shall comply with all *applicable* 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

1. Replace the following language “the State” and insert the below language into 8.2 :

Upon the occurrence of any Event of Default, *the non-defaulting party* may take any one, or more, or all, of the following actions (*provided that 8.2.1 is the first action*):

2. Insert an additional provision to section 8. as 8.1.4:

*in the case of the State, failure to pay within 60 days from the due date any amount due under this Agreement to be provided to the Vendor hereunder.*

3. Insert the following language to 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; *provided, however, that this indemnification, defense and hold harmless obligation shall not include any claims, liabilities or penalties resulting from or arising out of willful misconduct of the State, its agents, officers, or employees.* 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.

4. Amend 14.3 with the following provisions:

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 *upon renewal*. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. The insurer will provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice (except 10 days for non-payment of premium) of cancellation of the policy. The Contractor will provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice (except 10 days for non-payment of premium) of modification of the policy.

Insert Certificate of Authority, SOS Authorization, Certificate of Insurance

Contractor Initials MTD  
Date 11/1/18

**CERTIFICATE OF VOTE**

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**, 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 1<sup>st</sup> day of November 2018.

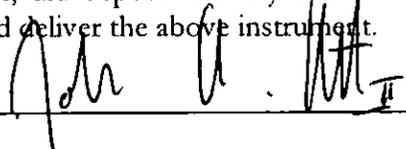
**A TRUE COPY:**

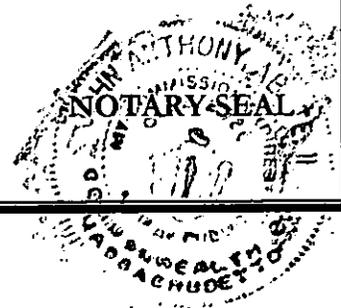
ATTEST:   
David J. Corrsin, Secretary

DATED: November 1, 2018

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



STATE OF:	<u>Massachusetts</u>
COUNTY OF:	<u>Middlesex</u>
On this the <u>1st</u> <sup>th</sup> day of <u>November</u> , 2018, 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:	<u>OCTOBER 2, 2020</u>



# State of New Hampshire

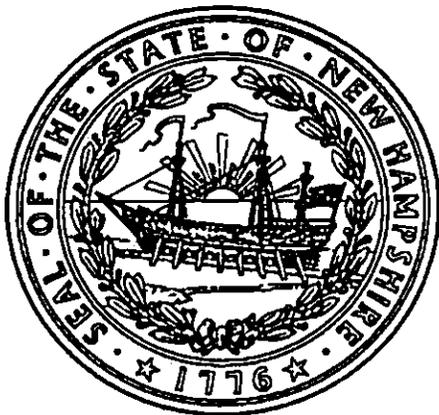
## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that AMERESCO, INC. is a Delaware Profit Corporation registered to transact business in New Hampshire on September 27, 2000. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 356531

Certificate Number: 0004207068



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 1st day of November A.D. 2018.

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

William M. Gardner  
Secretary of State

State of New Hampshire  
Department of State

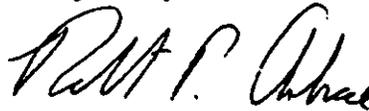
CERTIFICATE OF AUTHORITY OF

AMERESCO, INC.

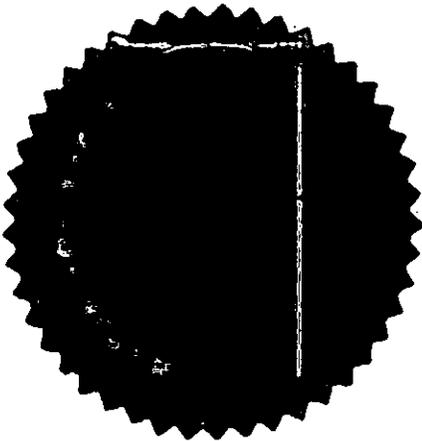
The undersigned, as Deputy Secretary of State of the State of New Hampshire, hereby certifies that an Application of AMERESCO, INC. for a Certificate of Authority to transact business in this State, duly signed pursuant to the provisions of the New Hampshire Business Corporation Act, has been received in this office.

ACCORDINGLY the undersigned, as such Deputy Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Authority to AMERESCO, INC. to transact business in this State under the name of AMERESCO, INC. and attaches hereto a copy of the Application for such Certificate.

IN TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 27th day of September A.D. 2000



Robert P. Ambrose  
Deputy Secretary of State



Form No. 41  
RSA 293-A:15.03



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/2/2018

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

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

<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 Company      16535	
	<b>INSURER B:</b> Zurich American Insurance Company of IL      27855	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
<b>INSURER F:</b>		

**COVERAGES**      **CERTIFICATE NUMBER: 648612255**      **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	ADL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:		GLO585238805	11/30/2017	11/30/2018	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
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	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N N/A	WC595394504	11/30/2017	11/30/2018	<input checked="" type="checkbox"/> PER STATUTE <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
B	Installation Floater		PWG455350514	11/30/2017	11/30/2018	\$15,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b>  State of New Hampshire 25 Capitol Street Concord NH 03301	<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 