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## INVESTMENT GRADE AUDIT AGREEMENT

**THIS INVESTMENT GRADE AUDIT AGREEMENT** (this "*Audit Agreement*") is entered into as of *March 23*, 2012, by and between the Town of Sudbury, acting by its Town Manager, with a business address at 278 Old Sudbury Rd., Sudbury, MA 01776, and the Sudbury Public Schools, acting by its Superintendent, with a business address of 40 Fairbank Rd., Sudbury, MA 01776, collectively referred to as "*Owner*", and Ameresco, Inc. having its principal place of business at 111 Speen Street, Suite 410, Framingham, Massachusetts 01701 ("*Ameresco*"). The Owner and Ameresco may be referred to herein individually as a "*Party*" and collectively as the "*Parties*".

**WHEREAS**, Per *Massachusetts General Laws Chapter 25A*, the Metropolitan Area Planning Council ("*MAPC*") issued a Request for Qualifications ("*RFQ*") on July 27, 2011, and any changes thereto, and Ameresco provided a response to said RFQ dated September 16, 2011 and any revisions thereto ("*Response*"), incorporated herein by reference, and Ameresco was selected by MAPC to offer Energy Management Services to participating entities, including Owner; and

**WHEREAS**, Ameresco desires to perform certain energy services including a detailed energy audit for Owner at the facilities identified in Exhibit A attached hereto (the "*Facilities*"); and

**WHEREAS**, a product of this Agreement shall be a proposal (the "*Project Proposal*"), which, shall become the basis for work to be performed by Ameresco under a separate energy services agreement ("*ESA*") to be executed *after* the acceptance by Owner of the Energy Audit; and

**WHEREAS**, Owner may enter into an ESA with Ameresco for implementation of the Scope of Work (referred to below) identified by Ameresco as a result of its work under this Audit Agreement.

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

### A. SCOPE

1. Ameresco shall complete the following work under this Audit Agreement (the "*Audit Work*"):
  - (a) conduct an energy audit of the Facilities for review and approval of Owner, as per the approach described in Exhibit B attached hereto;
  - (b) analyze the existing Facilities' energy consuming systems;
  - (c) design an appropriate project for the Facilities; and
  - (d) prepare and deliver to Owner the Project Proposal, which shall include:
    - (i) the proposed scope of work (the "*Scope of Work*");
    - (ii) the implementation price for the Scope of Work (the "*Implementation Price*");
    - (iii) estimated cost savings for the Project Proposal; and
    - (iv) a pro forma cash flow analysis showing the project self funds over a twenty (20) year repayment period starting after completion of construction. (Analysis will be based on Ameresco or other proposed financing terms over a period not to exceed twenty years or less, with a fixed rate of interest actually available to Owner.)

2. Owner hereby agrees to provide timely and complete access to all necessary and available property and energy consumption and cost records for up to three (3) years preceding the commencement of Ameresco's services. Owner will make available the assistance of its personnel as may be necessary for Ameresco's performance of the Audit Work hereunder.
3. Ameresco hereby agrees that all conservation measures recommended and proposed shall meet all current codes including the State Sanitary Code, Plumbing and Fuel Gas Codes, Fire Prevention Regulations, Massachusetts Electrical Code, State Building Code and any other applicable requirements of federal, state, and local government. Ameresco will not be expected to resolve any existing code violations but shall report to Owner if any such violations are found.
4. Ameresco hereby agrees that the Project Proposal will note when any specified equipment will require additional personnel to be hired by Owner for operation or maintenance.
5. Ameresco, to the maximum extent feasible and consistent with the optimization of conservation measures, hereby agrees to specify similar or comparable equipment of the same manufacturer at each building and property in order to achieve as much standardization of equipment as possible in Owner facilities.
6. Ameresco acknowledges that Owner may retain an energy consultant to assist in the technical, financial and commercial management of the Audit Work and hereby agrees to work collaboratively with the energy consultant as directed and to provide all necessary documentation, in a form satisfactory to the consultant (such as MS Excel) in support of the review of the Audit Work. Ameresco may require consultant to execute a confidentiality agreement to protect proprietary material or information
7. Coincident with the completion of the Audit Work and Owner's notification that it has accepted the Scope of Work set forth in the Project Proposal, Ameresco will prepare and submit to Owner an ESA detailing the terms and conditions related to the implementation of the Project Proposal.

## **B. TERMS**

1. Ameresco's receipt of an executed copy of this Audit Agreement shall be evidence of Owner's agreement to the terms and conditions of this Audit Agreement and its authorization of and notification to Ameresco to proceed with the Audit Work. Ameresco will thereafter promptly initiate the Audit Work.
2. Owner hereby agrees that if it does not execute an ESA for the Scope of Work within ninety (90) days of submission of the Project Proposal, Owner shall compensate Ameresco for its Audit Work by paying an audit fee to Ameresco in the amount of Twenty Five Thousand Four Hundred Seventeen Dollars (\$25,417) (the "Audit Fee"). The Audit Fee shall be fully-earned, due and payable by Owner to Ameresco no later than one hundred-twenty (120) days after the date that Ameresco submits the Project Proposal to Owner. Owner reserves the right to reject the Scope of Work and not be liable to Ameresco for the Audit Fee if, 1) after review of the Facilities, Ameresco confirms that energy or water savings cannot be attained at any of Facilities; 2) Ameresco is unable to identify a package of energy and water conservation measures which, if implemented, will be able to provide Owner with guaranteed cash savings sufficient to fund payments of all or a portion of annual costs and fees associated with the ESA, including any annual fees to Ameresco (less any third-party rebates or incentives or cash payment Owner may choose to contribute); or, 3) Owner, upon review of the Project Proposal, reasonably determines that it does not meet with the terms and conditions of this Agreement, provided Ameresco shall have fifteen (15) business days to revise the Project Proposal to comply with said terms and conditions.

3. If Owner and Ameresco enter into an ESA which includes the Scope of Work, Owner will not be billed the Audit Fee due under this Audit Agreement as the Implementation Price shall be all inclusive. In the unlikely event that Ameresco is unable to develop a project that satisfies the annual cash flow goal set forth in Section 1(d)(iv) above, then Owner is not obligated to reimburse Ameresco the Audit Fee; provided, however, that Ameresco will be deemed to have satisfied the requirements of Section 1(d)(iv) above should Ameresco's failure to meet the requirements of such section result from either (a) a material adverse change in Owner's credit or bond rating or (b) an increase in interest rates such that the costs associated with the Scope of Work increase due to conditions beyond the control or fault of Ameresco.
4. Ownership of all documents, drawings, calculations, test results, recommendations, technical specifications, renderings, exhibits, models, prints, photographs, or other materials prepared by Ameresco shall become the property of Owner upon payment therefore.

All such documents prepared or furnished by Ameresco pursuant to this Agreement are instruments of service. Such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the proposed project or on any other project. Any reuse without written verification or adaptation by Ameresco for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Ameresco, or to Ameresco's independent professional associates or consultants.

#### **C. LIABILITY**

In no event shall Ameresco be liable for any special, consequential, incidental, punitive, exemplary or indirect damages in tort, contract or otherwise, including, without limitation, loss of profits, loss of use of the Facilities or other property, or business interruption, howsoever caused, in connection with this Audit Agreement.

#### **D. ENTIRE AGREEMENT**

1. This Audit Agreement and exhibits and attachments hereto, if any, shall (a) constitute the entire agreement between the Parties relating to the subject matter hereof, (b) supersede all previous agreements, discussions, communications and correspondences with respect to the subject matter hereof and (c) only be amended, supplemented or modified by a written instrument executed by both Parties. If any provision of this Audit Agreement is held by a court of competent jurisdiction to be unenforceable, no other provision shall be affected thereby, and the remainder of this Audit Agreement shall be interpreted as if it did not contain such unenforceable provision.
2. Ameresco and Owner represent and warrant to each other that (a) the execution, delivery and performance of this Audit Agreement have been duly authorized and approved by all necessary organizational action on the part of such Party, (b) the signatories hereto have been duly authorized by all necessary organizational action of such Party to sign and deliver this Audit Agreement and (c) upon execution this Audit Agreement will constitute a legal, valid and binding obligation of such Party.

*[signature page follows]*

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

**OWNER: TOWN OF SUDBURY**

  
\_\_\_\_\_  
Authorized Signature

Maureen G. Valente

Town Manager

**AMERESCO, INC.**

  
\_\_\_\_\_  
Authorized Signature

David J. Anderson

Executive Vice President

**OWNER: SUDBURY PUBLIC SCHOOLS**

  
\_\_\_\_\_  
Authorized Signature

Anne Wilson

Superintendent

*[Signature Page to the Investment Grade Audit Agreement]*

**EXHIBIT A**

**FACILITIES LIST**

<b>Building</b>	<b>Address</b>	<b>Sq. Ft.</b>
DPW Highway	275 Old Lancaster Road	4,000
DPW Offices (2 bldgs)	275 Old Lancaster Road	28,000
Flynn Building	278 Old Sudbury Road	15,916
Town Hall	322 Concord Road	12,789
Police Station	415 Boston Post Road	6,400
Fairbank Center (including pool)	40 Fairbank Road	38,076
Goodnow Library	21 Concord Road	32,800
Fire Department HQ	77 Hudson Road	7,400
Fire Station	550 Boston Post Road	3,484
Fire Station	266 North Road	3,484
Curtis Middle School	22 Pratts Mill Road	155,000
Loring Elementary School	80 Woodside Road	71,451
Noyes Elementary School	280 Old Sudbury Road	65,000
Haynes Elementary School	169 Haynes Road	62,811
Nixon Elementary School	472 Concord Road	58,215
	Total	564,826

## **EXHIBIT B**

### **Audit Details**

#### **a. Process Overview**

This will be an interactive approach in working with the Owner, following these steps:

- 1) Preliminary Assessment of Needs and Opportunities
  - a) Meet with the Owner to establish interests, plans, problems, etc. related to facilities and operation of facilities.
  - b) Collect data and background information on buildings, equipment and facilities operation
  - c) Perform a preliminary walk-through of facilities and interview staff and occupants to identify potential measures
  - d) Establish base year consumption and reconcile with end-use consumption estimates
  - e) Conduct a preliminary analysis of potential measures
  - f) Meet with the Owner to present preliminary findings and establish agreement on measures to further analyze
- 2) Further Analysis and Audit Report
  - a) Further analyze measures
  - b) Develop a draft Investment Grade Audit Report
  - c) Meet with the Owner to present results
  - d) Prepare final Investment Grade Audit Report
- 3) Energy Performance Contract Proposal
  - a) Develop draft contract for an energy savings performance contract
  - b) Meet with the Owner to present results and negotiate final terms

#### **b. Scope Guidelines and Requirements**

- 1) Allowable cost and savings factors approved for consideration. Owner will provide Ameresco with sufficient guidance to develop savings estimates.
  - a) Payment sources that can be incorporated:
    1. Energy and water cost savings
    2. Material/commodity savings, including scheduled replacement of parts
    3. Outside labor cost savings, including maintenance contracts
    4. Deferred maintenance cost
    5. Offset of future capital cost
    6. Outside incentive funds (utility incentives, grants, etc.)
    7. Any savings related to maintenance and operation of the facilities.

#### **c. Collect data and background information from Owner concerning facility operation and energy use for the baseline period as follows.**

- 1) Building square footage.
- 2) Construction data of buildings and major additions including building envelope
- 3) Sample utility company invoices
- 4) Occupancy and usage information
- 5) Description of primary energy-consuming or energy-saving equipment used on the premises, as available.
- 6) Description of energy management procedures utilized on the premises
- 7) Description of any energy-related improvements made or currently being implemented
- 8) Description of future plans regarding building modifications or equipment modifications and replacements
- 9) Drawings, as available (may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels)
- 10) Operating engineer logs, maintenance work orders, etc., as available
- 11) Records of maintenance expenditures on energy-using equipment, including service contracts
- 12) Prior energy audits or studies, if any

Owner agrees to work diligently to furnish Ameresco, upon request, accurate and complete data and information as available. Where information is not available from Owner, Ameresco will make a diligent effort to collect such information through the facility inspection, staff interviews, and utility companies.

Ameresco agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

d. **Identify potential measures**

- 1) Interview the facility manager, maintenance staff, subcontractors and/or occupants of each building regarding:
  - a) Facility operation, including energy management procedures
  - b) Equipment maintenance problems
  - c) Comfort problems and requirements
  - d) Equipment reliability
  - e) Projected equipment needs
  - f) Occupancy and use schedules for the facility and specific equipment.
  - g) Facility improvements – past, planned and desired
- 2) Survey major energy-using equipment, including lighting (indoor and outdoor), heating and heat distribution systems, cooling systems and related equipment, automatic temperature control systems and equipment, air distribution systems and equipment, outdoor ventilation systems and equipment; exhaust systems and equipment; hot water systems, electric motors, transmission and drive systems, special systems (kitchen/dining equipment, etc.), renewable energy systems, other energy using systems, water consuming systems (restroom fixtures, water fountains, irrigation systems, etc.)
- 3) Perform "late-night" surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules, if deemed necessary.
- 4) Develop a preliminary list of potential energy and water saving measures. Consider the following for each system:
  - a) Comfort and maintenance problems
  - b) Energy use, loads, proper sizing, efficiencies and hours of operation
  - c) Current operating condition
  - d) Remaining useful life
  - e) Feasibility of system replacement

- f) Hazardous materials and other environmental concerns
  - g) Institution's future plans for equipment replacement or building renovations
  - h) Facility operation and maintenance procedures that could be affected
  - i) Capability to monitor energy performance and verify savings
- e. **Establish base year consumption and reconcile with end use consumption estimates.**
- 1) Establish base year consumption by examining utility bills for a representative period of time for electricity, gas, steam, water, etc. Present base year consumption in terms of energy units (kWh, kW, ccf, Therms, gallons, or other units used in bills), in terms of dollars, and in terms of dollars per square foot. Describe the process used to determine the base year (averaging, selecting most representative contiguous 12 months, etc.). Consult with facility personnel to account for any anomalous schedule or operating conditions on billings that could skew the base year representation. Ameresco will account for periods of time when equipment was broken or malfunctioning in calculating the base year.
  - 2) Estimate loading, usage and/or hours of operation for all major end uses of total facility consumption including, but not limited to: lighting, heating, cooling, motors (fans and pumps), plug loads, and other major energy and water using equipment. Where loading or usage are highly uncertain (including variable loads such as cooling), Ameresco will use its best judgment, spot measurements or short-term monitoring. Ameresco should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.
  - 3) Reconcile annual end-use estimated consumption with the annual base year consumption. This reconciliation will place reasonable "real-world" limits on potential savings.
- f. **Develop a preliminary analysis of potential energy and water saving measures.**
- 1) List all reasonably potential opportunities. Consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems, other special equipment, irrigation systems, and water saving devices.
  - 2) Identify measures which appear likely to be cost effective and therefore warrant detailed analysis
  - 3) For each measure, prepare a preliminary estimate of energy or water cost savings including description of analysis methodology, supporting calculations and assumptions used to estimate savings.
- g. **Meet with Owner to present preliminary findings** prior to thorough analysis. Discuss assessment of energy use, savings potential, project opportunities, and potential for developing an energy performance contract. Develop a list of recommended measures for further analysis. The Owner shall have the option to reject calculations of savings, potential savings allowed, or project recommendations.
- h. **Upon selection by Owner of ECMs for further consideration, analyze savings and costs for each agreed upon energy and water saving measure.**
- 1) Follow the methodology of ASHRAE or other nationally-recognized authority following the engineering principle(s) identified for each retrofit option
  - 2) Utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings. Include accurate marginal costs for each unit of savings at the time the audit is performed, documentation of material and labor cost savings, adjustments to



- the baseline to reflect current conditions at the facility, calculations which account for the interactive effects of the recommended measures.
- 3) Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use
  - 4) Develop a preliminary measurement and verification plan for each measure
  - 5) Follow additional guidelines for analysis and report preparation given below
- i. **Prepare a draft Investment Grade Audit Report.** The report provides an engineering and economic basis for negotiating a potential Energy Performance Contract between the Owner and the Ameresco. The report shall include:
- 1) Overview
    - a) Contact information
    - b) Summary table of recommended energy and water saving measures, with itemization for each measure of total design and construction cost, annual maintenance costs, the first year cost avoidance (in dollars and energy units), simple payback and equipment service life
    - c) Summary of annual energy and water use by fuel type and costs of existing or base year condition
    - d) Calculation of cost savings expected if all recommended measures are implemented, and total percentage savings of total facility energy cost.
    - e) Description of the existing facility, mechanical and electrical systems
    - f) Summary description of measures, including estimated costs and savings for each as detailed above
    - g) Discussion of measures considered but not investigated in detail
    - h) Conclusions and recommendations
  - 2) Base year energy use
    - a) Description and itemization of current billing rates, including schedules and riders.
    - b) Summary of all utility bills for all fuel types and water
    - c) Identification and definition of base year consumption and description of how established
    - d) Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc) with base year (include discussion of any unusual findings)
  - 3) Full description of each energy and water saving measure including:
    - a) Written description
      - (1) Existing conditions
      - (2) Description of equipment to be installed and how it will function
      - (3) Include discussion of facility operations and maintenance procedures that will be affected by installation/implementation.
      - (4) Present the plan for installing or implementing the recommendation.
    - b) Savings calculations
      - (1) Savings estimates including analysis methodology, supporting calculations and assumptions used.
      - (2) Annual savings estimates. The cost savings for all energy saving measures must be estimated for each year during the contract period. Savings must be able to be achieved each year (cannot report average annual savings over the term of the contract).
      - (3) Savings estimates must be limited to savings allowed by the Owner as described above.
      - (4) Percent cost-avoidance projected
      - (5) Description and calculations for any proposed rate changes

- (6) Explanation of how savings interactions between retrofit options is accounted for in calculations.
  - (7) Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment.
  - (8) Conclusions, observations, caveats
- c) Cost estimate -- detailed scope of the construction work needed. Include all anticipated costs associated with installation and implementation. Provide specifications for major mechanical components as well as detailed lighting and water fixture counts.
- (1) Engineering/design costs
  - (2) Ameresco/vendor estimates for labor, materials, and equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities.
  - (3) Permit costs
  - (4) Construction management fees
  - (5) Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.)
  - (6) Conclusions, observations, caveats
- d) Other
- (1) Estimate of average useful service life of equipment
  - (2) Preliminary commissioning plan
  - (3) Preliminary measurement and verification plan, following the International Performance Measurement and Verification Protocol (IPMVP) or other approved approach, explaining how savings from each measure is to be measured and verified (stipulated by Contract, utility bill analysis, end-use measurement and calculation, etc.).
  - (4) Discussion of impacts that facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc., and identify who is responsible for maintenance.
  - (5) Compatibility with existing systems. NOTE: Include the name of the existing controls system, if new controls systems will have to be compatible with an existing brand of controls. Also note if a sole-source vendor is established for controls systems.
  - (6) Complete appendices that document the data used to prepare the analyses. Describe how data were collected.
- j. **Meet with Owner** to:  
Review the recommendations, savings calculations and impact of the measures on the operations of the facility. Describe how the projected project economics meet the terms for completing the Technical Energy Audit and Performance Contract Proposal. Discuss the willingness and capability of Owner to make capital contributions to the project to improve the economics of the overall project.
- k. **Revise Audit as directed by Owner.**
- l. **Prepare an Energy Performance Contract Proposal (Term Sheet).** In anticipation of Ameresco and Owner entering into an Energy Performance Contract to design, install, and monitor the energy and water saving measures proposed in the Investment Grade Audit Report, Ameresco shall prepare a proposal of terms to be incorporated in a Energy Performance contract to include:

- 1) Project Cost is the total amount Owner will pay for the project and Ameresco's services. Costs must be consistent with maximum markups and fees established above. Costs may include but are not limited to: engineering, designing, packaging, procuring, installing performance/payment bond costs; construction management fees; commissioning costs; maintenance fees; monitoring fees; training fees; legal services; overhead and profit; other markups.
- 2) Include a List of Services that will be provided as related to each cost.
- 3) Expected term of the Energy Performance Contract.
- 4) Description of how the project will be financed including available interest rates and financing terms, based on interest rates likely available to Owner at this time.
- 5) Explanation of how the savings will be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors. Monitoring and verification methods must be consistent with the International Performance Monitoring and Verification Protocol 2000 or other approved approach.
- 6) Analysis of annual cash flow for Owner during the contract term.