

RESOLUTION NO. 2014-9

**A RESOLUTION OF THE LAPORTE COUNTY COUNCIL
REGARDING THE APPROVAL OF
A GUARANTEED ENERGY SAVINGS CONTRACT,
AND CERTAIN RELATED MATTERS**

WHEREAS, LaPorte County (the "County") previously authorized the advertising for and receipt of proposals for certain energy conservation measures (the "Improvements") pursuant to Indiana Code 36-1-12.5, as amended (the "Act"); and

WHEREAS, the County previously accepted the proposal of Ameresco, Inc. (the "Contractor") to provide the Improvements; and

WHEREAS, the County, by and through the Board of Commissioners of the County (the "Board of Commissioners") entered into a contract with the Contractor, a copy of which is attached hereto as Exhibit A pursuant to which the Contractor was tasked to and

WHEREAS, the County desires to proceed with the completion of the Improvements determining that the amount that it would spend on the Improvements that are recommended in the Facilities Report provided to the Council at this meeting by the Contractor (the "Report") is not likely to exceed the amount to be saved in energy consumption costs and other operating costs over twenty (20) years from the date of installation if the recommendations in the Report were followed, as provided in Indiana Code 36-1-12.5-5(a)(1); and

WHEREAS, in order to provide for the installation of the Improvements, the Contractor and the County will enter into a guaranteed energy savings contract (the "Contract") pursuant to which the Contractor will provide a written guarantee that the savings in energy and operating costs due to the Improvements will be greater than the costs of the payments for the Improvements, and that the Contractor will reimburse the County for the difference between the guaranteed savings and the actual savings; and

WHEREAS, in order to pay for the Improvements recommended in the Report, the County would enter into an installment payment contract as permitted by Section 7 of the Act in the form of a lease purchase agreement (the "Agreement") providing for the balance of the payment to be paid by the County in installments not to exceed the lesser of twenty (20) years or the average life of the Improvements installed pursuant to the Report; and

WHEREAS, the payments that would be due under the Agreement would be subject to annual appropriation as required by Section 7 of the Act and would not constitute an indebtedness of the County within the meaning of any constitution or statutory debt limitation as required by Section 7 of the Act;

NOW, THEREFORE, BE IT RESOLVED by the LaPorte County Council as follows:

1. The County Council hereby approves of the County proceeding with the installation of the Improvements recommended in the Report and further approves of the County entering into the Contract with the Contractor to provide for the installation of the Improvements as recommended in the Report. The County Council further approves of the County entering into the Agreement to provide for the payment of the Improvements, it being understood that the payments due under the Agreement by the County shall be subject to annual appropriation by this County Council and shall not constitute an indebtedness of the County within the meaning of any constitution or statutory debt limitation as required by Section 7 of the Act.

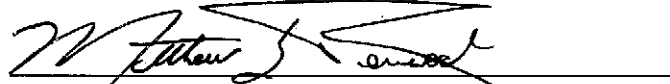
2. Any official of the County is hereby authorized, empowered and directed to finalize the Agreement and the Contract, and the President of the Board of Commissioners and the County Auditor are hereby authorized, empowered and directed to sign and attest, respectively, on the County's behalf the Agreement and the Contract and any addenda, schedules, notes or other instruments issued under the provisions of the Agreement, and the President of the Board of Commissioners and the County Auditor are authorized, empowered and directed to sign and/or attest any other instrument or document which may be necessary or expedient in connection with the fulfillment of the provisions of the Agreement and the Contract, including, without limitation, the Report (and any exhibits thereto), Certificate of Incumbency, Arbitrage Certificate, Notice of Acknowledgment of Assignment of Guaranteed Energy Savings Contract, Escrow Agreement, Form 8038-G and other instruments or documents related to the Agreement and which are deemed necessary upon the advice of counsel.

3. The Agreement and the Contract are hereby designated as a qualified tax exempt obligation for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended.

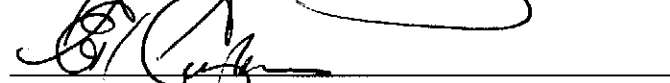
4. This Resolution shall be in full force and effect from and after its adoption by the County Council.

Adopted and approved by the LaPorte County Council this 22 day of Sept., 2014.

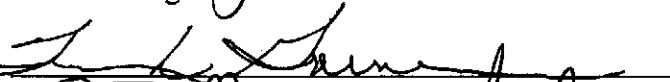
LAPORTE COUNTY COUNCIL



Matt Bernacchi




Earl Cunningham




Terry Garner



Rich Mrozinski



Jeff Santana



Lois Sosinski



Mark Yagelski

ATTEST:



Auditor, LaPorte County, Indiana



EXECUTION VERSION

**ENERGY SERVICES AGREEMENT
BY AND BETWEEN
LAPORTE COUNTY BOARD OF COMMISSIONERS
AND
AMERESCO, INC.**

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ENERGY SERVICES AGREEMENT

BY AND BETWEEN

LAPORTE COUNTY BOARD OF COMMISSIONERS

AND

AMERESCO, INC.

THIS ENERGY SERVICES AGREEMENT (the "Agreement") is entered into on _____, 2014, by and between the La Porte County Board of Commissioners having its principal place of business located at 555 Michigan Ave, Suite 202, LaPorte, IN 46350 (hereinafter referred to as "Customer") and Ameresco, Inc., having its principal place of business at 111 Speen Street, Suite 410, Framingham, MA 01701 (hereinafter referred to as "Ameresco"). The parties to this Agreement shall be collectively referred to as the "Parties" and individually as a "Party."

WHEREAS, Customer issued a Request for Proposals, as published on September 19, 2013 and September 26, 2013, (the "**RFP**") seeking proposals from qualified energy service companies to provide performance-based services for the design and execution of an energy consumption reduction plan including acceptance of payment for such services via guaranteed cost savings accrued as a result of plan implementation;

WHEREAS, Ameresco has prepared and issued a Proposal to Customer, in response to the RFP;

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

WHEREAS, Customer owns and controls the Property.

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

SECTION 1 SCOPE OF SERVICES

(a) Work:

- (i) Upon delivery by Customer to Ameresco of a "Notice To Proceed," substantially in the form attached to this Agreement as Attachment E, Ameresco shall furnish all labor, materials and equipment and perform all work (the "**Work**") required for the completion of the Scope of Services, including the installation of the energy conservation and facility improvement measures ("**ECM(s)**"), included in the Scope of Services, as such Scope of Services may be modified in accordance with the terms of this Agreement.
- (ii) Customer and Ameresco shall mutually plan the scheduling of the installation of the ECM(s), so as to minimize disruption of the daily routine of Customer's staff and students. Installation of the ECMs shall proceed in accordance with the provisions

contained in this Agreement and the preliminary construction and installation schedule provided by Ameresco to Customer, as updated from time to time during construction progress meetings (the “Project Schedule”), and subject to satisfaction by Customer of its responsibilities as set forth herein and to the inability of Ameresco to carry out its obligations as a result of causes beyond its control, including Customer- Caused Delays described in Section 10(o), Force Majeure (as provided in Section 21) or any conditions that are outside the scope of the Work (collectively, “Excused Delays”). Ameresco shall diligently carry out the Work in accordance with this Agreement and shall use reasonable efforts to achieve Substantial Completion of the final ECM within eighteen (18) months of the date of issuance of the Notice to Proceed, subject to Excused Delays. The time for Substantial Completion shall be automatically extended for each day of delay due to Excused Delays. Extensions for reasons other than Excused Delays shall require a Written Change order. If Ameresco fails or refuses to prosecute the Work with such diligence as to allow Substantial Completion of the ECMs substantially in accordance with the Project Schedule, subject, in each case, to Excused Delays, the parties shall attempt to resolve any disputes regarding responsibility for such delay through the mediation process set forth in Section 13. Unless the Parties agree otherwise, or the Work cannot be continued without the resolution of a question of fact, the mediation process shall not be cause for delay of the Work or delay in payment for Work performed.

- (b) Disposal: Ameresco shall be responsible for the disposal of all non-hazardous equipment and materials which are rendered useless and removed as a result of installation of the ECM(s) pursuant to this Agreement. Ameresco shall 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) as may be applicable, and PCB-contaminated ballasts, if any, which have been rendered useless and removed as a result of the installations of the ECM(s) to be transported and disposed of. The costs related to such disposal and removal have been included in the Contract Cost and will be paid for by Ameresco from the amounts payable in respect of the Contract Cost. All other existing PCB-contaminated ballasts, lamps and all other hazardous materials remain the sole responsibility of Customer and Ameresco shall assume no liability in connection with their removal, transportation or disposal.
- (c) Asbestos and Lead Paint:
 - (i) Asbestos: Ameresco’s Scope of Services is predicated on the viability of the Project without Ameresco encountering or disturbing asbestos or being required to perform any asbestos abatement or taking any other action with respect to asbestos. Customer hereby represents and warrants to Ameresco that there is no asbestos or other hazardous material in any area wherein Ameresco shall be performing the Scope of Services. If: (a) Ameresco encounters any friable asbestos which is in the vicinity of the Project that is not identified in the Scope of Services, (b) Ameresco determines that its work will result in the disturbance of asbestos containing material, or (c) Ameresco determines that the presence of asbestos containing material may impede Ameresco's work, Ameresco shall notify Customer of the same and Customer shall: (x) at its cost, cause the asbestos to be lawfully removed, enclosed, encapsulated or otherwise abated in accordance with applicable laws, rules and regulations; (y) at its cost, provide written test reports showing that asbestos in that area has been properly removed, enclosed encapsulated or otherwise abated in accordance with applicable laws rules and regulations; or (z) abandon the Project and terminate this Agreement. If Ameresco cannot determine whether any

particular material contains asbestos, Customer, upon Ameresco's written request, shall either: (i) at Customer's cost, lawfully perform tests or cause tests to be performed in order to determine whether such material contains asbestos and/or whether there are unacceptable levels of airborne particulate material containing asbestos and provide such test report to Ameresco; or (b) abandon the Project and terminate this Agreement. Under no circumstances shall Ameresco be required to handle asbestos. If Ameresco encounters asbestos that materially affects the Scope of Services or the Project schedule, Ameresco, at its option, may demobilize and cease construction in the area affected by the presence of asbestos until such time as Customer elects and performs one of the options afforded Customer as described in this Subsection. If Customer does not promptly take action, as provided herein, or notifies Ameresco that it shall not take such action, Ameresco may, at its option, either remove the affected area from its Scope of Services (and make commensurate adjustments to its rights and obligations) or terminate this Agreement in its entirety. Customer shall be responsible for payment of the portion of the Scope of Services implemented prior to termination. Customer shall be responsible for any and all costs (including termination) incurred by Ameresco that relate to the presence of asbestos.

- (ii) Lead Paint: Ameresco's Scope of Services is predicated upon Ameresco not encountering or disturbing lead paint or being required to perform abatement or providing any notice or taking any other action with respect to lead paint. Customer hereby represents that there is no exposed lead paint in any area in which Ameresco shall be performing the Scope of Services. If Ameresco encounters lead paint in any area where it is to perform the Scope of services, which services shall require disturbing lead paint, and Ameresco reasonably believes that such paint may be lead paint, Customer, upon Ameresco's written request, shall either (a) at Customer's cost, lawfully perform tests or cause tests to be performed in order to determine whether such paint contains lead and shall provide a test report to Ameresco; or (b) abandon the Project and terminate this Agreement. If such test report demonstrates the presence of lead paint or Ameresco reasonably believes that performing its services under this Agreement is likely to cause the disturbance of lead paint in such a manner as to require Ameresco to provide any notification or take any actions pursuant to any federal, state or local laws, rules, or regulations and Ameresco notifies Customer of the same, Customer shall: (x) at its cost, cause the lead paint to be lawfully removed, or otherwise abated in accordance with applicable laws, rules and regulations; or (y) abandon the Project and terminate this Agreement. Under no circumstances, shall Ameresco be required to perform services, which cause the disturbance of lead paint. If lead paint materially affects the Project Schedule, Ameresco, at its sole option, may demobilize and cease construction in the area affected by the presence of lead paint until such time as Customer has elected and performs one of the options afforded Customer as described in this Subsection. If Customer does not promptly take action as provided herein or notifies Ameresco that it shall not take such action, Ameresco may, at its sole option, either remove the affected area from its Scope of Services (and make commensurate adjustments to the rights and obligations of the Parties) or agree with Customer to terminate this Agreement in its entirety, which agreement shall not be unreasonably withheld and Customer shall be responsible for payment of the portion of the Scope of Services implemented prior to such termination. Customer shall be responsible for any and all costs (including termination) incurred by Ameresco that relate to the presence of lead paint.

(d) Compliance With Law: Ameresco shall, at its expense, comply with and obtain all applicable licenses and permits required by federal, state and local laws in connection with (i) the installation of the ECMs and (ii) the operation and/or maintenance of the ECMs (to the extent that Ameresco agrees to perform such operations and/or maintenance services). In the event that Ameresco cannot procure any such license or permit in light of a requirement that Customer is required to do so, the Parties shall work jointly to obtain such permit or license.

(e) Taxes: Customer represents that it is a tax exempt entity and that it shall cooperate with Ameresco and provide Ameresco with appropriate resale exemption documentation so that Ameresco may attempt to establish that it is not obligated to pay taxes, fees and assessments or other charges of any character which may be imposed or incurred by any governmental or public authority as an incident to title to, or operation of the ECM(s) ("Taxes") which would otherwise be levied upon or in respect to said interest component or of the ECM(s). Notwithstanding the foregoing, Customer shall pay (or, if applicable, reimburse Ameresco for the payment of) all property, sales taxes, use taxes or other fees and assessments associated with the Work. Customer shall have no liability for taxes measured by the net income of Ameresco.

(f) Monitoring, Measurement and Verification: To the extent provided for in Attachment G, Ameresco will supply such ongoing monitoring, measurement and verification services during the Term at a cost to Customer as set forth in Section 4 and Attachment I.

(g) Duties, Obligations and Responsibilities of Ameresco:

- (i) All labor furnished under this Agreement shall be competent to perform the tasks undertaken, all materials and equipment provided shall be new and of appropriate quality and the completed work shall comply in all material respects with the requirements of this Agreement.
- (ii) Ameresco shall maintain the Project site in a reasonably clean condition during the performance of the construction work.
- (iii) Ameresco shall regularly, as mutually agreed upon by the Parties, clean the Project site of all debris, trash and excess material or equipment generated by Ameresco's construction work hereunder.
- (iv) Ameresco shall permit Customer or any of its representatives to enter upon the Project site to review or inspect construction work, provided, in each case, the Customer and/or its representatives coordinate such review or inspection with Ameresco and agree to comply with all applicable federal, state and local safety laws, rules and regulations, including, without limitation, those promulgated by the U.S. Department of Labor Occupational Safety & Health Administration.
- (v) Ameresco shall provide equipment manuals, as-built drawings and other appropriate information regarding equipment installed hereunder to Customer at or about the time of "Substantial Completion" as such term is defined below.
- (vi) Ameresco shall provide the training described on Attachment H. Such training is included in the Contract Cost.
- (vii) Ameresco shall assign to Customer all manufacturer's warranties for equipment installed in the Project, to the extent the same are assignable.

SECTION 2 Ownership of ECM(s)

Ownership and title to each ECM or portion thereof, as applicable, shall automatically pass to Customer upon Ameresco's receipt of both (i) the executed Substantial Completion Certificate (Attachment D(3)), or each Percent Complete Acknowledgement Certificate (Attachment D(2)), (including Customer payment certification) delivered pursuant to Section 4 for such ECM or portion thereof, and (ii) the indefeasible payment in full of all of Customer's payment obligations to Ameresco pursuant to such Substantial Completion Certificate or Percent Complete Acknowledgement Certificate for such installed ECM or portion thereof. Prior to satisfaction of the conditions set forth in (i) and (ii) in the previous sentence with respect to an ECM or portion thereof, title to each ECM or portion thereof shall remain in the name of Ameresco. If, notwithstanding the intent of the Parties, Customer is deemed to hold title to any or all of the ECMs or portion thereof prior to the satisfaction of the conditions set forth in (i) and (ii) above, as security for the payment in full of the Customer's obligations with respect to each such ECM or portion thereof, Customer hereby assigns, transfers and grants to Ameresco a security interest in such ECMs. Customer hereby authorizes Ameresco to file, from time to time, Uniform Commercial Code financing statements in such jurisdictions as may be necessary to perfect and maintain its security interest in such ECMs. If requested by Ameresco, Customer agrees to execute and deliver all further instruments and documents and take all further action that may be necessary in order to create, perfect and protect Ameresco's security interest in the ECMs and hereby irrevocably appoints Ameresco as Customer's attorney-in-fact with full power to sign such instruments and documents. Upon delivery of the Substantial Completion Certificate and satisfaction of clause (ii) above for each ECM, Ameresco's interest in the related ECMs shall be released and terminated, in each case without further action on any Party's part.

SECTION 3 Financing and Ability to Pay

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

SECTION 4 Contract Cost; Monthly Progress Payments

- (a) Subject to the terms of this Agreement, Ameresco shall perform the Scope of Services at a contract cost of SIX MILLION NINE HUNDRED SIXTY FOUR THOUSAND TWENTY NINE and 00/100 Dollars (\$6,964,029.00) (subject to adjustment as provided in Section 8, the "**Contract Cost**").
- (b) Upon execution of this Agreement and delivery by Customer to Ameresco of the Notice to Proceed, substantially in the form attached to this Agreement as Attachment E, including proof of available funds sufficient to pay the Contract Cost, Customer shall pay Ameresco ten percent (10%) of the Contract Cost for mobilization. Thereafter, Ameresco shall submit invoices to Customer for monthly progress payments to Ameresco based upon the percentage of the Project construction and equipment procurement completed at the end of each month, so that Ameresco is paid the percentage of the Contract Cost that is commensurate with the percentage of completion of the Scope of Services. A Percent

Complete Acknowledgement Certificate in the form attached hereto as Attachment D (2) will be executed by Customer during each month of the construction period showing the percent complete and monthly payment due. Customer shall make payment to Ameresco, within thirty (30) days after the submission of each such invoice (the "Due Date"). Customer shall not unreasonably withhold, condition or delay the execution and delivery of any Percent Complete Acknowledgement Certificate.

- (c) Upon Substantial Completion of the installation of an ECM, Ameresco will deliver to Customer a Substantial Completion Certificate in the form of Attachment D (3). Within five (5) calendar days after receipt of each Substantial Completion Certificate, Customer shall complete, execute and deliver to Ameresco each such Substantial Completion Certificate. For the purposes of this Agreement the term "**Substantial Completion**" shall mean that each subject ECM(s) has been installed by Ameresco, and, if such ECM is equipment, such equipment is then operating in a manner such that Customer is deriving beneficial use thereof. A Delivery and Acceptance Certificate, in the form of Attachment D(1), shall be executed by Customer upon Substantial Completion of the installation of the final ECM. Customer shall not unreasonably withhold, condition or delay the execution and delivery of any Substantial Completion Certificate or the Delivery and Acceptance Certificate.
- (d) Within thirty (30) days following each successive twelve (12) month period beginning with the first day of the Guarantee Period, as such term is defined in Attachment C, Customer shall pay Ameresco the additional amounts set forth on Attachment I, Measurement and Verification Fee Schedule, as an annual fee for measurement and verification services.
- (e) All amounts not paid to Ameresco on or before the due dates specified in Subsections 4(b) and (d), shall accrue interest at the Prime rate of interest as published in the Wall Street Journal for major banks, or such lower rate as is prescribed by applicable law.

SECTION 5 Term

This term of this Agreement (the "Term"), shall begin on the date first above written and shall remain in effect through the "Guarantee Period" as such term is defined in Attachment C, unless terminated prior to such date, as provided for in Section 12, 14 or Attachment C of this Agreement. Anything in this Agreement to the contrary notwithstanding, Customer shall not be relieved of its obligation to pay Ameresco when due all amounts which accrued prior to such termination

SECTION 6 Savings Guarantee

- (a) To the extent set forth in Attachment C, and solely in accordance with Attachment C, Ameresco hereby guarantees that the amount of the **Annual Savings** (as such term is defined in Attachment C and determined in accordance the measurement and verification plan set forth in Attachment D and the savings calculation methodology set forth in Attachment G), shall equal or exceed the "**Annual Guaranteed Savings Amount**" (as such term is defined in Attachment C), to be achieved by Customer as a result of installation of the ECMs.
- (b) The Annual Guaranteed Savings Amount is subject to Customer maintaining the Standards of Service and Comfort (Attachment I) and performing all of its maintenance and other obligations under this Agreement that may affect the achieved Annual Guaranteed Savings Amount. If Customer fails to perform its obligations under this Agreement or interferes with, or permits any third party to take any action which, in the reasonable opinion of Ameresco, may prevent the achievement of the Annual Guaranteed Savings Amount under

this Agreement, Ameresco may, after providing Customer thirty (30) days advance notice, adjust the Annual Guaranteed Savings Amount during the period in which such savings were affected to reflect the impact such actions had on such savings. Ameresco's rights set forth in this section shall not be in limitation of any other rights it is entitled to by law or it possesses under this Agreement.

SECTION 7 Right of Entry/Space

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

SECTION 8 Changes in Services

- (a) The Scope of Services may be changed only by agreement of the Parties evidenced by execution of a "Change Order" substantially in the form attached to this Agreement as Attachment F, including the quantity, quality, dimensions, type or other characteristics of the ECMs. During the Term hereof, either Customer or Ameresco may suggest that other energy efficiency measures and facilities be added to the Scope of Services, in which case the parties shall endeavor to agree upon any new ECMs to be installed and may either amend this Agreement or enter into a new agreement for the installation, financing and commissioning of any such new ECMs. Nothing in this paragraph shall obligate either party to proceed with installation of any ECMs which are not part of the original Scope of Services or evidenced by execution of a Change Order.
- (b) Should Ameresco encounter subsurface or latent physical conditions at the site which differ materially from those indicated in the project documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, Ameresco shall give written notice to the Customer before any such condition is disturbed or further disturbed. The Customer will promptly investigate and, if it is determined that the conditions materially differ from those which Ameresco should reasonably have been expected to discover or anticipate, the Customer shall either (a) approve such changes in the Scope of Services as are necessary, with a corresponding adjustment in the Annual Guaranteed Savings Amount; or (b) abandon the Project and terminate this Agreement, with Ameresco to be paid in the same manner as if the Customer had terminated this Agreement because of a proposed increase in the Contract Cost because of the presence of hazardous materials or lead paint at the Project site. If such differing conditions cause an increase or decrease in Ameresco's cost or time of performance, and the parties agree upon a change in the Scope of Services, the parties shall negotiate an equitable adjustment to Ameresco's cost and/or time for performance, as the case may be and a Change Order shall be issued and executed by the Customer to reflect such adjustment(s).
- (c) If at any time prior to Substantial Completion of an ECM, Ameresco determines that an ECM is not commercially viable, Ameresco may, at its option, remove such ECM from the Scope of Services and from the Property. In such event, Ameresco shall refund to Customer the portion of the Contract Cost attributable to such ECM and the Annual Guaranteed Savings Amount will be reduced by an amount equal to the portion of the Annual Guaranteed Savings Amount attributable to such ECM.

- (d) If Ameresco and the Customer agree to an adjustment of the Contract Cost and the contract schedule established for the Scope of Services, such an agreement shall be effective immediately upon execution of a Change Order.

SECTION 9 **Warranties**

Ameresco hereby agrees as follows:

- (a) Ameresco warrants that the Work and all materials and equipment to be installed in the Project are warranted to be free from defects in materials and workmanship on an ECM by ECM basis for a period of one (1) year from the date of execution by Customer of the Substantial Completion Certificate for such ECM. Any manufacturers' warranties which exceed this one (1) year period shall be assigned to Customer to the extent allowed by the manufacturer. This section does not apply in any way to the Savings Guarantee.
- (b) EXCEPT AS PROVIDED IN THIS SECTION 9, AMERESCO MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO THE VALUE, DESIGN, AND CONDITION OR FITNESS FOR USE OR PARTICULAR PURPOSE AND MERCHANTABILITY, REGARDING THE WORK, THE ECM(S) OR THE EQUIPMENT.

SECTION 10 **Customer's Responsibilities**

- (a) Operations: Customer shall operate all equipment installed hereunder in accordance with the manufacturer's recommendations and the manuals supplied to Customer by Ameresco.
- (h) Standards of Service and Comfort: Customer shall operate the ECMs and the Property in a manner that shall provide the Standards of Service and Comfort provided for in Attachment J.
- (b) Maintenance: Customer shall, at its expense, repair, operate and maintain the Property in good working condition during the Term of this Agreement. Customer shall maintain, repair and operated, at Customer's expense: (i) all equipment and other components included as part of the ECMs, and (ii) all other equipment which is attached thereto and/or is integral to the proper functioning of the ECMs.
- (c) Malfunctions: Customer shall notify Ameresco immediately in the event of any malfunction in the operation of the ECM(s) or the equipment installed hereunder.
- (d) Protection of ECMs: Except in the case of emergency, Customer shall not remove, move, alter, turn off or otherwise significantly alter the operation of the equipment installed hereunder or the operation of the ECMs, or any individual part thereof, without the prior approval of Ameresco, which approval shall not be unreasonably withheld. After receiving Ameresco's written approval, Customer shall proceed as instructed. Customer shall act reasonably to protect the ECMs from damage or loss, if, due to an emergency; it is not reasonable to notify Ameresco before acting. Customer agrees to protect and preserve the facility envelope and the operating condition of all ECMs, mechanical systems, and other energy consuming systems located on the Property.
- (e) Measurement System: Customer shall not move, modify or otherwise alter the measurement and verification system installed as part of the ECM(s) or any component thereof without the written consent of Ameresco unless such action is in accordance with operating manuals and procedures provided by Ameresco.
- (f) Adjustment to Baseline: If, in the reasonable opinion of Ameresco, Customer does not

reasonably operate, maintain, repair or otherwise protect the ECMs and/or maintain the Property in good repair and good working condition, then Ameresco may equitably adjust the baseline, as referenced in Attachment G, for any increased energy usages at the Property.

- (g) Changes to Property or Addition of Equipment: Customer shall notify Ameresco in writing at least thirty (30) days prior to making any changes to the Property that could reasonably be expected to affect the energy usage on the Property, such as changes in the hours or days or time of year that the Property is occupied or operated, the number of occupants (including staff), the activity conducted, the equipment, the facilities, the size of the Property etc. Customer shall also notify Ameresco regarding material increases over time in numbers and usage of “plug in” devices such as computers and printers. If Ameresco receives such notification or otherwise determines that such a change has occurred, it may make appropriate revisions to the Attachments to reflect any adjustment to the baseline or the Annual Guaranteed Savings Amount. Ameresco may also make retroactive adjustments to the baseline or calculation of Annual Savings if Customer has not provided timely notice and any payments shall be retroactively reconciled to reflect the changed baseline.
- (h) Energy Usage Data: Customer shall make available to Ameresco, on a monthly basis for the Term of this Agreement, copies of all energy bills, energy usage data, and any and all other such documentation maintained by Customer, as may be requested by Ameresco, which are required for it to perform all of its obligations under this Agreement.
- (i) Insurance and Risk of Loss or Damage: Without limiting any of its obligations or liabilities under this Agreement, Customer shall, at its expense, provide and maintain at all times during the Term of this Agreement, sufficient insurance against the loss, theft of or damage to the ECM(s), related equipment, and all equipment installed hereunder, for the full replacement value thereof. Customer’s Commercial General Liability insurance shall be primary for any property damage or bodily injury during the performance of the Work hereunder.

Upon Substantial Completion of an ECM, Customer assumes all risk of loss of or damage to such ECM from any cause whatsoever. In the event of loss or damage to any equipment installed hereunder, Customer shall promptly notify Ameresco and promptly return the same to good repair with the proceeds of any insurance received to the cost of such repair or demand that Ameresco perform such repair, in which case Ameresco shall promptly do so for such compensation to which the parties agree. If Customer determines that any of the ECM(s) are lost, stolen, confiscated, destroyed or damaged beyond repair, Customer shall replace the same with like equipment in good repair in a timely fashion under the circumstances. If at any time after the date of the Delivery and Acceptance Certificate and after Customer’s complete payment to Ameresco in accordance with Section 4(a), as such amount may be modified from time to time in accordance with this Agreement, any fire, flood, other casualty, or condemnation renders a majority of the Property incapable of being occupied and renders the ECMs or the equipment installed hereunder inoperable and, in the case of a casualty, the affected portion of such ECMs or equipment is not reconstructed or restored within one hundred twenty (120) days from the date of such casualty, Ameresco and/or Owner may terminate this Agreement by delivery of a written notice to the other Party. Upon such termination, Owner shall pay Ameresco any amounts, or pro-rata portions thereof, under Sections 4(b), (c), (d) and (e) and Attachment E, which accrued prior to such termination. Ameresco may also make appropriate adjustments to the baseline or the Annual Guaranteed Savings Amount to reflect the impact of such casualty or condemnation, including corresponding revisions to the Attachments.

- (j) Telephone: Customer shall install and maintain telephone lines and pay all associated costs for the ECM(s) telephone lines or applicable energy management system communication systems.
- (k) Protection: Customer shall at all times act reasonably to protect the ECM(s) from loss or damage to the same extent and in the same manner in which it protects the Property.
- (l) Alteration: Except in cases of emergency, Customer shall not move, alter or change the ECM(s) in any way that may cause a reduction in the level of efficiency or savings generated by the ECM or the equipment installed hereunder without obtaining Ameresco's written approval, which shall not be unreasonably withheld.
- (m) Storage: Customer shall provide rent free space for Ameresco, or any of its subcontractors, to mobilize and store supplies, tools and equipment during installation of the ECM(s) as available pursuant to this Agreement for which such storage space may be required, with locking capacity acceptable to Ameresco. Only Ameresco or any of Ameresco's subcontractors, and Customer's assigned personnel shall have access to storage.
- (n) Fuel: Customer shall procure and pay for all energy and fuel for the operation of the Property.
- (o) Cooperation during Construction: Customer shall reasonably cooperate in relocating staff, personnel, furniture and equipment and taking such other actions as may be necessary by Customer in order to prepare space for work by Ameresco to enable Ameresco to timely perform its obligations hereunder. Customer shall use reasonable efforts to prevent the occurrence of a Customer-Caused Delay. "Customer-Caused Delay" means a failure by Customer to perform any of its obligations under this Agreement or any act by Customer that would interfere with, hinder interrupt or delay prosecution of the Work, including, without limitation, (i) any failure by Customer to timely review, inspect, comment on, or approve Ameresco's submittals and notices delivered in connection with this Agreement, including notices regarding Substantial Completion; (ii) failure of Ameresco and Customer to reach agreement on scheduling, including relocation of staff, personnel, furniture and equipment, and (iii) Customer's hindrance or interference with the performance of the Work, in each case, that (A) does not result from a Ameresco's Event of Default or the fault or negligence, gross negligence or willful misconduct of Ameresco or any of its subcontractors; or (B) affects the critical path of the Work such that the performance of the Work in accordance with this Agreement is prevented or delayed.

SECTION 11 Defaults

- (a) By Customer.

Customer shall be in default under this Agreement upon the occurrence of any of the following:

- (i) Customer fails to pay when due any amount to be paid under this Agreement and such failure continues for a period of five (5) business days after notice of overdue payment is delivered by Ameresco to Customer;
- (ii) Customer fails to perform any of its required duties or obligations under this Agreement and fails to cure such failure and the effects of such failure within thirty (30) days of receipt of written notice of default, unless such failures and effects

cannot be completely cured within thirty (30) days after said written notice, in which case a default shall exist only if Customer does not commence and diligently pursue to cure such failures and effects as soon as practicable;

- (iii) Customer enters receivership, or makes an assignment for the benefit of creditors, whether voluntary or involuntary, or a petition is filed by or against Customer under any bankruptcy, insolvency or similar law and such petition is not dismissed within sixty (60) days.
- (iv) Customer fails to cooperate in relocating students, staff, personnel, furniture and equipment or to take such other actions as may be necessary by Customer in order to prepare space for work by Ameresco as is reasonably requested by Ameresco in a timely manner in order to allow the Work to be accomplished hereunder.

(b) By Ameresco.

Ameresco shall be in default under this Agreement if Ameresco fails to perform any of its material duties or obligations under this Agreement and fails to cure such failure or effects of such failure within thirty (30) days of receipt of written notice of default, unless such failure or effects of such failure cannot be completely cured within thirty (30) days after said written notice, in which case a default shall exist only if Ameresco does not promptly commence and diligently pursue to cure such failure as soon as practicable.

SECTION 12 Remedies for Default

If either Party defaults under this Agreement, the other Party may, subject to the dispute resolution procedures in Section 13 below:

- (i) bring actions for any remedies available at law or in equity or other appropriate proceedings for the recovery of damages, including amounts past due, and/or bring an action in equity for specific performance; and
- (ii) with or without recourse to legal process, terminate this Agreement by delivering written notice of termination at least ten (10) days prior to the requested termination date.

SECTION 13 Dispute Resolution

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

forum, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period of time by agreement of the parties or court order.

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

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

SECTION 14 Insurance and Bonds

(a) *By Ameresco:* Ameresco shall provide and maintain at its expense the following insurance coverage:

- (i) Workers' Compensation and Employer's Liability Insurance as required by applicable State law.
- (ii) Commercial General Liability Insurance, including contractual liability, Bodily Injury per person, \$1 million; Bodily Injury per occurrence, \$1 million; Property Damage per occurrence, \$1 million; Personal Injury per occurrence, \$1 million.
- (iii) Comprehensive Automobile Liability Insurance, including owned, non-owned and hired automotive equipment of, Bodily Injury per person, \$1 million; Bodily Injury per occurrence, \$1 million; Property Damage per occurrence, \$1 million.

Ameresco shall deliver to Customer a Certificate of Insurance naming Customer as an additional insured party under paragraphs (ii) and (iii), above.

(b) Ameresco shall deliver to Customer Payment and Performance Bonds in a sum equal to the Contract Cost conditioned upon faithful performance of the Agreement by Ameresco, for the implementation of the ECM(s) as it may be from time to time modified by Change Orders within ten (10) days of issuance of a Notice to Proceed. The Payment and Performance Bonds shall apply only to the installation portion of this Agreement and do not apply in any way to energy savings guarantees, payments or maintenance provisions.

(c) *By Customer:* Without limiting any of its obligations or liabilities under this Agreement, Customer shall provide and maintain at its expense, insurance coverage consistent with the requirements of Section 10(i) above, and its obligations under this Agreement.

SECTION 15 Indemnification and Limitation of Liability

- (a) Anything in this Agreement to the contrary notwithstanding, neither Party nor its respective officers, directors, agents, employees, parent, subsidiaries or affiliates or their affiliates' officers, directors, agents or employees shall be liable, irrespective of whether such claim of liability is based upon breach of warranty, tort, (including negligence, whether of any of the Parties to this Agreement or others), strict liability, contract, operation of law or otherwise, to any other Party, or its affiliates, officers, directors, agents, employees, successors or assigns, or their respective insureds, for incidental, delay, punitive or consequential damages connected with, related to or arising from performance or non-performance of this

Agreement, or any action or inaction in connection therewith including claims in the nature of lost revenues, income or profits (other than payments expressly required and due under this Agreement), and increased expense of, curtailment, reduction in or loss of power generation production or equipment used therefor.

- (b) Ameresco's total aggregate liability for any and all injuries, damages, claims, losses, expenses or claim expenses (including attorney's fees) arising out of this Agreement from all causes or any causes, regardless of the legal theory under which liability is imposed, shall in all cases be limited to the sum of the payments received by Ameresco under Section 4. Such causes shall include, but not be limited to, Ameresco's negligence, errors, omissions, strict liability, breach of contract, warranty, breach of warranty or any indemnified claims.
- (c) Ameresco agrees to indemnify and hold Customer harmless from and against any and all third party claims for damages but only to the extent such damages arise by reason of bodily injury, death or damage to property caused by Ameresco's negligence or willful misconduct. To the extent that any such damages are covered by or under Ameresco's Commercial General Liability Insurance policy, Ameresco shall not be required to indemnify Customer in excess of the proceeds of such policy. In no event, however, shall Ameresco be obligated to indemnify Customer to the extent that any such injury or damage is caused by the negligence of Customer or any entity for which Customer is legally responsible.
- (d) Customer agrees to indemnify and hold harmless Ameresco, its officers, agents and employees, from and against any and all third party claims for damages but only to the extent such damages arise by reason of bodily injury, death or damage to property caused by Customer's negligence or willful misconduct. In no event, however, shall Customer be obligated to indemnify Ameresco to the extent that such injury or damage is caused by the negligence of Ameresco or any entity for which Ameresco is legally responsible.

SECTION 16 Agreement Interpretation and Venue

Each Party hereto has had ample opportunity to review and comment on this Agreement. This Agreement shall be read and interpreted according to its plain meaning and an ambiguity shall not be construed against either Party. The judicial rule of construction that a document should be more strictly construed against the draftsman thereof shall not apply to any provision of this Agreement.

This Agreement shall be governed as to all matters, whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the State in which the Project is located (the "*State*"). Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by all parties in the State. Any mediation and legal proceedings involving the negotiation, formation, interpretation or enforcement of this Agreement may be brought in any state or federal district court having jurisdiction over the Parties.

SECTION 17 Privileged and Proprietary Information

Ameresco's systems, means, cost, and methodologies of evaluating, implementing, accomplishing and determining energy savings and the terms of the Agreement for this Project shall be considered privileged and proprietary information. Customer shall use the same level of effort to protect and safeguard such information as it employs to safeguard its own confidential information, provided, however, that Customer is a public entity which has very little information that is not open to the public. Customer shall not disclose such proprietary information without the express written consent of an officer of Ameresco unless required to do so by statute or regulation. When any request for disclosure of such information is made under any applicable freedom of information law

(the "FOIL"), Customer shall provide prompt written notice to Ameresco such that Ameresco will have the opportunity to timely object under the FOIL should it desire to object to such disclosure of that information in whole or in part. In the event that Customer is required to make a filing with any agency or other governmental body, which includes such information, Customer shall notify Ameresco and cooperate with Ameresco in order to seek confidential treatment of such information included within any such filing or, if all such information cannot be protected from disclosure, to request that Customer be permitted to redact portions of such information, as Ameresco may designate, from that portion of said filing which is to be made available to the public.

SECTION 18 Severability

If any provision of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this Agreement, and all other provisions of this Agreement shall remain in full force and effect.

SECTION 19 Assignments and Subcontracting

- (a) Ameresco may elect to use subcontractors in meeting its obligations hereunder. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and Customer.
- (b) Customer shall not assign, transfer, or otherwise dispose of this Agreement, the ECM(s), or any interest therein, or sublet or lend the ECM(s) or permit the ECM(s) to be used by anyone other than Customer and Customer's employees without the prior express written consent of Ameresco; provided that Customer may, without obtaining the consent of Ameresco, assign its rights in the ECMs to any financial institution, lender or investor in connection with a leasing or financing arrangement for funding of the Contract Cost. If Customer transfers ownership or its interest in the Property, Customer shall terminate this Agreement in accordance with Section 32.
- (c) Ameresco shall not assign this Agreement in whole or in part to any other party without first obtaining the consent of Customer, which consent shall not be unreasonably withheld; provided that, Ameresco may assign, without obtaining the consent of Customer, its rights and obligations under this Agreement in whole or in part to any affiliated or associated company of Ameresco and its rights for payments only under this Agreement to any financial institution, lender or investor in connection with a credit facility to which Ameresco is a party.

SECTION 20 Waiver

Any waiver of any provision of this Agreement shall be in writing and shall be signed by a duly authorized agent of Ameresco and Customer. The waiver by either Party of any term or condition of this Agreement shall not be deemed to constitute a continuing waiver thereof nor of any further or future waiver of any additional right that such Party may be entitled to under this Agreement.

SECTION 21 Force Majeure

If either Party shall be unable to carry out any material part of its obligations under this Agreement, except Customer's obligations to make payments when due) due to causes beyond its control ("Force Majeure"), including, but not limited to, an act of God, strikes, lockouts or other industrial disturbances acts of public enemies orders or restraints of any kind of the government of the United States or any state or any of their departments agencies or officials or any other civil governmental,

military or judicial authority, war, blockage, insurrection, riot, sudden action of the elements, fire, explosion, flood, earthquake, storms, utility power outage, drought, landslide, or explosion or nuclear emergency, this Agreement shall remain in effect but the affected Party's obligations shall be suspended for a period equal to the disabling circumstances, provided that:

- (a) the non-performing Party gives the other Party prompt written notice describing the particulars of the event of Force Majeure, including the nature of the occurrence and its expected duration, and continues to furnish timely regular reports with respect thereto during the period of Force Majeure;
- (b) the suspension of performance is of no greater scope and of no longer duration than is required by the event of Force Majeure;
- (c) no obligations of either Party that arose before the event of Force Majeure causing the suspension of performance are excused as a result of the event Force Majeure;
- (d) the non-performing Party uses reasonable efforts to remedy its inability to perform; and
- (e) the Term of this Agreement, as agreed upon by Customer and Ameresco, shall be extended for a period equal to the number of days that the event of Force Majeure prevented the non-performing Party from performing.

Any decision by Customer to close or change the use of the facilities or ECM's at the Property, except to the extent such closure or change is itself caused by Force Majeure, shall not constitute a Force Majeure excusing Customer's performance under this Agreement.

SECTION 22 Contract Documents

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

SECTION 23 Notices

All notices, requests, demands, elections and other communications under this Agreement, other than operational communications, shall be in writing and shall be deemed to have been duly given on the date when hand-delivered, or on the date of the confirmed facsimile transmission, or on the date received when delivered by courier that has a reliable system for tracking delivery, or six (6) business days after the date of mailing when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the following individuals:

- (a) If to Customer:
LaPorte County Board of Commissioners
555 Michigan Ave., Suite 202
LaPorte, IN 46350

Attention: President of Commissioners

With a copy to: Friedman & Associates P.C.

- (b) If to Ameresco:

Ameresco, Inc.
150 North Michigan Avenue, Suite 2040
Chicago, IL 60601
Attention: Louis P. Maltezos, Executive Vice President
& General Manager Central Region

With a copy to:

Ameresco, Inc.
111 Speen Street, Suite 410
Framingham, MA 01701,
Attention: General Counsel

Either Party may from time to time change the individual(s) to receive notices and/or its address for notification purposes by giving the other Party written notice as provided above.

SECTION 24 Records

To assist Ameresco in its performance of this Agreement, Customer shall (to the extent it has not already done so) furnish (or cause its energy suppliers and transporters to furnish) to Ameresco, upon its request, accurate and complete data (kept by Customer or Customer's energy suppliers and transporters in the regular course of their respective businesses) concerning energy usage for the existing facilities at the Property, including the following data for the most current thirty-six (36) month period: utility records, occupancy information; descriptions of any changes in building structure or heating, cooling or other systems or energy requirements; descriptions of all energy consuming or saving equipment used on Property; descriptions of all energy management procedures presently utilized. If requested by Ameresco, Customer shall also provide any prior energy analyses of the Property, to the extent available.

SECTION 25 Representations and Warranties

Each Party warrants and represents to the other Party that:

- (a) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
- (b) its execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, as to Ameresco, its organic instruments and as to Customer, by all

- requisite action and are not in breach of any applicable law, code or regulation;
- (c) this Agreement has been duly executed and delivered by the signatories so authorized, and constitutes each Party's 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 a material 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 adversely affect its ability to perform hereunder;
 - (e) the persons executing this Agreement are fully authorized by law to do so; and
 - (f) Customer warrants and represents to Ameresco that Customer has obtained all necessary governmental, legal, administrative and any other approval necessary for it to enter into and perform this Agreement.

SECTION 26 Additional Representations and Warranties of Customer

Customer hereby warrants and represents to Ameresco that:

- (a) Customer intends to continue to use the Property in a manner reasonably similar to its present use;
- (b) Customer does not contemplate any changes to the electrical and thermal consumption characteristics of the Property except as may have been disclosed to Ameresco by Customer in writing prior to the execution of this Agreement;
- (c) Customer has provided Ameresco with all records heretofore requested by Ameresco;
- (d) Customer has not entered into any other agreements or understandings for the Property with persons or entities other than Ameresco regarding the provision of the Scope of Services; and
- (e) Since the date of the Audit, there has been no change, event, circumstance or development that has or could reasonably be expected to have a material adverse effect on (i) the operation or condition of the Property, (ii) the energy usage at the Property, or (iii) the ability of Customer to perform its obligations hereunder.

SECTION 27 Independent Contractor

Nothing in this Agreement shall be construed as reserving to Customer any right to exercise any control over or to direct in any respect the conduct or management of business or operations of Ameresco. The entire control or direction of such business and operations shall be in and shall remain in Ameresco, subject only to Ameresco's performance of its obligations under this Agreement. Neither Ameresco nor any person performing any duties or engaged in any work on the Property on behalf of Ameresco shall be deemed an employee or agent of Customer.

Nothing in this Section shall be deemed to be a waiver of Customer's right to use the Property. Customer and Ameresco are independent of one another and shall have no other relationship relating to or arising out of this Agreement. Neither Party shall have or hold itself out as having the right or authority to bind or create liability for the other by its intentional or negligent act or omission, or to make any contract or otherwise assume any obligation or responsibility in the name of or on behalf of the other Party.

SECTION 28 Negligent/Wrongful Acts

Neither Party to this Agreement shall be liable for any negligent or wrongful acts, either of commission or omission, chargeable to the other. This Agreement shall not be construed as seeking to either enlarge or diminish any obligation or duty owed by one Party against the other or against third parties.

SECTION 29 Further Documents and Events

The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement. Ameresco agrees to execute and deliver all documents reasonably required to release any lien held by Ameresco or its assignees upon termination of this Agreement and payment of all amounts required to be paid by Customer pursuant to this Agreement at the time of termination; provided, however, that Ameresco shall have no right to record a lien against the Property.

Customer shall execute all documents which may be reasonably required for Ameresco to obtain all licenses, permits and governmental approvals required by Ameresco for installation and operation of the ECM(s). Ameresco'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.

Customer agrees that Ameresco shall have the right to all environmental, energy, tax, financial, and electrical-related attributes, rights, credits, deductions, benefits and characteristics associated with or arising out of the transactions contemplated by this Agreement or associated with the ECMs or with the energy, capacity or electrical savings created under this Agreement, howsoever created or recognized. Customer shall provide Ameresco all reasonable assistance in perfecting its rights to such attributes, rights, credits, benefits and characteristics. Ameresco's obligations hereunder are subject to obtaining all such required licenses, permits and governmental approvals.

SECTION 30 Third Party Beneficiaries

The Parties hereto do not intend to create any rights for, or grant any remedies to, any third party beneficiary of this Agreement.

SECTION 31 Notifications of Governmental Action - Occupational Safety and Health

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

SECTION 32 Termination for Convenience

Customer shall take all necessary and timely action during the Term to obtain funds and maintain appropriations sufficient to satisfy its obligations under this Agreement.

The foregoing notwithstanding, subsequent to the date of the Delivery and Acceptance Certificate, this Agreement may be terminated by Customer in accordance with the provisions of this Section 32. Customer shall provide notice to Ameresco of its election to terminate no later than thirty (30) days in advance of the end of the then current Guarantee Year. The termination shall become effective on the last day of said Guarantee Year. The termination of this Agreement by Customer shall release Ameresco from its obligation to provide maintenance, monitoring and training services after the effective date of termination, as well as its obligation to provide the Energy Savings Guarantee after the termination date; provided, however, that Customer is responsible for payment for maintenance, monitoring and training services performed in accordance with the terms of this Agreement prior to the termination date and Ameresco shall remain responsible for any Savings Shortfall (as defined in Attachment C) payments due Customer prior to the date of termination.

SECTION 32 References

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

* * *

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

LAPORTE COUNTY BOARD OF COMMISSIONERS

AMERESCO, INC.

By: _____
Authorized Signature

By: _____
Authorized Signature

Name: _____
Title: _____

Name: Louis P. Maltezos
Title: Executive Vice President & General
Manager Central Region

ATTACHMENTS TO ENERGY SERVICES AGREEMENT
BETWEEN
AMERESCO, INC.
AND

LAPORTE COUNTY, INDIANA

ATTACHMENT A

PROPERTY DESCRIPTION

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

County Complex / Jail
809 State Street
La Porte, IN 46350

County Courthouse
813 Lincolnway
La Porte, IN 46350

Michigan City Courthouse – Superior Court
300 Washington Street
Michigan City, IN 46360

ATTACHMENT B

SCOPE OF SERVICES

This Attachment sets forth a description of the Energy Conservation Measures (ECMs) and related equipment to be installed by Ameresco at the buildings, facilities, and areas set forth in Attachment A within the Property. Installation of the ECM(s) and the included equipment is subject to change if Ameresco discovers unforeseen conditions at the Property that render its preliminary analysis of the Property inaccurate, or significantly affect achievement of the Annual Guaranteed Savings Amount. Any changes to the installation of the ECM(s) and the included equipment are subject to approval of Customer, which approval shall not be unreasonably withheld, conditioned or delayed.

The ECM's described below are included in the Scope of Services:

| Table 1 | | Facility | | |
|---------|----------------------|--------------------|--------------------------|-----------------------|
| ECM # | Proposed Improvement | LaPorte Courthouse | Michigan City Courthouse | County Complex / Jail |
| 1 | HVAC Replacement | X | X | |
| 2 | Elevator Upgrades | X | X | X |
| 3 | Fire Alarm Upgrades | X | | X |
| 4 | Electrical Upgrades | X | | |

ECM-1 La Porte and Michigan City Courthouses - HVAC Replacement

Replacement of existing HVAC systems with Variable Refrigerant Flow (VRF) system including web accessible Direct Digital Controls (DDC).

The specific scope of work for the LaPorte Courthouse includes the following:

- Installation of a variable refrigerant flow system with energy recovery ventilator (ERV) heat pumps and removal / lawful disposal of existing HVAC system.
- Specific components consist of:
 - Four (4) packaged air cooled heat recovery units
 - Four (4) branch circuit controllers
 - One (1) packaged air cooled heat pump unit
 - Twenty eight (28) wall mounted indoor units
 - Twenty four (24) 4-way ceiling recessed cassettes
 - Sixteen (16) ceiling concealed ducted units
 - Three (3) ceiling suspended units
 - Nine (9) floor mounted indoor units
 - Two (2) ERV units with heat pumps
 - The renovation of the second floor will be coordinated with the architect
 - The new HVAC system will be sized and installed in this area to accommodate proposed renovations.

The specific scope of work for the Michigan City Courthouse includes the following:

- Installation of a variable refrigerant flow system with energy recovery ventilator (ERV) heat pumps and removal of existing HVAC system.
- Specific components consist of:
 - Nine (9) packaged air cooled heat recovery units
 - Nine (9) branch circuit controllers
 - Sixty one (61) wall mounted indoor units

- Twenty six (26) 4-way ceiling recessed cassettes
- Nineteen (19) ceiling concealed ducted units
- Three (3) ceiling suspended units
- Nine (9) floor mounted indoor units
- Six (6) ERV units with heat pumps.

Customer will enter into a two (2) year service agreement (the "Preventive Maintenance") with a mechanical contractor (the "Mechanical Contractor"). The service fees for the first two (2) years are included in the Contract Cost. Fees for any subsequent years will be the responsibility of Customer.

Notwithstanding anything herein to the contrary, Ameresco is not responsible for the quality or warranty of the services provided by the Mechanical Contractor pursuant to the Preventive Maintenance Agreement.

ECM-2 Elevator Upgrades – County Complex, La Porte Courthouse, and Michigan City Courthouse:

The upgrades required in the three (3) buildings [County Complex, La Porte Courthouse, and Michigan City Courthouse] for the elevator numbers noted below include mechanisms, controls, accessibility, and aesthetics.

The Scope of Services includes only the following items:

- Control system
- Hydraulic power unit (specific work required for Michigan City Courthouse only)
- Variable voltage variable frequency Otis ReGen regenerative drive system (specific work required for County Complex elevators only)
- Hoist, governor ropes, and governor device (specific work included for County Complex elevators only)
- Soft starter
- Closed loop door operator, gate switches, and infrared door obstruction controls
- Operator panel in car
- Car emergency lighting
- Car position indicator
- Hands free phone in car
- Car direction arrow indicators
- Hall Buttons

Note that there may be additional items discovered / required during inspections of elevators and associated systems. Additional items identified during this inspection are not included in the Scope of Services and associated cost will be the responsibility of the Customer.

The elevators included in the Scope of Services are as follows:

- County Complex:
 - South Elevator (State Number 40743)
 - North Elevator (State Number 40744)
- La Porte Courthouse:
 - Elevator #1 (State Number 38330)
- Michigan City Courthouse:
 - Elevator #1 (State Number 38039)

ECM-3 Fire Alarm Upgrades – County Complex and La Porte Courthouse:

The fire alarm control panels will be replaced with two new panels in order to bring the systems up to current NFPA standards. Scope of work consists of the following:

- Provide and install an upgrade package to the existing older Siemens Brand MXL fire alarm panels. This upgrade will modernize the system to the new Siemens Brand XLS panel.
- All existing field devices and wiring will be re-used.

- The Scope of Services assumes that the current existing fire alarm system cabling infrastructure and existing field devices are in good operating condition. The Scope of Services excludes any upgrades to the existing cabling or existing field devices.
- The fire alarm control panel upgrade excludes any items not identified in the following system component list:

County Complex System Components to be provided and Installed:

- One (1) Siemens XLS-MLE6-ADPT- Adapter Insert and Door
- One (1) Siemens Inner Door Blank
- One (1) Siemens Plexi Insert
- Three (3) Siemens Mounting Plates
- One (1) Siemens PMI- Person Machine Interface
- Three (3) Siemens MCL-Loop Cards
- One (1) Siemens PSC-12-Power Supply
- One (1) Siemens CC-2 –Card Cage
- Five (5) Siemens CC-5 –Card Cages
- One (1) Siemens ZIC-4A- NAC Card
- One (1) Siemens NIC-C Network Card
- Two (2) Siemens RNI Remote Networks
- Two (2) Siemens SSD-C REM-- Remote Annunciators
- Two (2) Siemens SCM-8 Switch Modules
- Two (2) ADI Batteries
- One (1) CCSB Fire Alarm Monitoring for the 1st Year - Certification Testing and Warranty for one (1) year

La Porte County Courthouse System Components to be provided and Installed:

- One (1) Siemens XLS-MSE3-ADPT- Adapter Insert and Door
- One (1) Siemens PMI- Person Machine Interface
- One (1) Siemens MCL-Loop Card
- One (1) Siemens PSC-12-Power Supply
- One (1) Siemens CC-5 –Card Cage
- One (1) Siemens CC-2 Card Cage
- One (1) Siemens ZIC-4A- NAC Card
- Two (2) ADI Batteries
- One (1) CCSB Fire Alarm Monitoring for the 1st Year - Certification Testing and Warranty for one (1) year

ECM-4 Electrical Upgrades at La Porte Courthouse:

Scope of Services for Grounding and Panel Feeders:

- Remove & re-pull existing subpanel feeders deleting cloth covered conductors and upgrading conduits where necessary.
- Install proper sized ground wiring throughout the distribution system.
- Replace panels" 1C, "1D", "3A", "OA", and "OB" as they are from original installation and include fusible switches rather than circuit breakers.

Scope of Services for Branch Circuiting:

- Furnish labor and materials to perform electrical rewire branch circuiting.
- Work includes the replacement of improper, faulty, and poor branch circuitry pertaining to branch circuit power and lighting feeds replacing with new THHN wire circuited and grounded per NEC 2008.
- Wiring will be replaced from the panels to the light fixtures on lighting circuits
- Wiring will be replaced from the panels to the receptacles
- Receptacles will be replaced in the following selected cases:
 - If not a grounded type receptacle
 - Where GFI receptacles are needed and not currently installed
 - If the receptacles are in poor condition.

ATTACHMENT C

SAVINGS GUARANTEE

SAVINGS GUARANTEE

The "Annual Guaranteed Savings Amount" is: Six Hundred Ten Thousand Seven Hundred Forty Nine and 00/100 Dollars (\$610,749).

The Annual Guaranteed Savings Amount is made up of three (3) savings components:

1. Energy Savings; and
2. Operational Cost Savings.

Ameresco guarantees that the Annual Savings (as such term is defined below) to be achieved as a result of installation and operation of the ECMs shall equal or exceed the Annual Guaranteed Savings Amount for each Guarantee Year during the Guarantee Period. The first Guarantee Year shall be the consecutive twelve (12) month period beginning with the first day of the month following the date of the Acceptance Certificate. The Guarantee Period shall be 15 years unless terminated earlier as a result of termination of the Agreement or termination of the Measurement and Verification Services (the "M&V Services").

Ameresco guarantees that the Annual Guaranteed Savings Amount will be achieved by operation and beneficial use of all ECMs taken in the aggregate, but does not guarantee the savings amount achieved by each ECM individually.

Ameresco's obligations in respect of this Savings Guarantee are subject to Customer performing all of its maintenance, repair, service and other obligations under this Agreement, including, without limitation, maintenance of the Standards of Service and Comfort set forth in Attachment J, which may affect achievement of the Annual Guaranteed Savings Amount. If Customer fails to perform its obligations under this Agreement or interferes with, or permits any third party to take any action which, in the reasonable opinion of Ameresco, may prevent the achievement of the Annual Guaranteed Savings Amount under this Agreement, Ameresco may, after providing Customer thirty (30) days advance notice, adjust the Annual Guaranteed Savings Amount during the period in which such savings were affected to reflect the impact such actions had on same. Ameresco's rights set forth in this Attachment C shall not be in limitation of any other rights it is entitled to by law and under this Agreement

CUSTOMER REVIEW

The Customer has reviewed the Annual Guaranteed Savings Amount calculations, assumptions, and methodologies contained in the M&V Plan (as defined below), the Baseline set forth in Attachment D, and the Standards of Service and Comfort set forth in Attachment J and finds them to be reasonable.

MEASUREMENT AND VERIFICATION PLAN

The "M&V Plan" consists of the measurement and verification plan set forth Attachment D and the savings calculation methodologies set forth in Attachment G. The total savings achieved by the combined ECMs, determined as provided in the M&V Plan, including any "Agreed Upon Savings" as such term is defined in the M&V Plan, shall be deemed the total "Annual Savings". Agreed Upon Savings amounts shall be deemed achieved upon Substantial Completion of the ECMs.

ANNUAL REPORT; M&V SERVICES

For each Guarantee Year during the Guarantee Period for which measurement and verification services are to be performed, operational verification services will be performed as described in the M&V Plan (the "M&V Services"), and Ameresco will submit to Customer an Annual Report (the "Annual Report") within 60 days following the end of such Guarantee Year. The M&V Services will be performed and the Annual Report delivered for each Guarantee Year of the Guarantee Period, except as otherwise provided herein. By written notice to Ameresco provided no later than ninety (90) days prior to the commencement of a Guarantee Year, Customer, in its sole discretion, may elect to discontinue the M&V Services, provided however, the Annual Guaranteed Savings Amount will be deemed achieved for the balance of the Guarantee Period, this Agreement shall terminate, and no further M&V Services will be performed.

The Customer must pay the stated M&V fee listed in Attachment I in each given year for the M&V Services to be provided as required by the Section 4(d) of the ESA. Failure to pay the above listed fee on an annual basis will result in the termination of the M&V Services, termination of this Agreement and the Annual Guaranteed Savings Amount shall be deemed achieved for the balance of the Guarantee Period.

In the event of early termination of this Agreement or of the M&V Services, unless termination is effective on the last day of the Guarantee Year then in effect, no Annual Report will be produced for the Guarantee Year then in effect, and the Annual Guaranteed Savings Amount shall be deemed achieved for the Guarantee Year then in effect and for the balance of the Guarantee period.

ATTACHMENT D

**SAVINGS MEASUREMENT AND VERIFICATION PLAN;
METHODOLOGY TO ADJUST BASELINE**

Utility Rates

Table D1 summarizes the baseline utility rates. These rates were used in establishing the Baseline in Attachment G. Throughout the Term of the Guarantee Period, the utility rates in Table D1, escalated at 3% per year shall be used in determining Annual Savings. The Customer acknowledges and accepts the utility rates set forth in Table D1 as reasonable.

Table D1: Utility Baseline Data and Rates

| Location | Approximate Square Feet | kWh | Max kW | Utility Consumption and Costs | | | | | | | | | |
|---------------------------|-------------------------|----------------|------------|-------------------------------|-----------------|----------------|---------------|-----------------|----------------|----------------|----------------|----------------|------------------|
| | | | | Electricity | | | Natural Gas | | | Water/Sewer | | | |
| | | | | Total kW | \$ | \$/kWh | therm | \$ | \$/therm | gallons | \$ | \$/kgal | Sub-Total |
| LaPorte County Courthouse | 49,181 | 693,882 | 155 | 1,417 | \$62,067 | \$0.089 | 25,654 | \$16,711 | \$0.651 | 139,128 | \$4,520 | \$32.49 | \$83,298 |
| Michigan City Courthouse | 46,920 | 131,720 | 78 | 426 | \$18,373 | \$0.139 | 19,238 | \$12,669 | \$0.659 | 405,416 | \$2,808 | \$6.93 | \$33,850 |
| Total/Average | 96,101 | 825,602 | 117 | 1,843 | \$80,439 | \$0.097 | 44,893 | \$29,381 | \$0.654 | 544,544 | \$7,328 | \$13.46 | \$117,148 |

Table D 2 summarizes the utility baseline data received by Ameresco from the Customer. The electrical utility baseline for LaPorte Courthouse is based on a square footage proration of the total electrical consumption of the Courthouse & Justice Center electric meter.

Table D2: Utility Baseline Dates

| Building | Electricity | Gas | Water |
|--------------------------|------------------------|------------------------|-----------------------|
| Michigan City Courthouse | June 2012 to May 2013 | July 2012 to June 2013 | June 2012 to May 2013 |
| LaPorte Courthouse | July 2012 to June 2013 | June 2012 to May 2013 | June 2012 to May 2013 |

Schedule & Reporting of M&V Services

Table D3: Schedule of Reports

| | |
|-----------------------------------|---|
| First Year Annual Report | 60 days after the end of the first Guarantee Year |
| Subsequent Annual Reports, if any | 60 days after the end of each subsequent Guarantee Year |

Agreed Upon Savings: Operational Verification Overview

For the first Guarantee Year, and for subsequent Guarantee Years for which M&V Services are performed, Ameresco shall perform the M&V Services as set forth in this Attachment D.

The approach to M&V is based on the International Performance Measurement and Verification Protocol (IPMVP) Volume 1 2012 (January 2012). IPMVP Volume 1 is a guidance document describing common practice in measuring, computing, and reporting savings achieved by energy or water efficiency projects at end user facilities. The IPMVP presents a framework and the four M&V options. For purposes of this Agreement, the Parties have utilized an additional M&V Option – “Agreed Upon” savings. “Agreed Upon” savings are subject to operational verification, but are not subject to measurement or verification, do not include measurement and verification activities and is utilized on ECMs where the costs to accurately calculate, measure, or monitor the projected savings would be greater than the anticipated savings value.

| |
|---|
| Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the ECM's affected system(s). Estimates of the non-key parameter are used for the savings calculations. |
| Savings are determined by field measurement of the energy use of the ECM-affected system. |
| Savings are determined by measuring energy use at the whole facility or sub-facility level. |
| Savings are determined through simulation of the energy use of the whole facility, or of a sub-facility. Simulation routines are demonstrated to adequately model actual energy performance measured in the facility. The model is closely calibrated with data collected for each ECM. |
| Used where cost to accurately calculate and/or measure savings would exceed anticipated savings. |

Measurement and Verification Plan

Operational Verification involves site visits two (2) times per year for Guarantee Years one (1) through three (3), and one (1) site visit for Guarantee Years (4) through (15). These site visits will include the following:

- Verification that the preventative maintenance agreement is properly executed as detailed in Attachment B, ECM-1
- Verification that all operational parameters are met to ensure maximized energy savings per the savings calculations shown in Attachment G.
- Generation of an exception report listing deviations from operational parameters which could lead to excessive energy usage.

Any deficiencies in operation will be brought to the attention of Customer so that Customer may rectify the same.

Operational Verification of System Performance Leading to Agreed Upon Energy Savings

The Annual Savings identified in the table below are Agreed Upon Savings for the First Guarantee Year documented by the calculations and methodologies described in Attachment G and are not subject to measurement or verification. In each subsequent Guarantee Year, the Agreed Upon Savings shall be escalated at a rate of 3% per year to determine the Agreed Upon Savings from these measures for such Guarantee Year. The Parties have reviewed the savings in Attachment G and the Customer agrees and accepts that upon Substantial Completion of the related ECM's the Agreed Upon Savings set forth in Table D4 below shall be deemed achieved and included in the Annual Savings determined for each Guarantee Year.

Table D4: Annual Energy and Water Agreed Upon Savings for First Guarantee Year

| <i>ECM</i> | <i>Operational Verification and Agreed Upon Energy Savings</i> |
|--|--|
| ECM-1 La Porte and Michigan City Courthouses - HVAC Replacement | \$20,059.00 |
| Total Agreed Upon Energy Savings: | \$20,059.00 |

Agreed Upon Operational Cost Savings

The annual Operational Cost Savings identified in Table D5 below are Agreed Upon Savings for the First Guarantee Year, and each subsequent Guarantee Year, documented by the calculations and methodologies described in Attachment G and are not subject to measurement or verification. These savings have been reviewed and analyzed by the Parties and may include but are not limited to: repair and maintenance cost reductions; deferred maintenance backlog cost reductions; and other long term operating cost savings. The Parties have reviewed the Agreed Upon Savings in Table D5 below and the Customer agrees and accepts that upon Substantial Completion of the related ECMs, such Agreed Upon Savings shall be deemed achieved for the First Guarantee Year and each subsequent Guarantee Year during the Guarantee Period, and included, in the Annual Savings determined for such Guarantee Year.

Table D5: Annual Operational Cost Savings for First Guarantee Year

| <i>ECM/Building</i> | <i>Agreed Upon Savings</i> |
|--|----------------------------|
| La Porte Courthouse Upgrades | \$292,865 |
| Michigan City Courthouse Upgrades | \$256,856 |
| County Complex Upgrades | \$40,969 |
| Total Operational Cost Agreed Upon Savings in First Guarantee Year: | \$590,690 |

Preventative Maintenance Agreement

In order to maximize savings generated by the HVAC system replacements at La Porte Courthouse and Michigan City Courthouse, a two year preventative maintenance plan is included in the price of the ECM. As part of the M&V plan, Ameresco will assist La Porte County in bidding out preventative maintenance after the initial two (2) year preventative maintenance plan has been completed. This will provide a platform for the County to take over this bidding process for subsequent years. Refer to Attachment B ECM-1 for specific details of the preventative maintenance Agreement (i.e. the Preventive Agreement).

Dispute Resolution

Any dispute, claim or disagreement of any kind or nature between the Parties arising out of or in connection with this M&V Plan, Adjustment to the Baseline or the Energy Savings Guarantee shall be resolved in accordance with the Dispute Resolution procedures set forth in Section 13 of the Agreement.

Attachment D (1)
DELIVERY AND ACCEPTANCE CERTIFICATE

PROJECT COMPLETION LOG

Table AC-1

| <i>Sub-Project Tasks</i> | <i>Completion Date</i> |
|--------------------------|------------------------|
| | |
| | |
| | |
| | |
| | |
| | |
| | |

Notes (special instructions etc.):

Items furnished to CUSTOMER upon accepting this Delivery and Acceptance Certificate:

- Receipt of owner's manuals; _____ sets.
- Receipt of instruction and training; _____
- Completion of inspection and walk-through.
- Receipt of warranty information.

The aforementioned Project is hereby completed to the standards set forth in the Agreement denoted above and to the satisfaction of Customer. Customer agrees that the Total Agreed Upon Savings have been satisfied for the term of the Guarantee Period.

Total Agreed Upon Savings \$ _____

| | | | |
|----------|-----|--------|-------|
| CUSTOMER | By: | Title: | Date: |
|----------|-----|--------|-------|

ATTACHMENT D (2)

PERCENT COMPLETE ACKNOWLEDGEMENT CERTIFICATE

Customer hereby acknowledges receipt and acceptance of the _____ portion of the Energy Conservation Measure (the "ECM") described in Attachment B to the Energy Services Agreement (the "Agreement") dated _____, 201_ between Customer and Ameresco. Customer certifies that the work described in the related application for payment submitted by Ameresco has been completed in accordance with the Agreement and that the ECM(s) are _____ percent complete, as substantiated by sufficient detail provided by Ameresco. Customer agrees to make payment to Ameresco as set forth in Section 4 of the Agreement.

Date Accepted by Customer: _____

Accepted for:

Accepted by:

Name: _____

Title: _____

ACKNOWLEDGMENT OF AMERESCO

Ameresco hereby acknowledges that the total amount due based upon percent complete for the ECM's described in Attachment B, and the Notice to Proceed, hereto is \$_____.

Date Accepted by Ameresco:

Accepted for: AMERESCO, INC.

Accepted by:

Name:

Title:

ATTACHMENT D (3)

SUBSTANTIAL COMPLETION CERTIFICATE

PROJECT NAME & ADDRESS:

PROJECT NO.:

CONTRACT DATE:

DESCRIPTION:

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

SUBSTANTIAL COMPLETION DATE: _____

The date of Substantial Completion of an ECM is the date certified by Customer when such ECM is sufficiently complete in accordance with the Agreement so that Customer derives beneficial use thereof. Customer agrees that the Agreed Upon Savings associated with the ECMs listed have been satisfied for the term of the Guarantee Period.

Agreed Upon Savings \$ _____

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

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

AUTHORIZED

_____ DATE: _____

NAME: _____

(type or print)

CUSTOMER:

AUTHORIZED

_____ DATE: _____

NAME: _____

(type or print)

PUNCHLIST ITEMS

[Empty rectangular box for punchlist items]

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

ATTACHMENT E

NOTICE TO PROCEED

PLEASE PRINT ON CUSTOMER LETTER HEAD

MONTH DAY YEAR

Mr. Louis P. Maltezos
Executive Vice President and General Manager – Central Region
Ameresco, Inc.
150 N. Michigan Avenue, Suite 2040
Chicago, IL 60601

SUBJECT: NOTICE TO PROCEED

To Whom It May Concern:

In accordance with the terms of the Energy Services Agreement dated [month day year] , Customer hereby issues this **Notice to Proceed** to Ameresco in relation to the Scope of Services set forth in such Agreement.

Sincerely,

CUSTOMER

(Name)
Title

ATTACHMENT F

CHANGE ORDER

(Agreement for change in Scope of Services and/or Agreement)

Change Request No.

CUSTOMER:

Department:

Project No.

Contract No.

Site:

Title:

I. REQUEST

Date:

(a) Requested by

Of

(b) Description of change

II. AMERESCO's AGREEMENT

For all costs involved in this change including extensions of time herein requested, Ameresco proposes to perform the work described in accordance with the provisions of the Agreement for the price as follows.

Payment shall be made on the basis of:

- (a) Predetermined lump sum total of (add) (deduct) \$
- (b) Lump sum "not-to-exceed" (add) (deduct) \$
(Max. price based on contract or
Negotiated unit prices)

NOTE: ONLY IF RATE TABLE INCLUDED: ()

- (c) Time & Material Basis
"not-to-exceed" (add) (deduct) \$
(Computed in accordance with provisions
of the Contract)

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

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

AMERESCO, INC.

By: _____
Title: _____
Date: _____

CUSTOMER APPROVAL:
CUSTOMER

| | | |
|-------|---------------------|----|
| _____ | Contract Award | \$ |
| | Previous Additions | \$ |
| | Previous Deductions | \$ |

By: _____
Title: _____
Date: _____

| | | |
|-------|-------------|----|
| | Net Total | \$ |
| | This Change | \$ |
| Total | \$ | |

ATTACHMENT G

METHODOLOGY USED TO CALCULATE ANNUAL SAVINGS

The methodology used for calculating Annual Savings resulting from the implementation of the proposed project is summarized in the following equation:

$$\text{Annual Savings} = \text{Energy Savings} + \text{Operational Cost Savings}$$

$$\text{Operational Cost Savings} = \text{Operational and Maintenance Savings} \\ (\text{O\&M}) + \text{Long Term Operational Cost Savings}$$

Where:

Annual Savings: The total annual savings associated with implementation of this project.

Energy Savings: The total Energy Savings associated with reduction in energy consumption as a result of implementation of this project.

Operational and Maintenance Savings (O&M): The total Operational and Maintenance Savings (O&M) savings associated with reduction in operations, maintenance and repair related expenses as a result of implementation of this project.

Long Term Operational Cost Savings: The total annual long term operational savings resulting from future capital replacement expenditures that are being offset by Customer as a result of implementation of this project

$$\text{Energy Savings} = (\text{Baseline Energy Use}) - (\text{Post Installation Energy Use}) \pm \text{Adjustments}$$

Summary of Annual Savings

| Savings Summary Table | Long Term Operational Savings | O&M Savings | Energy Savings | Total Savings |
|--|--------------------------------------|------------------------|-----------------------|----------------------|
| La Porte Courthouse HVAC and Controls Replacement, Electrical Distribution and Grounding Upgrades, Elevator Rehabilitation, Fire Alarm Control Panel Upgrade | \$292,865 | \$0 | \$11,975 | \$304,840 |
| Michigan City Courthouse HVAC and Controls Replacement, Elevator Rehabilitation | \$256,856 | \$0 | \$8,084 | \$264,940 |
| County Complex / Jail Elevator Rehabilitation, Fire Alarm Control Panel Upgrade | \$40,969 | \$0 | \$0 | \$40,969 |
| Base Project Total | \$590,690 | \$0 | \$20,059 | \$610,749 |

The following details the savings calculations associated with each Energy Conservation Measure (ECM) included in Attachment B.

ECM -1 HVAC System Replacement at LaPorte and Michigan City Courthouses:
La Porte Courthouse VRF System Savings Calculation

| | |
|-------------------|-------------------------------|
| Heating Savings | 25,654 Therms -124,023 Kwh |
| Cooling Savings | 0 Therms 70,922 Kwh |
| Cost per Therm NG | \$0.651 |
| Cost per Kwh | \$0.089 |



| | |
|---------------------------|---|
| TOTAL SAVINGS (\$) | \$16,701 Natural Gas Savings (\$) -\$4,726 Electric Savings (\$) |
|---------------------------|---|



HEATING SAVINGS

| | Variable | Units | Formula |
|--|----------|---------|--|
| Natural Gas Therms Total (Annual) | 25,654 | Therms | User Input from Baseline |
| Natural Gas Base Load (Monthly) | 0 | Therms | User Input from Baseline (Typically July or August Gas Load) |
| Natural Gas Used for Heating (Total - BaseLoad) | 25,654 | Therms | Total Gas - Base Load |
| Existing Natural Gas Heating Plant Efficiency (Net) | 75% | Percent | User Input |
| Building Heat From Central Plant (Annual Therms) | 19,241 | Therms | Natural Gas Used for Heating x Plant Efficiency |
| Additional Heat Required to Compensate for Space Heaters | 10% | % | User Input |
| VRF System Heating COP | 5.0 | COP | User Input |
| Input to VRF System to Annual Building Heat (Therms) | 4,233 | Therms | Annual Therms x (1+Additional Heat Required) / VRF COP |
| Input to VRF System to Annual Building Heat (kwh) | 124,023 | Kwh | Input Therms to VRF System / .03413 |
| Cost per Therm NG | \$0.650 | | |
| Cost per Kwh | \$0.090 | | |
| Cost to heat with existing NG Plant | \$16,675 | | |
| Cost to Heat with VRF | \$11,162 | | |
| Savings (\$) | \$5,513 | | |
| Savings (Gas) | 25,654 | Therms | |
| Savings (Electric) | -124,023 | Kwh | |

COOLING SAVINGS

| | | | |
|---|---------|-------|---|
| TOTAL AIR HANDLER CFM (CFM) | 45,000 | CFM | User Input |
| ANNUAL COOLING BTU FROM WEATHER BINS (CBTU) | 38,791 | BTU | User Input from Weather Data |
| HRS/WK OF HVAC OPERATION (HVACHRS) | 168 | Hours | User Input |
| WKS/YR OF BUILDING OPERATION (WPY) | 52 | Weeks | User Input |
| HRS/YR COOLING IS REQUIRED (CHPY) | 3511.2 | Hours | User Input from Weather Data |
| COOLING WEEKS PER YEAR (CWPY) = (CHPY/168) | 20.90 | Weeks | |
| COINCIDENT COOLING WEEKS (CLGWKS) = MAX((CHPY/168)-(52 WKS-WPY) | 20.90 | Weeks | |
| HRS/YR COOLING IS REQUIRED (CHPY) | 3511.2 | Hours | |
| CURRENT CHILLER EFFICIENCY/COEFFICIENT OF PERFORMANCE (OLDCOP) | 3.50 | COP | User Input |
| CURRENT CHILLER KW/TON (OLDKW) | 1.00 | KW | |
| COP OF NEW VRF SYSTEM | 4.50 | COP | User Input |
| KW/TON OF VRF SYSTEM | 0.78 | KW | |
| ADDITIONAL COOLING REQUIRED TO COMPENSATE FOR SPOT COOLERS | 10% | | User Input |
| Ton-Hours | 488,767 | | ((CFM*CBTU*1000*HVACHRS / 50)*(CLGWKS / CWPY)/12000 |
| Savings | 70,922 | Kwh | TON-HRS * (OLDKW - NEWKW) |

ECM-1 Michigan City Courthouse VRF System Savings Calculation

| | |
|-------------------|------------------------------|
| Heating Savings | 18,518 Therms -89,524 Kwh |
| Cooling Savings | 0 Therms 59,889 Kwh |
| Cost per Therm NG | \$0.659 |
| Cost per Kwh | \$0.139 |

| | |
|---------------------------|--|
| TOTAL SAVINGS (\$) | |
| | \$12,203 Natural Gas Savings (\$) |
| | -\$4,119 Electric Savings (\$) |

HEATING SAVINGS

| | Variable | Units | Formula |
|--|----------|---------|--|
| Natural Gas Therms Total (Annual) | 19,238 | Therms | User Input from Baseline |
| Natural Gas Base Load (Monthly) | 60 | Therms | User Input from Baseline (Typically July or August Gas Load) |
| Natural Gas Used for Heating (Total - BaseLoad) | 18,518 | Therms | Total Gas - Base Load |
| Existing Natural Gas Heating Plant Efficiency (Net) | 75% | Percent | User Input |
| Building Heat From Central Plant (Annual Therms) | 13,889 | Therms | Natural Gas Used for Heating x Plant Efficiency |
| Additional Heat Required to Compensate for Space Hea | 10% | % | User Input |
| VRF System Heating COP | 5.0 | COP | User Input |
| Input to VRF System to Annual Building Heat (Therms) | 3,055 | Therms | Annual Therms x (1+Additional Heat Required) / VRF COP |
| Input to VRF System to Annual Building Heat (kwh) | 89,524 | Kwh | Input Therms to VRF System / .03413 |
| Cost per Therm NG | \$0.660 | | |
| Cost per Kwh | \$0.130 | | |
| Cost to heat with existing NG Plant | \$12,222 | | |
| Cost to Heat with VRF | \$11,638 | | |
| Savings (\$) | \$584 | | |
| Savings (Gas) | 18,518 | Therms | |
| Savings (Electric) | -89,524 | Kwh | |

COOLING SAVINGS

| | | | |
|---|---------|-------|---|
| TOTAL AIR HANDLER CFM (CFM) | 38,000 | CFM | User Input |
| ANNUAL COOLING BTU FROM WEATHER BINS (CBTU) | 38,791 | BTU | User Input from Weather Data |
| HRS/WK OF HVAC OPERATION (HVACHRS) | 168 | Hours | User Input |
| WKS/YR OF BUILDING OPERATION (WPY) | 52 | Weeks | User Input |
| HRS/YR COOLING IS REQUIRED (CHPY) | 3511.2 | Hours | User Input from Weather Data |
| COOLING WEEKS PER YEAR (CWPY) = (CHPY/168) | 20.90 | Weeks | |
| COINCIDENT COOLING WEEKS (CLGWKS) = MAX((CHPY/1 | 20.90 | Weeks | |
| HRS/YR COOLING IS REQUIRED (CHPY) | 3511.2 | Hours | |
| CURRENT CHILLER EFFICIENCY/COEFFICIENT OF PERFORM | 3.50 | COP | User Input |
| CURRENT CHILLER KW/TON (OLDKW) | 1.00 | KW | |
| COP OF NEW VRF SYSTEM | 4.50 | COP | User Input |
| KW/TON OF VRF SYSTEM | 0.78 | KW | |
| ADDITIONAL COOLING REQUIRED TO COMPENSATE FOR | 10% | % | User Input |
| Ton-Hours | 412,736 | | ((CFM*CBTU*1000*HVACHRS / 50)*(CLGWKS / CWPY)/12000 |
| Savings | 59,889 | Kwh | TON-HRS * (OLDKW - NEWKW) |

Long Term Operational Cost Savings

| | ECM Description | Current Client Cost | Future Client Cost | Future Incl Annual prmts | Operational Cost Savings (Annual) |
|---|-----------------------------------|---------------------|--------------------|--------------------------|-----------------------------------|
| 1 | La Porte Courthouse Upgrades | \$ 3,452,773 | \$ 5,429,079 | \$ 7,845,748 | \$ 292,865 |
| 2 | Michigan City Courthouse Upgrades | \$ 3,028,242 | \$ 4,761,554 | \$ 6,881,085 | \$ 258,858 |
| 3 | County Complex Upgrades | \$ 483,014 | \$ 759,483 | \$ 1,097,554 | \$ 40,969 |
| | | | \$ - | \$ - | \$ - |
| | | | \$ - | \$ - | \$ - |

Methodology:

- 1 Operational Cost Savings is defined as the COST of WAITING (Future Cost) **MINUS** TODAY'S COST (Current Cost)
- 2 Operational Cost Savings = (Future Cost) - (Current Cost)
- 3 ECM Descriptions & costs are shown as (Current Client Cost)
- 4 Current cost is adjusted by annual inflation factor over the project duration (years) in addition to miscellaneous adjustment
- 5 factors as listed in Assumptions then calculated & shown as (Future Client Cost)
- 6 Annual payments for the Future Cost are summarized over the Project duration (total years) and shown as (Future Incl Annual prmts)
- 7 Operational Cost Savings is the difference between financed future cost and current cost divided by Project duration (total years)

| | |
|---|-------|
| Unplanned Equipment replacement factor | 6.00% |
| Economy of Scale factor for multiple projects | 6.00% |
| | |
| | |
| Contingency | 5.00% |
| Other | 0.00% |
| Other | 0.00% |
| Other | 0.00% |

| | |
|--|-------|
| * Annual Inflation | 3.00% |
| Cost of Capital | 5.00% |
| Nper: Number of Periods = Project savings duration (years) | 16 |

ATTACHMENT H

TRAINING

- A. Training Provisions:** Ameresco will provide hands-on training of the Customer's facility staff during the equipment commissioning phase of the Project. To ensure that efficient systems operations are well documented, Ameresco will provide training materials and instructional sessions to the appropriate members of the Customer's staff and contractors. The training materials and manuals are developed by suppliers and may be customized to reflect the specific application, as appropriate. Ameresco's training efforts will address systems and equipment that Ameresco installs, modifies, or influences through the implementation of the Scope of Services and will include two (2) core elements:
- 1. Element #1: Hands-on Training Sessions:** Ameresco will conduct one (1) – eight (8) hour classroom style training session for maintenance personnel shortly after substantial completion of ECM-1 (HVAC and control system replacements at the LaPorte Courthouse and Michigan City Courthouse)
 - 2. Element #2: Documentation and Manuals:** Ameresco will provide "as-built" drawings, guidelines, guidebooks and operating manuals. The manuals to be given to the Customer will specify operating parameters and procedures to be maintained for optimal savings, operations and maintenance (O&M) requirements, name and contact of O&M vendor (where applicable), measurements to be made to ascertain operating efficiency and frequency of measurements, start up and shut down procedures, a detailed listing of equipment specifications, make and model numbers. Ameresco will provide the Customer a complete set of manuals from equipment manufacturers. Ameresco will also affix descriptive labels to controls and equipment where useful to proper O&M. In addition to ECM-1 (HVAC and control system replacements at the LaPorte Courthouse and Michigan City Courthouse), Element #2 of the training scope will include ECM-2 Elevator Upgrades and ECM-3 Fire Alarm Upgrades.

ATTACHMENT I

MEASUREMENT AND VERIFICATION FEE SCHEDULE

Fees for M&V Services will be due and payable as provided in Section 4(d) of the ESA, and in Attachment C.

| Year | M&V Reporting and Evaluation Costs |
|-------------|---|
| 1 | \$5,000 |
| 2 | \$5,150 |
| 3 | \$5,305 |
| 4 | \$5,464 |
| 5 | \$5,628 |
| 6 | \$5,796 |
| 7 | \$5,970 |
| 8 | \$6,149 |
| 9 | \$6,334 |
| 10 | \$6,524 |
| 11 | \$6,720 |
| 12 | \$6,921 |
| 13 | \$7,129 |
| 14 | \$7,343 |
| 15 | \$7,563 |