



**PERFORMANCE CONTRACT
BY AND BETWEEN
CITY OF SEABROOK, TEXAS
AND
AMERESCO, INC.**

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PERFORMANCE CONTRACT

BY AND BETWEEN

CITY OF SEABROOK, TEXAS

AND

AMERESCO, INC.

THIS PERFORMANCE CONTRACT (the "Agreement") is entered into on _____, 2021, by and between the City of Seabrook, Texas having its principal place of business located at 1700 1st Street, Seabrook, Texas 77586 (hereinafter referred to as "Customer") and Ameresco, Inc., having its principal place of business at 2375 E. Camelback Road, Suite 400, Phoenix, AZ 85016 (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 selected Ameresco through 1GPA purchasing cooperative to provide performance-based services for the design and execution of a utility meter upgrade project;

WHEREAS, Ameresco has prepared and issued a proposal to Customer;

WHEREAS, Customer wishes Ameresco to perform a project ("**Project**") consisting of certain meter purchases and installations as set forth on Attachment B (as amended and/or otherwise modified from time to time as provided herein, the "**Scope of Services**") at certain account locations 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 covenants, representations, warranties, and mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

SECTION 1 SCOPE OF SERVICES

(a) Work: Upon Ameresco's receipt 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 installation of the new meters and ancillary and related equipment (collectively, the "**Meters**"), included in the Scope of Services, as such Scope of Services may be modified in accordance with the terms of this Agreement. Customer and Ameresco shall mutually plan the scheduling of the installation of the Meters, so as to minimize disruption of the daily routine of Customer's personnel.

(b) Disposal: As part of the Scope of Services Ameresco shall be responsible for the disposal of all non-hazardous equipment and materials which are rendered useless and removed as a result of the installation of the Meters. All other existing hazardous materials, however, shall remain the sole responsibility of Customer and Ameresco shall assume no liability whatsoever in connection with their removal, transportation and 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 it determines directly impacts 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 promptly notify Customer of the same and Customer may at its option: (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, and Ameresco providing sufficient detailed information with recommended action sufficient for the Customer's evaluation, may at its option 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, upon prior written notice to Customer, 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 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 and Ameresco providing sufficient detailed information with recommended action sufficient for the Customer's evaluation, may at its option, upon prior notice to Customer, ~~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 promptly notifies Customer of the same, Customer may at its option: (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 its rights and obligations) or terminate this Agreement in its entirety. Customer shall be responsible for payment of the portion of 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 the installation of the Meters. 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: The Customer stipulates that it is an exempt organization as defined by the Limited Sales, Excise and Use Tax Act and, as such, is exempt from the payment of the sales tax on materials and supplies used in the performance of this Agreement. Ameresco shall issue exemption certificates to its suppliers and Subcontractors in lieu of said sales tax for all such materials and supplies, and said exemption certificates must comply with the State Comptroller's Ruling No. 95-0.07 and shall be subject to the provision of the State Comptroller's Ruling No. 95-0.09, effective October 1, 1969. Notwithstanding the foregoing, the Customer shall pay (or, if applicable, reimburse Ameresco for the payment of) all property taxes, sales taxes, use taxes or other fees and assessments associated with the Scope of Services. The Customer shall have no liability for taxes measured by the net income of Ameresco.

(f) Monitoring, Measurement and Verification: Ameresco shall supply the measurement and verification services set forth in Attachment G (the "M&V Services") during the Term at a cost to Customer as set forth in Section 4.

(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 Scope of Services.
- (iii) 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.

- (iv) As provided in the Scope of Services, Ameresco shall provide equipment manuals, as-built drawings and other appropriate information regarding equipment installed hereunder to Customer at or about the time of delivery of the Delivery and Acceptance Certificate (as provided in Section 4). This information shall include:
 - Equipment manuals relating to (parts, maintenance, operation, etc.); meters, antennas, base stations, towers, and related information for equipment
 - Vendor and equipment lists/vendors for acquired equipment/materials used on the Project
 - Software manuals including the installation, use, troubleshooting and related information.
 - Software contacts for assistance, repair, assistance help.
- (v) Ameresco shall provide the training described in Attachment H. Such training is included in the Contract Cost unless included as a separate cost in Attachment I.

SECTION 2 Ownership of Meters

Ownership and title to each Installation Group 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 Installation Group 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 each installed Installation Group or portion thereof. Upon delivery of the Substantial Completion Certificate and satisfaction of clause (ii) above for each Installation Group, Ameresco's interest in the related Meters shall be released and terminated, in each case without further action on any Party's part.

SECTION 3 Financing and Ability to Pay

- (a) By its execution of this Agreement, Customer hereby represents and warrants to Ameresco that Customer has adequate funds for payment of the Contract Cost.

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 Two Million Nine Hundred Sixty One Thousand Five Hundred and 00/100 Dollars (\$2,961,500.00) (subject to adjustment as provided in Section 8, the "**Contract Cost**"). Payment of the Contract Cost will be due as set forth in Section 4(c) below.
- (b) Subject to the terms of this Agreement, Ameresco shall perform the M&V Services at a contract cost of Forty Seven Thousand Four Hundred Thirty Four Dollars (\$47,434.00) (the "**M&V Cost**"). The M&V Cost is in addition to the Contract Cost. Payment of the M&V Cost will be due as set forth in Section 4(e) below.
- (c) 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, 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, as determined by Customer, 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. Customer shall not unreasonably withhold, condition or delay the execution and delivery of any Percent Complete Acknowledgement Certificate.

- (d) The Meters will be installed by route or book, referred to herein as “**Installation Groups**”. Upon Substantial Completion of the installation of an Installation Group, 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 review and as appropriate complete, execute and deliver to Ameresco each such Substantial Completion Certificate or reasons for rejection of same. As used in this Agreement the term “**Substantial Completion**” shall mean that each Installation Group has been installed by Ameresco, and the Meters in such Installation Group are then operating in a manner such that Customer is deriving beneficial use thereof in compliance with this Agreement. A Delivery and Acceptance Certificate, in the form of Attachment D(1), shall be executed by Customer upon its determination of Substantial Completion of the installation of the final Installation Group. Customer shall not unreasonably withhold, condition or delay the execution and delivery of any Substantial Completion Certificate or the Delivery and Acceptance Certificate.
- (e) Within thirty (30) calendar days following the completion of the M&V Services, as determined by Customer, Customer shall pay Ameresco the M&V Cost as a one-time fee for measurement and verification services. Customer shall not unreasonably withhold, condition or delay the acceptance of the M&V Services or the payment of the M&V Cost as provided herein.
- (f) All payments made by Customer under this Agreement shall be made in accordance with the provisions of any Prompt Payment Act applicable to Customer. 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**

- (a) This term of this Agreement (the “**Term**”) shall begin on the date first above written commensurate with Customer’s execution, and shall remain in effect for Fifteen (15) years from the first day of the month following the date of **Final Completion of the Project** (such 15-year period being referred to herein as the “**Guarantee Period**”), unless terminated prior to such date, as provided for in this Agreement.
- (b) Ameresco shall achieve Substantial Completion of the last of the Installation Groups no later than 360 calendar days following the date on which Customer issues the Notice to Proceed (“**Guaranteed Substantial Completion Date**”).
- (c) The Parties agree that the Guaranteed Substantial Completion Date is a reasonable date, taking into consideration all conditions and usual industrial conditions prevailing in this locality, for Ameresco to achieve Substantial Completion of the last of the Installation Groups. The amount of delay damages for Ameresco’s failure to meet the Guaranteed Substantial Completion Date, as set forth in Section 5(d) below), is fixed and agreed upon by Ameresco

because of the impracticality and extreme difficulty in fixing and ascertaining actual damages that Customer in such event may sustain.

- (d) . If Ameresco should neglect, fail, or refuse to achieve Substantial Completion of the last of the Installation Groups by the Guaranteed Substantial Completion Date, as the same may be extended by change order hereunder or any proper extension thereof granted by Customer, then Ameresco does hereby agree as part of the consideration for the awarding of this Agreement, that Customer may withhold permanently from the Contractor's total compensation the sum of One Hundred (\$100.00) for each and every calendar day that between the Guaranteed Substantial Completion Date and the date on which the last of the Installation Groups achieves Substantial Completion ("Delay Damages"), not as a penalty, but as liquidated damages for the breach of this Agreement. Payment of the Delay Damages represents Customer's sole and exclusive remedy for Ameresco's failure to achieve Substantial Completion of the last of the Installation Groups by the Guaranteed Substantial Completion Date, as provided herein.

SECTION 6 Performance Guarantee

To the extent set forth in Attachment C, and solely in accordance with Attachment C, Ameresco guarantees that the "**Annual Project Benefits**" (as defined below) to be achieved as a result of installation and operation of the Meters shall equal or exceed the **Guaranteed Annual Project Benefits** (as defined in Attachment C) over the "**Guarantee Period**" (as defined above). The foregoing is referred to herein as the "**Performance Guarantee**".

For purposes of this Performance Guarantee, the following assumptions and provisions shall apply:

- (a) Ameresco guarantees that the Guaranteed Annual Project Benefits will be achieved by operation and beneficial use of all Meters taken in the aggregate but does not guarantee the benefits achieved by each Meter individually. A Project cash flow is set forth on Attachment K.
- (b) The total benefits achieved by the combined Meters, determined as provided in the M&V Plan, including any "**Non-Measured Project Benefits**" as such term is defined in the M&V Plan, shall be deemed the total "**Annual Project Benefits**". Non-Measured Project Benefits amounts shall be deemed achieved upon Final Completion of the installation of the Meters. Calculation of the Annual Project Benefits, inclusive of Non-Measured Project Benefits, shall be performed under, and governed by, the methods, formulas, and procedures described in the Measurement and Verification Plan set forth in Attachment G (the "**M&V Plan**").
- (c) Ameresco's obligations in respect of this Performance Guarantee are subject to Customer performing all of its maintenance, repair, service and other obligations under this Agreement. 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 Project Benefits under this Agreement, Ameresco may, after providing Customer thirty (30) days advance notice, adjust the Annual Project Benefits amount during the period in which such benefits were affected to reflect the impact such actions had on same. The Customer shall have the right to provide written good faith objections to any such adjustment within ten (10) business days following receipt of Ameresco's notice. If Customer does not object within such 10 business day period, the adjustment shall go into effect at the expiration of the 30 day notice period. If the

Customer does provide such written objection the parties shall proceed to resolve such dispute in accordance with Section 13 hereof. If the final determination of such dispute resolution process is that the proposed adjustment was proper, the date of such adjustment shall relate back to the original period that was the subject of Ameresco's notice to the Customer. Ameresco's rights set forth herein shall not be in limitation of any other rights it is entitled to by law or under this Agreement. Any disputes regarding achievement of Annual Project Benefits or any M&V Report delivered pursuant to Attachment G shall be resolved in accordance with the dispute resolution provisions of Section 13.

- (d) Notwithstanding anything herein to the contrary, it understood, stipulated and agreed that the requirements of Texas Local Government Code Section 302.001 et. seq. shall control.

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.

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 Meters prior to performance of the changed work. During the Term hereof, either Customer or Ameresco may suggest that sites be added to the Property hereunder, in which case the parties shall endeavor to agree upon any new Meters to be installed and may either amend this Agreement or execute a Change Order for the installation, financing and commissioning of any such new Meters. Nothing in this paragraph shall obligate either party to proceed with installation of any Meters 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 Scope of Services 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, or 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 Ameresco and the Customer to reflect such adjustment(s).
- (c) 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 shall be free from defects in materials and workmanship arising from normal usage on a Meter by Meter basis for a period of one (1) year from the date of Final Completion of the applicable Installation Group. 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 Performance 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 METERS OR THE ANCILLARY EQUIPMENT INSTALLED IN CONNECTION WITH THE INSTALLATION OF THE METERS.

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.
- (b) Standards of Service and Comfort: Customer shall operate the Meters and related equipment in a manner that shall provide the Standards of Service and Comfort provided for in Attachment J.
- (c) Maintenance: Customer shall, at its expense, repair, operate and maintain the Meters and related equipment in good working condition during the Term of this Agreement. Customer shall maintain, repair and operate, at Customer's expense: (i) all equipment and other components included as part of the Meters, and (ii) all other equipment which is attached thereto and/or is integral to the proper functioning of the Meters.
- (d) Malfunctions: Customer shall notify Ameresco immediately in the event of any malfunction in the operation of the Meters or any other equipment installed hereunder.
- (e) Insurance and Risk of Loss or Damage: Without limiting any of its obligations or liabilities under this Agreement, and without limitation on Ameresco's warranty obligations set forth in Section 9 hereof, Customer shall, at its expense, provide and maintain at all times after receipt of the Percent Complete Acknowledgement Certificate delivered pursuant to Section 4 for each Installation Group or portion thereof, sufficient insurance against the loss, theft of or damage to the Meters and all related equipment installed in the applicable Installation Group. Ameresco's Commercial General Liability insurance shall be primary for any property damage or bodily injury during the performance of the Work, except for the Customer's negligence or willful misconduct.

Upon receipt of the Percent Complete Acknowledgement Certificate delivered pursuant to Section 4 for each Installation Group or portion thereof, Customer assumes all risk of loss of or damage to the Meters and all related equipment in the applicable Installation Group from any cause whatsoever. In the event of loss or damage to any Meter or other equipment installed hereunder, Customer shall promptly notify Ameresco and determine whether to 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 Meters 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 Meters or the equipment installed hereunder inoperable and, in the case of a casualty, the affected portion of such Meters or equipment is not reconstructed or restored within one hundred twenty (120) days from the date of such casualty, Ameresco and/or Customer may terminate this Agreement by delivery of a written notice to the other Party. Upon such termination, Customer shall pay Ameresco any amounts, or pro-rata portions thereof, under Sections 4(b), (c), (d) and (e), Attachment I and any Change Order, which accrued prior to such termination. Ameresco may also make request appropriate adjustments to the baseline or the Annual Project Benefits to reflect the impact of such casualty or condemnation, including corresponding revisions to the Attachments.

- (f) Protection. Customer shall at all times act reasonably to protect the Meters from loss or damage to the same extent and in the same manner in which it protects the Property.
- (g) Alteration: Except in cases of emergency, and subject to Ameresco's right to make adjustments as provided in Section 6(c) above, Customer shall not move, alter or change the Meters in any way that may cause a reduction in the level of accuracy of the Meter or the equipment installed hereunder without providing Ameresco prior written notice.
- (h) Storage: Customer shall provide rent free space, as it determines appropriate, for Ameresco, or any of its subcontractors, to mobilize and store supplies, tools and equipment during installation of the Meters.
- (i) Fuel: Customer shall procure and pay for all energy, utilities and fuel for the operation of the Property.
- (j) Cooperation during Construction: Customer shall reasonably cooperate in relocating occupants, 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.
- (k) Customer responsibilities in connection with meter replacements:
 - a. Isolating the utility system to allow for the meter change out including the identification of shut off valves and disconnect switches
 - b. Assisting in scheduling shutdown of commercial customers
 - c. The Customer is responsible for complying with any government mandates regarding water source regulations and permits.
- (l) Telephone and Internet: Customer shall install and maintain telephone lines and pay all associated costs for the Meters telephone lines or applicable communication systems. Ameresco may use Customer's LAN for the purposes of any system that may be included in the Scope of Work subject to Customer's written published policies and restrictions, or of which Ameresco has received prior written notice.

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 which

is not subject to dispute, and such failure continues for a period of ten (10) business days after notice of overdue payment is delivered by Ameresco to Customer;

- (ii) any representation or warranty made by Customer in this Agreement or in any writing delivered by Customer pursuant hereto proves at any time to have been false, misleading or erroneous in any material respect as of the time when made; or
- (iii) Customer fails to timely 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;
- (iv) 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.

(b) By Ameresco.

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

- (i) Ameresco fails to timely 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 failure and effects cannot be completely cured within thirty (30) days after said written notice, in which case a default shall exist only if Ameresco does not commence and diligently pursue to cure such failures and effects as soon as practicable.
- (ii) any representation or warranty made by Ameresco in this Agreement or in any writing delivered by Ameresco pursuant hereto proves at any time to have been false, misleading or erroneous in any material respect as of the time when made; or
- (iii) Ameresco enters receivership, or makes an assignment for the benefit of creditors, whether voluntary or involuntary, or a petition is filed by or against Ameresco under any bankruptcy, insolvency or similar law and such petition is not dismissed within sixty (60) days.

SECTION 12 Remedies for 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
- (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/Venue

Claims, disputes, or other matters in controversy (a “*Dispute*”) arising out of or related to the Agreement or the Project shall be subject to informal dispute resolution and mediation as a condition precedent to any and all remedies at law or in equity. If during the Term of this Agreement a Dispute arises concerning the Project or this Agreement, the Dispute shall initially be submitted to Customer’s project representative and Ameresco’s project manager for resolution by mutual agreement between said parties. Any mutual determination by the Customer Representative and Ameresco’s project manager will be final and binding upon the Parties. However, should the Customer representative and Ameresco’s project manager fail to arrive at a mutual decision as to the Dispute within ten (10) business days after notice to both individuals of such Dispute, such Dispute will be submitted to a representative from management of both Parties who shall meet in person or by phone within ten (10) business days after either Party gives the other Party written notice of the Dispute (the “*Dispute Notice*”). The Dispute Notice shall set forth in reasonable detail the aggrieved party’s position and its proposal for resolution of the Dispute. If the Dispute is not resolved within thirty (30) calendar days after the first meeting of the Parties, then the Parties shall endeavor to resolve the Dispute by mediation in Houston, Harris County, Texas. A request for mediation shall be made in writing and delivered to the other Party. The request may be made concurrently with the filing of any and all remedies at law or in equity but, in such event, mediation shall proceed in advance of any proceedings filed in a judicial forum, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period of time by agreement of the parties or court order. This Agreement has been made under and shall be governed by the laws of the State of Texas. Performance and all matters related thereto, including exclusive venue for any dispute, shall be in Harris County, Texas.

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 Dispute 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) Insurance

Ameresco shall procure and maintain at its sole cost and expense for the duration of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Ameresco, its agents, representatives, volunteers, employees or subcontractors. The Customer shall be named an additional insured. The policies, coverages, limits and endorsements required are as set forth in Attachment M which is incorporated by reference and specifically include the following:

- (i) Ameresco shall provide and maintain at its expense the following insurance coverage:
 - (x) Workers' Compensation and Employer’s Liability Insurance as required by applicable State law.
 - (y) 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.
 - (z) 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.

- (iii) Ameresco shall deliver to Customer sufficient evidence of compliance, as determined by Customer, including requirements providing Customer as an additional insured party under paragraphs (ii) and (iii), above before any work shall proceed.

(b) Bonds

Pursuant to Section 2253.021 of the Texas Government Code, for all public works contracts with governmental entities, a payment bond is required if the Contract Amount exceeds \$50,000, and a performance bond is required if the Contract Amount exceeds \$100,000. Below those amounts, the City/Customer *may* require payment and/or performance bonds, as required for this Project. In the event a performance or payment bond or both is required either by law or in the City's/Customer's discretion, such bonds shall be executed in accordance with all requirements of Article 7.19-1 of the Texas Insurance Code, all other applicable law, and the following:

- (i) Ameresco shall execute performance and payment bonds for the full Contract Amount.
- (ii) The bond surety shall be authorized under the laws of the State of Texas to provide a performance and payment bond and shall have attached proof of authorization of the surety to act in the performance and payment of bonds.
- (iii) Ameresco shall provide original, sealed, and complete counterparts of the executed bonds in the forms required by Customer, which are attached as Attachment N, together with valid original powers of attorney, **at the time of execution of this Agreement, and approved by City/Customer, prior to the commencement of work.** Copies of the executed bonds shall be attached hereto as Attachment O.
- (iv) The performance and payment bonds shall remain in effect for a period of one (1) year after Final Completion of the work.
- (v) If at any time during the execution of this Agreement in the required period thereafter, the bond or bonds become invalid or ineffective for any reason, the Contractor shall promptly supply within ten (10) days such other bond or bonds, which bond or bonds shall assure performance or payment as required.

SECTION 15 Indemnification and Limitation of Liability

(a) Indemnity

AMERESCO SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, CITY, ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL THIRD PARTY SUITS, ACTIONS, OR CLAIMS, AND RESULTING DAMAGES, LOSSES, AND EXPENSES OF ANY

CHARACTER, NAME AND DESCRIPTION, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES, TO THE EXTENT ARISING OUT OF OR RESULTING FROM THE OPERATIONS OF AMERESCO, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS; OR ON ACCOUNT OF ANY NEGLIGENT ACT OF FAULT OF AMERESCO, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS, INCLUDING, BUT NOT LIMITED TO, ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND SHALL PAY ANY JUDGMENT, WITH COSTS, WHICH MAY BE OBTAINED AGAINST THE CITY GROWING OUT OF SUCH INJURY OR DAMAGE. NOTHING HEREIN SHALL WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The indemnification obligations of Ameresco under this section shall not extend to include the liability of any professional engineer, architect, their consultants, and agents or employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the professional engineer, architect, their consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under this section, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

Anything in this Agreement to the contrary notwithstanding, to the extent permitted by applicable law, 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. NOTWITHSTANDING THE FOREGOING, CUSTOMER DOES NOT WAIVE, AND EXPRESSLY RESERVES, THE RIGHT TO RECOVER FROM AMERESCO ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, MULTIPLE, AND PUNITIVE DAMAGES RECOVERED BY ANY THIRD PARTY AGAINST CUSTOMER TO THE EXTENT SUCH DAMAGES ARE CAUSED BY AMERESCO, TO THE EXTENT SUCH

DAMAGES ARE RECOVERABLE AGAINST AMERESCO AS A MATTER OF LAW AND UNDER THE TERMS OF THIS AGREEMENT. ADDITIONALLY, THE FOREGOING WAIVER SHALL NOT APPLY TO DELAY DAMAGES INCURRED BY AMERESCO UNDER THE TERMS OF SECTION 5 OF THIS AGREEMENT.

To the extent permitted by applicable law, 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 an amount equal two times (2x) the Contract Cost. 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. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE LIMITATION ON LIABILITY SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE SHALL NOT APPLY TO ANY THIRD-PARTY INDEMNITY CLAIMS FOR WHICH AMERESCO IS LIABLE AS SET FORTH IN THIS SECTION 15.

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 of Texas (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 shall be brought exclusively in Harris County, Texas.

SECTION 17 Privileged and Proprietary Information

Ameresco's systems, means, cost, and methodologies of evaluating, implementing, accomplishing and determining project benefits 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 so as to permit Ameresco to assert its privileges under the FOIL within the applicable time limits.

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 Meters, or any interest therein, or sublet or lend the Meters or permit the Meters to be used by anyone other than Customer and Customer's employees prior to the date of the Final Completion Certificate and after Customer's complete payment to Ameresco in accordance with Section 4(a) without the prior express written consent of Ameresco. Any such assignment, transfer or disposition following the date of the Final Completion Certificate and final payment as aforesaid may be made upon prior notice to Ameresco; provided that Customer may, at any time, without obtaining the consent of Ameresco, assign its rights in the Meters 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 without the prior written consent of Ameresco (if required as provided herein), this Agreement shall terminate automatically.
- (c) Ameresco shall not assign this Agreement in whole or in part to any other party without first obtaining the 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 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, unless such other Party would not be prejudiced by a delay in notification, 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 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 Meters 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:

City of Seabrook, TX
1700 1st Street
Seabrook, TX 77586
Attention: Gayle Cook, City Manager

- (b) If to Ameresco:

Ameresco, Inc.
2375 E. Camelback Road, Suite 400
Phoenix, AZ 85016
Attention: Allen Shrt, Director, Development Engineering

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 water suppliers and transporters in the regular course of their respective businesses) concerning water usage for the existing facilities at the Property, including the following data for the most current thirty-six (36) month period. 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 organizing 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;
- (d) 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
- (e) 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; and
- (f) the persons executing this Agreement are fully authorized by law to do so.

SECTION 26 Additional Representations and Requirements of Ameresco

- (a) Pursuant to Section 2270.002, Texas Government Code, the Customer may not enter into a contract for goods or services unless the agreement/contract contains a written verification that the contracting party: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. By executing this Agreement, Ameresco verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement.
- (b) Pursuant to Section 2252.152, Texas Government Code, Ameresco warrants, represents, and agrees that it is not identified on a list prepared and maintained by the Texas Comptroller of

Public Accounts as a company that engages in business with Sudan, Iran or a foreign terrorist organization.

Ameresco, by execution of this Agreement acknowledges it will comply with these statutes.

- (c) Pursuant to Section 2252 of the Texas Local Government Code, as of January 1, 2016, any business entity entering into a contract with a local government that requires approval of the governing body must submit a Disclosure of Interested Parties to the local government prior to the execution of the contract. The Texas Ethics Commission (TEC) has adopted a form for the Disclosure of Interested Parties, FORM 1295. The TEC has created a website application for business entities to submit the required information.
- (d) The City of Seabrook shall require, as a condition precedent to this Agreement, that Form 1295 to be filed electronically by the business entity and acknowledged electronically by the City of Seabrook before entering into any contract requiring the approval of the City Council. The business entity must go to the Texas Ethics Commission Website <http://www.ethics.state.tx.us> and follow the login directions. The following information is required:
 - A. Identification Number:
 - B. Project Description: Smart Meter Program

When the form has been completed, the system will generate a Certificate number and filed date. Please print the form, have it notarized and forward to the attention of the City Manager, understanding that this fully completed, executed and approved Form is a requirement for submission to City Council for consideration.

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 Intentionally Omitted

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.

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 of the Meters.

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, to the extent the Customer is unable to use or derive benefit therefrom, Ameresco shall have the right to all environmental, energy, tax, financial, and water related attributes, rights, credits, deductions, benefits and characteristics associated with or arising out of the transactions contemplated by this Agreement or associated with the Meters or with the project benefits 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.

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 **Termination for Convenience**

(a) 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.

(b) 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 31. Customer shall provide notice to Ameresco of its election to terminate no later than thirty (30) days in advance of the effective date of such termination. The termination of this Agreement by Customer shall release Ameresco from its obligation to provide the M&V Services or any other maintenance, monitoring, measurement and verification and training services after the effective date of termination, as well as its obligation to provide the Performance Guarantee after the termination date; provided, however, that Customer is responsible for payment for the M&V Services, and any other maintenance, monitoring, measurement and verification and training services performed in accordance with the terms of this Agreement prior to the termination date and Ameresco shall remain responsible for any Annual Project Benefits Shortfall (as defined in Attachment C) payments due Customer accrued 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.

CITY OF SEABROOK, TX

AMERESCO, INC.

By: _____
Authorized Signature
Name: _____
Title: _____

By: _____
Authorized Signature
Name: Robert Georgeoff
Title: Executive Vice President

ATTACHMENTS TO PERFORMANCE CONTRACT BETWEEN
AMERESCO, INC.
AND
CITY OF SEABROOK, TEXAS

ATTACHMENT A

METER DATABASE LIST

The following meters and accounts are included in the Scope of Services set forth in Attachment B:

Meter Replacements and Conversions	Quantity
5/8"x3/4" Neptune MACH 10 V5 Gal – R900i with 6 FT Antenna (Detector Check)	5
3/4" SL Neptune MACH 10 V5 Gal – R900i with 6 FT Antenna	3,634
1" Neptune MACH 10 V5 Gal – R900i with 6 FT Antenna	303
1.5" Neptune MACH 10 V5 Gal – R900i with 6 FT Antenna	51
2" Neptune MACH 10 V5 Gal – R900i with 6 FT Antenna	89
3" Neptune FLG 12 LEN MACH 10 V5 Gal – R900i with 20 FT Antenna	3
3" Neptune FLG 17 LEN MACH 10 V5 Gal – R900i with 20 FT Antenna	6
4" Neptune FLG 14 LEN MACH 10 V5 Gal – R900i with 20 FT Antenna	4
4" Neptune FLG 20 LEN MACH 10 V5 Gal – R900i with 20 FT Antenna	2
6" Neptune FLG 24 LEN MACH 10 V5 Gal – R900i with 20 FT Antenna	4
6" T/T Register & 1" T-10 Register w/ 20' Pit Antenna	1
6" HPP3 Register & 1.5" T-10 Register w/ 20' Pit Antenna	4
8" Neptune HPT E-Coder Register w/ 20' Pit Antenna	1
8" HPP3 Register & 2" T-10 Register w/ 20' Pit Antenna	2
10" HPP3 Register & 2" T-10 Register w/ 20' Pit Antenna	1
Additional 3/4" SL Neptune Mach 10 V5 Gal – R900i with 6ft Antenna for City Inventory	40
Total:	4,150

Additional details can be found in the appendix of the Investment Grade Audit (IGA).

ATTACHMENT B

SCOPE OF SERVICES

This Attachment sets forth a description of existing equipment, the Meters and related equipment to be installed by Ameresco at the Property. Installation of the Meters 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 Guaranteed Annual Project Benefits. Any changes to the installation of the Meters and the included equipment are subject to prior written approval of Customer, which approval shall not be unreasonably withheld, conditioned or delayed, and the issuance of a Change Order by Ameresco.

The Meters described below are included in the Scope of Services:

Summary of Project Scope

Measure	Scope Summary
Measure 1. Meter Replacements and Advanced Metering Infrastructure	<ul style="list-style-type: none">• Provide and Install a total of 4,101 solid state water meters in place of the existing meters.• Retrofit a total of 9 water meters with new transmitters• Provide a total of 40 additional 3/4" SL meters and radios for city inventory.• Install new plastic RF-compatible meter box lids for small and intermediate meters (1" and smaller meters).• Install new plastic RF-compatible box lids for intermediate meters (1-1/2" & 2" meters).• Replace existing meter boxes with plastic RF-compatible meter boxes for small and intermediate meters (1" and smaller meters).• Replace existing meter boxes with plastic RF-compatible meter boxes for intermediate meters (1-1/2" & 2" meters).• Provide and install a Neptune 360 AMI system.• Provide and install a WaterSmart customer portal.• Provide and install 1 new 50' monopole at City-Owned Pine Gully park.• Provide and install a total of 3 Neptune IoT Gateways (2 at elevated storage tanks and one at the new monopole).

The Investment Grade Audit dated March 17, 2021 has additional detail and is incorporated by reference. If there is a conflict between this Performance Contract and the Investment Grade Audit, the Performance Contract will take precedence

Measure 1. Water Meter Replacements and Advanced Metering Infrastructure (AMI)

The scope of work for this retrofit includes installation of the AMI system and replacement of the water meters and their end point transceivers. Details of the scope for each component is provided below:

AMI System

The Customer provided a list of assets, which Neptune used to develop a propagation study. The propagation study used to develop this scope of work is dated February 1, 2021 and is titled "Seabrook, TX R900 210128 IoT Revision Prop Study". The AMI system is designed to have a minimum 99.59 percent read rate of the geocoded meters or 98.36 percent of the total meter

population over a rolling three-day period for the service connections included in the scope of work. If Ameresco does not achieve this read rate, Ameresco will add additional gateways or meter equipment to achieve the read rate.

The gateway locations are shown in the map below and are listed in Table D.1, with the GPS coordinates and antenna heights. Existing sites are listed, as are new monopole installations. New monopoles have the height listed.

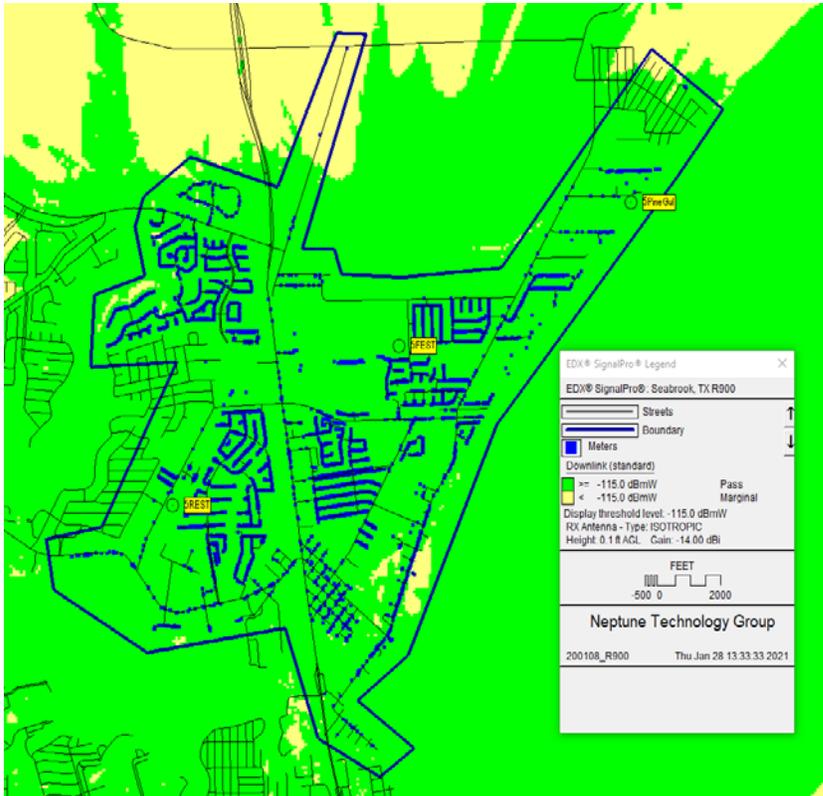


Table D.1. Gateway Locations

Neptune TAG Name	Description	Site Address	Existing or New	Ant. Height
5FEST	Friendship Elevated Storage Tank	3511 Park Road	Existing	121'
5Res	Repsdorph Elevated Storage Tank	2510 Repsdorph Road	Existing	120'
5PineGul	Pine Gully Park	605 Pine Gully Road	New Pole	50'

Installation of the AMI network infrastructure shall consist of the following:

- Provide and install 3 Neptune R900 IoT Gateways.
 - Two of the Gateways will be installed on existing Customer elevated storage tanks.
 - One of the Gateways will be installed on a new monopole located in Pine Gully Park at location shown in the map below:



- Install gateways, cabling, antenna, and other necessary equipment as required.
- Supply electrical power to the gateways from existing AC power source on the site.
- All sites will use cellular service for data communication backhaul.
- The gateways will be provided with a standard 12-month warranty from the manufacturer.
- The installation scope assumes the following:
 - Customer will allow Ameresco to install the gateways at the identified locations and on existing assets at no charge.
 - Ameresco assumes that the existing assets are structurally safe, provide adequate facilities for mounting the required brackets and antennas, and that those facilities / assets are readily accessible via integrated structures (ladders, catwalks, etc.).
 - Customer will allow Ameresco to connect to and use existing onsite 120VAC electrical supply to power the gateways at no charge.
 - The cellular backhaul communication service must be active for the data to be transmitted.
 - Customer will contract separately with the cellular communication provider for ongoing cellular data service.
 - Customer will be responsible for the ongoing annual fees to maintain the cellular service.
- If for any reason Ameresco cannot install gateways at the planned location for the planned height, Ameresco will attempt to find an alternate location during construction. If no alternate location can be found for the planned site, the read-rate coverage of the AMI system may be different than designed. In this situation, guaranteed read-rate coverage for the installed system will be adjusted accordingly as well as any cost changes.

- Installation of the Gateways include the following:
 - Evaluation of each monopole site for compliance with FAA and FCC regulations.
 - Perform a geotechnical study at the monopole site to evaluate the general subsurface conditions and to develop the design for the construction of the monopole foundation. The study will be conducted in the following phases:
 - > A single boring will be drilled at Pine Gully Park to evaluate the subsurface conditions and to obtain soil samples.
 - > Laboratory tests will be conducted on the samples recovered from the boring to evaluate the characteristics of the foundation soils.
 - > Engineering analyses will be performed using both field and laboratory data to develop foundation design recommendations. The geotechnical study report is used to develop the foundation design for the monopole site. The report and the foundation design document - both signed and sealed - are included in the final installation documentation.
 - An engineering study will be performed as the monopole pier is drilled. This is done to confirm the pier bore diameter and depth is completed per the design.
 - Supply and install all standard brackets and material required for AMI equipment installation.
 - Provide electrical wiring and connections for proper operation of the AMI equipment from the equipment to the electrical junction box.
 - Approximately 100 feet of trenching from the new monopole to the nearest electric power connection is included for the Pine Gully Park monopole location.
 - As each site is completed, tests will be performed to ensure all aspects of the installation have been properly completed and consistent with the manufacturer's requirements or industry standards.
 - Configuration and performance testing of the Gateways will be completed by Ameresco and the Neptune design team.
 - New monopole will be powder coated. The color is forest green.
- AMI system clarifications and exclusions:
 - Correction of any deficiencies in the existing utility infrastructure are not included.
 - Any deficiencies in existing electrical system at sites chosen for the Gateways, including proper grounding and bonding are not included and are the responsibility of the Customer.
 - Removal and trimming of trees or plant material is not included.
 - Replacement or addition of trees, shrubs, grass, or mulch is not included.
 - Removal, re-installation or addition of fencing is not included.

Water Meters

Ameresco will provide and install and/or retrofit a total of 4,110 water meters. Forty (40) meters and radios are included as spare inventory for a total of 4,150 meters. The quantity breakdown for each meter sizes is shown in the table below. These quantities are based on the database provided on December 3, 2020 by the Customer and meter route reports dated January 11, 2021. The Customer added a select number of “Inactive” meters to this scope of work. The table below shows the quantity of meters to be installed by size and type. Deviations, additions and substitutions will be handled on a case-by-case basis.

Table D.2. Water Meter Summary

Meter Replacements and Conversions	Quantity
5/8"x3/4" Neptune MACH 10 V5 Gal – R900i with 6 FT Antenna (Detector Check)	5
3/4" SL Neptune MACH 10 V5 Gal – R900i with 6 FT Antenna	3,634
1" Neptune MACH 10 V5 Gal – R900i with 6 FT Antenna	303
1.5" Neptune MACH 10 V5 Gal – R900i with 6 FT Antenna	51
2" Neptune MACH 10 V5 Gal – R900i with 6 FT Antenna	89
3" Neptune FLG 12 LEN MACH 10 V5 Gal – R900i with 20 FT Antenna	3
3" Neptune FLG 17 LEN MACH 10 V5 Gal – R900i with 20 FT Antenna	6
4" Neptune FLG 14 LEN MACH 10 V5 Gal – R900i with 20 FT Antenna	4
4" Neptune FLG 20 LEN MACH 10 V5 Gal – R900i with 20 FT Antenna	2
6" Neptune FLG 24 LEN MACH 10 V5 Gal – R900i with 20 FT Antenna	4
6" T/T Register & 1" T-10 Register w/ 20' Pit Antenna	1
6" HPP3 Register & 1.5" T-10 Register w/ 20' Pit Antenna	4
8" Neptune HPT E-Coder Register w/ 20' Pit Antenna	1
8" HPP3 Register & 2" T-10 Register w/ 20' Pit Antenna	2
10" HPP3 Register & 2" T-10 Register w/ 20' Pit Antenna	1
Additional 3/4" SL Neptune Mach 10 V5 Gal – R900i with 6ft Antenna for City Inventory	40
Total:	4,150

- All replacement meters will be the Neptune Mach10 meters. The Neptune meters are solid-state water meters with integrated radios for all meter installations (5/8"x3/4", 3/4"SL, 1", 1-1/2", 2", 3", 4", and 6").
- Standard warranty for all meters will be provided by the meter manufacturer.
- Prior to the installation of any meters, Ameresco will furnish and distribute door hangers for notification at least 2 days prior to meter installation. Customer will approve final version of door hanger before Ameresco prints and distributes.
- Ameresco will provide storage containers (Conex boxes) for meters and boxes/lids inventory. Customer will allow Ameresco to set Conex boxes at City's Public Works yard located at 1100 Red Bluff Road at no additional costs.
- Customer will provide trash dumpster for general trash along with a second container for existing meters that will be salvaged and/or recycled at City's Public Works yard.
- Ameresco will be responsible for inventory control of meters and boxes/lids, however,

Customer will assist Ameresco in unloading pallets off delivery trucks using Customer's backhoe or forklift at City's Public Works yard. Ameresco must provide 24-hr notice of delivery.

- General scope for the meter replacement is as follows:
 - Clean debris and dirt from the meter and piping inside the pit, as necessary.
 - Pump water out of the pit, as needed, and dump to a storm drain or street.
 - Observe status of service shut-off valve prior to work.
 - Check for indication of flow.
 - Attempt occupant notification.
 - Shut off water service at service shut-off valve.
 - Remove existing meter.
 - Install new meter.
 - Turn on water service at service shut-off valve.
 - Clear air from the line and verify operation by opening downstream valve.
 - Verify the meter is not leaking and there is an indication of flow.
 - Restore service shut-off valve to the original position.
 - Miscellaneous material and labor required to install the new meter such as adapters, couplings, bushings, etc., so long as the work can be performed in the existing pit.
 - Ameresco will be responsible for line breaks 2-feet upstream and 2-feet downstream of the replaced meter.
 - Should a leak occur within 2-feet upstream or 2-feet downstream of the replaced meter within 5 days after installation of that meter, Ameresco will be responsible for repairs necessary to fix the leak.
 - Ameresco will turn over the existing water meters to the Customer for salvage.
 - Ameresco will collect required installation data for uploading to the Customer's billing system.

- When replacing the meters, Ameresco will collect the following data for existing and replacement equipment:
 - Date and time of service
 - Account number
 - Service address
 - Meter ID number
 - Radio ID number
 - Meter size

- Meter brand
 - Meter type (positive displacement, multi-jet, turbine, compound, etc.)
 - Register reading
 - Pre- and post-installation photo documentation
- The scope includes replacing non-functioning service shut-off valves (curb stops) for all small water meters (sizes 5/8"x3/4", 3/4"SL, 1", 1 1/2" and 2"). This work will be done as field conditions required.
 - The scope includes replacing all the meter boxes and lids with new plastic boxes and lids on all small and intermediate meters (sizes 5/8"x3/4", 3/4"SL, 1", 1 1/2" and 2")
 - The scope includes drilling metal lids for external antenna installation at all large meters (3" and larger meters).

Water meter clarifications and exclusions for the scope of work:

- Any deficiencies in existing utility infrastructure that are identified will be reported to the Customer.
- Any existing water leaks found prior to beginning the meter replacement or retrofit will be reported to the Customer for future repair by the Customer.
- Repair of line breaks beyond 2-feet upstream and 2-feet downstream of the replaced meter are not included.
- Lowering or relocating water service lines associated with water meters is not included.
- Any repositioning or leveling of meter boxes for cosmetic appearance different than as-found condition is not included. For all meter boxes that we are replacing, Ameresco will attempt to install them at grade level, assuming the meter and AMI components fit inside the meter box.
- Installation of meter re-setters or risers with the new meters is not included.
- Installation of check valves or other backflow prevention devices with the new meters is not included.
- Additional repairs, replacements, or any modifications to existing meter pits or vaults not already listed and defined above are not included.
- Customer prefers rubber gaskets. Fiber gaskets are not to be used.
- Concrete, asphalt, and sidewalk repairs due to meter access, rework of meter boxes, repair of leaks, or replacement of meters is not included.
- Any cutting or removal of tree roots or shrubbery so that meter can be replaced or to gain access to the meter is not included. The cost for any arborist or specialist required for this work will be provided by the Customer.
- Abatement of any hazardous materials or hazardous material testing is excluded.

Software Installation and Integration

In addition to the AMI infrastructure and metrology, software is required to make the system function and for the Customer to be able to access and use the data recorded by the AMI system. The scope of work for the software installation and integration includes the following:

- Setup and installation of the Neptune 360 software.
- Setup and installation of the WaterSmart Customer Portal.
- On-site training as described in Attachment H for the software shall be provided to the Customer.
- Integrate data from a total of 4,110 water meters installed in the field to the Neptune 360 software platform.
- Project scope includes a one-time setup of the interface between the Neptune 360 and Customer's utility billing software (Incode).
- Integrate meter data from the Neptune 360 and WaterSmart software platforms to the Customer's existing utility billing software
- Project scope includes a one-time setup of the interface between WaterSmart, Neptune 360, and Customer's utility billing software (Incode).
- Ameresco will provide two Neptune Belt Clips. One will be given to Customer at the beginning of the project, while the other will be used by Ameresco during the implementation period. After Final Completion is signed, then Ameresco will turnover second Belt Clip to customer.

Customer responsibilities and clarifications

- Customer will contract separately with Neptune and WaterSmart and will be financially responsible for any annual hosting fees associated with these services.
- Customer will contract separately with the cellular communications provider (e.g., AT&T or Verizon) for ongoing cellular data service associated with the Gateways backhaul communication and will be responsible for any ongoing fees. This service must be kept active for data to be transmitted to the Neptune 360 software.
- Customer will contract separately with the billing software provider (Incode) and be responsible for maintaining the interface between Incode and Neptune 360 along with any associated ongoing service fees charged by Incode or Neptune.

AMI System Annual Services

Ameresco has included the first 12 months of hosting fees for the following software:

- Neptune 360 hosting fees for 4,110 meters
- WaterSmart Customer Portal hosting fees for 4, 110 meters

Ameresco has not included any fees or ongoing services for the following services or software:

- Neptune Gateway annual extended warranty.
- Neptune 360 fixed base annual hosting and support.
- Annual WaterSmart customer portal support or hosting fees.
- Annual Incode / Tyler Tech support or hosting fees.
- Cellular backhaul (AT&T, Verizon, etc) fees

The Customer will contract directly with the provider for these services and hosting fees.

General Clarifications

The following additional clarifications and exclusions are applicable:

- A successful and complete meter installation is defined as any meter installed according to manufacturer specifications. This includes the R900 integrated radio broadcasting a signal to the Neptune Gateway such that the data has been accurately transferred into Neptune 360 and reads one or more times electronically over the AMI network.
- A complete and functional AMI system shall be defined as the associated meters and R900 radios are capable of sending signals through the external antenna to the Gateway; the Gateway receiving those signals and transmitting the information to the Neptune meter data management system (Neptune 360) via cellular backhaul; and the Neptune meter data management system accurately sending the information to Customer's utility billing system.
- Due to external conditions, not all meters will read in the Neptune meter data management system every day; therefore, not all data will be uploaded into the WaterSmart customer portal on a daily basis.
- As final engineering is not started and equipment is not ordered until Ameresco has a signed contract and notice to proceed, Ameresco cannot guarantee delivery dates / system start up and is not responsible for costs associated with additional mobilizations, temporary equipment, etc. if long lead times affect the construction schedule.

ATTACHMENT C

GUARANTEED ANNUAL PROJECT BENEFITS

“Guaranteed Annual Project Benefit(s)” is defined as the meter guarantee for increased accuracy. Increased revenues associated with the increased accuracy are stipulated and calculated as shown in Attachment G.

The Measurement and Verification Plan provided in Attachment G describes the methodology to be used to calculate the projected benefit from the new meters.

Ameresco does not guarantee revenue increase from replacing the water meters. Rather, Ameresco guarantees that the average accuracy of the new 3/4" x 3/4" water meters is at least 98.5 percent. The increased meter accuracy could allow the Customer to bill for water usage and wastewater usage that currently does not register on the existing meters.

Should the average test results for the sample set of 3/4" x 3/4" water meters return less than 98.5% (the ***“Annual Project Benefits Shortfall”***), Ameresco will calculate the projected revenue shortfall. The lost revenue will be calculated between the average tested accuracy and 98.5 percent guaranteed accuracy using the modeled baseline water consumption for the 5/8"x3/4", 3/4", 1", 1 1/2", 2" meters and the water and sewer rates shown in each year of the 15 year project term shown in Attachment G.

Should the total Guaranteed Annual Project Benefits be less than the Meter Guarantee, Ameresco, at its sole discretion, will either replace all of the meters in an identifiable defective population of meters, or compensate the Customer for the difference in the projected revenue. The Meter Guarantee applies to all of the meters in aggregate, not individual meter classes.

Ameresco does not guarantee annual operation and maintenance savings from meter replacement. These cost savings are stipulated.

Notwithstanding anything herein and in the Agreement, it is stipulated and agreed that the terms and requirements of Texas Local Government Code, Section 302.001 et. seq. shall control and are incorporated by reference.

ATTACHMENT D (1)
DELIVERY AND ACCEPTANCE CERTIFICATE

PROJECT COMPLETION LOG

<i>Sub-Project Tasks/Punch List items</i>	<i>Completion Date</i>

Notes (special instructions etc.):
--

Items furnished to CUSTOMER with this Delivery and Acceptance Certificate:

- Receipt of owner’s manuals; _____sets.
- Receipt of instruction and training; _____
- Completion of inspection and walk-through.

The punch list items are hereby completed in accordance with the Agreement. Customer agrees that the Non-Measured Project Benefits have been satisfied for the term of the Guarantee Period.

CUSTOMER	By: _____	Title: _____	Date: _____
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ATTACHMENT D (2)

PERCENT COMPLETE ACKNOWLEDGEMENT CERTIFICATE

Customer hereby acknowledges receipt and acceptance of the _____ portion of the Meter installation project described in Attachment B to the Performance Contract (the "Agreement") dated _____, 202_ 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 installation of the Meters is) _____ 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 Meters 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 Meter 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 Meters is hereby established as:

SUBSTANTIAL COMPLETION DATE: _____

The date of Substantial Completion of a Meter is the date when such Meter is sufficiently complete in accordance with the Agreement so that Customer derives beneficial use thereof. Customer agrees that the Non-Measured Project Benefits associated with the ECMs listed have been satisfied for the term of the Guarantee Period.

A list of items to be completed or corrected is identified below as punch list items.

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

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

[Please Print On Customer Letter Head]

ATTACHMENT E

NOTICE TO PROCEED

MONTH DAY YEAR

Ameresco, Inc.
2375 E. Camelback Road, Suite 400
Phoenix, AZ 85016,
Attention: _____

SUBJECT: NOTICE TO PROCEED

Mr. _____:

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

Sincerely,

CUSTOMER

Name:
Title:

ATTACHMENT F

CHANGE ORDER

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 _____ \$

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.

ATTACHMENTS

[Tailor to Change Order and Scope]

All references in the Agreement to Attachments shall also mean and refer to Attachments A-_, B-_ etc., as a separate scope of Work. Attachments A-1 through J-1 shall be read and construed separately from Attachments A-_ through J-_

All other provisions of the Agreement not expressly modified by this Change Order #__ shall remain in full force and effect including, but not limited to, Section 25 of the Agreement, Representations and Warranties, which representations and warranties are incorporated herein by reference with respect to this Change Order #__.

IN WITNESS WHEREOF, the Parties hereto have caused this Change Order #__ to be duly executed and delivered by their proper and duly authorized officers.

AMERESCO, INC.

:

By: _____ By: _____
Title: _____ Title: _____
Date: _____ Date: _____
(Signature Required)

CUSTOMER APPROVAL:
CUSTOMER

Award	Contract	
_____	\$	
	Previous Additions	\$
	Previous Deductions	\$
	Net Total	\$
	This Change	\$
	Total	\$

By: _____
Title: _____
Date: _____

ATTACHMENT G

**METER MEASUREMENT AND VERIFICATION PLAN;
METHODOLOGY OF CALCULATING PROJECTED PROJECT BENEFITS**

“Non-Measured Project Benefits” are defined as the calculated total of all savings that are not measured through meter testing. For example, meter reading savings are calculated but are not measurable through standard engineering practices, these are just calculated values and are therefore stipulated.

“M&V Report” shall mean the measurement and verification report that includes all data, test results, etc. used to verify that the Guaranteed Annual Project Benefits were achieved. The results included in the M&V Report will follow the methodologies and assumptions stipulated in the M&V Plan.

Water Rates

Tables G.2 through G.4 detail the rates that will be used to calculate the water revenues during the measurement and verification period of the contract. Table G.5 describes the escalation rate that is applied for Year 1 through Year 3 and then escalated 2.8 percent annually for the duration of the project term. Each water rate shown in Tables G.2 through G.4 will be escalated per Table G.5 during the M&V period.

Table G.2. Water Revenues During Measurement and Verification, Year 1 (FY 2021)

Meter Size	Base Rate - FY 2021	Tier 1 (0 to 2 kGal)	Tier 2 (2 to 10 kGal)	Tier 3 (10 to 15 kGal)	Tier 4 (Above 15 kGal)
5/8"	\$18.00	\$0.00	\$5.20	\$6.19	\$7.39
3/4" SL	\$18.00	\$0.00	\$5.20	\$6.19	\$7.39
1"	\$45.00	\$0.00	\$5.20	\$6.19	\$7.39
1.5"	\$89.99	\$0.00	\$5.20	\$6.19	\$7.39
2"	\$143.99	\$0.00	\$5.20	\$6.19	\$7.39
3"	\$269.98	\$0.00	\$5.20	\$6.19	\$7.39
4"	\$449.97	\$0.00	\$5.20	\$6.19	\$7.39
6"	\$899.93	\$0.00	\$5.20	\$6.19	\$7.39
8"	\$1,439.98	\$0.00	\$5.20	\$6.19	\$7.39
10"	\$2069.84	\$0.00	\$5.20	\$6.19	\$7.39
Meter Size	Base Rate - FY 2021	Tier 1 (0 to 4 kGal)	Tier 2 (4 to 10 kGal)	Tier 3 (Above 10 kGal)	
Per Living Unit	\$18.00	\$0.00	\$5.20	\$6.19	\$0.00

Table G.3. Water Revenues During Measurement and Verification, Year 2 (FY 2022)

Meter Size	Base Rate - FY 2022	Tier 1 (0 to 2 kGal)	Tier 2 (2 to 10 kGal)	Tier 3 (10 to 15 kGal)	Tier 4 (Above 15 kGal)
5/8"	\$19.00	\$0.00	\$5.98	\$7.12	\$8.50
3/4" SL	\$19.00	\$0.00	\$5.98	\$7.12	\$8.50
1"	N/A	\$0.00	\$5.98	\$7.12	\$8.50
1.5"	N/A	\$0.00	\$5.98	\$7.12	\$8.50
2"	N/A	\$0.00	\$5.98	\$7.12	\$8.50
3"	N/A	\$0.00	\$5.98	\$7.12	\$8.50
4"	N/A	\$0.00	\$5.98	\$7.12	\$8.50
6"	N/A	\$0.00	\$5.98	\$7.12	\$8.50
8"	N/A	\$0.00	\$5.98	\$7.12	\$8.50
10"	N/A	\$0.00	\$5.98	\$7.12	\$8.50
Meter Size	Base Rate - FY 2022	Tier 1 (0 to 4 kGal)	Tier 2 (4 to 10 kGal)	Tier 3 (Above 10 kGal)	
Per Living Unit	\$18.00	\$0.00	\$5.98	\$7.12	\$0.00

Table G.4. Water Revenues During Measurement and Verification, Year 3 (FY 2023)

Meter Size	Base Rate - FY 2023	Tier 1 (0 to 2 kGal)	Tier 2 (2 to 10 kGal)	Tier 3 (10 to 15 kGal)	Tier 4 (Above 15 kGal)
5/8"	\$20.00	\$0.00	\$7.00	\$8.33	\$9.95
3/4" SL	\$20.00	\$0.00	\$7.00	\$8.33	\$9.95
1"	N/A	\$0.00	\$7.00	\$8.33	\$9.95
1.5"	N/A	\$0.00	\$7.00	\$8.33	\$9.95
2"	N/A	\$0.00	\$7.00	\$8.33	\$9.95
3"	N/A	\$0.00	\$7.00	\$8.33	\$9.95
4"	N/A	\$0.00	\$7.00	\$8.33	\$9.95
6"	N/A	\$0.00	\$7.00	\$8.33	\$9.95
8"	N/A	\$0.00	\$7.00	\$8.33	\$9.95
10"	N/A	\$0.00	\$7.00	\$8.33	\$8.50
Meter Size	Base Rate - FY 2023	Tier 1 (0 to 4 kGal)	Tier 2 (4 to 10 kGal)	Tier 3 (Above 10 kGal)	
Per Living Unit	\$18.00	\$0.00	\$7.00	\$8.33	\$0.00

Table G.5. Water Rate Escalation

Period	Water Rate Increases %
Year 1	Rates Provided by the Customer
Year 2	Rates Provided by the Customer
Year 3	Rates Provided by the Customer
Year 4	2.80%
Year 5	2.80%
Year 6	2.80%
Year 7	2.80%
Year 8	2.80%
Year 9	2.80%
Year 10	2.80%
Year 11	2.80%
Year 12	2.80%
Year 13	2.80%
Year 14	2.80%
Year 15	2.80%

Sewer Rates

Tables G.6 through G.8 details the sewer rates that will be used to calculate the sewer revenues during the measurement and verification period of the contract. Similar to the water revenue increase, the sewer rate will be escalated per Table G.9 for the duration of the project term.

Table G.6. Sewer Rate Summary (\$/kGal) Year 1 (FY 2021)

Rate	Base Rate - FY 2021	Tier 1 (0 to 2 kGal)	Tier 2 (2 to 16 kGal)	Tier 3 (Above 16 kGal)
Residential, Light Commercial, Multi-Family	\$23.00	\$0.00	\$4.86	\$0.00
Rate Code 22, 23, 27	\$23.00	\$0.00	\$4.86	\$0.00
Rate Code 32, 35	\$32.61	\$0.00	\$6.38	\$6.38
Commercial, Industrial	\$32.61	\$0.00	\$6.38	\$6.38

Table G.7. Sewer Rate Summary (\$/kGal) Year 2 (FY 2022)

Rate	Base Rate - FY 2022	Tier 1 (0 to 2 kGal)	Tier 2 (2 to 16 kGal)	Tier 3 (Above 16 kGal)
Residential, Light Commercial, Multi-Family	\$24.00	\$0.00	\$5.59	\$0.00
Rate Code 22, 23, 27	\$24.00	\$0.00	\$5.59	\$0.00
Rate Code 32, 35	N/A	N/A	N/A	N/A
Commercial, Industrial	N/A	N/A	N/A	N/A

Table G.8. Sewer Rate Summary (\$/kGal) Year 3 (FY 2023)

Rate	Base Rate - FY 2023	Tier 1 (0 to 2 kGal)	Tier 2 (2 to 16 kGal)	Tier 3 (Above 16 kGal)
Residential, Light Commercial, Multi-Family	\$24.00	\$0.00	\$6.53	\$0.00
Rate Code 22, 23, 27	\$24.00	\$0.00	\$6.53	\$0.00

Rate Code 32, 35	N/A	N/A	N/A	N/A
Commercial, Industrial	N/A	N/A	N/A	N/A

Table G.9. Sewer Rate Escalation

Period	Sewer Rate Increases %
Year 1	Rates Provided by the Customer
Year 2	Rates Provided by the Customer
Year 3	Rates Provided by the Customer
Year 4	2.80%
Year 5	2.80%
Year 6	2.80%
Year 7	2.80%
Year 8	2.80%
Year 9	2.80%
Year 10	2.80%
Year 11	2.80%
Year 12	2.80%
Year 13	2.80%
Year 14	2.89%
Year 15	2.80%

Metering O&M Savings

Table G.10 lists the stipulated metering O&M savings over the 15-year performance period.. The O&M savings is escalated by 3.0 percent annually.

Table G.10. Stipulated Water Meter O&M Savings

Period	Materials Savings (\$)
1	\$45,000
2	\$46,350
3	\$47,741
4	\$49,173
5	\$50,648
6	\$52,167
7	\$53,732
8	\$55,344
9	\$57,004
10	\$58,714
11	\$60,475
12	\$62,289
13	\$64,158
14	\$66,083
15	\$68,065

Table G.11 provides the total metered water consumption by meter size for the evaluation period. Small meters (1 inch and smaller) represent 58.6 percent of the consumption in the system. Overall baseline water consumption for all meter sizes is 472,815 kGal per year.

Table G.11. Water Consumption (kGal) Summary

Meter Size	Baseline Consumption Thousands of Gallons (kGal) Average Nov 2017 – Oct 2020
5/8" x 3/4" & 3/4" SL	242,339
1"	34,802
1.5"	14,830
2"	86,599
3"	15,220
4"	31,987
6"	10,950
8"	3,123
10"	22,475
Blank	10,491
Total:	472,815

Table G.12 presents the total water revenue calculated by meter size. These charges include the monthly charges and the consumption-based charges. Overall baseline water revenue for all meter sizes totals \$2,940,739 per year.

Table G.12. Water Consumption Revenue Summary (\$)

Meter Size	Baseline Water Revenue Average Nov 2017 – Oct 2020
5/8" x 3/4" & 3/4" SL	\$1,363,425
1"	\$263,119
1.5"	\$115,151
2"	\$601,427
3"	\$95,722
4"	\$205,227
6"	\$66,934
8"	\$37,134
10"	\$117,822
Blank	\$74,779
Total:	\$2,940,739

Sewer from the end users is collected through the sewer system. Table G.13 lists the annual sewer consumption by meter sizes. Overall baseline sewer consumption is 435,953 kGal inclusive of all base charges.

Table G.13. Sewer Consumption (kGal) Summary

Meter Size	Baseline Consumption (kGal) Average Nov 2017 – Oct 2020
Residential, Light Commercial, Multi-Family	262,967
Commercial, Industrial	55,437
Rate Codes (22, 23, 27, 32, 35)	117,548
Total:	435,953

The largest sewer consumption is observed for the residential, light commercial, and multi-family meter rates followed by Rate Codes (22, 23, 27, 32, and 35). Table G.14 lists the annual revenue from sewer utility. The

residential, light commercial, and multi-family sewer charges total revenue is 55 percent of the total, and the commercial – industrial including the rate codes (22, 23, 27, 32, 35) sewer charges are 44.9 percent. The baseline sewer revenue is \$2,825,304 a year inclusive of all base charges.

Table G.14. Sewer Consumption Revenue Summary (\$)

Meter Location	Baseline Sewer Revenue Average Nov 2017 – Oct 2020
Residential, Light Commercial, Multi-Family	\$1,558,149
Commercial, Industrial	\$330,680
Rate Codes (22, 23, 27, 32, 35)	\$936,476
Total:	\$2,825,304

Measurement and Verification Plan

The M&V protocol for Measure 1 is based on the guidelines of the IPMVP Option A. Option A involves verifying that the measure has the potential to perform and to generate revenues. Performance verification techniques include engineering calculations with one-time representative measured values, resulting in measured verification of performance. Post-installation water meter accuracy will be determined from a one-time, post-retrofit field test of a representative sample of water meters.

Ameresco does not guarantee revenue increase from replacing the water meters. Rather, we guarantee that the average accuracy of the new meters that are tested (3/4" SL) is at least 98.5 percent. Per Texas statute, the water meter accuracy verification must be done within the first five years of the performance period. Ameresco plans to perform the water meter M&V in Year 3 after construction is complete.

Cost savings from annual metering O&M are stipulated and agreed-upon with the Customer. No measurement and verification will be done for O&M cost savings.

Measured Variables:

- Average accuracy of existing 5/8"x3/4" and 3/4" SL water meters (performed during project development).
- Average accuracy of new 3/4" SL water meters.

Stipulated Variables:

- Small meters (1" inch and smaller) average accuracy is equal to that of the 5/8"x3/4" & 3/4" SL tested meter population, pre and post.
- Intermediate meters (1-1/2" and 2") average accuracy is equal to that of the 5/8"x3/4" & 3/4" tested meter population, pre and post.
- Baseline modeled consumption profile to be used as post-retrofit consumption profile for accuracy improvement calculations for duration of the performance period.
- Annual metering O&M cost savings (labor and service contracts).

Testing Plan

Average accuracies of the existing water meters have been determined during the audit. During the third year of the performance period (15 years), Ameresco will perform one statistical accuracy test on the new water meters.

For the new, small 3/4" SL water meters installed, Ameresco will select 68 random meters from the size group

for testing, which is the quantity of meters to achieve the required post-measurement requirements of 90 percent confidence and 10 percent precision. The meters will be removed from service, sent to a testing lab for testing following the American Water Works Association (AWWA) guidelines, and returned to the Customer. New meters are installed in place of the test meters. Average accuracy for the low flow, medium flow, and high flow will be aggregated assuming a 15 percent / 70 percent / 15 percent usage in each range as was used to establish baseline efficiency during the Investment Grade Audit (IGA). The verification will be deemed satisfied if the aggregate average accuracy of the sample meters is at least 98.5 percent.

Should the average test results for the sample set of meters return less than 98.5 percent, Ameresco will calculate the projected revenue shortfall. The lost revenue will be calculated between the average tested accuracy and 98.5 percent guaranteed accuracy using the modeled baseline water consumption for the 5/8"x3/4", 3/4", 1", 1 1/2", 2" meters and the water and sewer rates shown in each year of the 15 year project term shown in Tables G.2 through G.14.

Should the total Meter ECM Annual Project Benefits be less than the Meter Guarantee, Ameresco, at its sole discretion, will either replace all of the meters in an identifiable defective population of meters, or compensate the Customer for the difference in the projected revenue.

Ameresco has no control over the water quality within the Customer's distribution system. Poor water quality can cause a meter to fail. If there are signs of scoring from particles or debris or accumulation of deposits as determined by third party laboratory, then the test results for those meters will be removed from the average and the Customer will be responsible for replacements of those meters.

ATTACHMENT H TRAINING

Training and orientation on the systems installed will vary depending on the complexity of the specific equipment installed for each energy and water conservation measure (ECM). Training will be provided in the following levels:

- **Level 1:** For systems and equipment that are essentially direct replacements of existing equipment and where no additional specific skills will be required to perform operations and maintenance (O&M) functions, training will be limited to a general overview of the equipment installed and a review of the O&M manuals. Training will be directed to the City of Seabrook's (Customer) facilities' operations and maintenance personnel. The review of the O&M manuals will provide staff with familiarity with the equipment that is installed, manufacturer's recommended maintenance procedures, and warranty information. Training should be provided at the completion of construction of each of the measures.
- **Level 2:** For systems/equipment that are new to the site and require some general understanding as to their function and operation, training will include a minimal amount of classroom time that will provide an overview of the technology and any specific maintenance or operation requirements. Following the classroom training, a site tour will be conducted to view the installation and operation of the equipment. Training should occur at both the onset and completion of construction. Equipment specification sheets provided at the beginning of construction, will provide a general description of the equipment, function and operation. At the conclusion of construction, the O&M manuals will provide parts lists and warranty information.
- **Level 3:** For systems and/or equipment that are new to the site and more complex in nature, training will be directed to both the facilities engineering and the O&M personnel. In general, training will consist of classroom training followed by hands-on instruction in the field. Training will be provided through a complement of Ameresco personnel, design engineers, installation contractors and manufacturer's representatives, as necessary, and will be dictated by the complexity of the installation, participant's prior experience with the equipment that is installed, and contractual obligations.

Specifics on the training program, including schedule and training materials, will be further refined during the design process, but the training, in general, will consist of the following:

- Explanation of the design concept
 - Design intent
 - Meter reading communication through the AMI and billing systems
- Systems operation
 - Operation of individual components, instruction from authorized factory technicians, if required
 -
 - System operational procedures for all modes in manual and automatic modes
- Operation of the software systems
 - Use of graphical user interfaces
 - Alarms and problem indicators
 - Diagnostics and corrective actions
- Service and maintenance
 - Use of the O&M manuals

- Instruction from authorized factory technicians, where applicable
- Troubleshooting and investigation of malfunctions
- Recommended procedures for collecting, interpreting, and storing specific performance data

The types of training planned for this project is listed in Table I.0. Training will be provided during construction, commissioning and acceptance phases will be dictated by the complexity of the measure.

Table H.0. Training Plan

Description	Training Level	Training Hours	
		Classroom	Field
Measure 1. Meter Replacements and Advanced Metering Infrastructure	3	3 x 8 Hr	3 x 82 Hr

ATTACHMENT I
MEASUREMENT AND VERIFICATION FEE SCHEDULE

Table I.0. Annual M&V Cost

Performance Period	Metering Measure
Year 1	\$0
Year 2	\$0
Year 3	\$47,434
Year 4	\$0
Year 5	\$0
Year 6	\$0
Year 7	\$0
Year 8	\$0
Year 9	\$0
Year 10	\$0
Year 11	\$0
Year 12	\$0
Year 13	\$0
Year 14	\$0
Year 15	\$0

ATTACHMENT J
CUSTOMER'S MAINTENANCE RESPONSIBILITIES

Customer, after Substantial Completion and completion of Attachment D(3), at its own expense, will keep and maintain, or cause to be kept and maintained, the Meters and all associated equipment in as good operating condition as when delivered to the Customer hereunder, ordinary wear and tear resulting from proper use thereof alone excepted, and will provide maintenance and service and make all repairs necessary for such purpose. Responsibility for the proper maintenance, service, repair and adjustments to the Meters and related ancillary systems and equipment, including related expenses, shall transfer to the Customer on the date of "Substantial Completion" as such date is determined in accordance with the definition of Substantial Completion set forth in Section 1 of the Agreement. The Customer will be responsible for such maintenance, service, repair and adjustments for the remainder of the Term. Operation and Maintenance Manuals ("*O&M Manuals*") will be provided to the Customer, by Ameresco. Included with the O&M Manuals will be a list of maintenance responsibilities and tasks for the Customer.

Operations. The Customer shall operate the equipment installed hereunder in accordance with parameters noted in the manufacturers' recommendations, and any supplemental procedures supplied to the Customer by Ameresco, including those set forth in the O&M Manuals.

Maintenance. The Customer's maintenance responsibilities include the proper operation and prompt repair and maintenance of the Meters and related ancillary systems and equipment such that they are maintained in good working order during the Term. The Customer shall repair and maintain (i) the Meters and all related equipment and other components which comprise the work installed hereunder and accepted/approved by Customer as provided in the Agreement, and (ii) all other equipment which is attached thereto and/or is integral to the proper functioning of the Meters, including performance of the maintenance tasks, manufacturer's recommendations and supplemental procedures included in the O&M Manuals. Maintenance also refers to performing required maintenance of ancillary systems.

In addition to any of its other obligations under this Agreement, Customer agrees to operate and maintain the Meters and associated equipment to the standards set forth in this Attachment J. Deviation from these standards may result in adjustments to the Guaranteed Project Benefits, or the determination of Annual Project Benefits.

ATTACHMENT K
PROJECT CASH FLOW

Project Proforma
City of Seabrook, Texas

Implementation Cost of Meters \$ 2,961,500
 Payment & Performance Bonds included in the Implementation Cost:
Total Ameresco Contract Amount: \$ 2,961,500
 Cash Contribution/Buydown: \$ (2,961,500)
Total Amount : \$ 2,961,500

Financial Assumptions

Project Term: 15
 Water Revenue Escalation Rate: 2.80%
 Sewer Revenue Escalation Rate: 2.80%
 M&V Cost Escalation Rate: 3.00%
 Labor Savings Escalation Rate: 3.00%

Year	Annual Water Revenue Increase from 5/8"x3/4" and 1" Meters	Annual Sewer Revenue Increase from 5/8"x3/4" and 1" Meters	Water & Sewer Annual Revenue Increase from 1-1/2" and 2" Meters	Operations & Maintenance Labor Savings	Capital Contribution	Total Revenues and Savings	Measurement and Verification	Annual Neptune N360 Fee (City to contract directly with Neptune)	Neptune Extended Warranty on Gateways (City to contract directly with Neptune)	Annual Tyler Tech (Incode) Fee (City to contract directly with Tyler Tech)	Annual Cellular Backhaul Fees (City to contract directly with AT&T or Verizon)	Annual Water Smart Customer Portal Fee (City to contract directly with Water Smart)	Net Annual Benefit	Cumulative Cash Flow
0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
1	\$ 5,344	\$ 3,807	\$ 2,693	\$ 45,000	\$ -	\$ 56,843	\$ -	\$ 11,166	\$ 4,119	\$ 591	\$ 1,854	\$ 10,906	\$ 28,207	\$ 28,207
2	\$ 6,146	\$ 4,378	\$ 3,097	\$ 46,350	\$ -	\$ 59,971	\$ -	\$ 11,501	\$ 4,243	\$ 621	\$ 1,910	\$ 11,233	\$ 30,464	\$ 58,671
3	\$ 7,193	\$ 5,115	\$ 3,625	\$ 47,741	\$ 14,166	\$ 77,840	\$ 47,434	\$ 11,846	\$ 4,370	\$ 652	\$ 1,967	\$ 11,570	\$ 1	\$ 58,673
4	\$ 7,193	\$ 5,115	\$ 3,625	\$ 49,173	\$ -	\$ 65,106	\$ -	\$ 12,202	\$ 4,501	\$ 684	\$ 2,026	\$ 11,917	\$ 33,776	\$ 92,449
5	\$ 7,193	\$ 5,115	\$ 3,625	\$ 50,648	\$ -	\$ 66,581	\$ -	\$ 12,568	\$ 4,636	\$ 719	\$ 2,087	\$ 12,275	\$ 34,298	\$ 126,747
6	\$ 7,395	\$ 5,258	\$ 3,727	\$ 52,167	\$ -	\$ 68,547	\$ -	\$ 12,945	\$ 4,775	\$ 754	\$ 2,149	\$ 12,643	\$ 35,281	\$ 162,027
7	\$ 7,602	\$ 5,405	\$ 3,831	\$ 53,732	\$ -	\$ 70,570	\$ -	\$ 13,333	\$ 4,918	\$ 792	\$ 2,214	\$ 13,022	\$ 36,291	\$ 198,318
8	\$ 7,815	\$ 5,556	\$ 3,938	\$ 55,344	\$ -	\$ 72,653	\$ -	\$ 13,733	\$ 5,066	\$ 832	\$ 2,280	\$ 13,413	\$ 37,329	\$ 235,647
9	\$ 8,034	\$ 5,712	\$ 4,048	\$ 57,004	\$ -	\$ 74,798	\$ -	\$ 14,145	\$ 5,218	\$ 873	\$ 2,349	\$ 13,815	\$ 38,398	\$ 274,045
10	\$ 8,259	\$ 5,872	\$ 4,161	\$ 58,714	\$ -	\$ 77,006	\$ -	\$ 14,569	\$ 5,374	\$ 917	\$ 2,419	\$ 14,230	\$ 39,496	\$ 313,541
11	\$ 8,490	\$ 6,036	\$ 4,278	\$ 60,475	\$ -	\$ 79,279	\$ -	\$ 15,006	\$ 5,536	\$ 963	\$ 2,492	\$ 14,657	\$ 40,626	\$ 354,167
12	\$ 8,728	\$ 6,205	\$ 4,398	\$ 62,289	\$ -	\$ 81,620	\$ -	\$ 15,457	\$ 5,702	\$ 1,011	\$ 2,566	\$ 15,096	\$ 41,788	\$ 395,955
13	\$ 8,972	\$ 6,379	\$ 4,521	\$ 64,158	\$ -	\$ 84,030	\$ -	\$ 15,920	\$ 5,873	\$ 1,062	\$ 2,643	\$ 15,549	\$ 42,983	\$ 438,938
14	\$ 9,223	\$ 6,558	\$ 4,648	\$ 66,083	\$ -	\$ 86,512	\$ -	\$ 16,398	\$ 6,049	\$ 1,115	\$ 2,723	\$ 16,016	\$ 44,212	\$ 483,150
15	\$ 9,481	\$ 6,742	\$ 4,778	\$ 68,065	\$ -	\$ 89,066	\$ -	\$ 16,890	\$ 6,230	\$ 1,170	\$ 2,804	\$ 16,496	\$ 45,475	\$ 528,625
	\$ 117,068	\$ 83,252	\$ 58,994	\$ 836,943	\$ 14,166	\$ 1,110,423	\$ 47,434	\$ 207,680	\$ 76,608	\$ 12,756	\$ 34,482	\$ 202,838	\$ 528,625	

NPV of the Net Annual Benefit (3% Discount Rate): \$409,383

Notes:

- 1 Revenues are based on current utility rate structures and usage information provided for purposes of this project.
- 2 The performance and payment bonds apply only to the installation portion of the contract and do not apply in any way to energy savings guarantees, payments or maintenance provisions, except that the performance bond shall guarantee that the installation will be free of defective materials and workmanship for a period of 12 months following completion and acceptance of the work.
- 3 The City will contract separately with Neptune, WaterSmart, and Back-haul Communication provider for fees shown in the table. These fees are escalated using the factors shown above.
- 4 Water escalation rates included in years 1 through 3 revenue increase are based on the Seabrook City Council Special Meeting Minutes June 30, 2020. Starting in year 4, the rates are escalated at 2.8% per year.

ATTACHMENT L
FINAL COMPLETION CERTIFICATE

[PLACE ON CUSTOMER LETTERHEAD]

Mr. Robert Georgeoff, Vice President
Ameresco, Inc.
2375 E. Camelback Road, Suite 400
Phoenix, AZ 85016,

Re: Performance Contract (the "Agreement"; capitalized terms used and not defined herein shall have the meanings given to such terms in the Performance Contract) dated as of _____, 20__ by and between [CUSTOMER] ("*Customer*") and Ameresco, Inc. ("*Ameresco*")

Dear Mr. Georgeoff:

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

The date of this Final Completion Certificate is the date of commencement of applicable warranties for the Meters, as required by the Agreement.

Sincerely,

[CUSTOMER]

By: _____

Duly Authorized Signatory

Name: _____

Title: _____

Date accepted: _____

ATTACHMENT M

INSURANCE REQUIREMENTS

During the Term of this Agreement Contractor's insurance policies shall meet the following requirements:

- I. Standard Insurance Policies Required:
 - A. Commercial General Liability
 - B. Business Automobile Liability
 - C. Umbrella / Excess Liability – required for contract amounts exceeding \$1,000,000
 - D. Workers' Compensation
 - E. Builder's Risk – provides coverage for contractor's labor and materials for a project during construction that involves a structure such as a building or garage. builder's risk policy shall be written on "all risks" form.

- II. General Requirements Applicable to All Policies:
 - A. Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
 - B. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
 - C. "Claims Made" policies are not accepted.
 - D. Each insurance policy shall be endorsed to state that coverage shall not be canceled except after thirty (30) days (ten (10) days for non-payment of premium) prior written notice by certified mail, return receipt requested, has been given to the City of Seabrook.
 - E. Upon request, certified copies of all insurance policies shall be furnished to the City of Seabrook.
 - F. The City of Seabrook, its officials, employees and volunteers, are to be named as "Additional Insured" to the Commercial General, Umbrella and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.

- III. Commercial General Liability
 - A. General Liability insurance shall be written by a carrier with a "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
 - B. Limit of \$1,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$2,000,000.00 which limits shall be endorsed to be per Project.
 - C. Coverage shall be at least as broad as ISO form GC 00 01.
 - D. Intentionally Omitted
 - E. The coverage shall include but not be limited to the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual

liability (insuring the indemnity provided herein) Host Liquor Liability, Personal & Advertising Liability; and Explosion, Collapse, and Underground coverage.

IV. Business Automobile Liability

- A. Business Automobile Liability insurance shall be written by a carrier with a "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
- B. Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- C. Coverage shall be at least as broad as Insurance Service's Office Number CA 00 01.
- D. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
- E. The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- F. If applicable to the Scope of Work, Pollution Liability coverage shall be provided by endorsement MCS-90, with a limit of \$1,000,000.00. Such insurance may be provided by Ameresco's subcontractor(s).

V. Excess Liability

Umbrella form excess liability coverage following the form of the underlying coverage with a minimum limit of \$2,000,000.00 per occurrence/aggregate when combined with the lowest primary liability coverage, is required for contracts exceeding \$1,000,000 in total value.

VI. Those policies set forth in Paragraphs III, IV, and V shall contain an endorsement naming the City as Additional Insured and further providing that the Contractor's policies are primary to any self-insurance or insurance policies procured by the City. The additional insured endorsement shall be in a form at least as broad as ISO form GC 2026. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement. Contractor shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at or before the time of execution of this Agreement, and approved by the City Attorney before work commences.

VII. Workers Compensation Insurance

- A. Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers compensation insurance policy: either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.
- B. Workers compensation insurance shall include the following terms:

1. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee are required.
 2. "Texas Waiver of Our Right to Recover from Others Endorsement, WC 42 03 04" shall be included in this policy.
 3. Texas must appear in Item 3A of the Workers Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
- C. Pursuant to the explicit terms of Title 28, Section 110.110(c) (7) of the Texas Administrative Code, the bid specifications, this Agreement, and all subcontracts on this Project must include the following terms and conditions in the following language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:
- "A. *Definitions:*
- Certificate of coverage ("certificate") – An original certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.*
- Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.*
- Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.*
- B. *The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.*
 - C. *The Contractor shall provide City Insurance Policy Endorsements and any additional coverage evidence requested by City to confirm insurance requirements prior to the start of work, as determined by City. A certificate of coverage that does not fully evidence the required coverage and terms of this Agreement shall be rejected for noncompliance.*
 - D. *If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.*
 - E. *The Contractor shall obtain from each person providing services on a project, and provide*

to the governmental entity:

- (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and*
 - (2) no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.*
- F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.*
- G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.*
- H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.*
- I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:*
- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;*
 - (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;*
 - (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
 - (4) obtain from each other person with whom it contracts, and provide to the Contractor:*
 - (a) A certificate of coverage, prior to the other person beginning work on the project; and*
 - (b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
 - (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing*

services on the project; and

(7) *Contractually require each person with whom it contracts to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.*

J. *By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project; that the coverage will be based on proper reporting of classification codes and payroll amounts; and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.*

K. *The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity."*

VIII. Certificates of Insurance, if tendered to evidence coverage requirements shall be prepared and executed by the insurance company or its authorized agent, and shall contain the following provisions and warranties:

- A. The company is licensed and admitted to do business in the State of Texas.
- B. The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance or ISO.
- C. All endorsements and insurance coverages according to requirements and instructions contained herein.
- D. The form of the notice of cancellation, termination, or change in coverage provisions to the City of Seabrook.
- E. Original endorsements affecting coverage required by this section shall be furnished with the Certificates of Insurance.

Title: _____

Date: _____

Note: Date of Bonds must be equal to or after the date of execution of Agreement by City.

EXECUTED PAYMENT AND PERFORMANCE BONDS